

596 F.3d 583, 10 Cal. Daily Op. Serv. 2228, 2010 Daily Journal D.A.R. 2765  
(Cite as: 596 F.3d 583)

United States Court of Appeals,  
Ninth Circuit.

J. AVALOS, individually and as representative of the  
class defined, Plaintiff-Appellant,

v.

Leroy BACA; Larry Waldie; Shaun Mathers, Defen-  
dants-Appellees.

No. 07-56511.

Argued and Submitted Aug. 7, 2009.

Filed Feb. 24, 2010.

[CALLAHAN](#), Circuit Judge:

J. Avalos was over-detained by the Los Angeles Sheriff's Department ("LASD"). He filed this action against officers of the LASD in their official and individual capacities.<sup>FN1</sup> He asserts claims pursuant to [42 U.S.C. § 1983](#) for alleged violations of his rights under the Fourth and Fourteenth Amendment based on his over-detention and for defendants' efforts to procure an involuntary waiver of his civil rights claim based on his over-detention. Avalos also alleges claims of conspiracy and violations of the Racketeer Influenced and Corrupt Organizations Act, [18 U.S.C. § 1962\(a\)-\(c\)](#) ("RICO"). The district court granted summary judgment in favor of defendants. We conclude that (1) plaintiff has failed to show an unconstitutional custom, policy or practice of over-detention, (2) there is no actionable claim under [§ 1983](#) for procuring a coercive or involuntary waiver of a civil rights claim, (3) the district court properly granted summary judgment for defendants on plaintiff's conspiracy claims, and (4) plaintiff has failed to present sufficient evidence of a RICO violation or any harm to his business or property from the alleged act of racketeering. Accordingly, the district court's grant of summary judgment in favor of defendants is affirmed.

<sup>FN1</sup> The first amended complaint included as defendants six Los Angeles County Supervisors. The district court dismissed these defendants, and Avalos does not challenge their dismissal on appeal. The remaining named defendants are Sheriff Leroy Baca,

Undersheriff Larry Waldie, and Lieutenant Shaun Mathers.

I

On June 22, 2004, Avalos was arrested on an Orange County warrant for domestic abuse and transported to the LASD's jail. LASD had the responsibility to notify the Orange County Sheriff's Department of Avalos's arrest and detention. See [\\*586 Cal. Penal Code § 821](#). LASD failed to notify the Orange County Sheriff's Department that Avalos was available to be picked up. On September 4, 2004, over two months later-LASD realized that Avalos had been over-detained and should be released.

On that day, Avalos was allowed to change into his personal clothes and was brought into an empty room. After he entered the room, Deputy Sheriff Wilson came in wearing street clothing and a sheriff's badge, and sat down across a desk from Avalos. According to Avalos, Wilson took out some papers. Avalos does not speak English, and claims that when he told Wilson he did not understand what was in the papers, Wilson only showed him where to sign. Avalos signed the papers, but asserts that he did not understand that the papers were an offer to settle his claim for over-detention for \$500.

According to the defendants, when Wilson realized that Avalos did not speak English, he enlisted Deputy Yvonne Zarate to translate. Deputy Zarate stated that she spoke to Avalos, learned that he earned \$500 a week in his janitorial job, and discussed the waiver of his claim for over-detention in exchange for \$500. Avalos was released later on September 4, 2004, and on September 9, 2004, two LASD officers, in an unmarked car and wearing street clothes, went to visit Avalos at his home. Avalos alleges that they telephoned his home, spoke to his 13-year-old daughter, and told her that Avalos should come outside. Avalos went outside alone. He states that neither of the officers, Wilson and Deputy Lam, spoke Spanish, but they told him to sign a "Release and Settlement Agreement" and gave him a check for \$500. Avalos alleges that the officers did not explain the documents to him and he did not understand what he was signing. Avalos signed the documents, accepted the check, and subsequently

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cashied the check.

Avalos's First Amended Complaint ("FAC") was filed on April 3, 2006, at a time when several other related "over-detention" cases were pending before the district court judge. *See Mortimer v. Baca*, 478 F.Supp.2d 1171 (C.D.Cal.2007), *aff'd Mortimer v. Baca*, 594 F.3d 714 (9th Cir.2010) ("Mortimer II"). The FAC alleges four claims for relief. In his first claim, Avalos alleges that defendants violated his Fourth and Fourteenth Amendment rights by causing him to be over-detained and by causing him to involuntarily waive his civil rights claim against defendants. Avalos's second claim alleges that defendants engaged in a conspiracy to cause Avalos's over-detention and his involuntary waiver of his over-detention claim. In claims three and four, Avalos alleges that defendants conspired to and did engage in a pattern of racketeering activity in violation of RICO. Avalos also sought to represent a class of more than a hundred individuals sharing the following characteristics: (1) they were over-detained by the LASD; (2) their over-detentions were recognized by LASD officials; and (3) they were "fraudulently, oppressively, extortionately, or with threats [ ] duped into compromising their monetary claims for sums far less than those claims are worth."<sup>FN2</sup>

<sup>FN2</sup>. Because Avalos did not move for class certification, the district court treated the FAC as an individual suit against the defendants.

In September 2006, Avalos moved for partial summary adjudication. On October 16, 2006, the district court granted plaintiff's motion and determined that he had been over-detained and that the defendants were potentially liable. In March \*587 2007, the defendants moved for summary judgment. On August 24, 2007, the district court granted defendants' motion for summary judgment in its entirety. *Avalos v. Baca*, 517 F.Supp.2d 1156 (C.D.Cal.2007). Avalos filed a timely notice of appeal from that order.

\* \* \* \*

#### **D. The district court properly granted defendants summary judgment on plaintiff's claims under RICO.**

Avalos alleges that he "has a cognizable property interest in his [Section 1983](#) cause of action for viola-

tion of his Fourteenth Amendment constitutional rights based on the 73-day over-detention and therefore has standing to assert his RICO claim." He further asserts that the record is replete with evidence that "through fraud and duress, the defendants had a pattern of fraudulently extracting in-custody settlements for negligible amounts, and of defeating, or attempting to defeat, potential [Section 1983](#) lawsuits."

The district court set forth the criteria for a RICO claim as follows:

[RICO] prohibits, among other activities, the conducting of an enterprise's affairs through racketeering activity. [18 U.S.C. § 1962\(c\)](#). A prima facie RICO case requires: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 620 (9th Cir.2004). Furthermore, there must be an injury to a specific business or property interest. *Diaz v. Gates*, 420 F.3d 897, 898 (9th Cir.2005). The plaintiff must also demonstrate that defendants engaged in at least *two* acts of racketeering activity as defined in [18 U.S.C. § 1961](#). *Bowen v. Oistead*, 125 F.3d 800, 806 (9th Cir.1997). Moreover, RICO requires as a threshold for standing an injury to "business or property." \*593 [18 U.S.C. § 1964\(c\)](#). "Without a harm to a specific business or property interest—a categorical inquiry typically determined by reference to state law—there is no injury to business or property within the meaning of RICO." *Diaz*, 420 F.3d at 900.

[Section 1962\(d\)](#) prohibits anyone from conspiring to violate the provisions of [18 U.S.C. § 1962\(c\)](#). Under [§ 1962\(d\)](#), plaintiff must show that defendants objectively manifested their agreement to participate in a racketeering enterprise through the commission of two or more predicate crimes. *Baumer v. Pachl*, 8 F.3d 1341, 1346-47 (9th Cir.1993).

[Avalos](#), 517 F.Supp.2d at 1170.

The district court proceeded to grant defendants summary judgment on Avalos's RICO claims because: (1) although "plaintiff alleges he has suffered lost wages and economic opportunities due to his over-detention, plaintiff has presented no evidence to

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support this assertion”; (2) “plaintiff has presented no evidence of a ‘pattern’ of ‘racketeering activity’ by any of the defendant officials sued in their official or individual capacities”; and (3) as to plaintiff’s RICO conspiracy claim, “plaintiff has not presented any evidence of a ‘conspiracy’ or ‘agreement’ among defendants to over-detain him.” *Id.* at 1171-72. The district court concluded, citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), that Avalos had not met his burden at the summary judgment stage of presenting evidence to show a genuine issue for trial. *Id.*

On appeal, Avalos argues that he has standing to assert a RICO claim because we look to state law to determine what is a property right and California law provides that a cause of action to recover money in damages is a form of personal property. *See Diaz*, 420 F.3d at 899 (stating that “[w]e believe the best-reasoned approach is that of *Doe v. Roe*, 958 F.2d 763 (7th Cir.1992), under which we typically look to state law to determine ‘whether a particular interest amounts to property,’ *id.* at 768.”); *see also Parker v. Walker*, 5 Cal.App.4th 1173, 1182-83, 6 Cal.Rptr.2d 908 (citing Cal. Civil Code §§ 663 and 953, and holding that a “cause of action to recover money in damages, as well as money recovered in damages, is a chose in action and therefore a form of personal property”).<sup>FN9</sup>

<sup>FN9</sup> Avalos also claims that the district court erred in granting summary judgment against him on his RICO claims because (1) the district court misconstrued his burden at the summary judgment stage, (2) qualified immunity is not available to defendants on RICO claims, and (3) his FAC adequately states RICO claims. These contentions are not discussed as they do not affect our reasons for affirming the district court.

The district court’s grant of summary judgment for the defendants on plaintiff’s RICO claims was proper for at least two reasons. First, a prima facie RICO case requires a showing of conduct of an enterprise through a pattern of racketeering activity. *Miller*, 358 F.3d at 620. Here, the determination that defendants did not engage in a custom, policy or practice of over-detention precludes Avalos from alleging any predicate act concerning over-detention that might support a finding of a pattern of racketeer-

ing activity. This conclusion is reinforced by plaintiff’s failure to allege that the defendants had any personal involvement in their over-detentions. Similarly, as there is no constitutional right against defendants seeking settlements or waivers, defendants in procuring Avalos’s waiver did not commit any predicate act that might support a finding of a pattern of racketeering activity.

\*594 Second, in order to state a RICO claim, a plaintiff must show harm to a specific business or property interest. *Diaz*, 420 F.3d at 900 (holding that “[w]ithout a harm to a specific business or property interest ... there is no injury to business or property within the meaning of RICO”). Avalos has failed to do so. He has not proffered any evidence of specific injury to a business, and it appears that he cannot do so because he admits that he is not a United States citizen and does not have a work visa. Avalos may be correct in contending that his right to judicial action could be considered “property” under California law, but he cannot show any harm because the allegedly coerced waiver, in fact, did not deny him access to the courts. In other words, even if the right to a judicial proceeding is a property right under California law, Avalos suffered no “harm” to that right because he was able to file his claim for over-detention (and coerced settlement) in the district court.

#### IV

There appears to be no doubt that Avalos was improperly over-detained by the LASD. In this action, however, he seeks damages from the Sheriff and two officers of the LASD based on 42 U.S.C. § 1983 and RICO. The district court properly concluded that Avalos failed to make a prima facie showing for relief under these statutes. He failed to show that the officers had any personal involvement in his over-detention or that his over-detention was the result of any custom, policy or practice of the LASD. Also, Avalos failed to show that he had any constitutional right against the LASD seeking a settlement of his claim for over-detention. In addition, he has not demonstrated any cognizable injury from the allegedly coerced waiver of his right to seek damages due to his over-detention. Finally, on plaintiff’s RICO claims, the district court properly determined that Avalos had failed to allege any improper acts by the named defendants that could be construed as constituting a pattern of racketeering activity and he failed to show any harm to a business or property interest.

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For these reasons, the district court's grant of summary judgment in favor of defendants and against the plaintiff is

**AFFIRMED.**

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