**SHAW v. COUNTY OF LOS ANGELES**

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*JAMIEL SHAW, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.*

Court of Appeals of California, Second District, Division One.

Filed January 25, 2012.

***Attorney(s) appearing for the Case***

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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

CHANEY, J.

Plaintiff Jamiel Shaw sued the County of Los Angeles and Sheriff Lee Baca for negligence and wrongful death arising from the murder of plaintiff's son by a known illegal alien gang member who had been released from jail by sheriff's deputies the day before the murder. Plaintiff appeals from the judgment of dismissal entered when the trial court sustained defendants' demurrer to plaintiff's second amended complaint without leave to amend. We affirm.

**BACKGROUND**

The tragic facts underlying the legal issues posed in this matter are taken from the original and second amended complaints. On March 1, 2008, a Saturday, Pedro Espinoza, an illegal alien and member of the criminal street gang commonly known as 18th Street, was released by the Los Angeles County Sheriff's Department from county jail. Within 24 hours of his release, Espinoza acquired a gun and shot and killed Jamiel Shaw II, a college-bound high school junior, while Shaw was engaged in a phone conversation with his girlfriend two doors from his home. Plaintiff, Shaw's father, heard the shots from his home and rushed outside to find his son lying on the sidewalk. Plaintiff alleged Espinoza targeted and shot Shaw because Shaw was an African American who Espinoza mistakenly thought was a gang member.

Prior to the shooting, the Los Angeles County Board of Supervisors had entered into a memorandum of understanding (MOU) with the United States Department of Homeland Security (DHS or the Department) pursuant to which personnel of the sheriff's department would be trained to perform some immigration enforcement functions within Los Angeles County jail facilities. The intent was to create a project that would "result in enhanced capacity to deal with immigration violators."

The MOU provided that immigration enforcement activities performed by participating sheriff's department personnel would be supervised and directed by U.S. Immigration and Customs Enforcement (ICE) personnel. The MOU provided that participating sheriff's department personnel "shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes ICE arrest or detainer is appropriate to facilitate ICE action prior to any release from LA County custody." The MOU also authorized participating sheriff's department personnel to prepare immigration detainers. An immigration detainer "serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." (8 C.F.R. § 287.7(a) (2011).) "The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible." (*Ibid.*) Upon being served a detainer, a law enforcement agency may hold an individual, who could otherwise no longer be lawfully detained, for up to 48 hours, excluding Saturdays, Sundays, and holidays, to permit DHS to assume custody. (*Id.* at (d); *Rivas v. Martin* (N.D. Ind. 2011) [781 F.Supp.2d 775](https://www.leagle.com/cite/781%20F.Supp.2d%20775), 782.)[1](https://www.leagle.com/decision/incaco20120125032#fid1)

The MOU provided that "[e]xcept for the rights of participating [sheriff's department] personnel . . ., this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal."

Plaintiff filed a complaint on May 8, 2009. After two rounds of demurrers, the second amended complaint is operative, in which plaintiff alleges causes of action for negligence, negligence per se, and wrongful death. The gravamen of the complaint is the allegation that the MOU imposed a mandatory obligation on the sheriff's department to notify ICE supervisory personnel of any alien for whom detainer is appropriate and specifically to issue a detainer for aliens such as Espinoza and keep them in custody for 48 hours. Defendants breached the duty when it released Espinoza.

Defendants demurred to the second amended complaint on the grounds that it failed to state any cause of action and they were absolutely immune from liability pursuant to several Government Code sections. Plaintiff did not oppose the demurrer, and the trial court sustained it without leave to amend.

Plaintiff appeals from the resulting judgment of dismissal.

**DISCUSSION**

**1. Standard of Review**

In reviewing a judgment following the sustaining of a demurrer without leave to amend we decide anew whether the complaint states a cause of action. (*Bower v. AT&T Mobility, LLC* (2011) [196 Cal.App.4th 1545](https://www.leagle.com/cite/196%20Cal.App.4th%201545), 1552.) We take all alleged facts as true but do not assume the truth of contentions, deductions or conclusions of law. (*Ibid.*)

**2. The Trial Court Properly Sustained Defendants' Demurrer to the Second Amended Complaint Without Leave to Amend**

Defendants contend they cannot be held liable to plaintiff because they owed no duty of care to Shaw and are immune from tort liability for performing the discretionary act of releasing Espinoza from custody without notifying ICE. Plaintiff responds that pursuant to the provision in the MOU prescribing that sheriff's department personnel "shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes ICE arrest or detainer is appropriate," the sheriff's department had a mandatory duty to check on Espinoza's immigration status and notify ICE before releasing him.

We agree with defendants.

**a. defendants owed no duty of care**

To determine whether a peace officer or law enforcement agency would be liable for injury caused by a person released from custody, the first question is whether the peace officer or agency owed a duty of care to the injured party. (*Davidson v. City of Westminster* (1982) [32 Cal.3d 197](https://www.leagle.com/cite/32%20Cal.3d%20197), 201-202.) "As a general rule, one owes no duty to control the conduct of another nor to warn those endangered by such conduct." (*Bonds v. Cal. ex rel. Cal. Highway Patrol* (1982) [138 Cal.App.3d 314](https://www.leagle.com/cite/138%20Cal.App.3d%20314), 318; see *Thompson v. County of Alameda* (1980) [27 Cal.3d 741](https://www.leagle.com/cite/27%20Cal.3d%20741), 758.) Thus, police officers have no duty to control the conduct of a person released from custody or to warn other agencies or potential victims. (*Tarasoff v. Regents of Univ. of California* (1976) [17 Cal.3d 425](https://www.leagle.com/cite/17%20Cal.3d%20425), 444.)

In *Jackson v. Clements* (1983) [146 Cal.App.3d 983](https://www.leagle.com/cite/146%20Cal.App.3d%20983), police officers detained a person who was too intoxicated to drive, but released him and did not prevent him from leaving in his automobile. He thereafter killed three people while driving under the influence. The court concluded that under these circumstances the officers had no duty of care to the persons killed. (*Id.* at p. 987.)

Similarly in *Harris v. Smith* (1984) [157 Cal.App.3d 100](https://www.leagle.com/cite/157%20Cal.App.3d%20100), an officer released a driver even though he detected the odor of alcohol on the driver's breath. Shortly thereafter the driver was involved in an accident in which two persons were killed. His blood alcohol level was 0.17. In concluding the officer owed no duty of care to the persons killed, the court stated, "Officer Kreps did not create the peril to plaintiff; he took no affirmative action which contributed to, increased or changed the risk that otherwise existed; he did not voluntarily assume any responsibility to protect plaintiff; and he made no statement or promise to induce plaintiff's reliance. Assuming, arguendo, plaintiff or any other member of the motoring public was a reasonably foreseeable victim, that fact alone is not enough to establish a special relationship with Officer Kreps imposing on him a duty to use due care." (*Id.* at p. 105.)

In *Tarasoff v. Regents of University of California, supra,* the Supreme Court held that police officers owed no duty to control a person arrested and released even though they knew of his potential for violence against a specific victim. (17 Cal.3d at p. 444.)

In *Thompson v. County of Alameda, supra,* county employees released from custody an individual they knew had "`latent, extremely dangerous and violent propensities regarding young children and that sexual assaults upon young children and violence connected therewith were a likely result of releasing [him] into the community.'" (27 Cal.3d at p. 746, quoting the complaint.) The county also knew the individual "had `indicated that he would, if released, take the life of a young child residing in the neighborhood.'" (*Ibid,* quoting the complaint.) Within 24 hours of his release, the individual murdered the plaintiffs' young son. (*Ibid.*) The court stated, "whenever a potentially dangerous offender is released and thereafter commits a crime, the possibility of the commission of that crime is statistically foreseeable." (*Id.* at p. 758.) But the county "had no affirmative duty to warn plaintiffs, the police, the mother of the juvenile offender, or other local parents." (*Ibid.*)

Here, defendants had no duty either to detain Espinoza or warn ICE of his impending release. Plaintiff's argument that the MOU prescribed such a duty is without merit. The MOU is a contract between DHS and the County of Los Angeles. The only obligations imposed are contractual duties between the County and DHS and their agents, not tort obligations to outside persons. The MOU expressly provides as much.

Plaintiff argues the MOU was a "statute" or "enactment" that was designed to protect against the risk of the particular kind of injury that occurred here and imposed mandatory duties on defendants within the meaning of Government Code section 815.4. The argument is without merit.

"Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." (Gov. Code, § 815.6.) Here, the MOU is not an enactment, it is only a contract. It was not designed to protect against the risk of the particular kind of injury that occurred here. By its terms, it was designed to create a project that would "result in enhanced capacity to deal with immigration violators in Los Angeles County jail facilities." Moreover, the MOU established no mandatory duty. Although it authorized sheriff's department personnel to prepare immigration detainers, it did not require them to do so. The MOU's prescription that sheriff's department personnel "shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes ICE arrest or detainer is appropriate," imposed only an obligation to perform the discretionary function of determining who should be reported to ICE. In other words, even if the MOU imposed some mandatory obligation, at most the obligation was to notify ICE of any alien for whom arrest or detention was deemed appropriate. There was no mandatory obligation to identify anyone as subject to detention.

The trial court properly concluded plaintiff failed to state any cause of action for negligence or wrongful death.

**b. immunity**

Plaintiff's claims are also barred by immunity statutes.

The purpose of immunity is not to condone negligence, it is to recognize the need for independent action in public service. The complex process of the administration of county jails requires that sheriff's department officers and employees be charged with the duty of making decisions and exercising judgment. These officers and employees would be unduly hampered in the discharge of their duties if they were not protected in some reasonable degree from private liability and vexatious lawsuits. Moreover, it would be unfair to place a person in a position in which he is required to exercise independent judgment while at the same time holding him liable for not acting according to the future judgments of others, judgment that perforce comes with the benefit of hindsight. (Rest.2d Torts, § 895D, com. b.)

This is not to say plaintiff's lawsuit is vexatious. On the contrary, as stated above, on demurrer the facts a plaintiff alleges are assumed to be true. We thus assume it to be true that sheriff's department personnel knew Espinoza was a dangerous gang member who was in the country illegally and knew they should report this to ICE but negligently failed to do so. But it is impossible to know before a case has been tried whether the claims raised in it are well founded. To submit all officials, the negligent as well as the non-negligent, to the burden of a trial and the danger of its outcome would intimidate and deter them from performing their duties. The public interest demands that our officers and employees be free to take action based on their best judgment. Sometimes that judgment is mistaken. And because the work is important, sometimes the mistakes have tragic consequences. Even so, it is thought better in the end to leave unredressed the wrongs done by negligent officers than to subject all officers to the constant dread of retaliation. (See *Gregoire v. Biddle* (2d Cir. N.Y. 1949) [177 F.2d 579](https://www.leagle.com/cite/177%20F.2d%20579), 581-582; see also *Bradley v. Fisher* (1871) [80 U.S. 335](https://www.leagle.com/cite/80%20U.S.%20335), 350-351.)

Pursuant to these principles, "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (Gov. Code, § 820.2.) More specifically, and as pertinent here, neither a public entity nor a public employee is liable for (1) "any injury resulting from determining whether to parole or release a prisoner" or (2) "injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody." (Gov. Code, §§ 845.8, subd.(a), 846; *County of Santa Barbara v. Superior Court* (1971) [15 Cal.App.3d 751](https://www.leagle.com/cite/15%20Cal.App.3d%20751), 756 [public entity was immune from liability for negligently releasing from jail an offender known to be violent who committed murder shortly after his release].)

We cannot help but feel the utmost sympathy for the family of Jamiel Shaw II. Whatever personal emotions and personal views members of this court may have in this heartrending case, those feelings must be put aside in resolving the narrow legal question decided here. The issues are duty and policy. Defendants owed no duty to retain custody of Espinoza or notify ICE of his impending release. Even if they had such a duty and breached it they would still be immune from civil liability. The demurrer was therefore properly sustained.

**DISPOSITION**

The judgment is affirmed. Respondents are entitled to recover their costs on appeal.

ROTHSCHILD, Acting P. J. JOHNSON, J., concurs.

**FootNotes**

1. Section 287.7 of title 8 of the Code of Federal Regulations provides in pertinent part the following: "(d) Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department."