

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No.	CV 12-09012 BRO (FFMx) CV 13-04416 BRO (FFMx)	Date	July 28, 2015
Title	DUNCAN ROY ET AL. V. COUNTY OF LOS ANGELES ET AL. GERARDO GONZALEZ ET AL. V. IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL.		

Present: The Honorable	BEVERLY REID O'CONNELL, United States District Judge
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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 MOTIONS TO CONSOLIDATE [72], [88]

I. INTRODUCTION

Pending before the Court are motions to consolidate two related cases, *Duncan Roy et al. v. County of Los Angeles et al.*, Case No. CV 12-09012 BRO (FFMx) (hereinafter *Roy*) and *Gerardo Gonzalez et al. v. Immigration and Customs Enforcement et al.*, Case No. CV 13-04416 BRO (FFMx) (hereinafter *Gonzalez*). The County of Los Angeles (“County”) and Los Angeles County Sheriff (collectively, “County Defendants”), who are parties to the *Roy* case only, seek to consolidate these matters for all purposes. Both cases raise issues regarding the legality of immigration holds or detainers issued by the federal Immigration and Customs Enforcement (“ICE”) agency. After considering the papers filed in support of and in opposition to the instant motions, the Court deems these matters appropriate for resolution without oral argument of counsel. See Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, County Defendants’ consolidation motions are **GRANTED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Roy Action

The *Roy* case involves a putative class action on behalf of individuals who were or are currently in the custody of the Los Angeles County Sheriff’s Department (“LASD”)

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and who were denied either bail or release on the basis of an immigration hold, also known as an immigration detainer. Duncan Roy (“Mr. Roy”) is a British citizen who was allegedly detained for eighty-nine days pursuant to an immigration hold and County Defendants’ subsequent refusal to permit him to post bail. (Roy Compl. ¶ 9.) Alain Martinez-Perez (“Mr. Martinez-Perez”) is a Mexican citizen who was detained for six days after County Defendants denied him bail and the district attorney declined to file criminal charges. (Roy Compl. ¶ 10.) Annika Alliksoo (“Ms. Alliksoo”) is an Estonian citizen who was detained for a total of eighteen days and held for three days after a state court judge ordered her release. (Roy Compl. ¶ 11.) Clemente De La Cerda (“Mr. De La Cerda”) is a Mexican citizen and a lawful permanent resident. (Roy Compl. ¶ 12.) As of the date of filing, Mr. De La Cerda remained in LASD’s custody pursuant to an immigration hold. (Roy Compl. ¶ 12.)¹

Roy Plaintiffs initiated this putative class action on behalf of themselves and others similarly situated.² Collectively, Roy Plaintiffs challenge the legality of LASD’s practice of detaining individuals solely on the basis of an ICE-issued immigration hold or detainer. (Roy Compl. ¶ 18.) Immigration holds essentially advise local law enforcement agencies that the Department of Homeland Security (“DHS”) seeks to arrest or detain an alien in the local agency’s custody. (Roy Compl. ¶¶ 21–22.) According to Roy Plaintiffs, immigration holds are voluntary administrative requests that are not accompanied by the same procedural protections as a criminal detainer or hold. (Roy Compl. ¶¶ 33–34.) For example, ICE agents may assign an immigration hold without probable cause to believe a

¹ The Court will refer to these individuals and the putative class collectively as “Roy Plaintiffs.”

² Mr. Roy is proceeding on behalf of himself only. Mr. Martinez-Perez and Ms. Alliksoo seek damages on behalf of all individuals injured by County Defendants’ practice of refusing bail requests and detaining individuals beyond the time permitted by state law. (Roy Compl. ¶¶ 10, 11.) Mr. De La Cerda seeks equitable relief on behalf of all individuals who are currently or who will in the future be in County Defendants’ custody on the basis of an immigration hold. (Roy Compl. ¶ 12.) Specifically, he seeks to bar County Defendants from detaining individuals beyond the time permitted by state law “solely on the basis of an immigration hold not supported by a probable cause determination.” (Roy Compl. ¶ 12.) The Complaint also names Christian Michel Varela (“Mr. Varela”) as a plaintiff in this case. (Roy Compl. ¶ 13.) The Court has previously dismissed Mr. Varela under Federal Rule of Civil Procedure 41(b). (Dkt. No. 69.)

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person is removable and without a warrant or court order authorizing the person's deportation. (Roy Compl. ¶¶ 26–27.) Roy Plaintiffs allege LASD's practice of honoring immigration holds has resulted in numerous and widespread unlawful detentions, as the issuance of an immigration hold "does not ensure that ICE will assume custody over the detainee or that ICE will take any action against the detainee." (Roy Compl. ¶ 37.)

Roy Plaintiffs challenge two of LASD's practices related to immigration holds. First, they assert LASD has engaged in a pattern and practice of unlawfully denying bail to inmates subject to an immigration hold, thereby preventing these individuals from securing their release pending resolution of the charges against them. (Roy Compl. ¶¶ 1, 38–47.) Pursuant to this practice, LASD allegedly codes the record of every individual subject to a hold with a "no bail" notation, regardless of the individual's bail eligibility under state law. (Roy Compl. ¶ 40.) Roy Plaintiffs further allege LASD has "routinely turned away and refused to accept lawfully-tendered bail bonds from bail bondsmen, family members and others when they attempt to lawfully post bail for an inmate" to support this theory of liability. (Roy Compl. ¶ 41.)

Second, Roy Plaintiffs contest LASD's practice of detaining individuals solely on the basis of an immigration hold and beyond the time or authority permitted under state law to hold an inmate in custody. (Roy Compl. ¶¶ 2, 48–50.) To that end, Roy Plaintiffs aver LASD continues to detain inmates subject to immigration holds even when no charges have been filed against them, they have served their sentence, they have posted bail, they are ordered released on their own recognizance, or a jury has acquitted them. (Roy Compl. ¶ 49.) According to Roy Plaintiffs, ICE does not permit local law enforcement agencies to hold an alien for more than forty-eight hours beyond the time he or she would otherwise be released from custody. (Roy Compl. ¶ 23.) Roy Plaintiffs allege LASD nevertheless "regularly" detains individuals beyond this forty-eight hour time frame. (Roy Compl. ¶ 49.)

Roy Plaintiffs initiated this action on October 19, 2012. (Dkt. No. 1.) The first and second claims allege violations of the Fourth and Fourteenth Amendments to the United States Constitution under 42 U.S.C. § 1983. The third through eighth claims all arise under California state law and allege: (1) violations of the California Constitution; (2)

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false imprisonment; (3) negligence per se; and (4) violations of the California Government Code and California Civil Code. On July 9, 2015, the Court ruled on County Defendants’ motion for judgment on the pleadings. (Dkt. No. 88.) Pursuant to the order, the Court dismissed *Roy* Plaintiffs’ claims under the Tom Bane Civil Rights Act (“Bane Act”), Cal. Civ. Code § 52.1, as well as the state constitutional claims to the extent *Roy* Plaintiffs seek monetary relief. (*See id.* at 22.)

B. The *Gonzalez* Action

The *Gonzalez* case also challenges the legality of ICE immigration holds and detainers. According to the Third Amended Complaint, ICE routinely issues detainers against individuals held by local law enforcement agencies without probable cause to believe the individuals are removable. (*Gonzalez* TAC ¶ 1.) Plaintiffs Gerardo Gonzalez (“Mr. Gonzalez”) and Simon Chinivizyan (“Mr. Chinivizyan”) seek declaratory and injunctive relief on behalf of themselves and others similarly situated to rescind the immigration holds issued against them and to enjoin ICE from issuing any further such holds in the future.³ (*Gonzalez* TAC ¶ 10.) Mr. Gonzalez and Mr. Chinivizyan are both United States citizens and residents of California who were detained in a County jail facility pursuant to an ICE-issued immigration hold. (*Gonzalez* TAC ¶¶ 9, 11–14.) Mr. Gonzalez alleges that the immigration hold prevented him from posting bail to secure his pretrial release. (*Gonzalez* TAC ¶ 12.) Mr. Chinivizyan alleges that he had been released from criminal custody when he joined this lawsuit and that he remained detained solely on the basis of the immigration hold. (*Gonzalez* TAC ¶ 14.)

According to *Gonzalez* Plaintiffs, immigration holds or detainers issued by ICE (currently through Form I-247) serve three purposes. (*Gonzalez* TAC ¶ 19.) First, the holds advise local law enforcement agencies that ICE seeks custody of an alien presently within the local agency’s custody. (*Gonzalez* TAC ¶ 19.) Second, the holds request that the local agency apprise ICE before releasing such an alien to permit ICE “to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.” (*Gonzalez* TAC ¶ 19.) Finally, the holds request that the

³ The Court will refer to these plaintiffs and the putative class collectively as “*Gonzalez* Plaintiffs.”

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local agency detain the alien for a maximum of forty-eight hours, excluding weekends and holidays, to facilitate ICE's assumption of custody. (*Gonzalez* TAC ¶ 19.)

Gonzalez Plaintiffs assert ICE's practice of issuing immigration holds has resulted in numerous Fourth and Fifth Amendment violations. (*Gonzalez* TAC ¶ 5.) To that end, *Gonzalez* Plaintiffs allege that immigration detainers are neither warrants nor court orders, are not approved or issued by a judicial officer, and are not supported by an individualized probable cause determination such that any detentions resulting from immigration holds deprive individuals of their constitutional liberty and due process rights. (*Gonzalez* TAC ¶¶ 5, 20.) *Gonzalez* Plaintiffs also believe immigration holds exceed the statutory limitations on ICE's warrantless arrest and enforcement powers under 8 U.S.C. § 1357(a). (*Gonzalez* TAC ¶ 6.) According to *Gonzalez* Plaintiffs, § 1357(a) only permits ICE to arrest or detain an alien if an ICE agent has first made an individualized determination that the particular alien is likely to escape before a warrant could be issued. (*Gonzalez* TAC ¶ 28.)

In addition to causing unlawful detentions, *Gonzalez* Plaintiffs allege other adverse impacts from immigration detainers, including:

- Preventing pretrial inmates from posting bail on their criminal charges;
- Limiting the possible terms of a plea; and
- Affecting an inmate's prison or jail classifications or eligibility for work programs.

(*Gonzalez* TAC ¶¶ 52–56.)

Gonzalez Plaintiffs initiated this putative class action on June 19, 2013 against ICE and various ICE officials.⁴ They bring five claims for relief, including two Fourth

⁴ The original Complaint named five individual defendants. The three remaining individual defendants include Thomas Winkowski, ICE's acting director; David Marin, the acting field office director for the Los Angeles ICE district; and David Palmatier, the unit chief of ICE's law enforcement service center.

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Amendment violations for unlawful seizure and detention, as well as two Fifth Amendment violations for unreasonable detention and procedural due process deprivations. (*Gonzalez* TAC ¶¶ 106–16.) *Gonzalez* Plaintiffs also bring one claim under § 706(2) of the Administrative Procedures Act, 5 U.S.C. §§ 701 *et seq.*, alleging that immigration holds are arbitrary and capricious, unconstitutional, exceed ICE’s statutory authority, and do not comply with certain procedures required by law. (*Gonzalez* TAC ¶¶ 102–05.)

As indicated above, *Gonzalez* Plaintiffs seek injunctive and declaratory relief for these alleged violations. (*See generally Gonzalez* TAC Prayer for Relief.) In ruling on ICE Defendants’ motion to dismiss the Third Amended Complaint, the Court upheld the first request for injunctive relief, which seeks rescission of the immigration detainers. (*See* Dkt. No. 61 at 9.) The Court dismissed the second request for injunctive relief, which seeks an order enjoining ICE Defendants from requesting local law enforcement agencies detain aliens without first determining there is probable cause for the individual’s removal. (*Id.* at 9–10.) The Court granted *Gonzalez* Plaintiffs leave to amend this request, but *Gonzalez* Plaintiffs did not file an amended pleading.

C. Procedural History

On June 8, 2015, County Defendants filed motions to consolidate the *Roy* and *Gonzalez* actions.⁵ *Roy* Plaintiffs and *Gonzalez* Plaintiffs are represented by the same counsel and have opposed these motions, arguing that the cases involve different defendants and raise substantially different legal questions and factual issues. ICE Defendants also oppose consolidation on the basis that ICE holds are only requests for local law enforcement agencies to detain aliens, not requirements. According to *Roy* and

(*Gonzalez* TAC ¶¶ 16–18.) The Court will refer to these individuals and ICE collectively as “ICE Defendants.”

⁵ The consolidation motion in *Roy* is available at Case No. CV 12-09012 BRO (FFMx), Docket No. 72; the consolidation motion in *Gonzalez* is available at Case No. CV 13-04416 BRO (FFMx), Docket No. 88. Because the motions, oppositions, and replies in each action are essentially identical, the Court will refer to these papers collectively.

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Gonzalez Plaintiffs, as well as ICE, the different bases for liability in each case counsels against consolidation.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 42(a) permits a court to consolidate actions that “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). “The district court has broad discretion under this rule to consolidate cases pending in the same district.” *Inv’rs Research Co. v. U.S. Dist. Court for the Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). In determining whether to consolidate, a court “weighs the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause.” *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984); *accord Paxonet Commc’ns, Inc. v. TranSwitch Corp.*, 303 F. Supp. 2d 1027, 1028 (N.D. Cal. 2003) (“To determine whether to consolidate, a court weighs the interest in judicial convenience against the potential for delay, confusion, and prejudice caused by consolidation.”). While consolidation is generally favored, *see Perez-Funez v. Dist. Dir., I.N.S.*, 611 F. Supp. 990, 994 (C.D. Cal. 1984) (citing *Ikerd v. Lapworth*, 435 F.2d 197, 204 (7th Cir. 1970)), the moving party bears the burden of showing it is appropriate, *see In re Consol. Parlodel Litig.*, 182 F.R.D. 441, 447 (D.N.J. 1998).

IV. DISCUSSION

County Defendants seek consolidation on the basis that both the *Roy* and *Gonzalez* cases involve overlapping factual and legal issues such that consolidation will avoid inconsistent judgments and enhance judicial economy. County Defendants stress that both cases raise the fundamental legal question of whether ICE immigration detainers are constitutional and supported by probable cause. In addition to this foundational question, County Defendants assert both cases will require a determination as to whether ICE immigration holds are merely requests of local law enforcement agencies, or whether the holds impose mandatory detention obligations.

County Defendants also identify common questions of fact. For example, both cases will require extensive fact discovery into ICE’s process and procedures for issuing immigration holds, as well as ICE’s involvement and relationship with local law

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enforcement agencies like LASD. County Defendants maintain that consolidation will facilitate more efficient discovery, as both cases will require the depositions of many of the same lay witnesses and may rely on the same expert witnesses.

Finally, County Defendants believe consolidation is appropriate given the procedural postures of the *Roy* and *Gonzalez* actions. The parties in both cases are engaged in discovery, and neither motions for class certification nor dispositive motions have been filed in either case. *Roy* and *Gonzalez* Plaintiffs are also represented by the same counsel, suggesting that consolidation will streamline their discovery efforts.

Roy and *Gonzalez* Plaintiffs object to consolidation on various grounds. They argue that the similarities identified by County Defendants are minimal in comparison to the different defendants, legal claims, and requests for relief involved in each case. Whereas *Gonzalez* challenges ICE's conduct, *Roy* challenges the County and LASD's. Whereas *Gonzalez* Plaintiffs seek only injunctive relief to remedy ICE's ongoing policies and practices, *Roy* Plaintiffs seek damages to remedy the County and LASD's unlawful conduct from October 2010 to the present. And whereas *Gonzalez* raises legal questions under only the United States Constitution, *Roy* Plaintiffs also bring claims under the California Constitution, California Government and Civil Codes, and common law.

Roy and *Gonzalez* Plaintiffs also stress that the potential illegality of ICE's conduct is separate and distinct from the potential illegality of the County and LASD's. Thus, whether ICE had probable cause to issue an immigration hold may not be dispositive as to County Defendants' liability. *Roy* and *Gonzalez* Plaintiffs also argue that because each case involves different claims for relief, consolidated discovery will not actually ease the parties' efforts or save time. For example, because *Gonzalez* concerns only ICE's current practices and policies, the discovery will be more limited than in *Roy*, which involves damages claims for LASD's past practices and will therefore require discovery into LASD's conduct from October 2010 to the present at each of its jails, stations, and courthouse lock-ups. Nevertheless, *Roy* and *Gonzalez* Plaintiffs do not oppose consolidating discovery against ICE.

ICE Defendants also object to consolidation. Like *Roy* and *Gonzalez* Plaintiffs, they maintain that LASD and County Defendant's actions are entirely independent of

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their own, and that the different bases for liability in each case counsels against consolidation. To that end, ICE Defendants contend that *Gonzalez* turns solely on the constitutional questions of whether the Fourth or Fifth Amendments require ICE officers to have probable cause to believe an alien is subject to deportation before issuing an immigration hold. *Roy*, on the other hand, involves the related but different question of whether law enforcement agencies like LASD may rely on an immigration hold when detaining an individual beyond the time he or she would otherwise be entitled to release. That question, in turn, raises state and federal constitutional questions, statutory questions under the California Government and Civil Codes, and questions under common law.

Additionally, ICE Defendants point to procedural differences between *Roy* and *Gonzalez*. The *Gonzalez* case is scheduled for trial in January 2016, with a discovery cut-off date in November 2015. *Roy*, on the other hand, is scheduled for trial in August 2016, with discovery permitted until May 2016. The fact finders in each case will be different; whereas *Roy* Plaintiffs have requested a jury trial, *Gonzalez* will proceed as a bench trial. ICE Defendants maintain the *Roy* jury may be confused by the Court's differing roles in each case.

After considering the parties' positions and reviewing the substantive allegations and procedural histories in both cases, the Court finds consolidation appropriate for pretrial purposes. At their most basic level, *Roy* and *Gonzalez* concern the legality of ICE-issued immigration holds and will require the resolution of whether these holds are, or are required to be, supported by probable cause. Although County Defendants' liability is independent from ICE Defendants', this difference does not obviate the need to determine whether ICE-issued immigration holds must be supported by probable cause to be lawful, and whether ICE's policies and procedures ensure its agents only issue holds after making an individualized probable cause determination. The foundational requirement for consolidation is therefore met, as both actions involve common questions of law and fact.

Moreover, consolidation serves the interests judicial economy. The burdens of discovery on all parties will be eased by coordination, and the Court will save time and

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resources through consolidated motion practice.⁶ The Court is mindful that consolidation will lead to some delay in the *Gonzalez* action, as it is currently scheduled for trial eight months earlier than *Roy*. “Factors such as differing trial dates or stages of discovery usually weigh against consolidation.” *Lewis v. City of Fresno*, No. CV 08-01062 OWW, 2009 WL 1948918, at *1 (E.D. Cal. July 6, 2009) (citing 9 Wright & Miller, Federal Practice and Procedure § 2383 (2006)). Nevertheless, given the significant legal and factual overlap between these cases, the risk of inconsistent judgments outweighs the potential burden on the parties in *Gonzalez* from a litigation delay.

Although *Roy* and *Gonzalez* Plaintiffs assert they will suffer prejudice from consolidation, they have not articulated any reason why they believe this to be so. Consolidating these actions for pretrial purposes will result in both cases proceeding under the later deadlines set in *Roy*; thus, *Gonzalez* Plaintiffs will not suffer any prejudice from shortened discovery or earlier motion cut-off dates. There is also no risk of confusion to the jury in *Roy*, as the Court finds consolidation appropriate for pretrial purposes only at this time. Accordingly, the Court finds no risk of prejudice from pretrial consolidation. Given the potential for substantial savings in time, effort, and expense, and in light of the real risk of inconsistent adjudications, the Court finds pretrial consolidation appropriate and favorable.

V. CONCLUSION

For the foregoing reasons, County Defendants’ motions to consolidate are **GRANTED**. These cases are hereby consolidated for pretrial purposes only. The Court will consider a renewed motion to consolidate these matters for trial at a later date, with any such motion to be filed and heard by no later than June 6, 2016.

⁶ *Roy* and *Gonzalez* Plaintiffs assert that class certification and dispositive motions cannot be consolidated because the cases involve different proposed classes, claims, and requests for relief. But it is well-established that consolidation does not necessarily “merge the suits into a single action, or cause the parties to one action to be parties to another.” 9A Fed. Prac. & Proc. Civ. § 2382 (3d ed.); *see also Freeman v. Delta Air Lines, Inc.*, No. CV 13-04179 JSW, 2014 WL 5830246, at *5 (N.D. Cal. Nov. 10, 2014) (citing *Wilbur v. Superior Concrete Accessories*, 217 F. Supp. 600, 602 (N.D. Cal. 1963)).

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For ease of record keeping, all further documents and proceedings shall occur under Case No. CV 12-09012 BRO (FFMx). Case No. CV 13-04416 BRO (FFMx) shall be closed until pretrial proceedings have expired, at which point the case shall be re-opened if the matters are not consolidated for trial. **Until such time, counsel shall file all further documents under Case No. CV 12-09012 BRO (FFMx) only.**

The hearing on County Defendants' consolidation motions scheduled for August 3, 2015, at 1:30 p.m., is hereby **VACATED**. **The parties are also ordered to attend a mandatory status conference on Monday, August 24, 2015, at 1:30 p.m., to discuss any further issues related to consolidation.**

IT IS SO ORDERED.

Initials of
Preparer

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