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 L.R. 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). The remaining Plaintiffs in the Roy action at the time the Court considered the recent summary judgment motions were Clemente De La Cerda and Alain Martinez-Perez (collectively, "Roy Plaintiffs"[1]). Defendants in the Roy action are the County of Los Angeles and Sheriff Leroy D. Baca (collectively, "Roy Defendants" or the "County"). The County brings the instant Motion to Reconsider the Court's February 7, 2018 Order granting summary judgment in favor of the Roy Plaintiffs' Post-48 Hours *Gerstein* Subclass and the No-Money Bail Subclass. (Dkt. No. 373 ("Mot. to Reconsider").)

After considering the papers filed in support of and in opposition to the instant Motion, the Court **DENIES** the County's Motion to Reconsider.

II. RELEVANT BACKGROUND

On February 7, 2018, this Court granted in part and denied in part the Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242) and granted in part and denied in part the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240). (Dkt. No. 346.)

On April 12, 2018, the County 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 April 20, 2018, the Roy Plaintiffs opposed. (Dkt. No. 379.) And on April 27, 2018, the County replied. (Dkt. No. 362.)

[1] The only remaining Plaintiff in the Roy action after the Court issued its Order on the summary judgment motions (Dkt. No. 346) is Alain Martinez-Perez.

III. LEGAL STANDARD

The County moves this Court under Local Rule 7-18 to reconsider portions of its February 7, 2018 Order (Dkt. No. 346) relating to the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240). (Mot. to Reconsider at ii.)

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 County moves this Court to reconsider: (1) its decision to grant summary judgment in favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass on the basis that there has been a material change in the law from that presented to the Court after it issued the Order (Mot. to Reconsider at 1, 3–9 (citing C.D. Cal. L.R. 7-18(a))); and (2) its decision to grant summary judgment in favor of the Roy Plaintiffs' No-Money Bail 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 2, 9–10 (citing C.D. Cal. L.R. 7-18(c))). The Court will address each in turn.

A. The Court Denies the County's Request to Reconsider its Decision to Grant Summary Judgment in Favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass

In the Court's February 7, 2018 Order, the Court granted summary judgment as to the Post-48 Hour *Gerstein* Subclass. (Dkt. No. 346 at 38–41.) The Post-48 Hour *Gerstein* Subclass includes "[a]ll LASD inmates who were detained for more than forty-eight hours beyond the time they were due for release from criminal custody, based solely on immigration detainers, excluding inmates who had a final order of removal or were subject to ongoing removal proceedings as indicated on the face of the immigration detainer" and covers those inmates who were detained from October 19, 2010 to the present (federal claims), and from November 7, 2011 to June 5, 2014 (California state law claims). (Dkt. No. 184.)

In brief, the Court granted summary judgment in favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass because the undisputed evidence established that the Los Angeles County Sheriff's Department ("LASD") held inmates beyond their release dates on the basis of civil immigration detainers. (Dkt. No. 346 at 41.) The Court further held that holding the inmates beyond their release dates on the basis of civil immigration detainers constituted a new arrest under the Fourth Amendment. Ultimately, the Court concluded that because the LASD officers have no authority to arrest individuals for civil immigration offenses, detaining individuals beyond their release date violated the individuals' Fourth Amendment rights. (Dkt. No. 346 at 41.)

The County now argues that the Court should grant its Motion for Reconsideration as to the Post-48 Hour *Gerstein* Subclass because the Fifth Circuit's decision in *City of El Cenizo, Texas v. Texas*, 885 F.3d 332 (5th Cir. 2018),[2] "clearly

[2] On May 9, 2018, the County filed a Notice of Substitution of *City of El Cenizo* Opinion by the Fifth Circuit Court of Appeals. (Dkt. No. 386.) On May 8, 2018, the Fifth Circuit withdrew its decision, found at 885 F.3d 332, and substituted in a new opinion, found at ---F.3d---, 2018 WL 2121427 (5th Cir. May 8, 2018). The Fifth Circuit withdrew its prior opinion of March 13, 2018, for purposes of "eliminate[ing] reference to *United States v. Gonzalez–Longoria*, 831 F.3d 670 (5th Cir. 2016) (en banc), given that decision's abrogation by the Supreme Court in *Sessions v. Dimaya*, -

constitutes a material difference in law [that] could not have been presented to this Court prior to the subject summary judgment ruling." (Mot. to Reconsider at 9.)

The County asserts that in *City of El Cenizo*, "[t]he Fifth Circuit rejected outright the plaintiffs' contention that cooperation with federal immigration officials would result in Fourth Amendment violations because such cooperation would result in arrests in the absence of criminal probable cause." (Mot. for Reconsider at 4.) The County claims that the Fifth Circuit's decision calls for a change to the Court's February 7, 2018 Order because the analysis in the Fifth Circuit decision "is squarely on point with respect to the claims in this case (and specifically this Motion), and the significance of the Fifth Circuit's decision is heightened by the fact that this Court's summary judgment ruling with respect to the Post-48 Hour Damages Subclass paralleled the probable cause analysis in the Texas district court cases which have now been either directly or effectively reversed by the Fifth Circuit." (Mot. for Reconsider at 6.)

First, the Court does not find the Fifth Circuit decision to be persuasive, and the Court continues to find the Fourth Circuit decision of *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013), which the Court cited in its decision, to be persuasive. (*See* Dkt. No. 346 at 40.) Second, while the County appears to argue that the Fifth Circuit's direct or effective reversal of Texas district court cases somehow warrants a change of course here, the only Texas district court decision that the Court cited in its Order on the Post-48 Hour *Gerstein* Subclass is *Mercado v. Dallas County, Texas*, 229 F. Supp. 3d 501, 511 (N.D. Tex. 2017). (Dkt. No. 346 at 40.) Notably, the Court cited *Mercado* for the undisputed proposition that "[t]he Supreme Court has characterized deportation and removal proceedings as 'civil in nature.'" Thus, this argument is rejected. Finally, the County's reliance upon *City of El Cenizo, Texas* for the proposition that local law enforcement may seize a person in

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--U.S.---, 138 S. Ct. 1204 . . . (2018)." *City of El Cenizo*, 2018 WL 2121427, at *1. The amended opinion does not change the Court's analysis here.

other situations absent probable cause that a crime has been committed is beside the point. (*See* Mot. to Reconsider at 4–5 (citing *City of El Cenizo, Texas*, 885 F.3d at 355–56, for the premise that "[c]ourts have upheld many statutes that allow seizures absent probable cause that a crime has been committed[,]" such as seizure of individuals who are: incapacitated, mentally ill, seriously ill and in danger of hurting themselves, and juvenile runaways).) The epicenter of the Court's decision is that the local law enforcement in this case does not have the authority to arrest individuals for civil immigration violations, which is in line with Supreme Court precedent. (*See* Dkt. No. 346 at 40 ("Courts 'have universally . . . interpreted *Arizona v. United States*[, 567 U.S. 387 (2012),] as precluding local law enforcement officers from arresting individuals solely based on known or suspected civil immigration violations." (quoting *Santos*, 725 F.3d at 465, which cites *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012))).)

A change in another Circuit's case law, which this Court does not find to be persuasive and is not binding upon this Court, does not change the result here. The County's Motion to Reconsider the Court's February 7, 2018 Order granting summary judgment in favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass is **DENIED**.[3]

B. The Court Denies the County's Request to Reconsider its Decision Grant Summary Judgment in Favor of the Roy Plaintiffs' No-Money Bail Subclass

In its February 7, 2018 Order, the Court granted summary judgment in favor of the Roy Plaintiffs' No-Money Bail Subclass. (Dkt. No. 346 at 43–44.) The No-Money Bail Subclass includes "[a]ll LASD inmates on whom an immigration detainer had been lodged, who would otherwise have been subject to LASD's policy of rejecting for booking misdemeanor defendants with a bail amount of less than $25,000

[3] On July 9, 2018, the County filed a Notice of Supplemental Authority, directing the Court's attention to a case from the District of Arizona, *Tenorio-Serrano v. Driscoll*, No. CV-18-08075-PCT-DGC (BSB), 2018 WL 3329661 (D. Ariz. July 6, 2018). (Dkt. No. 392.) The Court does not find this case to be persuasive here.

(including Order of Own Recognizance)" and covers those inmates who were detained from October 19, 2010 to October 18, 2012 (federal claims), and from November 7, 2011 to October 18, 2012 (California state law claims). (Dkt. No. 184.)

In brief, the Court granted summary judgment in favor of the Roy Plaintiffs' No-Money Bail Subclass on the basis that the undisputed facts established that the LASD treated Roy Plaintiffs in the No-Money Bail Subclass differently than other arrestees solely on the basis that the Plaintiffs were subject to immigration holds. (Dkt. No. 346 at 43.) The Court held that there was no lawful government purpose for this distinction in treatment between those arrestees subject to detainers and those not subject to detainers because the LASD does not have authority to detain people exclusively on the basis of suspected civil immigration violations. (Dkt. No. 346 at 43 (citing *Santos*, 725 F.3d at 465).) Accordingly, the Court concluded that the LASD's practices of booking individuals subject to immigration detainers when those individuals would otherwise be subject to LASD's policy of not booking arrestees with a bail mount of less than $25,000 violates equal protection. (Dkt. No. 346 at 44.) As a result, the Court granted summary judgment in favor of the Roy Plaintiffs as to the No-Money Bail Subclass. (Dkt. No. 346 at 44.)

The County now argues that the Court should reconsider its Order because the Court's finding of an equal protection violation conflicts with the Court's prior decision to deny the Roy Plaintiffs leave to amend the operative complaint to add an equal protection claim. (Mot. to Reconsider at 2 (citing Dkt. No. 107 at 13).) The County also argues that "the only equal protection-related allegations in the First Amended Complaint were stricken for having violated the Court's order denying Plaintiff leave to amend to add such allegations." (Mot. to Reconsider at 2 (citing Dkt. No. 124 at 14).) In essence, the County challenges the Court's Order granting summary judgment in favor of the Roy Plaintiffs' No-Money Bail Subclass "on the basis of an equal protection violation despite the absence of an equal protection claim in this case." (Mot. to Reconsider at 2.)

The County points out that it "addressed these dispositive procedural facts in opposing Plaintiff's [M]otion [for Summary Adjudication Regarding Liability]." (Mot. to Reconsider at 2 (citing Dkt. No. 273 at 27:7–20).) The County contends, that "[t]his Court's ruling, therefore, constituted a 'failure to consider material facts presented to the Court before such decision[,]' warranting reconsideration under Local Rule 7-19(c)." (Mot. to Reconsider at 2.) The County explains that it "presented these material facts to the Court in opposing Plaintiff's [M]otion for [S]ummary [Adjudication] but they *apparently were not considered* in the Court's decision to find an equal protection violation." (Mot. to Reconsider at 10.)

First, the County's assertion that it is a fact that the Roy Plaintiffs are not entitled to assert a legal argument based on equal protection is incorrect. The County's assertions are not facts, they are arguments, which the County raised in their Opposition to the Roy Plaintiffs' Motion for Summary Adjudication. (*See* Dkt. No. 273 at 27.) And because the County raised these arguments in opposition to the Roy Plaintiffs' Motion for Summary Adjudication, they are not the proper subject of a motion for reconsideration under Local Rule 7-18. C.D. Cal. L.R. 7-18 ("No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.").

Second, the County's contention that the Court did not consider this argument is simply wrong. The Court reviewed and considered all arguments contained in the parties' briefing and raised during oral argument. (*See* Dkt. No. 346 at 2 ("After considering the papers filed in support of and in opposition to the instant Motions, as well as oral argument of counsel at the hearing held on September 12, 2017, for the following reasons, the Court . . . **GRANTS in part** and **DENIES in part** Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240).").) Further, the Court need not explicitly discuss each and every argument in any order. The Court's refusal to discuss an argument constitutes an implicit rejection of those arguments. *See Clemons v. Miss.*, 494 U.S. 738, 747 n.3 (1990) (observing that the

court's refusal to address an argument constitutes an implicit rejection of those arguments); *see also Savage v. Hadlock*, 296 F.2d 417, 419 (D.C. Cir. 1961) (concluding that the district court's ruling in favor of the plaintiff constituted an "implicit rejection" of the defendant's argument where the defendant actually raised the argument before the court and "[t]he issue was clearly presented and all the relevant papers were before the court").

Third, the Court again rejects the County's arguments. The Court denied the Roy Plaintiffs' Motion for Leave to Amend to add additional facts in support of a separate equal protection claim. (Dkt. No. 107.) The Court also granted the County's Motion to Strike the new factual allegations in support of the separate equal protection claim that the Roy Plaintiffs sought to add in the Motion for Leave to Amend. (Dkt. No. 124.) In the Motion to Strike Order, however, the Court clarified that "[t]he question before the Court in ruling on Plaintiffs' Motion for Leave to Amend was limited to whether Plaintiffs had shown good cause to modify the scheduling order by acting diligently in seeking modification." (Dkt. No. 124 at 14 (citing Dkt. No. 107).) The Court further explained that it "did not determine that Plaintiffs failed to plead an equal protection claim in their original complaint. Indeed, such a conclusion would be inapposite in determining whether Plaintiffs were diligent in seeking leave to amend. *Plaintiffs are free to argue that they satisfactorily pleaded equal protection claims through the allegations contained in the original complaint.*" The Court thus rejects the County's arguments that "pursuit of an equal protection theory of relief was barred by the fact that the Court had denied Plaintiff leave to amend to add an equal protection claim to this action and granted Defendant's motion to strike Plaintiff's equal protection allegations from the First Amended Complaint." (Mot. for Reconsider at 9.) As the Court held in its Order on the Motion to Strike, "Plaintiffs are free to argue that they satisfactorily pleaded equal protection claims through the allegations contained in the original complaint." (Dkt. No. 124 at 14.)

Thus, the County's assertion that "the Court's granting of summary judgment

on the finding of an equal protection violation is contrary to the principles of the law of the case and the Court's explicit rulings[,] which excluded Plaintiff's allegations of equal protection" is incorrect. (Mot. to Reconsider at 10.) The County's Motion to Reconsider the Court's decision to grant summary judgment in favor of the Roy Plaintiffs' No-Money Bail Subclass is **DENIED**.

V. CONCLUSION

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

IT IS SO ORDERED.

Dated: July 11, 2018

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE