Vanke v. Block

United States District Court for the Central District of California
November 5, 1998, Decided ; November 7, 1998, Filed
Case No. CV 98-4111 DDP (SHx)

Reporter: 1998 U.S. Dist. LEXIS 23488
R VANKE, et al., Plaintiffs, v. SHERMAN BLOCK, et al. Defendants.

Subsequent History: Motion granted by, Costs and fees proceeding at Vanke v. Block, 2002 U.S. Dist. LEXIS 26415 (C.D. Cal., Aug. 6, 2002)

Disposition: [*1] Plaintiff's motion for class certification granted. Plaintiff's motion for preliminary injuncion granted. Defendant Block's motion to dismiss granted in part and denied in part.

Counsel: For R VANKE, plaintiff: Stephen Yagman, Marion R Yagman, Venice, CA. Richard H Millard, Richard H Millard Law Offices, Los Angeles, CA.

For SHERMAN BLOCK, defendant: Scott D MacLatchie, Franscell Strickland Roberts & Lawrence, Glendale, CA.

For LEE BACA, defendant: Jeremy B Warren, Michael D Allen, David D Lawrence, Franscell Strickland Roberts & Lawrence, Glendale, CA.

Judges: DEAN D. PREGERSON, United States District Judge.

Opinion by: DEAN D. PREGERSON

Opinion

This matter comes before the Court on the plaintiffs' motions for class certification and preliminary injunction, and on the 'motion of defendant Sheriff Sherman Block (the "Sheriff") to dismiss the action for failure to state a claim upon which relief can be granted. The plaintiffs contend that the Los Angeles County Sheriff's Department (the "Department") maintains an unconstitutional policy of continuing to hold pretrial detainees who are entitled to be released after acquittal or dismissal of the charges against them in order to check for warrants, [1] wants and holds. [2] The Sheriff [*2] [3] contends that such record checks are not constitutional violations, but rather are necessary steps in the administrative process of releasing pretrial detainees.

[*3] Having considered the contentions of the parties in light of the applicable legal authorities, the Court rules as follows:

The motion for class certification is granted. The Court finds that three of the named plaintiffs meet the constitutional standing requirements, and that three of the named plaintiffs meet the requirements set forth in *Rule 23 of the Federal Rules of Civil Procedure.*

The motion for preliminary injunction is granted. The Court makes a preliminary finding of fact that the Department maintains and implements a policy under which court-ordered releases are not carried out until the Department has taken up to thirty-six hours to update its computer database to reflect wants and holds that arrived on the day of the order. The Court analyzes the constitutional claims by separating release delays into two categories based on the government conduct causing the delay: (1) delays caused by the administrative steps incident to release ("administrative delays"), and (2) delays caused by the policy of deferring the commencement of those steps until the Department has updated its database of wants and holds ("investigative delays"). Administrative delays are governed by the [*4] due process clause of the Fourteenth Amendment. They violate due process if the delay is the result of arbitrary or deliberately indifferent government conduct that shocks the conscience. Investigative delays constitute a reseizure and are governed by the *Fourth Amendment.* Absent

---

[1] The complaint alleges that the Department checks for warrants. The Sheriff contends that the Department does not check for warrants, but only for wants and holds. (Walker Decl. P 5.)

[2] Wants and holds are the means by which one law enforcement agency notifies another agency that the notifying agency has authority to detain an individual currently in the custody of the notified agency. Cal. Code Regs. tit. 15 §§ 2000(b) (52), 2600, 5331, 5332, 5334 (authorizing parole agents and the California Board of Prison terms to issue wants and holds for detained individuals upon reasonable suspicion of parole violation); 8 U.S.C.A. § 1226(d) (West Supp. 1998) (requiring Attorney General to devise and implement a system to assist state law enforcement agencies in identifying aliens unlawfully present in the United States pending criminal prosecutions).

[3] Among the two defendants remaining in the action, the Sheriff and the County of Los Angeles (the "County"), only the Sheriff has responded to the complaint and filed oppositions to the present motions.

probable cause or reasonable suspicion to believe that unprocessed wants and holds include a want or hold against a particular individual whose release has been ordered, continued detention of that individual longer than required to perform the administrative steps incident to release violates the *Fourth Amendment* guarantee against unreasonable seizure.

The Department acknowledges that it has no reason to believe that a want or hold is more likely to arrive on the day that an individual is ordered released than on any other day during or after the individual's period of lawful custody. The speculation that a want or hold may appear, absent any particularized reason to expect its appearance for a given individual, does not provide a lawful basis to detain that individual under the *Fourth Amendment.* Therefore, the Department policy of continuing to detain individuals for up to two days on the mere possibility [*5] that a want or hold will appear creates an actual and imminent threat to the *Fourth Amendment* rights of the named plaintiffs and the class of detainees whom they represent. Because the harm created by unlawful seizure is irreparable, injunctive relief is appropriate and required.

The Court concludes that the first amended complaint states a claim under *§ 1983* based on the over-detention policy. The Court concludes, however, that the first amended complaint fails to state a claim based on the Department's policy of approaching overdetained individuals with settlement offers. The motion to dismiss is therefore granted in part and denied in part.

I. BACKGROUND

A. Parties, Claims & Remedies

The first amended complaint ("FAC"), filed July 1, 1998, alleges that plaintiff Vanke is a pretrial detainee currently in the Sheriff's custody. (FAC P 10.) The FAC alleges that Vanke "previously was over-detained [because of II a check for warrants, wants and holds and presently believes he again will be overdetained for the same reason . . . ." (Id.)

Named plaintiffs E. Villafranco, R. Angulo, and V. Halajian are also alleged to be pretrial detainees. (Id. P 16.) There are no allegations, [*6] however, that Villafranco, Angulo or Halajian were over-detained in the past.

The action is brought on behalf of a purported class of persons who "(1) are charged with crimes, (2) held in County custody, (3) whose charges are dismissed, and (4) who at that moment have an immediate and unconditional right to be released from custody." (jr) The class is alleged to include approximately 22,000 detainees. (Id. P 18.)

The defendants are the Sheriff and the County. The original complaint and the FAC also named seven members of the Los Angeles County Board of Supervisors, alleging that they caused overdetentions by voting to indemnify county employees for punitive damage awards. The plaintiffs voluntarily dismissed the action against the county supervisor defendants on the same day that the FAC was filed. (SeeStipulation and Order For Dismissal Without Prejudice, filed July 1, 1998.)

The FAC alleges that the defendants violate detainees' *Fourth Amendment* right to. be free from unreasonable seizure and their Fourteenth Amendment right to due process by continuing their detention, after an order of release, to check for warrants, wants and holds.

The FAC seeks the following relief: [*7] (1) a declaration that continued detention to check for warrants, wants and holds is unconstitutional; (2) an injunction prohibiting (a) the practice of retaining detainees whose charges have been dismissed in order to check for warrants, wants and holds, and (b) the practice of approaching detainees who have been over-detained in order to offer "to pay them relatively insubstantial sums of money in return for waivers of a right to sue;" (3) an injunction mandating the establishment of a mechanism to advise pretrial detainees of their right not to sign waivers of liability, and mandating that all such waivers be unilaterally revocable for 30 days; (4) an injunction mandating that the defendants circulate over-detention claim forms to all detainees every five days, and requiring copies of any completed forms to be filed with this Court, and served on the class counsel. (FAC P 9; Mot'n at 6-7 (providing details of the claim form process).)

II. MOTION FOR CLASS CERTIFICATION

A. Legal Standard

The party seeking class certification bears the burden of proving that certification is appropriate. See Doninger v. Pacific Northwest Bell. Inc., 564 F.2d 1304, 1308 (9th Cir. 1977). [*8]

In considering a motion for class certification, the Court does not consider the merits of the moving party's claims. *See*Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177, 40 L. Ed. 2d 732, 94 S. Ct. 2140 (1974) ("We find nothing in either the language or history of *Rule 23* that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.").

The Court may consider the allegations of the complaint in determining whether the *Rule 23* requirements are met. See Schwarzer et al, Federal Civil Procedure Before Trial

§ 10:574 (Rutter 1998). In addition, the Court may consider extrinsic evidence, and may request the parties to supplement the allegations of the complaint with sufficient evidence to allow informed judgment as to each of *Rule 23*'s requirements. See id. § 10:575.

The plaintiffs have moved for certification under *Rule 23 (b)(2)*, which provides that a class action is maintainable if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding [*9] declaratory relief with respect to the class as a whole." *Fed. R. Civ. P. 23(b)(2)*

In order to maintain a class action, a party must first meet the following prerequisites listed in *Rule 23(a)*

> Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.*Fed. R. Civ. P. 23(a)*.

B. Standing

As a threshold matter, before applying the *Rule 23* factors, the Court is required to determine whether the named plaintiffs have Article III standing as individuals. See O'Shea v. Littleton, 414 U.S. 488, 494, 38 L. Ed. 2d 674, 94 S. Ct. 669 (1974);Allee v. Medrano, 416 U.S. 802, 40 L. Ed. 2d 566, 94 S. Ct. 2191 (1974)

Class representatives must have standing at the commencement of the action, although the action on behalf of [*10] the class may continue if the representatives' claims become moot during the action. See County of Riverside v. McLaughlin, 500 U.S. 44, 52-53, 114 L. Ed. 2d 49, 111 S. Ct. 1661 (1991); *Lee v. State of Oregon, 107 F.3d 1382, 1390 (9th Cir. 1997)*. In cases alleging certain types of transitory harm, the class representatives' standing need not exist at the time of certification, provided that it existed at the time the action was filed. Some claims are so inherently transitory that the
trial:court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires.'" McLaughlin, 500 U.S. at 52 (quoting United States Parole Comm'n v. Geraghty, 445 U.S. 388, 399, 63 L. Ed. 2d 479, 100 S. Ct. 1202 (1980)); Gerstein v. Pugh, 420 U.S. 103, 110, 43 L. Ed. 2d 54, 95 S. Ct. 854 (1975)

Under Article III of the Constitution, "the irreducible constitutional minimum of standing contains three elements." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992) . The plaintiffs have the burden [*11] to allege [4] facts supporting three elements: (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. See Lujan, 504 U.S. at 560-61.

In addition, standing to seek injunctive relief under *§ 1983* must be analyzed separately from standing to seek retrospective relief. See City of Los Angeles v. Lyons, 461 U.S. 95, 75 L. Ed. 2d 675, 103 S. Ct. 1660 (1983)Lyons holds that a federal court plaintiff does not have standing to obtain an [*12] injunction unless the plaintiff shows a real or immediate threat that the plaintiff will be wronged again. Id. at 105. A conjectural or hypothetical threat of future injury is insufficient. SeeId.at 105-10.

The threat that these plaintiffs will be detained for a want and hold check is sufficiently certain under the rule of Lyons. The plaintiff in Lyons could not allege with any degree of certainty that he would ever by stopped by the police again, and if stopped, subjected to a chokehold.Id.Unlike the plaintiff in Lyons, these plaintiffs are already in the defendants' custody. Their custody is certain to end either in release or remand to another law enforcement agency. The application of the allegedly unconstitutional policies to these plaintiffs is contingent on one event -- a release order -- not on a speculative chain of events.See Thomas v. County of Los Angeles, 978 F.2d 504, 507-08 (9th Cir. 1992) (holding that plaintiffs demonstrated a realistic threat from future application of persistent practice of police misconduct within a small neighborhood); Gonzales v. City of Peoria, 722 F.2d 468, 481 (9th Cir. 1983) [*13] (holding that where plaintiffs alleged that police consistently applied city policy of checking immigration status of motorists who appeared to be of Mexican descent, contingent nature of future traffic stop did not defeat standing).

The threatened injury -- detention after a judicial release order -- will be directly caused by the defendants' policy

---

[4] At the pleading stage, the plaintiff's burden is discharged by "general factual allegations" to support each element. Lujan, 5O4 U.S. at 561. Standing may be challenged at any stage of the litigatioh, however. At summary judgment the plaintiff would have to set forth facts demonstrating a genuine question; at trial, the facts demonstrating standing must be "supported adequately by the evidence."Id.

to delay release for a want and hold check, and would be redressable by an injunction against the policy. On the causation and redressability prong, however, the situation of named plaintiffs Villafranco, Angulo, and Halajian diverges from that of named plaintiff Vanke. The Department currently has information that Vanke is subject to a hold. (See Santos Decl., Ex. A. to Opp'n, P 2.) Detention of Vanke after a judicial release order would thus not be caused by the defendants' policy of imposing detention to perform a check; the check has already been performed. Vanke's continued detention, therefore, would neither be caused by the current checking policy; nor would it be redressable by an injunction against the policy.

While Vanke's parole violation makes his standing questionable, this lawsuit may go forward based on the standing of [*14] named plaintiffs Villafranco, Angulo, and Halajian. The presence of one named plaintiff with standing is sufficient to invoke federal court jurisdiction under Article III without considering the standing of other named plaintiffs. See Watt v. Energy Action Educ. Found., 454 U.S. 151, 160, 70 L. Ed. 2d 309, 102 S. Ct. 205 (1981); California ex rel. State Water Resources Control Bd. v. F.E.R.C., 966 F.2d 1541, 1561 (9th Cir. 1992); Comer v. Cisneros, 37 F.3d 775, 788 (2d Cir. 1994); 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 3531.15, at 101 (1984)

The Court understands the Sheriff's contention that Villafranco, Angulo, and Halajian might also be subject to holds. The Court construes the allegation of the FAC that these plaintiffs are entitled to immediate release upon dismissal of their current charges to include an allegation on information and belief that a check for wants and holds would reveal no authority to hold them. (FAC P 16.) At this stage of the litigation, with the want and hold information in the defendants' control, this allegation is sufficient to establish the standing [*15] of Villafranco, Angulo, and Halajian.

The present detention of the named plaintiffs distinguishes this case from O'Shea, 414 U.S. 488, 38 L. Ed. 2d 674, 94 S. Ct. 669, *Lee, 107 F.3d 1382*, Eggar v. City of Livingston, 40 F.3d 312 (9th Cir. 1994), and Nelsen v. King County, 895 F.2d 1248 (9th Cir. 1990) . In these cases, the plaintiffs were safe from application of the allegedly unconstitutional practices unless a long chain of speculative events, some of which were contingent on the plaintiffs' voluntary choices, converged to bring the plaintiffs within the defendants' control, or within a class of people likely to be harmed by the defendants' practices. SeeO'Shea, 414 U.S. at 496 (holding that plaintiffs did not have standing because prospect of future injury depended on likelihood that they would commit a crime and be arrested); Eggar, 40 F.3d at 316 (holding that standing did not exist where plaintiffs would have to commit a crime, be arrested, plead guilty, and be sentenced to jail in order to be subject to challenged practice); Nelsen, 895 F.2d at 1254 (finding [*16] only speculative possibility that plaintiffs would suffer relapse into serious alcohol dependency requiring residential treatment, and 4ading to treatment in same facility where previously treated); *Lee, 107 F.3d at 1387-90* (finding only speculative possibility that terminally ill plaintiff would become depressed, explore assisted s iicide option, and be unduly pressured to choose it)

In light of the foregoing, the Court concludes that three of the named plaintiffs have established Article III standing.

C. *Rule 23* Requirements

1. Prerequisites for Class Action Under *Rule 23(a)*:

Numerosity. Commonality. Typicality, and Adequacy of Representation

a. *Rules 23(a)(1) and (2)*: Numerosity and

Commonality

The Sheriff does not contest the plaintiffs' showing that the .pproximately 20,000 to 22,000 detainees in County custody constitute a group too numerous for practicable joinder, or that there are questions of law and fact common to the class under *Rules 23(a)(1)and (2)*. The Court concludes that the prerequisites of *Rules 23(a)and (2)* are met.

b. *Rule 23(a)(3)*: Typicality

Typicality under *Rule 23(a)(3)* is shown when "a plaintiff's injury [*17] arises from or is directly related to a wrong to a class, and that wrong includes the wrong to the plaintiff." 1 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 3.13, at 3-72 (3d edL 1992). In making this determination, the Court looks to the ellements that the named plaintiffs must prove to prevail on the cause of action. If the elements that the class representative must prove are substantially the same as the rest of the class, typicality is generally met. See id. § 3.15 at 3-82. The purpose of the typicality requirement is to ensure that the interests of the named representative aligns with the interests of the class. See-Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992).

The Sheriff contends that because detainees are not entitled to instantaneous release, but only reasonable release in light of 11 of the circumstances, proof of liability for over-detention ill require an individualized inquiry for each class member. This ontention, however, does not defeat typicality. The ndividualized inquiry does

not require the named plaintiffs to rove different elements. The contention that some class members' etentions after dismissal [*18] will be reasonable while those of other embers will not be reasonable does not change the fact that liability for each class member turns on the same element, reasonableness. See Hanon, 976 F.2d at 508 ("Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.").

The Court finds that the *Rule 23(a)(3)* typicality requirement is met.

c. *Rule 23(a)(4)*: Adequacy of Representation

The Ninth Circuit has recognized two criteria for determining the adequacy of class representation. See Lerwill v. Inf light Motion Pictures. Inc., 582 F.2d 507, 512 (9th Cir. 1978). First, the representative must be able to prosecute the action vigorously through qualified counsel. See id. Second, the representative must not have interests that are antagonistic to the interest of the class. See id.

The standard for qualifications and competency of class counsel looks to the attorney's experience, resources, ability, ethics, and any potential conflicts of interest. Class counsel has met these requirements.

The Court finds no evidence that the namedplaintiffs [*19] have interests antagonistic to the rest of the class members.

In light of the foregoing, the Court finds that the requirements of *Rule 23(a)(4)* are met.

2. Grounds for Class Action Under *Rule 23(b) (2)*

The Sheriff does not dispute that by keeping released detainees in detention to check for wants and holds, the defendants have acted or refused to act on grounds generally applicable to the class. The Court finds that the plaintiffs have presented evidence indicating that the Department maintains a policy of continuing detentions beyond the time of acquittal or dismissal to check for wants and holds. (See Block Depo. at 33.) This policy is generally applicable to members of the class which the plaintiffs seek to certify.

D. Notice

Class actions under *Rule 23(b)(2)* are not subject to the individual notice requirements of *Rule 23(c)(2)* . See 2 Newberg § 8.05. Instead, notice in such class actions is discretionary under *Rule 23(d)(2)*. Here, because the relief sought would be applicable to the class members generally, with little or no likelihood of conflicting interest among class members, it appears at this stage of the litigation that no notice is required. [*20] This ruling, however, is without prejudice to future motions seeking notice under *Rule 23(d)(2)*.

E. Conclusion as to Class Certification

In light of the foregoing, the Court certifies the following class: persons who (1) are charged with crimes, (2) held in County custody, (3) whose charges may be dismissed (4) under an order directing their release from County custody.

III. PRELIMINARY INJUNCTION

A. Legal Standard

The party seeking a preliminary injunction must show either (1) a combination of probable success on the merits and the possibility of irreparable injury if relief is not granted, or (2) the existence of serious questions governing the merits and that the balance of hardships tips in its favor. See International Jensen. Inc. v. Metrosound U.S.A.. Inc., 4 F.3d 819, 822 (9th Cir. 1993) . These standards "are not separate tests but the outer reaches of a single continuum." id. In addition, in cases affecting the public interest, the court must consider whether the public interest will be advanced by granting preliminary relief. [5]See Miller v. Cal. Pac. Med. Ctr., 19 F.3d 449, 456 (9th Cir. 1994)

[*21] The Ninth Circuit applies a rigorous factual review where the district court enjoins a state law enforcement

---

[5] Additionally. the Sheriff contends that iniunctive relief in this action must meet the standards of the Prison Litigation Reform Act of 1996 ("PLRA") . In the PLRA. Congress limited the availability and scope of federal iniunctions regarding prison and jail conditions. See18 U.S.C. § 3626(g)(5) (defining "prison" to include local facilities that detain iuveniles or adults accused of crimes) . The PLRA requires that in any civil case involving prison conditions. any prospective relief "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs" and that the Court make findings that any prospective relief is "is narrowly drawn. extends no further than necessary to correct the violation of the Federal right. and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). In addition. before granting prospective relief under the PLRA the court must "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." Id.

The PLRA does not apply to this action. The PLRA applies to any "civil action with respect to prison conditions." 18 U.S.C. § 3626(a)(1), (2). This phrase is defined in the PLRA as

agency. In such cases, there must be a strong factual showing of a pervasive pattern of police misconduct. See Thomas v. City of Los Angeles, 978 F.2d 504, 508 (9th Cir. 1992) (citing Rizzo v. Goode, 423 U.S. 362, 375, 46 L. Ed. 2d 561, 96 S. Ct. 598 (1976)).

B. Preliminary Findings of Fact

For purposes of ruling on the preliminary injunction motion, the Court makes the following preliminary findings of fact. [6]

[*22] 1. The evidence before the Court indicates that the Department has a policy to process released detainees by taking the following steps in the following order:

(a) After a detainee is acquitted or otherwise ordered released, the detainee is returned to jail [7] for processing of release.

(b) The Department continues to hold the individual n jail, and does not begin the process of releasing the individual until the Department confirms that the individual is not wanted by nother law enforcement or correctional agency. (See Block Depo. t 29:12-20, 31:20-25, 33:11-15, 48:15-49:19.) The Department akes this determination

[*23] by checking the detainee's record in a computer database known as the Automated Justice Information System (the "AJIS"). The Department policy is to wait to perform this computer check until all of the wants and holds that arrived on the day that the detainee was ordered released have been entered into the AJIS. Because of the volume of orders received, averaging 3,000 to 5,000 per day, the entry of any given day's orders is often not completed until late the following day, and sometimes not until midnight of the following day.

(c) Only after the AJIS has been updated, and the Department has checked a released detainee's AJIS record for wants and holds, does the Department begin the administrative steps incident to release.

2. The Department applies the above-described policy in the administration of the County jail system, which consists of several jails with a total average daily population of 20,000 to 2,000 inmates and detainees. [8]

---

any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.18 U.S.C. § 3626(g)(2) . The claims in this case do not involve constitutional violations arising from the conditions of confinement. Instead, the plaintiffs contend that the Constitution is violated by a systemic policy of continuing to hold individuals in confinement after a judicial order of release.

In addition, although the PLRA does not apply, the Court, in applying the equitable standard for preliminary injunctive relief, ha/ considered the potential adverse effects on public safety, and has narrowly drawn the prospective relief granted in this order to extmd no further than necessary to protect the federal right.

[6] In making these findings, the Court relies on the deposition of the Sheriff attached as an exhibit to the original complaint, and on the declaration of Lieutenant Mike Walker.

The Court does not rely on the newspaper article submitted by the plaintiff in a post-argument brief seeking judicial notice. (SeePlaintiff's Rule 28(j) Analog, filed July 21, 1998; see also, Defendants' Objection to Plaintiffs' Submission of "Rule 28(j) Analog" Statement, filed July 29,1998.) The factual assertions contained in the article are not subject to judicial notice because they are not facts commonly known or capable of accurate or ready determination. SeeFed. R. Evid. 201(b) . Nor are the assertions, as the plaintiffs contend, adoptive admissions of the defendants. The article attributes the statement to no one in particular, leaving the Court unable to determine whether the purported maker of the statement was authorized to make it. In addition, the article presents a double hearsay problem: even if the statement to the reporter were an admission, the statement to the reporter is hearsay outside of any applicable exception. The Court therefore disregards the newspaper article.

[7] Male detainees are brought to the Inmate Reception Center ("IRC") for release processing. Female detainees are brought to the Sybil Brand Institute for Women ("SBI") for release processing. (See Los Angeles County Sheriff's Department Manual of Policy and Procedures § 5-03/005.00 at 5-03/1 (1996).) The Court takes judicial notice of the manual under Rule 201(c) of the Federal Rules of Evidence.

[8] The Sheriff refers to all persons in county custody as "inmates." In order to be precise, the Court employs "inmates" to describe individuals who have been convicted of crimes and whose sentences include incarceration in the County jail system. The plaintiff class in this action does not include inmates. The Court employs "detainees" to describe individuals who are being held on a finding of probable cause and are awaiting trial. All members of the plaintiff class in this action are detainees.

(See Walker Decl. [9] P 3.) Annually, the Department books and releases an average of 200,000 o 220,000 detainees. (See id P 3.) [*24]

3. Every weekday, the Department transports an average 1,800 to 2,000 inmates and detainees from its jail facilities to the courts. (See id. P 6).

4. The IRC, which processes the release of male detainees, [10] is contacted 24 hours a day by other law enforcement and correctional agencies in order to place holds on the release of detainees. (See id. P 7.) The Department usually receives such holds by telephone or teletype. (See id.) The holds transmitted in this manner include immigration holds and holds placed by the State Board of Prison Terms regarding parole violations. (See id.)

[*25] 5. Each weekday, the IRC receives an average of 3,000 to 5,000 paper transmittals from 10 superior court districts and 32 municipal court districts in the County. (See id P 8.) These transmittals include a number of different types of orders. Some of these orders affect the status of detainees, either by ordering r authorizing a detainee's release, or by requiring the Department o hold a detainee for another agency. (See. id P 11.)

6. The superior and municipal courts send paper transmittals to the IRC by placing them in bags to be transported on the same buses used by the Department to transport detainees to and from the courts. (See id. P 9.)

7. The peak volume of bus arrivals at the IRC from the courts occurs between 6:00 p.m. and 7:00 p.m. (See id. P 9.)

8. Bags of paperwork from the courts are emptied by clerks at the IRC. The clerks then read and interpret each paperwork item to determine what effect it has on the status of the inmate or detainee to whom it refers. This task is made more timeconsuming by the use of several different types of forms, and by incidents in which court personnel make contradictory or inconsistent notations on the form. After interpreting [*26] the form, the IRC clerk enters the resulting changes in inmate or detainee status in the AJIS. (Seeid. PP 10-11.)

9. Counsel for the Sheriff represented during oral argument that the task of entering one day's paperwork into the AJIS is often not completed until the evening of the following day, and sometimes past midnight of the following day.

10. The Department is currently developing a plan to connect the superior and municipal court computers to the AJIS, in order to eliminate the paper transmittal of orders. (See id. P 14.) The Department predicts that electronic transmittal of orders will eventually allow detainees to be released directly from ourt after a check of the electronically updated AJIS from the ourthouse. (See id.)

11. After the AJIS has been updated, the Department egins taking the administrative steps necessary to release the detainee. These steps include:

(a) checking the updated AJIS for wants and holds;

(b) positively identifying the released detainee using fingerprints to prevent erroneous releases caused by detainees' switching of wristband identifications (See id. P 15;

(c) returning the detainee's personal property (see id. P [*27] 14); the Department will in some instances release a detainee without returning his property, allowing the detainee to return to the IRC later to pick up his property (see id. PP 14, 16); and

(d) updating the Department's records to reflect the detainee's release.

12. The Department policy of returning detainees to the IRC after a release order includes an exception for instances where the court explicitly orders a detainee released "in court." (See Walker Decl. P 16 (referring to in-court release procedure set forth in the Department manual).) The Department manual only allows in-court releases when the judge "specifically directs the deputy having custody of the prisoner to release the inmate in court.'" [11] If the judge orders the detainee released "'forthwith'" or "'immediately, '" the manual requires that the detainee be returned to the IRC or SBI for processing.

[*28] 13. The majority of detainees are processed for release after the Department receives an order written on a

---

[9] The factual findings regarding the operation of the County jail system are based on the declaration of Mike Walker, the Administrative Lieutenant for the IRC. (Walker Decl. P 1.) The IRC processes all male inmates and detainees leaving the County jail system.

[10] According to the Department manual, female detainees are processed by the SBI. (See Los Angeles County Sheriff's Department Manual of Policy and Procedures § 5-03/005.00 at 5-03/1 (1996).) The parties, however, have not presented evidence regarding the release procedures followed at the SBI for female detainees.

[11] The Court takes judicial notice under Federal Rule of Evidence 201(c) of the 1996 edition of the Department manual. The manual includes the following provision regarding in-court releases:

superior court form which begins as follows: "This is to authorize you to release" the, detainee. (See Walker Decl. P 10 and Ex. thereto.) Most court clerks add the following notation to the form: "This Case Only." (See id.)

14. A recently reported decision of this Court found that an acquitted detainee who had received an unambiguous order stating "defendant is released" was held by the Department for an additional twenty-four to forty-eight hours pursuant to the Department's policy of continuing to hold released detainees for purposes of performing an updated AJIS check for wants and holds. See Fowler v. Block, 2 F. Supp. 2d 1268, 1276 & 1279 n.8 (C.D. Cal. 1998)

15. There is no causal connection between the court order to release a detainee and the arrival of a new want or hold against the detainee. Counsel for the Sheriff acknowledged the lack of a causal connection during oral argument. Wants or holds are no more likely to arrive on the same day as the release order than on any other day before or after the release order.

C. Standing

In [*29] order to establish a likelihood of success on the merits, the plaintiffs must show that they have standing to bring this action.

The standing issues are analyzed above in the class certification discussion. (See, supra, at pp. 7-11.) The named plaintiffs in this action have demonstrated standing by alleging that they are in detention, and by presenting evidence that the Department has a consistent policy of keeping released detainees for want and hold checks. (See "Preliminary Findings of Fact," supra, at pp. 16-22.)

D. Likelihood of Success on the Merits

"To sustain an action under *section 1983*, a plaintiff must show (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a federal constitutional or statutory right." Wood v. Ostrander, 879 F.2d 583, 587 (9th Cir. 1989)

1. What constitutional standard applies?

The parties dispute the issue of what constitutional framework should be applied to over-detention claims. The plaintiffs contend that over-detention violates their *Fourth Amendment* right to be free from unreasonable seizure, and their Fourteenth Amendment [*30] right to be free from deprivation of liberty without due process. The Sheriff contends that only the due process clause applies. Before determining whether the plaintiffs have shown a likelihood of success on the merits, it is necessary to determine what constitutional standard applies. See County of Sacramento v. Lewis, 523 U.S. 833, 118 S. Ct. 1708, 1714 n.5, 140 L. Ed. 2d 1043 (1998) ("As in any action under *§ 1983*, the first step is to identify the exact contours of the underlying right said to have been violated.").

Constitutional claims arising from improper confinement are examined using either a due process or *Fourth Amendment* analysis. See Mackinney v. Nielsen, 69 F.3d 1002, 1009 (9th Cir. 1995). In cases where the plaintiff challenges the lawfulness of confinement prior to a judicial determination of probable cause for a warrantless arrest, the Ninth Circuit employs a *Fourth Amendment* analysis. See id In cases where the plaintiff challenges the length of confinement after a determination of probable

---

Under no circumstances shall a prisoner be released directly from court except following a direct order by a judge. A prisoner ordered released "forthwith" or "immediately" shall be returned to IRC/SBI unless the judge specifically directs the deputy having custody of the prisoner to release the inmate "in court.

"When a judge orders a prisoner released "in court," the deputy having custody of the prisoner shall:- Obtain the release order from the court specifying the release is to "in court,"

- Obtain the release authorization from IRC/5B4 by telephone,

- Indicate the date, time, and name of the document analyst (IRC/SBI) authorizing the release, on the reverse side of the court release order,

- Establish positive identification of the prisoner to be released (the identification band worn by the inmate is not considered positive identification) . If positive identification of the prisoner cannot be established by personal knowledge of the bailiff or court personnel, the judge shall be so informed. The judge will be asked to permit the prisoner to be returned to IRC/SBI for fingerprint comparison and expedited release. When necessary, special transportation may be provided. If the judge denies the request, the bailiff will release the prisoner and document the circumstances.(Los Angeles County Sheriff's Department Manual of Policy and Procedures § 5-03/130.05, at 5-03/32 (1996).)

cause, a due process analysis applies. See Baker v. McCollan, 443 U.S. 137, 61 L. Ed. 2d 433, 99 S. Ct. 2689 (1979); [*31] Armstrong v. Squadrito, 152 F.3d 564, 1998 WL 416887 *4 7th Cir. July 24, 1998); Mackinney, 69 F.3d at 1009; Villanova v. Abrams, 972 F.2d 792, 797 (7th Cir. 1992)

Where the *Fourth Amendment* applies to a constitutional claim, he claim must be analyzed under the more specific guarantee against unreasonable seizure, rather than under the more generalized notion of Fourteenth Amendment substantive due process. See Albright v. Oliver, 510 U.S. 266, 273, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994) (plurality) Graham v. Connor, 490 U.S. 386, 395, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989). This case, however, must be analyzed under both the *Fourth Amendment* and the Fourteenth Amendment, because the plaintiffs challenge two distinct sources of delay, each of which is governed by a different constitutional right.

First, the plaintiffs challenge administrative delay. Administrative delay is caused by the steps necessary to implement the release order. Such steps include transportation, confirming the acquitted detainee's identity through fingerprinting or other methods, checking for wants and [*32] holds already in the AJIS, returning the detainee's property, and physically allowing the detainee to leave the jail. The permissible length of these steps is governed by substantive due process, because these functions are part of the Sheriff's responsibility to properly run the jail. See Block v. Rutherford, 468 U.5. 576, 82 L. Ed. 2d 438, 104 S. Ct. 3227 (1984); Bell v. Wolfish, 441 U.S. 520, 60 L. Ed. 2d 447, 99 S. Ct. 1861 (1979). The burdens that this administrative delay places on the plaintiff class members can be understood as part of their transition from confinement to freedom.

Second, the plaintiffs challenge investigative delay. Investigative delay results from the Department policy to defer commencement of the administrative steps described above until the)epartment staff has updated the AJIS with wants and holds received luring the day. The Sheriff's decision to extend confinement of acquitted detainees for this purpose exceeds the scope of both the initial finding of probable cause, and of the Sheriff's authority to implement the release order in a manner consistent with his responsibility to properly manage the jails. Because this investigative delay exceeds the scope of the Sheriff's [*33] lawful authority over the released detainee, it constitutes a re-arrest, and must be analyzed under the *Fourth Amendment* standard for reasonable seizures. Because the more specific guarantees of the *Fourth Amendment* apply to this investigative delay, the Court must apply the more specific *Fourth Amendment* standard, rather than the generalized substantive due process standard under the Fourteenth Amendment.

2. Administrative Delay: Substantive due process limits the Sheriff's authority to continue holding an acquitted pretrial detainee

After the government's authority to hold the individual is established under the *Fourth Amendment*, the conditions and duration *of the detention are governed by substantive due process. [12] Substantive due process limits the conditions under which the individual may be held, Bell, 441 U.S. at 536, the length of time during which the individual may be held before his next judicial appearance,

---

[12] The Court notes that the rights of convicted inmates to be released at the proper time as provided by indeterminate sentencing statutes are governed by a procedural due process standard. See Haygood v. Younger, 769 F.2d 1350 (9th Cir. 1985) (en banc) Haygood, however, does not control this case. In Haygood, the California Adult Authority, applying the indeterminate sentencing statute then in force, miscalculated *the prisoner's sentence, - causing him to he held in prison five years after he should have been released. Id. at 1354. The constitutional violation in Haygood was deprivation of a liberty interest created by the state sentencing -statute. Id. at 1355. Sentencing statutes do not create substantive rights; instead they create the right to have certain procedures followed to ensure an accurate calculation of the sentence. The holding in Haygood is based on the principle that convicted prison inmates have a due process right to fair administration of the statute under which their sentences are calculated. Id.

Here, however, a pretrial detainee's interest in being released after an order of acquittal is not created by a statute for calculating the period in which a pretrial detainee may be held. Instead, the pretrial detainee, upon acquittal of the charge for which he is being detained, regains his substantive liberty interest in freedom from confinement by government without lawful authority.

Also distinguishable are cases involving a convicted inmate's right to be released from incarceration pursuant to a probation order, or to be released from a more restrictive to a less restrictive form of incarceration. See Walters v. Grossheim, 990 F.2d 381, 384 (8th Cir. 1993) (holding that failure of prison officials to comply with habeas writ ordering prisoner moved to less restrictive level of detention deprived prisoner of liberty interest under Fourteenth Amendment due process); Slone v. Herman, 983 F.2d 107, 110 (8th Cir. 1993) (holding that continued detention of prisoner after order suspending his sentence deprives prisoner of liberty interest under Fourteenth Amendment due process); Salahuddin v. Coughlin, 781 F.2d 24 (2d Cir. 1986) . As in Haygood, the constitutional violations in these cases arose from the convicted prisoners' liberty interests in the fair administration of state statutes governing the length and conditions of their sentences. Such cases do not address the situation of a person who was being held only on probable cause of having committed a crime, who is acquitted of that crime, and who is in effect re-arrested without probable cause to check for wants and holds.

Coleman v. Frantz, 754 F.2d 719 (7th Cir. 1985), and, most important for this case, whether the government may continue to hold the individual when new circumstances arise that undermine the government's lawful authority to [*34] continue the detention, Duckett v. City of Cedar Park. Tex., 950 F.2d 272, 279 (5th Cir. 1992).

[*35] "The concept of 'substantive, due process' . . . forbids the government from depriving a person of life, liberty, or property in such a way that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." Nunez v. City of Los Angeles, 147 F.3d 867, 871 (9th Cir. 1998) (quoting United States v. Salerno, 481 U.S. 739, 746, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987)). The standards for determining whether executive action offends substantive due process are "less rigid and more fluid than those envisaged in other specific and particular provisions of the *Bill of Rights*." County of Sacramento v. Lewis, 118 S. Ct. at 1719 (internal quotation marks omitted). Instead of applying a formal set of fixed elements to any challenged executive practice, the Court must examine the totality of the circumstances to determine whether the challenged practice represents a deliberate abuse of power that shocks the conscience. See id at 1718-19.

Although the substantive due process test is fluid, for purposes of clarity, the Court must follow a basic framework in analyzing the totality of the circumstances. The Supreme [*36] Court has recently reiterated that the ultimate question of law under substantive due process is whether the challenged executive action "shocks the conscience " or "interferes with rights implicit in the concept of ordered liberty." Id. at 1717. Although the phrase "shocks the conscience carries the "unfortunate connotation of a standard laden with subjective assessments," the standard does not depend on the subjective impression that the challenged practice makes on the Court. Id. at 118 S. Ct. 1722 (Kennedy, J, concurring). Instead, the standard depends on the following three inquiries:

(1) Does the due process clause protect against the challenged executive's [13] conduct? This inquiry focuses on the individual interest threatened by the challenged government action. Not all individual interests affected by government action receive constitutional protection. Compare Nunez, 147 F.3d at 873-74 (holding that police officers' interest in promotion to higher rank is not protected by substantive due process against arbitrary government action), with, Armstrong, 152 F.3d at 564 , 1998 WL 416887 * 8 (holding that individuals arrested pursuant [*37] to valid -warrants have a protected interest under substantive due process against needlessly prolonged detention before first appearance in court) . The Supreme Court often expresses the distinction between protected and unprotected interests by repeating the formula that the Constitution must not be transformed into "a font of tort law." County of Sacramento v. Lewis, 118 S. Ct. at 1717-18; Daniels v. Williams, 474 U.S. 327, 332, 88 L. Ed. 2d 662, 106 S. Ct. 662 (1986); Paul v. Davis, 424 U.S. 693, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976)

[*38] (2) Does the executive's level of culpability offend the standards of substantive due process? An injury that results from mere negligence cannot be characterized as an abuse of power, and therefore does not offend substantive due process. See County of Sacramento v. Lewis, 118 S. Ct. at 1718. By contrast, an injury that results from the executive's deliberate indifference may rise to the level of a substantive due process violation, depending on the totality of the circumstances. Compare id. at 1721 (holding that in the context of a high-speed police pursuit in which a police officer had no time for deliberation, deliberate indifference is not sufficient to establh a substantive due process violation; intent to injure is required), with, id. at 1719 (noting in dicta that deliberate indifference to the welfare of inmates and pretrial detainees is sufficient to make out constitutional violations because prison officials have time to deliberate, except in riot conditions, which are governed by a different standard).

(3) Does the executive's conduct shock the conscience? This final step is essentially a reprise of the first two steps. Whether the challenged [*39] conduct shocks the conscience depends on the importance of the threatened interest, the extent of the injury to that interest, and the level of culpability of the government actors in light of the factual circumstances. See Armstrong, 152 F.3d at 564 , 1998 WL 416887 *18.

The Court applies these three questions to the period of administrative delay and concludes that the administrative delays here do not offend substantive due process.

a. Does the due process clause protect individuals

against continued detention after an order of

In light of the foregoing, the Court concludes that the procedural due process standard applied in Haygood does not control this case.

[13] In County of Sacramento v. Lewis, the Court noted that the criteria for examining government conduct under substantive due process "differ depending on whether it is legislation or a specific act of a governmental officer that is at issue." 118 S. Ct. at 1716. The challenged policy here is executive. The Court therefore applies the standards set forth in County of Sacramento v. Lewis for examining executive actions.

release?

"To establish a substantive due process claim, a plaintiff must, as a threshold matter, show a government deprivation of life, liberty, or property." Nunez, 147 F.3d at 871.

There can be no question that the plaintiffs in this case have asserted a protected liberty interest. Freedom from physical restraint or confinement in the absence of lawful authority "has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha v. Louisiana, 504 U.S. 71, 80, 118 L. Ed. 2d 437, 112 S. Ct. 1780 (1992); see also, Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) [*40] ("the paradigmatic liberty interest under the due process clause is freedom from incarceration") . When the government loses lawful authority to detain an individual, continued detention violates substantive due process. See McNeil v. Director. Patuxent Inst., 407 U.S. 245, 32 L. Ed. 2d 719, 92 S. Ct. 2083 (1972).

During the period of pretrial detention, the Sheriff's lawful authority to hold a detainee derives from a judicial finding of probable cause. See Gerstein, 420 U.S. 103, 43 L. Ed. 2d 54, 95 S. Ct. 854; Baker, 443 U.S. at 143. The situation changes radically, however, when the pretrial 'detainee is acquitted of the charge on which he is being held, or when a judge orders him released. At that moment the Sheriff's lawful authority over the individual is greatly diminished. There is little case authority on the degree to which the government's authority over the individual is diminished at this point. Neither the Ninth Circuit nor the Supreme Court has addressed the question of how much authority the government retains over an acquitted pretrial detainee [14]

[*41] The Seventh Circuit has addressed the question by drawing an analogy to the *Fourth Amendment* limits on the length of time a warrantless arrestee can be held without a judicial determination of probable cause. See Lewis v. O'Grady, 853 F.2d 1366 (7th Cir. 1988). A recent decision of this Court has looked to Lewis v. O'Grady to determine whether a prolonged detention to check for wants and holds was reasonable for purposes of qualified immunity. See Fowler, 2 F. Supp. 2d at 1278. In Lewis v. O'Grady the plaintiff had been held an additional eleven hours after he was ordered released. The plaintiff brought a *§ 1983* claim based on the over-detention. The district court entered a directed verdict for the defendants, concluding that no reasonable jury could find that eleven hours was an unreasonable delay. The Seventh Circuit reversed, holding that it was for the jury to decide whether eleven hours was reasonable in light of the administrative demands on the sheriff's department. See id.. 853 F.2d at 1370. The Seventh Circuit reached its holding by making an analogy to the *Fourth Amendment* standard governing the reasonableness [*42] of the delay between a warrantless arrest and a judicial determination of probable cause. See id. The Seventh Circuit reasoned that although the situations are different, the reasonableness of an administrative delay would depend on several of the same factors governing the period of reasonable detention for warrantless arrestees, including "such matters as transportation, identity verification, and processing." See Id.

In applying the reasoning of Lewis v. O'Grady to a damages action arising from the same policy challenged here, the Court in Fowler analyzed the period of time after an order of release by separating the activity performed by the sheriff's department into two categories: (1) "administrative tasks" incident to releasing the individual, and (2) the "check for wants and holds." See Fowler, 2 F. Supp. 2d at 1277-79.

The Fowler court concluded that the activities defined in this order as administrative delay -- the administrative steps necessary to execute a court order of release -- were within the Sheriff's continued authority over the acquitted detainee, and did not offend due process if the time taken was reasonable in light of [*43] the circumstances. See id. at 1278-79. Permissible administrative steps after acquittal include fingerprinting the acquitted detainee to confirm that he is the person ordered released, noting the release in the department's records, and returning the detainee's property. The court concluded that due process allowed a reasonable delay in performing these activities, the length of which must be determined by institutional factors such as the number of people to be processed. See id

The Fowler court analyzed the check for wants and holds 5 separately from the other administrative steps incident to release. 6 The court reasoned that the check for wants and holds could have 7 been performed in the morning, before the detainee was brought to 8 the court appearance at which he was later acquitted. See2 F. Supp. 2d at 1279. The court therefore concluded that delaying release for the purpose of checking wants and holds unreasonably prolonged the detention.

The present case is distinguishable from Fowler. The Sheriff has now presented evidence that checking for wants and holds that are already in the AJIS is not the only

---

[14] The exception to this statement involves acquittals by reason of insanity. Where a criminal defendant is acquitted by reason of insanity, the Constitution allows continued detention as long as the individual remains dangerously mentally ill. See Foucha, 504 U.S. at 79-80; Jones v. United States, 463 U.S. 354, 370, 77 L. Ed. 2d 694, 103 S. Ct. 3043 (1983)

cause of the delay. (See Walker Decl. PP 7-9, 11-15.) [*44] The Sheriff is clearly entitled to check whether a released detainee is eligible to be released. [15] Therefore, checking the AJIS for wants and holds is a logical part of the administrative steps incident to release. Any delay caused by retrieving information in the AJIS, provided it is reasonable, does not violate the Constitution. The delay complained of here results from the policy of not checking the AJIS until after the Department has input into the AJIS all new wants and holds received during the day. In order to remedy the constitutional violation caused by such delay, however, it is not necessary to prohibit the Sheriff from conducting any checks for wants and holds after a detainee is ordered released. [16] It is important to distinguish between wants and holds of which the Department already has knowledge, i.e., that are already entered into the AJIS, and wants and holds which the Department speculates may exist. As noted above, an AJIS check for wants and holds already known to the Department is one of the administrative steps incident to release. In contrast, the policy of deferring checking for wants and holds to investigate the speculative existence of unknown wants and [*45] holds is not within the Sheriff's lawful authority under the Fourteenth Amendment due process clause, and must be analyzed as a re-seizure of the released detainee under the *Fourth Amendment.* [*46]

In summary, the Court here departs from the Fowler analysis and holds as follows: (1) An AJIS check after a detainee is ordered released does not violate substantive due process if it does not significantly prolong the administrative steps incident to release. (2) The policy of deferring the AJIS check until all newly received paperwork has been processed must be analyzed under [*47] the *Fourth Amendment* and results in an unreasonable seizure if the Department does not have probable cause to believe that wants or holds exist for the detainees whose confinement is prolonged while the AJIS check is deferred. This *Fourth Amendment* holding is discussed in greater detail below, in a separate section of this order.

b. Does the executive's level of culpability offend the standards of substantive due process?

As noted above, the due process clause is concerned with abuses of executive power, and not with negligently inflicted harm. See County of Sacramento v. Lewis, 118 S. Ct. at 1718. Thus, if the policy complained of here results in over-detentions only because the persons applying it occasionally - apply it without due care, the resulting injuries would not be constitutional violations. See Erdman v. Cochise County, 926 F.2d 877, 882 (9th Cir. -1991) (holding that arrest of plaintiff on felony warrant after charges had already been adjudicated resulted from an isolated instance of negligence, and therefore did not rise to the level of a constitutional violation); Harris v. City of Marion, 79 F.3d 56, 59 (7th Cir. 1996) [*48] (holding that isolated negligent incident does not establish deliberate indifference in otherwise inoffensive policy). If, on the other hand, the policy regularly results in released detainees being held without lawful authority, continued application of the policy rises to the level of deliberate indifference. See Armstrong, 152 F.3d 564 , 1998 WL 416887 * 16.

Under this standard, delays resulting from negligent performance of the administrative steps incident to release do not offend substantive due process. These steps are within the Sheriff's lawful authority. Isolated instances of failure to exercise these steps with due care do not give rise to a constitutional violation. The plaintiffs have not presented facts to demonstrate a pattern of incidents in which the administrative steps are allowed to continue for an unreasonably long period of time. If such a pattern exists, and the Department is aware of it, the pattern may

---

[15] The Court notes the Sheriff's contention that one of the administrative steps incident to release is a determination of whether the Sheriff is holding the individual on one case or several cases. The Sheriff points to a notation on many release orders indicating that the detainee is released for "this case only." The distinction between such an order and the order in Fowler, which read "defendant is released," is not meaningful, even though "defendant is released" appears on its face to be more definite. See Fowler, 2 F. Supp. 2d at 1276. The court issuing a release order has jurisdiction only over the case before it. An order stating "defendant is released" contains the implied term "on this case only" because the court issuing the order has jurisdiction only over the case before it. Either order -"defendant is released" or "defendant is released on this case only" -- requires the Department to determine whether it is holding an individual only on the terminated case, or on other cases as well. Such a determination, like the check for wants and holds, is one of the reasonable administrative steps incident to release.

[16] Additionally, unlike in Fowler, the Sheriff has presented facts to demonstrate that it would be unduly burdensome to perform the check for wants and holds in the morning before detainees are transported to court. The Department does not know in the morning which of the 1,800 to 2,000 transported inmates and detainees will be ordered released during the day. (See Walker Decl. PP 6-9.) Until a detainee is ordered released, there is no reason to check for wants and holds. Based on the evidence presented here, the Court finds that the check for wants and holds already in AJIS can be performed after a detainee is ordered released without significantly delaying the administrative steps incident to release.

support a finding of deliberate indifference. This question, however, is not currently before the Court.

c. Does the executive's conduct shock the

conscience?

Based on the record before the Court, the administrative [*49] delays in release do not shock the conscience. As noted above these steps are performed pursuant the Sheriff's authority to carry out orders of release. A reasonable period of delay to carry out these steps is not an arbitrary exercise of government power. These steps are necessary to fulfill the legitimate government purpose of ensuring that the order of release is properly executed, and that the correct person is released. See Fowler, 2 F. Supp. 2d at 1277-78 (noting the necessary purposes served by the administrative steps incident to release). Substantive due process, however, does limit the length of time that the Sheriff can take to perform these administrative steps. As discussed above, the permissible length of time will vary depending on institutional factors such as the number of people to be processed, the necessary transportation, and the state of the available technology. The facts presented on the preliminary injunction motion do not establish that the time currently taken for such administrative steps constitutes a deliberate abuse of power that deprives detainees of liberty in a manner that shocks the conscience.

It is important to note, however, that [*50] this conclusion does not govern the investigative delays -- the delays resulting from the Sheriff's policy to defer the administrative steps incident to release until the AJIS system has been updated. As noted above, investigative delays of any length exceed the Sheriff's lawful authority and must be analyzed as a re-seizure under the *Fourth Amendment.*

3. Investigative Delay: The *Fourth Amendment* bar on

re-seizure without reasonable suspicion or re-arrest

without probable cause

Investigative delays -- those delays that result from the policy of deferring release until the AJIS is updated -- restrict the liberty of individuals after a court has either ordered their release or concluded that the lawful authority to hold them on the case before the court no longer exists. After receiving such an order, the Department may no longer treat the individual as a pretrial detainee, but as a former detainee, over whom the Department's authority extends no further than necessary to execute the court's order directing release. The force of a court order negating the lawful authority to hold an individual requires that any continued detention beyond the period necessary to execute [*51] the order be analyzed as a new arrest under the *Fourth Amendment.* To analyze the situation any other way would be to denigrate the seriousness of a judicial order Cf Slone, 983 F.2d at 110; Coverdell v. Dep't of Social and Health Services, 834 F.2d 758, 765 (9th Cir. 1987) (noting that "[tihe fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised.")

As noted above, substantive due process allows the Sheriff to check for wants and holds against an acquitted detainee while the Sheriff retains lawful authority to hold the individual, i.e., at any time before the acquittal or order of release, or during the time reasonably necessary to carry out the administrative steps incident to release.

In order to continue holding the detainee past this point, however, the Sheriff must meet the reasonable seizure standards of the *Fourth Amendment.* These standards are clearly defined. On a reasonable, articulable suspicion that the defendant has committed a crime, or is wanted for a past crime, the Sheriff may hold him for a brief period to confirm or deny the suspicion. See [*52] Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968); United States v. Hensley, 469 U.S. 221, 227-30, 83 L. Ed. 2d 604, 105 S. Ct. 675 (1985) (extending Terry to allow investigative stops on reasonable suspicion that person is wanted for a prior crime) . On a showing of probable cause, the Sheriff may arrest the individual, holding him for a longer period and under more intrusive circumstances than are permitted in a Terry stop. See United States v. Ayarza, 874 F.2d 647, 650 (9th Cir. 1989)

The policy challenged here results in seizures that are supported by neither probable cause nor reasonable suspicion. The Sheriff acknowledges that there is no causal connection between the date on which an individual is acquitted or ordered released and the appearance of a new want or hold.

The Sheriff has not contended that a released detainee's mere tatus as someone who had previously been charged with a crime ives rise to probable cause or reasonable suspicion that the eleased detainee is wanted for other crimes. Such a contention ould have no support in *Fourth Amendment* law. The prior arrest oes not provide authority under [*53] the *Fourth Amendment* to prolong the period of pretrial detention for the purpose of investigating other crimes, unless probable cause has already been established to believe that the person has committed a crime. See County of Riverside v. McLaughlin, 500 U.S. 44, 56, 114 L. Ed. 2d 49, 111 S. Ct. 1661 (1991) (noting that judicial determination of probable cause for warrantless arrest may

not be delayed for the purpose of seeking evidence needed to establish probable cause); Willis v. Chicago, 999 F.2d 284, 289 (7th Cir. 1993) (holding that judicial determination of probable cause may not be delayed for the purpose of investigating other crimes).

In light of the foregoing, the Court concludes that the plaintiffs have made the requisite showing of the likelihood of success on the merits of their claim that the Sheriff's policy to impose investigative delays on released detainees violates the *Fourth Amendment* by causing released detainees to be re-seized without probable cause or reasonable suspicion. The evidence before the Court constitutes a strong factual showing that the Department maintains an intentional and pervasive policy, in violation of the [*54] *Fourth Amendment*, to prolong detention of individuals over whom the Sheriff no longer has legal authority. based only on speculation that a new want or hold may have arrived for them. See Thomas, 978 F.2d at 508.

E. Irreparable Injury, Balance of Hardships, and Public Interest

When a deprivation of constitutional rights is involved, most courts hold that no further showing of irreparable injury is necessary. See Gutierrez v. Mun. Court of Southeast Judicial i t. Couny of Las Angeles, 838 F.2d 1031, 1045 (9th Cir. 1988). his presumption of irreparable injury does not apply where the damage to the plaintiff is purely economic. See Northeastern Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285-86 (11th Cir. 1990) . It is clearly established that prolonged detention without probable cause works an irreparable injury on the detainee. See Gerstein, 420 U.S. at 114 ("The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family [*55] relationships.").

Where, as here, the public will be affected by the injunctive relief sought, the Court must consider the public interest. See Miller v. California Pac. Med. Ctr., 19 F.3d 449, 456 (9th Cir. 1994). As noted above, the Court acknowledges the defendants' responsibility to protect the public against erroneous releases of detainees who are wanted for serious crimes other than the ones on which the defendants were detaining them. At the same time, the public has a strong interest in the protection of constitutional rights, and in the prevention of incidents in which released detainees who have no wants or holds are unlawfully kept from their homes, jobs and families for a substantial period after a court has ordered them released.

The Court recognizes that in order to comply with an njunction requiring prompt checks for wants and holds, the epartment will have to change the procedures for processing wants nd holds and for releasing pretrial detainees. The Court notes, owever, that the Department has already begun automating the entry of wants and holds into AJIS, a process which, if completed, would remove any purported need to delay court-ordered releases [*56] while the system is updated. (See, supra, Finding of Fact No. 11.) In order to prevent harm to the public interest that would result from erroneous releases during a transition period, the Court finds it appropriate to stay the execution and enforcement of this preliminary injunction for sixty days after the filing date of this order.

F. Miscellaneous Injunctive Remedies

1. Modifying the Department's Settlement/Release Forms

The plaintiffs seek an order mandating that the Department add the following language to its settlement/release form:

> You should consult with a lawyer before signing this form. If you sign this form, you may revoke your agreement within 30 days.(Mot'n at 7.)

The form currently in use by the Department is attached to the Declaration of Tom Laing, Lieutenant in charge of the Sheriff's Risk Management Bureau's Civil Litigation Unit. (Opp'n Ex. C.) The current letter includes the following notice in bold, italic type:

> You have the right to consult an attorney before agreeing to the specific amount and the release and settlement of your claim.(Id. at Bates 30.)

The Court finds no legal basis for an order requiring [*57] the Department to modify its settlement offer to include the 30-day revocation term.

The motion for a preliminary injunction is therefore denied as to this issue.

G. Court Ordered Over-Detention Claim Form and Monitoring

The plaintiffs seek an order mandating that the Department distribute to every detainee the claim form reproduced at pages 5-6 of the Motion for Preliminary Injunction. The order would require the Department to distribute this form to every detainee every five days. A copy of each form would be filed with the Court every Monday.

The Court finds no legal basis for imposing a court-monitored, over-detention claim system on the

Department at this time. The motion for preliminary injunction is therefore denied as to this issue.

IV. THE SHERIFF'S MOTION TO DISMISS

Under *Federal Rule of Civil Procedure 12(b)(6)*, a federal court cannot dismiss a complaint for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. See Moore v. City of Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989). The allegations contained in the complaint must be construed [*58] in the light most favorable to the plaintiff, and all material allegations in the complaint -- as well as any reasonable inferences to be drawn from them -- must be accepted as true. See NL Indus.. Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986)

Dismissal for failure to state a claim is with leave to amend unless the court "determines that the pleading could not possibly be cured by the allegation of other facts." Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995) (internal quotation marks omitted)

A. Standing

In the motion to dismiss, the Sheriff renews the contention that the named plaintiffs lack standing to bring the action. These arguments are addressed above with regard to the class certification and preliminary injunction motions. The Court concludes that even if the parole-hold of named plaintiff Vanke defeats his standing, the FAC adequately alleges the standing of the other named plaintiffs.

B. Merits

1. Over-Detention Resulting From Investigative Delay

The Court concludes that the FAC states a claim under *§ 1983* for violation of the *Fourth Amendment* right to be free from unreasonable seizure and the Fourteenth Amendment [*59] right to be free from deprivations of liberty without due process. As discussed in more detail above, the Court concludes that a policy of delaying the administrative steps incident to the court-ordered release of a pretrial detainee in order to update files of newly arrived wants and holds without probable cause to believe that a want or hold exists for that particular released detainee violates the *Fourth* and Fourteenth Amendments. The complaint therefore states a claim for relief. The FAC alleges that the Department, by following its wants and holds policy, will prolong detentions beyond the time required for administrative processing of the plaintiffs' releases. (See FAC PP 10, 11, 16.)

2. Settlement Procedures

The plaintiffs also contend that the Department policy of approaching over-detained individuals with settlement offers violates the Constitution and should be enjoined under *§ 1983*. The complaint does not allege specifically what constitutional right is violated by approaching detainees with settlement offers. The plaintiffs' brief in opposition to this motion makes no effort to describe the constitutional violation.

There is a large body of law on [*60] the validity of *§ 1983* settlement agreements that are negotiated close to the time of violation. See Town of Newton v. Rumery, 480 U.S. 386, 94 L. Ed. 2d 405, 107 S. Ct. 1187 (1987). Such agreements are not void against public policy under federal law provided that the agreement is voluntary, that there is no evidence of prosecutorial misconduct, and that enforcement of the agreement would not adversely affect the public interests served by *§ 1983*. See id. at 399; Davies v. Grossmont Union High School Dist., 930 F.2d 1390 (9th Cir. 1991)

There is no law, however, on the question of whether a policy of offering such agreements violates the Constitution. The enforceability of *§ 1983* settlement agreements is not a matter of constitutional law, but rather an application of federal common law to the question of whether the settlement violates public policy. See Newton, 480 U.S. at 392; Davies, 930 F.2d at 1396.

The plaintiffs have not responded to the motion to dismiss with any theory as to how the Sheriff's settlement policy violates the Constitution. Although on a *Rule 12(b)(6)* motion the Court [*61] must make every inference in favor the plaintiffs, the Court need not accept as true the complaint's conclusory legal characterizations. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Schwarzer, supra, § 9:226.2 (Rutter 1998). Here, the complaint simply alleges that the Department approaches detainees with settlement offers. The complaint contains no allegations as to how such offers deprive the plaintiffs of a constitutional right. The plaintiffs in opposing this motion have pointed to no inferences arising from the complaint to support a constitutional violation. The Court deems the plaintiffs' silence as an abandonment of this claim. This claim is therefore dismissed with leave to amend.

V. CONCLUSION

The motion for a preliminary injunction is GRANTED. IT IS I ORDERED that the defendants and their officers, agents, servants, employees, and all others in active concert or participation with them are enjoined during the pendency of this action from holding individuals who have been acquitted of the charges on which they are being held, or whose release has been ordered by a court, beyond

the period of time that is required to [*62] perform the administrative steps incident to release, including a check for wants and holds known [17] to the defendants at the conclusion of the administrative steps incident to release, but not including additional time for the receipt or processing of wants and holds not known to the defendants at the conclusion of the administrative steps incident to release.

This injunction is STAYED for sixty days after the filing date of this order.

The motion for class certification is GRANTED.

The motion to dismiss is DENIED as to the *§ 1983* claim based on over-detention, and GRANTED as to the *§ 1983* claim based on the settlement procedures. Any amended complaint reasserting this dismissed claim must be filed within 20 days of the filing date of this order.

[*63] Dated: November 5, 1998

DEAN D. PREGERSON

United States District Judge

---

[17] For purposes of this order, "known" means already present in the defendants' jail computer system known as the Automated Justice Information System ("AJIS"), or through another electronic or manual records system comparable in access time to the AJIS.