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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 13-04416 BRO (FFMx)**	Date	July 28, 2014
Title	**GERARDO GONZALEZ, ET AL. v. IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS)

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [31]

I. INTRODUCTION

This is a class action brought by Plaintiffs Gerrardo Gonzalez, Jr., and Simon Chinivizyan ("Plaintiffs") against Defendants Immigration and Customs Enforcement ("ICE"), John Sandweg, David Marin, and David C. Palmatier (collectively, "Defendants"). Plaintiffs challenge ICE's alleged practice concerning the issuance of immigration detainers for individuals in the custody of law enforcement agencies. The immigration detainers request local law enforcement agencies to hold individuals beyond the time they otherwise would be released from custody. Plaintiffs allege these immigration detainers are unlawfully issued without probable cause. They seek prospective injunctive relief against Defendants.

Currently pending before the Court is Defendants' motion to dismiss the Second Amended Complaint (Dkt. No. 31). After consideration of the papers filed in support of and in opposition to the instant motion, the Court deems this matter appropriate for decision without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, Defendants' motion is GRANTED.

II. BACKGROUND

A. Allegations of ICE's Practices Concerning Immigration Detainers

As alleged in the Second Amended Complaint ("SAC"), Form I-247, "known as an 'immigration detainer,' 'immigration hold,' or 'ICE hold,'" is a form used by ICE "to 'advise another law enforcement agency that [ICE] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise [ICE], prior to release of the alien, in order for [ICE] to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.'" (SAC ¶ 14, quoting 8 C.F.R. § 287.7(a).) The detainer requests that the other law enforcement agency "hold the alien for a period of no more than 48 hours excluding Saturdays, Sundays, and holidays 'beyond the time when the subject would have otherwise been released from [its] custody.'" (SAC ¶ 14, quoting 8 C.F.R. § 287.7(d).)

"Immigration detainers are not warrants or court orders, and they are not issued or approved by judicial officers; instead, they are unsworn documents that may be issued by a wide variety of immigration officers, including immigration enforcement agents and deportation officers." (SAC ¶ 14.)

"ICE agents know—and intend—that these detainers will cause the subjects to be imprisoned for an additional two to seven days after they should be released. Yet in practice, ICE agents routinely issue immigration holds without probable cause to believe that the subjects are removable from the United States." (SAC ¶ 21.)

"In addition to causing up to a week of additional warrantless imprisonment," Plaintiffs allege other impacts from immigration detainers, including:

- Holding detainees in custody "far longer than they otherwise would, due solely to the detainer";
- Preventing pretrial inmates from posting bail;
- Limiting the possible terms of a plea; and

- Affecting an inmate's prison or jail classifications or eligibility for work programs.

(SAC ¶¶ 29-35.)

B. Allegations Concerning the Named Plaintiffs

Plaintiff Gonzalez is a 23-year-old United States citizen who resides in Los Angeles, California. (SAC ¶¶ 8, 36.) On December 27, 2012, he was arrested on a felony charge of possession of methamphetamines and, since his arrest, has been in the custody of Los Angeles law enforcement. (SAC ¶ 39.) "Plaintiff Gonzalez only learned that ICE had lodged an immigration detainer against his when is girlfriend attempted to post bail shortly after his parole hold expired, and a bail bondsman told her that he had an immigration hold." (SAC ¶ 44.) Plaintiff Gonzalez alleges that if he had posted bail, "he would have been subject to unlawful detention in [Los Angeles Sheriff's Department ("LASD")] custody for up to 5 days on the sole authority of the immigration hold and subject to further unlawful detention for up to 2 days by ICE, all without a judicial probable case determination." (SAC ¶ 45.) "On June 19, 2013, hours after this action was commenced, ICE lifted the immigration hold it had unlawfully placed on Plaintiff Gonzalez." (SAC ¶ 46.)

Plaintiff Chinivizyan is a native of Uzbekistan. (SAC ¶ 47.) His family moved to the United States when he was approximately four years old and he became a United States citizen when he was fourteen years old. (SAC ¶ 47.) On approximately June 7, 2013, Plaintiff Chinivizyan was arrested on two drug charges and one charge of receiving stolen property. (SAC ¶ 49.) On June 19, 2013, Plaintiff Chinivizyan pled no contest to the three charges. (SAC ¶ 50.) Four days later, ICE placed an immigration detainer on Plaintiff Chinivizyan. (SAC ¶ 51.)

"On July 2, 2013, a superior court judge ordered Plaintiff Chinivizyan to spend six months in a residential drug treatment facility, and ordered him released on his own recognizance on the condition that he be released to a representative of the Assessment Intervention Resources ("AIR") program so that he could be transferred to the residential drug treatment facility." (SAC ¶ 52.) The next day, "an AIR representative went to

County jail to pick up Plaintiff Chinivizyan and transport him to a residential drug treatment facility." (SAC ¶ 54.) "LASD told AIR that it could not pick up Plaintiff Chinivizyan because he had an immigration hold." (SAC ¶ 54.)

After learning of the immigration detainer, Plaintiff Chinivizyan's mother provided LASD with documentation establishing her son's citizenship. (SAC ¶ 58.) However, a LASD officer informed her that nothing could be done to lift the immigration detainer until her son was transferred to ICE custody. (SAC ¶ 58.) "[A]t the time the [First] Amended Complaint was filed, Plaintiff Chinivizyan had been detained for 7 days in LASD custody on the sole authority of the immigration hold without any judicial probable cause determination." (SAC ¶ 55.) On July 12, 2013, two days after the First Amended Complaint was filed, ICE lifted the immigration hold placed on Plaintiff Chinivizyan. (SAC ¶ 60.)

Plaintiffs allege that the immigration detainers were unlawful. Specifically, Plaintiffs claim that the immigration detainers violate the Fourth and Fifth Amendments and exceed ICE's statutory power under 8 U.S.C. § 706(2)(A)-(D).

Plaintiffs seek declaratory and injunctive relief on behalf of themselves and the proposed class of individuals similarly situated.

III. LEGAL STANDARD

A. "Case or Controversy"

1. Standing

The burden is on "the party who seeks the exercise of jurisdiction in his favor clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *United States v. Hays*, 515 U.S. 737, 743 (1995) (internal quotations omitted). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative,

that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). Those who do not have Article III standing may not litigate in federal court. *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475–76 (1982).

"Standing is determined by the facts that exist at the time the complaint is filed." *Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (plurality op.). The standing of a later-added plaintiff is determined as of the date of the amended complaint which brought him into the action. *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004).

When a plaintiff seeks prospective injunctive relief, there must be a showing of a credible threat of recurrent injury to the named plaintiff. *LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985); *see also Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) ("Lyon's standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers."). "*Lyons* requires that the 'personal stake' showing necessary under Article III in cases involving injunctive relief includes an essential showing of the likelihood of similar injury in the future." *LaDuke*, 752 F.2d at 1324.

"[P]laintiffs must demonstrate that a 'credible threat' exists that they will again be subject to the specific injury for which they seek injunctive or declaratory relief. . . . There must be a 'demonstrated probability' that plaintiff will again be among those injured." *Sample v. Johnson*, 771 F.2d 1335, 1340 (9th Cir. 1985) (citing *Kolender v. Lawson*, 461 U.S. 352, 355 n.3 (1983) and *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam)).

2. *Mootness*

A federal court has no authority to give opinions upon moot questions. "A case becomes moot whenever it 'los[es] its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law.'" *West v. Sec'y of Dep't of Transp.*, 206 F.3d 920, 924 (9th Cir. 2000) (alteration in original) (quoting *Hall v. Beals*, 396 U.S. 45, 48 (1969)).

B. Failure to State a Claim

Under Rule 8(a), a complaint must contain a "short and plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). If a complaint fails to do this, the defendant may move to dismiss it under Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted) (emphasis added). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, there must be "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility'" that the plaintiff is entitled to relief. *Id.*

In ruling on a motion to dismiss for failure to state a claim, a court should follow a two-pronged approach: first, discount conclusory statements, which are not presumed to be true; and then, assuming any factual allegations are true, determine "whether they plausibly give rise to entitlement to relief." *See id.* at 679; *see also Chavez v. U.S.*, 683 F.3d 1102, 1108 (9th Cir. 2012).

Where a district court grants a motion to dismiss, it should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citation omitted).

IV. DISCUSSION

Defendants contend that this Court lacks jurisdiction. Specifically, Defendants assert (a) Plaintiffs lack standing to pursue their claims, (b) the case is moot because ICE canceled the immigration detainers lodged against Plaintiffs, and (c) Plaintiffs' claim for writ of habeas corpus must be dismissed because Plaintiffs have never been in ICE's

custody. Defendants also assert that Plaintiffs fail to state a claim for their first cause of action.

A. Plaintiffs Have Standing to Seek Damages and Certain Injunctive Relief, but Not Prospective Injunctive Relief

1. Plaintiffs Have Alleged Injuries in Fact

Injury in fact means that the plaintiff has suffered actual loss, damage or injury, or is threatened with impairment of his or her own interests. *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979); *Bullfrog Films, Inc. v. Wick*, 847 F.2d 502, 506 (9th Cir. 1988). The injury must involve "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical . . . ." *Lujan*, 504 U.S. at 559–560 (internal quotations and citations omitted).

When this action was filed, Plaintiff Gonzalez was subject to an active ICE detainer. (SAC ¶¶ 42-46.) Plaintiffs have alleged that, because of this detainer, Plaintiff Gonzalez was subject to up to five days of detention as soon as he became eligible for release from criminal custody. The threat of additional detention "beyond the time he or she would otherwise be released from criminal custody," (SAC ¶ 2), is an imminent injury sufficient to establish standing. *See Lee v. City of Los Angeles*, 250 F.3d 668, 683 (9th Cir. 2001) ("As one court explained, a detainee has a constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release.") (internal quotations omitted); *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) ("The Supreme Court has recognized that an individual has a liberty interest in being free from incarceration absent a criminal conviction.")

The possibility that Plaintiff Gonzalez might not have posted bail does not render the threat of injury "speculative" or "conjectural" as contended by ICE. (Mot. 14.) In fact, Plaintiffs alleged that Plaintiff Gonzalez's girlfriend actually attempted to post bail but was told by a bail bondsman about the immigration detainer. (SAC ¶ 44.)

Plaintiff Chinivizyan, too, was subject to an active ICE detainer as of the date of the First Amended Complaint—the pleading by which Plaintiff Chinivizyan was added as a party. (SAC ¶¶ 51-60.) Plaintiffs alleged that Plaintiff Chinivizyan "had been detained on the sole authority of the [immigration] hold for over a week without any judicial determination of probable cause." (SAC ¶ 6.) This alleged detention is a concrete injury sufficient to support standing. *See Lee*, 250 F.3d at 683; *Oviatt*, 954 F.2d at 1474.

2. Plaintiffs' Injuries Are Directly Traceable to ICE

As alleged by Plaintiffs, the immigration detainers are intended to—and actually do—induce law enforcement agencies to incarcerate individuals beyond the time they would otherwise be released. (SAC ¶¶ 2, 15, 21.) The fact that the immigration detainers impose no mandatory obligation on a law enforcement agency does not necessarily negate causation. "[A]n official with no official authority over another actor can also be liable for that actor's conduct if he induces that actor to violate a third party's constitutional rights, provided that the official possesses the requisite intent . . . ." *Lacey v. Maricopa County*, 693 F.3d 896, 916 (9th Cir. 2012). Plaintiffs alleged that LASD would not release Plaintiff Chinivizyan "because he had an immigration hold" and that "at the time the Amended Complaint was filed, Plaintiff Chinivizyan had been detained for 7 days in LASD custody on the sole authority of the immigration hold." (SAC ¶¶ 54-55.) The injury alleged in the SAC is thus directly traceable to ICE.

3. Plaintiffs' Injuries Are Redressable

Defendants do not contend that the alleged injuries would not be redressed by a decision favorable to Plaintiffs. The element of redressability is lacking when the plaintiff's injury can only be remedied through the choices of independent actors not before the court. *See Lujan*, 504 U.S. at 560. Here, Plaintiffs' alleged injuries involve actors not before the court—local law enforcement agencies, specifically LASD. However, neither LASD nor any other nonparty actor appears to be essential for Plaintiffs' alleged injuries to be redressed. A favorable decision against Defendants—depending on the nature of the relief sought—would likely redress Plaintiffs' alleged injuries. At this stage of the litigation, Plaintiffs adequately pleaded the redressability requirement.

4. Plaintiffs Have Only Pleaded Facts that Support Standing to Pursue Claims for Past and/or Ongoing Injuries, Not Prospective Injunctive Relief

Based on the foregoing, Plaintiffs have pleaded facts to support standing to make claims against Defendants. However, standing is not determined in the abstract. A plaintiff "must demonstrate standing separately for each form of relief sought." *Friends of the Earth*, 528 U.S. at 185; *see also Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) ("[S]tanding is not dispensed in gross."). Plaintiffs have established standing sufficient to seek damages and injunctive relief to remedy the alleged ongoing injuries. However, Plaintiffs have not prayed for such relief in the SAC. Rather, the relief sought by Plaintiffs is solely prospective injunctive relief.

"An award of prospective injunctive relief requires the plaintiff to demonstrate a reasonable likelihood of *future* injury." *Bank of Lake Tahoe v. Bank of Am.*, 318 F.3d 914, 918 (9th Cir. 2003) (emphasis added); *see also O'Shea v. Littleton*, 414 U.S. 488, 496–98 (1974) (finding no standing because plaintiffs could not establish that they would again violate the law, be charged, held to answer, and tried in allegedly unlawful proceedings); *Kruse v. State of Hawai'i*, 68 F.3d 331, 335 (9th Cir. 1995) (holding plaintiff lacked standing to seek injunctive relief because she failed to show a sufficient likelihood that defendant would violate any of her rights in the future). The allegations of in the SAC do not plead a reasonable likelihood of *future* injury to Plaintiffs Gonzalez and Chinivizyan—and Plaintiffs do not so argue in their opposition to Defendants' motion.

Plaintiffs contend they need not make the showing of a reasonable likelihood of future injury because they claim standing "based on the imminent and ongoing injuries they faced when they *filed* their claims." (Opp. 8.) However, "a plaintiff who has standing to seek damages for a past injury, or injunctive relief for an ongoing injury, does not necessarily have standing to seek prospective relief . . . ." *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010) (court reversed summary judgment in favor of plaintiff, holding plaintiff lacked standing to seek declaratory relief that provisions of the Foreign Intelligence Surveillance Act are unconstitutional under the Fourth Amendment because such relief would not redress the alleged injuries). Here, there is no "'substantial

likelihood' that the [prospective] relief sought [in the SAC] would redress the injur[ies]" alleged by Plaintiffs Gonzalez and Chinivizyan. *See id.* at 971.

Plaintiffs have not alleged sufficient facts to establish Article III standing to pursue the prospective equitable relief requested in the SAC. Accordingly, the Court GRANTS Defendants' motion on this basis and dismisses the SAC with leave to amend.

Because Plaintiffs are being given leave to amend, the Court addresses the remaining arguments raised by Defendants in their motion.

B. Plaintiffs' Claims Are Not Moot

Defendants argue that Plaintiffs' claims are moot because ICE canceled the immigration detainers lodged against them.

"[T]he [Supreme] Court has applied the [mootness] doctrine flexibly, particularly where the issues remain alive, even if the plaintiff's personal stake in the outcome has become moot." *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1087 (9th Cir. 2011) (internal quotations omitted). In *Gerstein v. Pugh*, 420 U.S. 103 (1975), prisoners brought a class action claiming unconstitutional pretrial detention. By the time the case came before the Supreme Court, the named plaintiffs had been convicted and thus pretrial detention had ended. *Id.* at 110 n.11. The Court held that the plaintiffs' claims were not moot. *Id.* Although, ordinarily, the plaintiffs would have been required to show whether they were still in custody awaiting trial when the court ruled on class certification, the Court found an exception applied: "The length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release . . . . It is by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of class of persons suffering the deprivation is certain." *Id.*

The Court finds that the reasoning of the Supreme Court in *Gerstein* applies with equal force to this case. The unlawful detention alleged by Plaintiffs lasts, at most, a matter of days. And, based on the allegations of an unlawful continuing policy, there appears to be a constant class of persons suffering the alleged deprivation. The Court

finds that Plaintiffs' claims are not moot because they are inherently transitory and may otherwise evade review. *See Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) ("If the district court finds the claims are indeed 'inherently transitory,' then the action qualifies for an exception to mootness even if there is no indication that Wade or other current class members may again be subject to the acts that gave rise to the claims. [Citation.] This is because there is a constantly changing putative class that will become subject to these allegedly unconstitutional conditions.").

C. Plaintiffs Were in ICE's Custody for Purposes of Their Habeas Corpus Claims

A court may entertain a habeas corpus claim only if the complaining party is "in custody" in violation of the Constitution, laws or treaties of the Unites States. 28 U.S.C. § 2241(c)(3) (2008). Defendants claim the Court has no jurisdiction over Plaintiffs' habeas corpus claim because Plaintiffs have never been in ICE's custody. (Mot. 20.)

The parties have not cited—and the Court is not aware of—any cases directly deciding whether an individual subject to the kind of immigration detainer alleged by Plaintiffs is in "custody" for purposes of a habeas claim. However, *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973) is analogous. In *Braden*, while a prisoner was serving a sentence in an Alabama prison, the state of Kentucky issued a detainer letter requesting that the warden in the Alabama prison hold the prisoner in connection with an indictment in Kentucky. The prisoner brought a habeas petition claiming a violation of his rights to a speedy trial on his indictment in Kentucky. The Supreme Court had "no difficulty concluding that petitioner is 'in custody' for purposes of 28 U.S.C. § 2241(c)(3)." *Id.* at 489 n.4.

The Ninth Circuit cases cited by ICE are distinguishable. *Garcia v. Taylor*, 40 F.3d 299, 304 (9th Cir. 1994) involved a detainer notice that merely advised the local law enforcement agencies that INS would subsequently obtain charging documents. The court in *Garcia* distinguished *Braden* on the ground that the detainer notice at issue did not request the law enforcement agency to "hold the prisoner for INS." *Id.* In *Campos v. I.N.S.*, 62 F.3d 311, 313 (9th Cir. 1995), which relied on *Garcia*, the detainer requested that the law enforcement agency transfer the prisoner to a certain correctional facility six months *before* the end of his sentence. Moreover, "[o]ne of the reasons the district court

granted summary judgment for the INS was the Service's representation that it would provide Campos with a deportation hearing before the completion of his sentence." *Id.*

The reasoning of *Braden* applies here and the Court finds that individuals subject to immigration detainers which request that the individuals be held beyond the time they would otherwise be released from local custody are in "custody" of ICE for purposes of seeking habeas corpus relief. For the reasons discussed in Part IV.B., *supra*, Plaintiffs' habeas claims are not rendered moot by ICE cancelling the immigration detainers against Plaintiffs Gonzalez and Chinivizyan.

D. Plaintiffs Have Sufficiently Pleaded a Claim that ICE's Detainer Practices Are Ultra Vires

Defendants challenge Plaintiffs' first cause of action for failure to state a claim for a violation of 5 U.S.C. § 706(2)(A)-(D). The powers of immigration officers and employees are governed by 8 U.S.C. § 1357. Subsection (a) limits warrantless arrest power to situations when an officer or employee has "reason to believe that the alien so arrested is in the Unites States [unlawfully] and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a) (2006). Subsection (d) applies to "[d]etainer of aliens for violation of controlled substances laws" and limits the issuance of such detainers to situations when an officer "has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States." *Id.* § 1357(d).

The parties dispute whether subsection (a) or (d) of 8 U.S.C. § 1357 governs the scope of ICE's authorized powers as it relates to the immigration detainers. Resolving that dispute, however, is not necessary for this motion. Plaintiffs have sufficiently pleaded that Defendants exceeded their authorized power. Specifically, Plaintiffs alleged that ICE issued—and, as a matter of policy, continues to issue—immigration detainers without probable cause resulting in unlawful detention. Probable cause is necessary under either 8 U.S.C. § 1357(a) or 8 U.S.C. § 1357(d). *See United States v. Gorman*, 314 F.3d 1105, 1112 (9th Cir. 2002) ("'[R]eason to believe' standard . . . embodies the same standard of reasonableness inherent in probable cause."); *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980) ("The phrase 'reason to believe' has been equated with the

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constitutional requirement of probable cause.") Plaintiffs have sufficiently pleaded a claim for relief.

V. CONCLUSION

For the foregoing reasons, ICE's motion to dismiss is GRANTED. The SAC is dismissed with leave to file a Third Amended Complaint **by August 18, 2014.**

IT IS SO ORDERED.

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