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SPEAKERS

Anthony Sanders, Jaba Tsitsuashvili, Ben Field

A Anthony Sanders 00:25

That any person who, under color of any law statute, ordinance, regulation, custom or usage of any state, shall subject or cause to be subjected any person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution of the United States shall, any such law, statute, ordinance, regulation, custom or usage of the state to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress. Now, longtime Short Circuit listeners will know that that is section one of the Third Enforcement Act, or otherwise known as the Ku Klux Klan Act, that Congress enacted into law in 1871. And today, with slight modifications, it is known as 42 USC Section 1983. Now, in the past, on this podcast, when we've talked about Section 1983, it's usually in the context of enforcing the 14th Amendment, which often means enforcing the Bill of Rights against state and local officials and municipalities. But today, we have it about something else in the Constitution that you don't hear so much about. That's the 13th Amendment, which, as you should know, says "neither slavery nor involuntary servitude, except as punishment for a crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." And so that's what we're going to be talking about today on Short Circuit, your podcast on the federal courts of appeals. I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. Now, we're recording this today, which is Thursday, December 15 2022. We won't be releasing this for a little bit. So wherever you are, even if you just downloaded it just now after you got the notification on your phone, you likely are sometime in the future, where you are gathered with family and friends, enjoying some time off, perhaps maybe a little eggnog, ringing in the new year. But back here in the past, it's not like that. We are hard at work defending civil liberties and civil rights of all Americans. And to discuss such matters, I have with me today two eminent civil liberty attorneys, who are my colleagues here at the Institute for Justice. One of them is Jaba Tsitsuashvili, who I'd like to have him please correct me as to the pronunciation of his name.

J Jaba Tsitsuashvili 03:18

Hi, Anthony. It was a valiant effort. It's Jaba Tsitsuashvili.

A Anthony Sanders 03:23

Thank you, Jaba. My practice before we started recording was a complete failure. Jaba is going to be talking about a different case in a little bit, and that involving where you were born and national origin discrimination and also wrapped up with qualified immunity. But first, we're going to be talking to my colleague Ben Field, who just did something that many attorneys go through their entire lives of practice without doing and that's filing a petition for certiorari at the U.S. Supreme Court. So Ben, tell us about filing a petition for certiorari, a cert petition, but also what the heck it has to do with the 13th Amendment?

B Ben Field 04:07

Sure. So I think it probably makes sense just to start, you know, 16 years ago, when the facts that gave rise to this case began, which I think, you know, just starting it off there gives you a sense of how difficult and how long it can be for people who have had their constitutional rights violated to get any sort of redress. So in 2006 and 2007, one of our clients, Felix Vinluan, who's an attorney who practices in Queens, New York, was referred by the Philippine consulate to 10 nurses who were working on Long Island. And they were in a terrible situation where they, you know, they had come from the Philippines, some of them were even trained as doctors, but they came from the Philippines to be nurses in Long Island, and they were promised by the nursing home company that they'd be assigned to a particular facility. They were promised particular housing and pay and benefits and things like that, only to discover that when they arrived, they were put in overcrowded housing that was just terrible. In one case, you know, you had multiple people living like in a one-bedroom apartment without a working bathroom. They weren't being given the wages they were promised. And they were being farmed out as contract laborers to some of the worst nursing facilities in New York, they actually were the subject of a subsequent expose by ProPublica, pointing out how terrible that they were. And so they wanted to quit their job. And that's where the 13th Amendment comes in. In the United States, there's no such thing as involuntary servitude. And so except in certain extreme cases, you have a right to leave a job that you don't want. And the nurses were in that situation. They wanted to know what their legal redress was. So they were referred to Felix. Felix both advised them, you know, you can quit as long as you don't leave during the middle of a shift and give the nursing home ample time to find replacements for your next shift. And he also filed a discrimination claim on their behalf with a unit of the Department of Justice that deals with discrimination for people who were brought in as immigrants to work in the United States. The nurses did quit, and you would think that would be the end of it. But their employer was a large nursing home company that was very, very politically connected. You know, if you read about them, you'll see they had ties to, you know, the New York senators, the then governor, the mayor of New York, and they went out of their way to make sure that nurses who worked for them didn't have the option to leave their job voluntarily. And so they complained to New York's nursing regulator. They complained to the police. They even filed a lawsuit. All of those went nowhere. And the court, the nursing regulatory agency, and the police all said the nurses had done nothing wrong. But then they flexed their political muscle and had their fixer lawyer arrange a meeting directly with the district attorney in Suffolk County. And he and his assistant were much more interested. And so Thomas Spota, the district attorney (sidebar, he's actually now in federal prison for other violations of civil rights) and his deputy Leonard Lato investigated, despite knowing that these other agencies already said the nurses did nothing

wrong, and they indicted them and Felix the lawyer on a number of charges of patient endangerment, as well as conspiracy and solicitation. And for two years, this indictment hung over them and it really ruined their lives for those two years. Just imagine trying to work in the healthcare field when you have indictments hanging over your head for endangering your patients or trying to be a lawyer when you have a bunch of criminal indictments hanging over you. But two years later, they eventually got some relief when a New York appellate court said that this prosecution just obviously violated both the 13th Amendment and the First Amendment. For the 13th Amendment, the court said that the prosecution was, quote, "the antithesis of the free and voluntary system of labor envisioned by the framers of the 13th Amendment."

A Anthony Sanders 08:22

Ben, I'm just curious. I read this cert petition, of course, but how were they even able to do that? Because usually, you know, having an indictment out there isn't something you can easily challenge without, you know, it eventually going to trial.

B Ben Field 08:38

Yeah, so it's an extraordinary writ. It's called a writ of prohibition. And it's when you go to an appellate court and you say, in this case, what the prosecutor is doing below is so clearly unlawful and so clearly outside the legitimate bounds of his jurisdiction, that you should not allow this to go forward. And what the appellate court said is yes, in this case, trying to punish somebody for leaving a job voluntarily is involuntary servitude and illegal. And it's also equally obviously a constitutional violation, in this case of the First Amendment, to prosecute a lawyer for offering good faith legal advice. So the New York Appellate Division quashed the prosecution. And so the next natural thing for the 10 nurses and Felix the lawyer to do was to seek some redress. You know, the provision that you cited, which is now Section 1983, gives every person in the United States whose constitutional rights are violated a cause of action to sue the officials who committed that violation. And here you've got a New York court that's already said your First and 13th Amendment rights were violated. The prosecutors were without their jurisdiction in bringing those charges. You would think it would be an open and shut case, but when they sued under Section 1983, they ran into the buzzsaw of absolute prosecutorial immunity. And that's a doctrine that the Supreme Court created in 1976. If listeners go back to the beginning of the podcast and listen to the actual text of Section 1983, they'll notice that there's nothing about immunity for prosecutors in it. But the Supreme Court has said that prosecutors are absolutely immune for anything they do, even if it's a bad faith, you know, corrupt prosecution, they're absolutely immune. But there are a couple exceptions to that. One of which is when the prosecutors clearly lack authority or jurisdiction for what they're doing. And this case eventually went up to the Second Circuit, which decided it earlier this year, and the majority said, essentially, well, as long as this is the type of charge that a prosecutor can typically charge, so here there's a criminal statute that has to do with patient endangerment, if the prosecutor charges that statute, then he gets absolute immunity. We don't look into whether there was actually a legal or factual basis for the charge. And what the dissent, Judge Chin in the Second Circuit, said is that is not at all a good faith reading of what this exception is supposed to be. In this case, sure, the prosecutors cited a statute, but it should have been obvious to any reasonable official that charging the nurses and their lawyer in this circumstance obviously violated the First and the 13th Amendments. I think I'll just quote

directly from what Judge Chin said. You know, he said that specifically with respect to Felix, that the indictment for him was particularly outrageous quote, "surely a prosecutor has no colorable authority to bring charges against the lawyer for giving legal advice to clients and for filing a claim of discrimination on their behalf." And so what our cert petition does is two things. The first thing that we're arguing is that Judge chin was 100% right. Going back over 200 years to Chief Justice John Marshall, the Supreme Court has repeatedly applied this common law exception to official immunities when officials are acting without any lawful authority. And if you go back to those cases from the early 19th century, the court really looks into, okay, what was the statutory basis for the official doing what they were doing? And did he actually have authority to do what he did or was there some statutory or constitutional boundary that he obviously transgressed? And if the Second Circuit majority's test is right, that's just not a meaningful inquiry. Any official can cite a statute saying that they have authority to do something. And then we wouldn't look any further and they'd automatically get immunity. So you could have a situation where a prosecutor, you know, charged a defense lawyer for being an accessory after the fact, if you just want to knock that criminal defense lawyer out of the case. You could have a situation, you know, a prosecutor in New York could pick up a phone book from California and pick a statute at random and charge somebody, and under the Second Circuit's test, you just look, like, okay, well, ordinarily you can't charge someone who lives in a completely different jurisdiction, but he cited a New York statute, he's within his jurisdiction, absolute immunity.

A Anthony Sanders 13:17

The legislature could just pass a law that, you know, prosecutors can use when they can't find anything else, and that would always immunize them.

B Ben Field 13:25

And in fact, that kind of happened in this case. One of the conspiracy charges against Felix charged him with the supposedly end of his conspiracy with getting the nurses a new job, which is obviously totally lawful and protected by the 13th Amendment. And the supposedly overt acts in support of that were filing the federal discrimination claim and giving them legal advice, which is obviously appropriate and protected by the First Amendment. So that's exactly what you're saying. They just looked at some broad statute and put it in an indictment. And according to the Second Circuit, you don't look any further. And so we think that that just contradicts centuries of Supreme Court precedent and the common law before it. But then the second thing we're asking is, if we're wrong about that, then this absolute immunity has clearly gotten so far away from the original purpose of Section 1983, that the court should scrap it altogether. And there are at least a couple of good reasons for that. First, just factually, if you can think of anything that Congress wanted to do in 1871, when it passed the Ku Klux Klan Act, it was protecting people's 13th Amendment rights and the ability of a lawyer to seek the federal government's protection for their federal rights. And in this case, apparently, that just has no constitutional protection whatsoever. And so if that's what the result of prosecutorial immunity is, then it should be scrapped. And in 1871, there was no prosecutorial absolute immunity. The court has actually acknowledged that since it invented the immunity in 1976. And the principal reason that the court gave for creating absolute immunity in the '70s was this idea that, well, it would be easy for plaintiffs to get around qualified immunity by just alleging that prosecutors acted in bad faith. But as listeners to the podcast know, after that the

Supreme Court changed the qualified immunity rule so it's now an objective test and you can't get around it just by alleging bad faith. So the principle reason the Court gave for creating absolute immunity for prosecutors just doesn't apply anymore. And we're hopeful that the extraordinary facts of this case will persuade the Court to either, you know, reaffirm and make sure that the common law exception for when a prosecutor is acting outside his authority is actually meaningful, or to take what we think is the more fundamental approach in saying, look, in 1871 there was no absolute prosecutorial immunity, the policy reasons we gave in the '70s are wrong and haven't been borne out, and we should just scrap it altogether.

A Anthony Sanders 15:56

Joba, any other thoughts for scrapping it all together?

J Jaba Tsitsuashvili 16:00

Yeah, they should. I mean, I think ultimately, everything that Ben said about kind of the implications of the rule, whether the rule as applied by the Second Circuit, or the rule, even kind of like, somewhat cabined the way that Judge Chin said is already currently cabined, either way, what you're looking at is a situation where prosecutors know they can escape and that like there won't be any real consequences for their conduct. Because ultimately, what's going to stop them, other than, you know, individual enforcement of these rights? Almost always nothing, right? This is one of those cases where, you know, one of the district attorneys has been imprisoned, but as my understanding, it wasn't rising from the conduct in this case. And, you know, you can Google how often prosecutors get, you know, any sort of disciplinary action, let alone some sort of criminal action against them for their conduct. And I don't have the number in front of me, but it's essentially never. So you need Section 1983, and you need it to be actually a viable cause of action that doesn't just get completely eroded and subverted by these made up immunities?

A Anthony Sanders 17:27

Ben, do you know the timing on the case now that it's at the Court? I believe it was it was filed December 9, is that right?

B Ben Field 17:35

That's correct. So we're waiting to see how and whether the other side responds, which will probably be sometime in January. So hopefully, the Court will get a chance to consider it sometime in the first quarter of 2023.

A Anthony Sanders 17:54

Well, and if listeners in the meantime want to learn more, if they don't already, about absolute immunity, we talked about that in the last season of Bound by Oath, our sister podcast. And so we'll put a link up to that episode in the show notes. So if it's been a while since you've listened

to Bound by Oath, and you want to dig into it again, you can go and listen a second time. Well, moving from the 13th Amendment to a part of the 14th Amendment, which has to do with discrimination. We're going to go to where I live, Minnesota, and the Eighth Circuit and some not the smartest policies that some law enforcement have been engaged in there. So Jaba, take it away.

J Jaba Tsitsuashvili 18:45

Yeah, thanks, Anthony. Yeah, I think that's probably a bit of an understatement. I mean, like you mentioned, this is about the 14th Amendment. Which says that, you know, state officials can't deny any person within its jurisdiction the equal protection of the laws. So this case comes to us out of the Eighth Circuit, specifically, from Anoka County in Minnesota. And what happened here was that the plaintiff, Myriam Parada, in 2017 she was rear-ended as she was driving her car. Someone rear-ended her and eventually a Coon Rapids police officer arrived at the scene. And I mean, I think we all know that typically, when there's a rear -accident, the person who does the rear-ending is kind of presumably at fault, right? It's kind of like, you know, well, you're not supposed to rear-end people. So the officer arrives and was represented with Ms. Parada in the front vehicle and then the car behind her who rear-ended her. So I will note that these facts are taken from Ms. Parada's third amended complaint in the district court. So what it says is that this officer proceeds to let the woman who was driving the rear-ending vehicle, he lets her go without any sort of citation, without anything, he just says, you know, be on your merry way. But when it comes to Ms. Parada, he keeps her there. And he's very interested in Ms. Parada. Now, what's one difference between Ms. Parada and the driver of the vehicle who hit her? While Ms. Parada is a Hispanic woman, the driver who hit her was a white woman. So the second driver, he says, be on your merry way. With Ms. Parada, he keeps her there. And he asked her a bunch of questions about her identity, about where she was born, etc. She provides him ample documentation of who she is, and where she's from, and all of that. But she's driving without a Minnesota driver's license. So that is obviously an offence for which she can cite her. Rather than simply, you know, cite her for that offense and let her go for this, you know, minor misdemeanor offense, he decides instead to keep her detained there, make some phone calls to his supervising officers, and ultimately decides that he's going to arrest her and bring her to the Anoka County jail. Now this officer in the past has written, you know, driving without a license citations before, but it says in the complaint that for at least well over a year, he hadn't arrested anybody on this misdemeanor violation. So he brings her to the county jail. And now the justification that he that he gives initially is, well, I don't know who she is, even though she's given him, you know, multiple kinds of Mexican consular documents showing exactly who she is and where she was born and what her name is and date of birth and all of that. Well, now, when he's filling out the intake forms, he knows exactly who she is, no such discrepancies. And he hands her over to the Anoka County officials. The Anoka County officials, their typical practice in circumstances like this where the person doesn't present any danger is to essentially just kind of process them and then put them in line for immediate release, is what they usually do. Now, they don't do that, though, whenever they encounter anybody who has been born outside of the United State. So the Anoka County had adopted an unwritten policy that anytime someone comes in born outside of the United States, they don't follow their normal procedures. What they do instead is they keep them there and they subject them to additional procedures, in order that the officials can contact the federal immigration agency, ICE, Immigration and Customs Enforcement, And essentially see if ICE has an interest in this person. Now, when the Anoka County officials do this, they're not doing this on the basis of immigration status. They're doing this strictly on the basis of birthplace status, right? As we know, you can be born outside of the United States and still be lawfully present in the United

States, not being in violation of any immigration laws. Whether that's because you're here on a permanent visa, a temporary visa, whether you have a green card, whether you're a citizen, there are myriad ways that you can be born outside of the States and be lawfully present in the United States.

A Anthony Sanders 24:02

Your parents could be citizens, you just happen to be born outside the United States like I was.

J Jaba Tsitsuashvili 24:06

Right. I mean, there's no reason that simply being born outside of the United States tells you anything about a person's immigration status. Similarly, this is obviously much more rare, but you can be born in the United States, have renounced United States citizenship, and actually not be lawfully present in the United States, in some way have run afoul of the immigration law. It's obviously much more rare. But the first point is the obvious one, right? Just because you were born elsewhere says nothing about your immigration status. Nevertheless, every time someone came into the Anoka County jail, these officials would hold them there in order to contact ICE. And if ICE expressed interest in this person, they would continue to hold them for ICE to come and get them, irrespective of, you know, what their normal procedures are about immediate release of non-dangerous persons and all of that. So, Miss Parada gets held there for, I want to say, like six extra hours or something like that. They won't let her see a lawyer. They hand her a phone and force her to talk to an ICE official, without telling them who she's talking to. And she asked the ICE official, well, should I get a lawyer? And he tells her apparently, no, things will go much more quickly if you don't get a lawyer. And now, this is me editorializing a little bit, what he means by that is, we'll be able to deport you much more quickly if you don't have a lawyer. So basically, she's forced to talk to this person, never being given the opportunity to see a lawyer who her family had hired, actually, but she doesn't know thatm and they won't let her see one. So eventually, she does get released into ICE's custody. They hold her there explicitly just so that ICE can come and pick her up. She gets released into ICE custody and then later on, she brings suit under Section 1983 against both the city, who employed the police department that initially arrested her, and Anoka County for this policy of holding anybody who's born outside the United States so that they could essentially see if ICE wanted to come and get them. So she sues; she brings a bunch of different claims against a bunch of different defendants. There's only two claims at issue in the Eighth Circuit opinion here that we're looking at, against one of the defendants. It is actually really interesting what happens with a lot of the others, but suffice to say that this case, unfortunately, is a unicorn in a lot of ways, which is really sad, because, you know, there are so many things that went right here that go wrong in other civil rights cases, including many of our own, because there are just so many pitfalls between the immunities, between the difficulty of suing cities for their unconstitutional policies. But somehow she overcomes them all. And she actually gets to a jury verdict. And the jury verdict relevant to this Eighth Circuit decision is that, well actually, the district judge found that Ms. Parata had stated an Equal Protection Clause claim for national origin discrimination and that she had also potentially stated a claim for false imprisonment, meaning that she was essentially held in violation of law. So it goes to the jury. The jury is going to decide first, whether she's due any compensatory damages for the Equal Protection violation. And second, whether there was a false imprisonment, and if so, whether she's due any damages for that. Now, the jury doesn't give her any compensatory damages for the

constitutional violation, the Equal Protection violation, it just gives her $1 in nominal damages, but it doe award her $30,000 for the false imprisonment claim. And so the that's where we are on appeal. Now, again, this is against just the county. We're not talking about the individual defendants and we're not talking about the city defendants who employed the police department that initially arrested her. And so the Eighth Circuit, it's a refreshingly short opinion. But there's a lot packed into it. And there's a lot of background that this evokes, but basically what it says is, yeah, this is a pretty cut and dry, classic example of national origin discrimination. I mean, you're subjecting people born in the country to one set of procedures and policies, and you're subjecting people born outside of the country to another set of procedures and policies. And when you're doing that it needs to survive strict scrutiny, need to show a compelling interest and that you have narrowly tailored your practices to that compelling interest. And the a compelling interest that Anoka puts forth here is that they say, well, we have a compelling interest in being good partners to our our federal officials at ICE. Now, this is interesting for a couple of reasons. One is that there is that Anoka and ICE had no formal relationship. Now there is a very controversial mechanism that they're known as 287 G agreements, where local departments will often partner with ice and essentially become kind of deputized as federal immigration enforcement agents, essentially, be disincentivized from, you know, doing their duties of criminal law enforcement under a state under state law, and essentially, they just kind of focus on helping ice, you know, Roundup, as many people as they can for deportation. But an open doesn't even have any sort of any such agreement. And nevertheless, they say, well, we have a compelling interest in helping our good friends in the federal government. And the Eighth Circuit says, you know what, look, we'll spot you that. Let's assume that you have that compelling interest, we won't even go there. Now, it's worth noting that the state of Minnesota actually weighed in as amicus here and said this is not a compelling interest because what this actually does is make our communities less safe, because immigrant communities and immigrant individuals, regardless of their immigration status, are much less likely to report crimes, because they don't want to be swept up in these systems and these procedures. So what these kinds of arrangements do is actually disserve public trust, diserve public safety, diserve criminal law enforcement, state criminal law enforcement. Nevertheless, the Eighth Circuit says, look, we'll spot you that, but regardless, the means that you use to achieve that compelling interest are clearly irrational, right? Because it doesn't take account of anything except where a person is born. And as we know, a person could be born anywhere and be lawfully in the United States for any number of reasons. I mean, let's also maybe just step back for a second and think, well, how do they even know where a person is born? Especially if you're gonna believe a person when they tell you that they were born outside of the United States, but they also tell you that they are lawfully here, right? Well, why are you disbelieving the second part of what they told you, but believing the first part? So you believe them that they're born elsewhere, but you're disbelieving them if they're lawfully here.

J Jaba Tsitsuashvili 31:45

If you're gonna lie, you'd just say, yeah, I was born in Texas, or whatever.

J Jaba Tsitsuashvili 32:32

Right? But Anoka doesn't care. I guess in instances where maybe there's some fuzziness there, they're really just basing it off of how people look, right? They're just kind of holding, you know, people who appear Hispanic and saying, well, let's see what ICE wants to do here. And, in fact,

the stats showed that 56% of the people subjected to this policy were in fact American citizens. Which just shows you again, what are they basing this off of? Well, they're just basing this off of wholy discriminatory characteristics and policies. So the Eighth Circuit dispenses with that pretty easily, and says, no, this is clearly irrational, this doesn't serve any compelling interest and this is so overinclusive, that it can't possibly survive. And then it goes on to the immunity defenses, obviously, because, you know, if you're a government defendant, you're obviously going to raise myriad immunity defenses. And it also talks about the false imprisonment claim. And that's where the immunity defenses actually come in. Because under the federal constitutional claim, the county can't claim qualified immunity, that's reserved only for individuals. So because they have been subjected to the Monell claim, they are liable there and, frankly, they have much less incentive to fight the constitutional claim because that was just a $1 award of damages. But here they want to get out from the compensatory damages for the false imprisonment. And there they say, well, here we're actually entitled to two different kinds of immunity. The first is a statutory immunity, and the second is, I haven't even heard where this comes from but an official immunity under state law. Those are both state law immunities, they say, because the false imprisonment claim is essentially a common law state law claim that they were subjected to. And the Eighth Circuit says that the official immunity claim, you raise that too late. So we're not even going to look at it now. But I do want to pause on it for a second, because for our purposes, at IJ, we want to just kind of like take a broad broad view of what's happening here. It is pretty absurd, first of all, that the county has this many immunities available to them. And this official immunity one in particular is really absurd. The theory on that one is that is supposed to actually be reserved for individuals. But the county says, and Minnesota state law allows counties as employers to invoke this individual immunity vicariously for the county. So basically, what it's saying is that, well, there's two ways for counties to get out from under civil rights violations. First, they can say, well, that was the individual that did it, it wasn't us, sue them. But then if you do sue them, and you succeed, they say, well, no, that individual would have had official immunity. So we get the official immunity too.

A Anthony Sanders 36:02

Sorry to interrupt, Jaba. But that goes to the work that IJ did earlier this year with our 50 Shades of Gray. Sorry, I always call that. 50 Shades of Immunity report about state-level immunities and how, you think it's bad at the federal level, sometimes in the states, it's even worse. In Minnesota really good in some ways, but other ways, nothing to brag about. So continue.

J Jaba Tsitsuashvili 36:28

Yeah, no, thanks. Absolutely. Yeah, there's a whole host of different immunity doctrines that the states themselves have developed and made just as terrible a list as the federal immunity doctrines. So yeah, so it says, you raised that official immunity too late, so we're not even really going to review it. But then there's still the question of the statutory immunity, which says that counties can't be liable for kind of high-level planning decisions, because we essentially don't want to get the courts involved in second-guessing them for their policy determinations, but they can be liable for operational decisions. Now query what the difference is, I'm not quite sure. Because, you know, if you're operationalizing a policy, you're still implementing the policy. And actually, the Eighth Circuit says, look, you know what, at first blush, the fact that they sued over this policy about how to treat everybody does kind of seem

like it would actually fall under the kind of planning umbrella and therefore should typically be subjected to the statutory immunity so that they can't be hauled into court on the false imprisonment claim. But under Minnesota law, it's the county's burden to actually present evidence showing how and why they should be gifted that immunity. And they didn't present any, so they don't get the statutory immunity here. So it was a nice example of the judiciary actually holding the government to its burdens to even meet these immunity standards, right? It acknowledges, look, these immunities are out there. They're very broad, but you can't just like, invoke them and expect us to just go along because you said these magic words. So it was refreshing in that regard. And then the third gambit that the county tried was, well, actually, under Minnesota law, there's no such thing as a false imprisonment claim against a county. It can only be brought against individuals. And there what the district court had said was, well, there's a difference between a direct false imprisonment claim and a vicarious liability false imprisonment claim. The first one does exist. And here the claim is that you were directly responsible for false imprisonment pursuant to this policy, and therefore you can be sued for false imprisonment. And so in short, the Eighth Circuit says, yeah, the district court got this all right. And, you know, even if you could be subjected to some of these immunities here, you either raised them too late or you didn't present any evidence of them. So we're just going to turn a blind eye to this egregious misconduct and, you know, let you skate here. So it was a refreshing kind of change of pace in immunity world, especially when you just kind of take a step back and realize what was actually happening here, how egregiously unconstitutional and kind of just morally bankrupt it was to just say, well, because either you were born outside of the United States or we think you were born outside of the United States. And we don't even know, because who knows what they're choosing to believe or not to believe? But we think you might have been born outside the United States. We're gonna hold you here. We're gonna detain you longer than we do anybody else. And we're essentially going to imprison you just because ICE has said that they want to come get you even though we have no reason to have you here at our jail. So it was a hard fought victory against Anoka County. But Ms. Parada ultimately did manage to get some vindication here.

A Anthony Sanders 40:23

Ben, did you count or see any immunities that the court or Jaba missed here? I think I counted to at least seven or eight. But, you know, maybe there's some others they should have argued.

B Ben Field 40:37

It definitely was chock full of most of the immunities that they could have raised. I'm not sure, there are obviously like the whole host of qualified immunity and absolute immunity and other things that might have happened for the individual defendants, but not for the county defendant.

A Anthony Sanders 40:53

Yeah, I think that one thing that may have helped them in the state law examination is the opinion was authored by Judge Stras, who was formerly on the Minnesota Supreme Court for seven years and had to deal with some of this stuff. And in some contexts, but not all, I know

Judge Stras is critical of some immunities law and so probably saw some of this nonsense that the county was trying to pull, just, you know, it wasn't time to take it too seriously and get too into the weeds.

B Ben Field 41:28

The point that Jaba made I think is important, about the compelling interest analysis, which was very brief. And as Jaba said, they didn't rule on it. But I thought it was very refreshing to see that the court at least said that they had their doubts about whether, you know, cooperating with ICE was a compelling interest. And, you know, in IJ's First Amendment work, we're often dealing with strict scrutiny. And often the government will assert, you know, all sorts of things that it claims to be compelling interest. Really, the only compelling interest that the Supreme Court has recognized are things that everybody would acknowledge are compelling, like national security or combating terrorism. And so it was nice to see that even if they didn't rule on it, the court here was skeptical about anything less than that counting as compelling.

A Anthony Sanders 42:19

Yeah, one thing that there's not a lot of case law in is what governmental interests are compelling and what ones are just kind of legitimate, quote unquote, you often see them kind of thrown around under both levels. And sometimes it depends on what the right is that you're talking about. But definitely, in this context, I think you're right, Ben, that's seems to be what the court has identified in the past.

J Jaba Tsitsuashvili 42:46

Well, there's a section in the county's brief at the Eighth Circuit, one of the subsections is titled something like a final word on strict scrutiny, and they spend like two or three pages essentially saying, look, you've got it all wrong here; we have a compelling interest and this is all just a matter of unfortunate misnomers. They're saying, what you're calling national origin discrimination is just identifying a subset of people who are subject to the immigration laws and a subset of people who are not subject to the immigration laws. And we have a compelling interest in helping ICE identify those people. And it's just like, wait a minute, but you're missing the point here. Number one, is that not everybody who was born outside of the United States is subject to the immigration laws. That's the whole point. That's why it's a national origin discrimination case, because you are assuming the conclusion here. And it's a wholly discriminatory conclusion that you're assuming. So it was interesting to see a section that was, let us give you some thoughts about strict scrutiny. And those thoughts, essentially being, look, we're just kind of trying to be good friends to our friends in ICE. And what's wrong with that?

A Anthony Sanders 44:09

Well, luckily, strict scrutiny actually meant strict scrutiny in this case, which is not always true, and increasingly sometimes it seems like it is not always true. Well, I will strictly thank both of my good colleagues here today, Jaba and Ben, for their presentations and the cert petition that we will keep a close eye on that Ben is working on. Also, I have whichever one because I think

this is about where you might be listening to this podcast, a happy new year. We will see you again in the new year when you can listen to some more Short Circuit content. But in the meantime, wherever you are and whenever you are listening to this, I would hope that you all get engaged.