UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DUNCAN ROY, *et al.*,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, *et al.*,

Defendants.

GERARDO GONZALEZ, *et al.*,

Plaintiffs,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. CV 12-09012-AB (FFMx)

Consolidated with:
Case No. CV 13-04416-AB (FFMx)

ORDER DENYING DEFENDANTS' MOTION UNDER LR 7-18 TO RECONSIDER THE COURT'S FEBRUARY 7, 2018 ORDER

I. INTRODUCTION

This action involves two cases that have been consolidated: *Duncan Roy, et al. v. County of Los Angeles, et al.*, No. 12-cv-09012-AB-FFM and *Gonzalez v. Immigration & Customs Enforcement, et al.*, No. 13-cv-04416-AB-FFM (both cases are now proceeding under No. 12-cv-09012-AB-FFM). Plaintiffs in the *Gonzalez* action are Gerardo Gonzalez and Simon Chinivizyan (hereinafter, "*Gonzalez* Plaintiffs"). (*See Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 44 (hereinafter, "Gonzalez TAC").) Defendants in the *Gonzalez* action are Immigration and Customs Enforcement ("ICE"), Thomas Winkowski, Acting Director of ICE, David Marin, Acting Field Office Director for the Los Angeles District of ICE, and David Palmatier, the Unit Chief for the Law Enforcement Service Center of ICE (collectively, "*Gonzalez* Defendants" or "ICE"). (*See* Gonzalez TAC ¶¶ 15–18.) The *Gonzalez* Defendants bring the instant Motion to Reconsider the Court's February 7, 2018 Order under Central District of California Local Rule 7-18. (Dkt. Nos. 354, 354-1 ("Mot. to Reconsider").)

After considering the papers filed in support of and in opposition to the instant Motion, as well as the oral argument of counsel, the Court **DENIES** the *Gonzalez* Defendants' Motion.

II. RELEVANT BACKGROUND

On February 7, 2018, this Court denied the *Gonzalez* Defendants' Motion to Dismiss and for Partial Summary Judgment (Dkt. No. 239) and granted in part and denied in part the *Gonzalez* Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240). (Dkt. No. 346.)

On March 13, 2018, the *Gonzalez* Defendants filed the instant Motion under Central District of California Local Rule 7-18 to Reconsider the Court's February 7, 2018 Order. (Mot. to Reconsider.) On March 23, 2018, the *Gonzalez* Plaintiffs opposed. (Dkt. No. 361 ("Opp'n").) And on March 30, 2018, the *Gonzalez* Defendants replied. (Dkt. No. 362 ("Reply").)

On April 13, 2018, the Court held a hearing on the instant Motion and took the Motion under submission. (Dkt. No. 374.)

III. LEGAL STANDARD

The *Gonzalez* Defendants move this Court under Local Rule 7-18 to reconsider portions of its February 7, 2018 Order relating to the *Gonzalez* Defendants' Motion to Dismiss and for Partial Summary Judgment (Dkt. No. 239) and the *Gonzalez* Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240). (Mot. to Reconsider at 1–2.)

Under the Local Rules, a motion for reconsideration must be founded on any of three bases: "(a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision[;]" "(b) the emergence of new material facts or a change of law occurring after the time of such decision[;]" "or (c) "a manifest showing of a failure to consider material facts presented to the Court before such decision." C.D. Cal. L.R. 7-18. A motion for reconsideration pursuant to Local Rule 7-18 must not "in any manner repeat any oral or written argument made in support of or in opposition to the original motion." *Id.* "Whether to grant a motion for reconsideration under Local Rule 7-18 is a matter within the court's discretion." *Daghlian v. DeVry Univ., Inc.*, 582 F. Supp. 2d 1231, 1251 (C.D. Cal. 2007).

IV. DISCUSSION

The *Gonzalez* Defendants move this Court to reconsider: (1) its decision to grant summary judgment in favor of the *Gonzalez* Plaintiffs' Statutory Subclass on the grounds that the Court failed to consider material facts presented to it before its decision under Local Rule 7-18(c) (Mot. to Reconsider at 6–18); and (2) its decision denying the *Gonzalez* Defendants' motion to dismiss on jurisdiction as there has been a "material difference in . . . law" since the time of the Court's decision under Local Rule 7-18(b) (Mot. to Reconsider at 3–6, 17 (citing C.D. Cal. L.R. 7-18(a))). The

Court will address each in turn.

A. The Court Denies the *Gonzalez* Defendants' Request to Reconsider its Decision to Grant Summary Judgment in Favor of the *Gonzalez* Plaintiffs' Statutory Subclass

In the *Gonzalez* Plaintiffs' Second Motion for Partial Summary Judgment, Plaintiffs claimed summary judgment should be granted in favor of the Statutory Subclass because ICE's practice of issuing detainers without making any assessment of flight risk violates 8 U.S.C. section 1357(a)(2), which permits ICE to make warrantless arrests only if it has determined that the individual is "likely to escape before a warrant can be obtained for his arrest." (Dkt. No. 247-1 at 21.) In the *Gonzalez* Defendants' Motion to Dismiss and for Partial Summary Judgment, the *Gonzalez* Defendants argued that judgment should be granted in their favor as to the Statutory Subclass because they no longer issue detainers without a warrant, rendering Plaintiffs' claims moot. (Dkt. No. 239-1 at 15–16.)

In its February 7, 2018 Order, the Court granted the *Gonzalez* Plaintiffs' Second Motion for Partial Summary as to the Statutory Subclass and denied the *Gonzalez* Defendants' Motion to Dismiss and for Partial Summary Judgment as to the Statutory Subclass. (Order at 346.) The Court held that the undisputed facts establish that it was ICE's policy to issue warrantless detainers for those in the Statutory Subclass without first determining whether those individuals were "likely to escape before a warrant could be obtained." (Order at 36 (citing Dkt. No. 297-1 ¶ 154).) Thus, ICE's practices were in contravention of 8 U.S.C. section 1357(a)(2), which "requires that the arresting officer reasonably believe that the alien is in the country illegally *and* that she 'is likely to escape before a warrant can be obtained for [her] arrest.'" *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (emphasis in original); (Order at 35–36). The Court further held that ICE has not met its heavy burden of establishing that it will not resume its practice of issuing warrantless detainers without making an assessment of whether an individual is a flight risk, and

thus, the Statutory Subclass' claims were not moot. (Order at 36.)

The *Gonzalez* Defendants now argue that the Court should reconsider its Order because the Court failed to consider California Senate Bill No. 54 ("S.B. 54") and the TRUST Act (California Government Code section 7282.5(a)) when making its decision. (Mot. to Reconsider at 2.) They further argue "that failure to consider the impact of these California laws was error, because California law does not authorize seizures based on detainers, so no such warrantless arrest can occur." (Mot. to Reconsider at 2.) The *Gonzalez* Defendants claim that, "if no such warrantless arrest can occur, then ICE does not violate any provision of the INA or the Fourth Amendment in issuing detainers." (Mot. to Reconsider at 2.)

The Court rejects the *Gonzalez* Defendants' arguments. The *Gonzalez* Defendants state "[t]his Court did not cite, or even address, [S.B. 54 or the TRUST Act] when issuing its decision. That constituted error warranting reconsideration under this Court rules [sic]." (Mot. to Reconsider at 14.) First, that is patently wrong. The Court cites both S.B. 54 and the TRUST Act in its Order. (*See* Dkt. No. 346.) Second, the *Gonzalez* Defendants did not argue in their Motion for Summary Judgment or their Reply that S.B. 54 or the TRUST Act impacted this Court's decision as to the *Gonzalez* Statutory Subclass. (Dkt. Nos. 239-1, 296.) In the *Gonzalez* Defendants' Opposition to the *Gonzalez* Plaintiffs' Motion for Partial Summary Judgment, Defendants reference the TRUST Act in their section that Plaintiffs' Statutory Subclass claims are moot: "[T]he California TRUST Act (AB4) went into effect on January 1, 2014, and, since that time, there is no evidence that any LEA has honored an ICE detainer by holding an inmate beyond his or her otherwise release date." (Dkt. No. 272 at 10–11.) But this sentence does not explain how the TRUST Act impacts the Court's decision that ICE's policy of issuing warrantless detainers without first making a determination as to flight risk violates 8 U.S.C. section 1357(a)(2), nor have Defendants successfully articulated how S.B. 54 or the TRUST Act impacts the Court's decision on this point in their Motion for

Reconsideration. Further, as evidenced by the *Roy* Defendants' October 18, 2017, Notice of Supplemental Authority on S.B. 54, to the extent the *Gonzalez* Defendants thought these California laws impacted their Motion for Summary Judgment, the *Gonzalez* Defendants had every opportunity to bring this to the Court's attention before the Court issued its Order on February 7, 2018. (*See* Dkt. No. 331, 331-1 (*Roy* Defendants' Notice of Supplemental Authority, filed on October 18, 2017, and describing S.B. 54).) As a result, the *Gonzalez* Defendants' argument that they have demonstrated "a manifest showing of a failure to consider material facts presented to the Court before such decision" is unfounded. C.D. Cal. L.R. 7-18(c).

Lastly, if the *Gonzalez* Plaintiffs are attempting to ask the Court to reconsider its decision that the *Gonzalez* Statutory Subclass' claims were not moot, Defendants have not made this clear. Nevertheless, the Court finds that neither the TRUST Act, nor S.B. 54 renders the *Gonzalez* Statutory Subclass' claims moot. First, the TRUST Act has been amended by S.B. 54. Second, while S.B. 54 prohibits California's local law enforcement agencies from detaining a person on the authority of an immigration detainer, S.B. 54 does not prohibit California state prisons from holding a person on the authority of an immigration detainer. Cal. Gov't Code § 7284.4(a) ("'California law enforcement agency' does not include the Department of Corrections and Rehabilitation"); § 7284.6(a)(1)(B) ("California law enforcement agencies shall not . . . [d]etain[] an individual on the basis of a hold request."). Third, these California laws do not have any impact on ICE's decision to issue warrantless detainers without first determining flight risk in violation of 8 U.S.C. section 1357(a)(2). And finally, these California laws do not have any impact on the class members outside the state of California.[1]

[1] The *Gonzalez* Plaintiffs' Statutory Subclass has members nationwide, not just in California. Plaintiffs' Statutory Subclass consists of any person subject to an immigration detainer issued out of the Central District of California. (Dkt. No. 184 at 13.) As the *Gonzalez* Plaintiffs highlight in their Opposition to the Motion to Reconsider, "more than 70% of all detainers issued by ICE agents in the Central

Thus, the *Gonzalez* Defendants' reliance on the California TRUST Act and S.B. 54 to argue that the Court's decision that ICE's policy of issuing warrantless detainers for those in the Statutory Subclass without first determining whether those individuals were "likely to escape before a warrant could be obtained" violated 8 U.S.C. § 1357(a)(2) is misplaced.

B. The Court Denies the *Gonzalez* Defendants' Request to Reconsider its Decision to Deny its Motion to Dismiss

In the *Gonzalez* Defendants' Motion to Dismiss and for Partial Summary Judgment, the *Gonzalez* Defendants argued that this Court lacks subject matter jurisdiction over the *Gonzalez* Plaintiffs' claims because the Immigration and Nationality Act ("INA") provides exclusive judicial review through the Petition for Review process. (Dkt. No. 239-1 at 10–15.) In its February 7, 2018 Order, the Court denied the *Gonzalez* Defendants' Motion to Dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). (Order a 31.)

In their Motion to Dismiss, the *Gonzalez* Defendants explained that "Congress . . . has expressed its clear intent to foreclose district court adjudication of claims that individuals could raise in removal proceedings through the jurisdiction channeling provisions of the [INA], 8 U.S.C. § 1252(a)(5), (b)(9), and (g)." (Dkt. No. 239 at 10.) The *Gonzalez* Defendants argued that "Plaintiffs' challenge to the detainer process—in which ICE seeks to detain individuals to determine how, if at all, to proceed with their removal—'arise[s] from an[] action taken or proceeding brought to remove [them] from the United States.'" (Dkt. No. 239 at 11.)

In its February 7, 2018 Order, the Court rejected the *Gonzalez* Defendants' arguments, and held that the *Gonzalez* Plaintiffs' claims do not "arise from" removal proceedings because the *Gonzalez* Plaintiffs were not subject to ongoing removal

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District of California are issued by the Pacific Enforcement Response Center ("PERC") in Laguna Niguel, CA, which—as Defendants acknowledge at Dkt. No. 360 at 4—issues detainers to 42 states and two U.S. territories." (Opp'n at 5 (citing Dkt. No. 297-1, ¶¶ 27, 34).)

proceedings at the time that ICE issued detainers against them, and the detainers were not based upon a final order of removal signed by a judge. (Order at 30.) The Court further explained that many of the class members, while subject to detainers, were or are never placed in removal proceedings. (Order at 31.) The Court held that if it were to determine that it did not have jurisdiction over Plaintiffs' claims, it would be tantamount to denial of judicial review. (Order at 31.) And as the Ninth Circuit has explained, sections 1252(a) and 1252(b) "are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions." (Order at 31 (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original)).)

The *Gonzalez* Defendants now argue that there has been a change in the law that "mandates a different conclusion as to [their] motion to dismiss under 8 U.S.C. § 1252(b)(9)." (Mot. to Reconsider at 3.) They argue that the recent Supreme Court decision of *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) "clarified the scope of 8 U.S.C. § 1252(b)(9) and, without explicitly addressing detainers, suggested its application to the issuance of a detainer." (Mot. to Reconsider at 1.)

The Court has reviewed *Jennings*, and holds that *Jennings* does not impact the Court's February 7, 2018 decision. The *Gonzalez* Defendants rely upon language from Part II of the Supreme Court's holding in *Jennings*. (Mot. to Reconsider at 1 (citing 138 S. Ct. at 841).) But Part II does not support the *Gonzalez* Defendants' position, as Part II held that section 1252(b)(9) "does not deprive [the Court] of jurisdiction." *Id.* at 839–40. Part II, in fact, emphasizes ideas that support the Court's decision not to interpret section 1252(b)(9) in such an expansive way that would foreclose judicial review of the *Gonzalez* Plaintiffs' claims. *See id.* at 840 ("The 'questions of law and fact' in all those cases could be said to 'aris[e] from' actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention. But cramming judicial review of those questions into the review of final removal orders would be absurd. Interpreting 'arising from' in this extreme way would also make claims of prolonged detention

effectively unreviewable.").

The *Gonzalez* Defendants' argument that Justice Thomas' concurring opinion, in which he only concurred in Part I and Parts III-VI, *not Part II*, somehow represents the majority view of the Court is baffling. While it is true that Justice Thomas stated section "1252(b)(9) removes jurisdiction over [Respondents'] challenge to their detention," and he would "therefore vacate the judgment below with instructions to dismiss for lack of jurisdiction," this is not the majority view of the Court, as Justice Thomas acknowledged as much in his concurrence. *Jennings*, 138 S. Ct. at 852 (Thomas, J., concurring) ("But because a majority of the Court believes we have jurisdiction, and I agree with the Court's resolution of the merits, I join Part I and Parts III-VI of the Court's opinion."). More importantly, the facts here are distinct from the facts in *Jennings* because in *Jennings*, as Justice Thomas states in his concurring opinion, "Respondents are a class of aliens whose removal proceedings are ongoing." *Id.* This different from the *Gonzalez* Plaintiffs, where many of the class members, while subject to detainers, were or are never placed in removal proceedings. Thus, the Supreme Court's decision in *Jennings* does not change the result here.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** the *Gonzalez* Defendants' Motion to Reconsider the Court's February 7, 2018 Order.

IT IS SO ORDERED.

Dated: April 18, 2018

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE