UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 12-09012-AB (FFMx)**	Date	February 7, 2018
Title	**DUNCAN ROY ET AL. V. COUNTY OF LOS ANGELES ET AL.**		

Present: The Honorable	**ANDRÉ BIROTTE JR., United States District Judge**	
Carla Badirian	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 RE DEFENDANTS' MOTION TO DISMISS AND MOTION FOR PARTIAL SUMMARY JUDGMENT; PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION REGARDING LIABILITY; DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, PARTIAL SUMMARY JUDGMENT; GONZALEZ PLAINTIFFS' SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT; AND, DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' EXPERT WITNESS DECLARATIONS [239, 240, 242, 247, 307]**

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-BRO-FFM and *Gonzalez v. Immigration & Customs Enforcement et al.*, No. 13-cv-04416-BRO-FFM.[1] Plaintiffs in the Gonzalez action are Geraldo 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 remaining Plaintiffs in the Roy action are Clemente De La Cerda and Alain Martinez-Perez (collectively, "Roy Plaintiffs"). (*See* Dkt. Nos. 125 (hereinafter, "Roy SAC"), 134, 216.) Defendants in the Roy action are the County of

[1] Both Cases are now proceeding under Case No. 12-cv-09012-BRO-FFM.

Los Angeles (the "County") and Sheriff Leroy D. Baca (collectively, "Roy Defendants" or the "County"). *See* Roy SAC.

Pending before the Court are five motions: (1) Gonzalez Defendants' Motion to Dismiss and for Partial Summary Judgment (Dkt. No. 239); (2) Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240); (3) Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242); (4) Gonzalez Plaintiffs' Second Motion for Partial Summary Judgment (Dkt. No. 247); and, (5) Gonzalez Defendants' Motion to Strike Plaintiffs' Expert Witness Declarations (Dkt. No. 307).

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: (1) **DENIES** the Gonzalez Defendants' Motion to Dismiss and for Partial Summary Judgment (Dkt. No. 239); (2) **GRANTS in part** and **DENIES in part** Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240); (3) **GRANTS in part** and **DENIES in part** Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242); (4) **GRANTS in part** and **DENIES in part** Gonzalez Plaintiffs' Second Motion for Partial Summary Judgment (Dkt. No. 247); and, (5) **DENIES** Gonzalez Defendants' Motion to Strike Plaintiffs' Expert Witness Declarations (Dkt. No. 307).

II. BACKGROUND AND RELEVANT PROCEDURAL BACKGROUND[2]

A. Background

1. ICE Detainers

ICE issues immigration detainers to federal, state, and local law enforcement agencies ("LEAs") to request that the LEA detain the individual up to 48 hours beyond the time he or she would otherwise be released from custody in order for ICE to assume

[2] The Court's description of the background of this case does not constitute this Court's findings of undisputed facts for these Motions.

custody of the individual. (*See* Dkt. No. 297-1 ¶ 13.) Since the Gonzalez action and the Roy action were filed, "ICE has used five different detainer forms: the December 2011, revision, the December 2012 revision, the June 2015 Form I-247D, the August 2015 Form I-247X, and the April 2017 Form I-247A." (Dkt. No. 297-1 ¶ 14.) "As ICE has changed its detainer forms, it has changed the language on the form indicating the basis for its determination to issue a detainer." (Dkt. No. 297-1 ¶ 16.) "The December 2011 I-247 detainer stated the reason for the detainer was that ICE had 'initiated an investigation' into whether the subject was removable from the United States." (Dkt. No. 297-1 ¶ 16.) "The June 2015 I-247D and August 2015 I-247X detainer forms, which ICE changed in response to judicial decisions holding ICE detainers lacked probable cause to justify a warrantless arrest and law enforcement agencies nationwide began to refuse to comply with them, further modified the form's wording to state that '[p]robable cause exists that the subject is a removable alien.'" (Dkt. No. 297-1 ¶ 17.)

"Beginning in September 2006, ICE began to adopt what it calls 'biometric interoperability' technology to 'link local law enforcement agencies to both FBI and DHS biometric databases.'" (Dkt. No. 297-1 ¶ 22.) "In other words, ICE began to receive—automatically and in real time—the fingerprints of any person booked into a local jail." (Dkt. No. 297-1 ¶ 22.) "This technology, incorporated into ICE's secure Communities Program, linked for the first time the . . . [FBI's] fingerprint repository, known as Integrated Automated Fingerprint Identification System ("IAFIS'), with the DHS's fingerprint repository, known as Automated Biometric Identification System ('IDENT')." (Dkt. No. 297-1 ¶ 23.) "As a result, any time a jail sent fingerprints to the FBI for a criminal background check . . . , those prints were now automatically shared with ICE." (Dkt. No. 297-1 ¶ 23.)

When an LEA runs the individual's fingerprints, those prints are sent to the FBI, "which sends the information to ICE's Law Enforcement Support Center (LESC) in Burlington, Vermont, through a system called 'interoperability'." (Dkt. No. 281¶ 1.)[3] "The LESC may conduct certain basic database background checks, relating to

[3] The Court's citations to specific paragraphs from Dkt. No. 281 refer to Plaintiffs' Statement of Genuine Issues section, not the Additional Material Facts section, unless otherwise indicated by the inclusion of the abbreviation "AMF."

immigration and criminal history, then sends an Immigration Alien Response (IAR) to ICE's Pacific Enforcement Response Center (PERC)." (Dkt. No. 281 ¶ 3.) "When ICE personnel at the PERC receive an IAR, ICE conducts . . . database checks, searching between five and ten different databases for each individual." (Dkt. No. 281 ¶ 4.) "Among the databases ICE officers search, maintained by a number of different federal government agencies, are CLAIMS [(Computer Linked Application Information Management Systems)], CIS [(Central Index System)], CLETS, ENFORCE [(Enforcement Case Tracking System)], NCIC, IDENT, TECS [(Treasury Enforcement Communications System)], and others." (Dkt. No. 281 ¶ 5.) "ICE requires contractors and agents issuing detainers on the basis of electronic database checks alone to check only four databases prior to issuing a detainer." (Dkt. No. 296-8 at ¶ 59.) These databases are: (1) CIS, (2) CLAIMS, (3) TECS, and, (4) ENFORCE. (Dkt. No. 296-8 at ¶ 59.) "There is no requirement that contractors or agents check any other databases; they are left to their discretion to do so if they feel it is necessary." (Dkt. No. 296-8 at ¶ 60.)

Plaintiffs claim that "[o]f the four databases that ICE requires officers to check prior to issuing a detainer, only two—CIS and CLAIMS—purport to contain immigration status and naturalization information." (Dkt. No. 296-8 at ¶ 61.) Defendants claim that all four databases that agents consult before issuing a detainer "contain immigration and citizenship information." (Dkt. No. 296-8 at ¶ 61.) Plaintiffs assert that CIS and CLAIMS are woefully incomplete and notoriously unreliable. (Dkt. No. 296-8 at ¶ 72.) "If the ICE officer determines through . . . those database checks that probable cause exists that the individual is a removable alien, then the officer issues a detainer." (Dkt. No. 281 ¶ 6.) ICE issued some detainers based solely upon database checks. (*See* Dkt. No. 281 ¶¶ 6, 8.) According to Plaintiffs, because CIS and CLAIMS are woefully incomplete and notoriously unreliable, ICE cannot establish probable cause based upon its reliance on databases alone. (Dkt. No. 247-1 at 14–21.)

"At the time Plaintiffs commenced their action, ICE might issue a detainer if the database search and investigation of an individual known to be born outside the United States returned information (known as a foreign born, no match)." (Dkt. No. 281 ¶ 8; Dkt. No. 296-8 ¶ 136.) "ICE admits that evidence of foreign birth and no match in a federal immigration database is not probable cause of removability." (Dkt. No. 296-8

¶ 138.) "In 2015, DHS announced that immigration detainers would no longer be issued based on 'Foreign Birth-No Match.'" (Dkt. No. 296-8 ¶ 140.)

"By statute, ICE is authorized to make arrests pursuant to administrative warrants and—under certain circumstances—to make arrests without an administrative warrant." (Dkt. No. 296-8 ¶ 155.) "An arrest without an administrative warrant is permitted only if the ICE officer has a 'reason to believe' an individual is removable from the United States and determines that the individual 'is likely to escape before a warrant can be obtained for his arrest.'" (Dkt. No. 296-8 ¶ 155.) "ICE issues detainers without making any determination whether the subject is likely to escape before an administrative warrant can be obtained." (Dkt. No. 296-8 ¶ 151.) "Under ICE's 2017 Detainer Policy, ICE now issues an administrative warrant to accompany an immigration detainer request." (Dkt. No. 296-8 ¶ 152.) "The 2017 Detainer Policy provides that it 'may be modified, rescinded, or superseded at any time without notice' and that 'no limitations are placed by this guidance on otherwise lawful enforcement or litigative prerogatives of ICE.'" (Dkt. No. 296-8 ¶ 154.)

2. Gonzalez Action

Plaintiff Gerardo Gonzalez, born in Los Angeles, California, is a U.S. citizen. (Dkt. No. 297-1 ¶ 1; Gonzalez TAC ¶ 11.)[4] At the time Gonzalez joined the instant action, he was being held in pretrial detention in a Los Angeles County jail, and he was subject to an ICE detainer. (Gonzalez TAC ¶ 12.) Plaintiff Simon Chinivizyan is a twenty-one-year-old American citizen who resides in Burbank, California. (Gonzalez TAC ¶ 13.) At the time he joined the lawsuit, he was being held in a Los Angeles County jail pursuant to an immigration detainer. (Gonzalez TAC ¶ 14.) Plaintiff Gonzalez and

[4] Throughout this Order, the Court cites the versions of the statements of uncontroverted facts or statements of genuine disputes that the parties submitted with either the reply briefs or the opposition briefs as they include both the Plaintiffs' and Defendants' factual contentions and responses for each separate motion. Because there are a series of separate statements filed in connection with the various motions, the Court will cite the particular docket number of the document to which it is referring.

Chinivizyan bring this action on behalf of themselves and those similarly situated. (*See* Gonzalez TAC.)

On September 9, 2016, the Court certified the following of the Gonzalez Plaintiffs' proposed classes: (1) Judicial Determination Class (limited to those who were detained for more than forty-eight hours without receiving a judicial determination of probable cause); (2) Probable Cause Subclass; and, (3) Statutory Subclass. (Dkt. No. 184 at 42.) While the Court granted Partial Summary Judgment in favor of the Gonzalez Defendants as to the Judicial Determination Class on June 12, 2017 (Dkt. No. 264), the definition of the Judicial Determination Class is relevant to the instant Motions to the extent it defines the subclass groups.

The Judicial Determination Class included:

> All current and future persons who are subject to an immigration detainer issued by an ICE agent located in the Central District of California, where the detainer is not based upon a final order of removal signed by an immigration judge or the individual is not subject to ongoing removal proceedings. Plaintiffs proposed Judicial Determination Class will seek rescission of class members' detainers and a declaration that Defendants' issuance of detainers against class members without providing a judicial determination of probable cause violates the Fourth Amendment.

(Dkt. No. 184 at 12.)

The Probable Cause Subclass includes:

> All members of the Judicial Determination Class for whom ICE has issued an immigration detainer based solely on checks for the individual in government databases. The Probable Cause Subclass, to which Plaintiff Gonzalez belongs, will seek rescission of subclass members' detainers and a declaration that Defendants' issuance of detainers against subclass members in reliance on database checks alone violates the Fourth Amendment.

(Dkt. No. 184 at 12–13.)

Finally, the Statutory Subclass includes:

> All members of the Judicial Determination Class for whom ICE did not issue an administrative warrant of arrest at the time it issued an immigration detainer. The Statutory Subclass, to which both Plaintiffs belong, will seek rescission of subclass members' detainers and a declaration that Defendants' issuance of detainers against subclass members without making an individualized determination that the individual is likely to escape before a warrant can be obtained for his arrest violates 8 U.S.C. § 1357(a)(2).

(Dkt. No. 184 at 13.)

Relevant to the instant Motions, the Gonzalez Plaintiffs seek "partial summary judgment on behalf of the Probable Cause Subclass on the issue of whether ICE's practice of issuing warrantless arrest requests (immigration detainers) in sole reliance on electronic databases that are incomplete and inaccurate violates the Fourth Amendment." (Dkt. No. 247 at 3.) The Gonzalez Plaintiffs also seek "partial summary judgment . . . on behalf of the Statutory Subclass on the issue of whether ICE's practice of issuing immigration detainers without first making a flight risk determination violates 8 U.S.C. § 1357(a)(2)." (Dkt. No. 247 at 3.)

3. Roy Action

a. ICE Detainer Forms in Connection with LASD's Practices

In August 2009, the Los Angeles County Sherriff's Department ("LASD") and ICE activated the "Secure Communities" program in Los Angeles County. (Roy SAC ¶ 18.) Under this program, LASD provides ICE with the fingerprints and booking information of every arrested individual during the booking process. (Roy SAC ¶ 18.) An agent in ICE's Law Enforcement Support Center checks the fingerprints against ICE and Federal Bureau of Investigation databases. (Roy SAC ¶ 18.) If the reviewing agent with ICE's Enforcement and Removal Operations Unit determines that ICE needs to take some action regarding a person detained, the agent provides LASD with a Form I-247, also referred to as an immigration or ICE detainer. (Roy SAC ¶ 19.) Pursuant to 8 C.F.R. § 287.7(a), an immigration hold is intended to advise a law enforcement agency that the Department of Homeland Security ("DHS") seeks to arrest or detain an alien in

the agency's custody. (Roy SAC ¶ 21.) The detainer form also requests that the agency detain the alien for an additional forty-eight hours beyond when the subject would otherwise have been released. (Roy SAC ¶ 22.)

The Roy Plaintiffs challenge two of the LASD's practices related to immigration holds. First, they assert that the LASD has engaged in a pattern and practice of unlawfully denying bail to inmates who were subject to an immigration hold, thereby preventing these individuals from securing their release. (*See* Roy SAC ¶¶ 47–55.) Second, Plaintiffs challenge the 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 SAC ¶¶ 57–60.)

b. Bail Practices

"LASD entered immigration detainers into their data system as an additional 'charge' on the inmate." (Dkt. No. 275 ¶ 29.)[5] "Within LASD's database system, some charges or holds have specific bail amounts attached to them, while others do not have a specific dollar amount." (Dkt. No. 275 ¶ 30.) "Charges or holds that do not have a specific dollar amount are designated as 'No Bail' holds." (Dkt. No. 275 ¶ 31.) According to Plaintiffs, "[a]side from ICE holds, the 'No Bail' notation is used exclusively for holds for which the inmate cannot post bail, including state prison holds (indicating that the state prison has custody of the inmate), probation holds indicating that the person may not be released due to probation violation) and warrants for which there is no bail." (Dkt. No. 275 ¶ 32.) Defendants contend that the "No Bail" notation is not used exclusively for holds for which the inmate cannot post bail, but rather, the "No Bail" notation is used for holds when there is no bail amount specified, unlike most criminal charges which are assigned a specific dollar figure. (Dkt. No. 275 ¶ 32–34.) Plaintiffs contend that if an inmate was subject to an immigration detainer, the inmate was not allowed to post bail, and Defendants argue that it has always been the LASD's policy and practice to allow inmates subject to immigration detainers to post bail. (*See* Dkt. No. 275 ¶¶ 46–47.)

[5] The Court's citations to specific paragraphs from Dkt. No. 275 refer to paragraphs within the Defendants' Statement of Genuine Issues section, not the Additional Material Facts section, unless otherwise indicated by the inclusion of the abbreviation "AMF."

"It is LASD policy not to book anyone into its jails for whom bail is set at $25,000 or less unless they refused to sign the citation, demanded to appear before a magistrate, were charged with a probation violation, or were charged with a disqualifying enumerated charge (e.g. escape from custody, child abuse, domestic violence, etc.)[.]" (Dkt. No. 275 ¶ 56.) "Pursuant to LASD's Policy of Bail Acceptance, where an individual with bail of less than $25,000 qualified for release without posting bail, watch commanders had discretion to book the person where they could not produce sufficient ID or were intoxicated." (Dkt. No. 275 ¶ 57.) "Until June 2014, LASD's policy of not booking arrestees with bail of less than $25,000 did not apply to those with ICE Detainers." (Dkt. No. 275 ¶ 58.)

c. Arrest and Detention Based on Immigration Detainers

"From October 2010 to June 2014, LASD's policy and practice was to detain individuals beyond the time they were eligible for release on the immigration detainer for up to 48 hours excluding weekends and holidays." (Dkt. No. 275 ¶ 16.) According to Plaintiffs, "[d]uring this period, LASD recorded immigration detainers in its Automated Jail Information System ("AJIS"), making them visible to jail staff and the public through LASD's inmate locator." (Dkt. No. 275 ¶ 18.) "All detainers uploaded into AJIS were detainers that the LASD intended to honor by detaining the inmate after [he or she was] due for release on criminal charges." (Dkt. No. 275 ¶ 20.)

"In March 2014, the LASD initiated steps to comply with a California law, known as AB4 (The Trust Act), Cal[ifornia] Gov[ernment] Code[] section 7282.5(a), which limited the circumstances in which law enforcement agencies could honor immigration detainers." (Dkt. No. 275 ¶ 21.) "Beginning in June 2014, LASD adopted policies and practices aimed at reducing the time that it detains an individual on an ICE detainer and enabling transfer to ICE without extending a person's detention beyond the time [he or she] is eligible for release." (Dkt. No. 275 ¶ 22.) "In June 2014, LASD stopped recording immigration detainers in AJIS and began keeping only a paper copy of the detainer in the inmate's record jacket." (Dkt. No. 275 ¶ 23.)

"During the class period, LASD has never had a policy or practice to bring people held on ICE detainers before a judge for a probable cause determination, despite maintaining procedures for ensuring other inmates held on warrantless arrests would be released within 48 hours." (Dkt. No. 275 ¶ 24.) "LASD's failure to insure that inmates

held on ICE detainers were brought before a magistrate within 48 hours was not due to any emergency or the need to complete administrative tasks." (Dkt. No. 275 ¶ 25.) "In LASD's view, it had no legal obligation to ensure that inmates held solely on ICE detainers were brought before a judge or magistrate within 48 hours." (Dkt. No. 275 ¶ 26.) Further, "LASD was aware that ICE did not provide a judicial determination of probable cause as to those individuals within 48 hours of ICE taking custody of the individual." (Dkt. No. 275 ¶ 27.) "Although the LASD has procedures to track the length of time a person subject to an out-of-country warrant is held before transfer to the requesting agency to ensure they are not over-detained, no such procedure exists for ICE [d]etainers." (Dkt. No. 275 ¶ 28.)

d. Roy Plaintiffs

The only two remaining named Plaintiffs in the Roy action are Alain Martinez-Perez and Clemente De La Cerda. (*See* Dkt. Nos. 125, 134, 216.)[6] Plaintiffs were in the custody of the Los Angeles County Sheriff's Department ("LASD") and were denied either bail or release from custody on the basis of an immigration hold. (*See* SAC.)

"Plaintiff Martinez-Perez is a 42-year-old Mexican citizen." (Dkt. No. 275 ¶ 19.) "In May of 2005, Martinez-Perez permanently moved to the United States using a B-2 travel visa that had been issued to him by the United States in 2004." (Dkt. No. 275 ¶ 20.) "The B-2 travel visa allowed Martinez-Perez to visit the United States as a tourist, but did not authorize him to live or work in the United States." (Dkt. No. 275 ¶ 21.) "Since entering the United States in May of 2005, Martinez-Perez has never left the country." (Dkt. No. 275 ¶ 22.) "After entering the United States in May of 2005, and since then, Martinez-Perez maintained several jobs without having ever received a work permit authorizing him to work in the United States." (Dkt. No. 275 ¶ 23.)

"On December 14, 2011, Martinez-Perez was arrested by the LASD for domestic battery, and booked in the LASD's City of Industry Station." (Dkt. No. 275 ¶ 24.) "At the time of his booking, Martinez-Perez was fingerprinted, asked various personal

[6] On January 25, 2016, the parties stipulated to dismiss Plaintiff Duncan Roy's claims. (*See* Dkt. No. 134.) Thus, Duncan Roy is no longer a party to this action. On January 26, 2017, pursuant to the parties' stipulation, the Court dismissed Plaintiff Annika Alliksoo from the Roy action. (Dkt. No. 216.)

information, and questioned about his immigration status, including where he was born and how long he had been living in the country. Martinez-Perez provided accurate and truthful information in response to these questions." (Dkt. No. 275 ¶ 25.) "On Friday, December 16, 2011, Martinez-Perez was issued a Certificate of Release/Clearance Letter pursuant to California Penal Code § 849.5, informing him that no charges were filed against him." (Dkt. No. 275 ¶ 26.) "However, due to the issuance of an immigration detainer by ICE, Martinez-Perez was not released from LASD custody until Tuesday, December 20, 2011, at which time he was released to ICE custody." (Dkt. No. 275 ¶ 27.) "Martinez-Perez remained in LASD custody no more than 48 hours after he received the Certificate of Release/Clearance Letter, excluding the weekend." (Dkt. No. 275 ¶ 28.) "Martinez-Perez stayed in ICE custody until January 2012, at which point he was released on an immigration bond." (Dkt. No. 275 ¶ 29.) "After his release from ICE custody, Martinez-Perez had two more court hearings before the immigration court, at which point all immigration proceedings were canceled against him." (Dkt. No. 275 ¶ 30.)

"During his detention in LASD custody, Martinez-Perez never personally contacted any bail bonds company to attempt to post bail." (Dkt. No. 275 ¶ 31.) "During his detention in LASD custody, Martinez-Perez was never aware of the amount of his bail or that bail had been set." (Dkt. No. 275 ¶ 32.) "Martinez-Perez's cousin, Elizabeth Perez-LoPresti ('Lo Presti') found out about his arrest on December 15, 2011." (Dkt. No. 275 ¶ 33.) "After finding out about his arrest, LoPresti called several bail companies, but was only able to communicate with one immediately. She does not recall the name of the bail company she spoke with." (Dkt. No. 275 ¶ 34.) "LoPresti provided the unknown bail company with her credit card information and information about Plaintiff Martinez-Perez, including his name and potential location." (Dkt. No. 275 ¶ 35.) "That same day, LoPresti received a call back from the unknown bail company and was told that bail could not be posted for Plaintiff Martinez-Perez due to his immigration hold." (Dkt. No. 275 ¶ 36.) "LoPresti was not told whether the bail company actually communicated with LASD personnel regarding Martinez-Perez, went to [the] station to inquire as to his bail, or made an attempt to post bail." (Dkt. No. 275 ¶ 37.) "LoPresti does not recall having any other conversations with any other bail company as to whether or not bail could be posted for Martinez-Perez." (Dkt. No. 275 ¶ 38.)

Plaintiff Clemente "De La Cerda is a 41-year-old Mexican citizen." (Dkt. No. 275 ¶ 39.) "On October 5, 2012, De La Cerda was arrested by the Whittier Police Department for a probation violation and misdemeanor possession of nunchucks." (Dkt. No. 275 ¶ 41.) "At the time of arrest, De La Cerda was a lawful permanent resident of the United States." (Dkt. No. 275 ¶ 43.) "Shortly after arrest, De La Cerda was transferred to LASD custody where he remained until December 2012." (Dkt. No. 275 ¶ 44.) "While in LASD custody, De La Cerda was interviewed by ICE. Thereafter, he was released to the custody of ICE where he was immediately placed on the ISAP program and allowed to return home." (Dkt. No. 275 ¶ 45.) "On February 14, 2013, De La Cerda voluntarily left the United States to Mexico." (Dkt. No. 275 ¶ 46.)

The Roy Plaintiffs initiated this putative class action on behalf of themselves and others similarly situated. Martinez-Perez seeks damages on behalf of all individuals injured by the Roy Defendants' practice of refusing bail requests and detaining individuals beyond the time permitted by state law. (Roy SAC ¶¶ 10, 11.) De La Cerda seeks equitable relief on behalf of all individuals who are currently or who will in the future be in Defendants' custody on the basis of an immigration hold. (Roy SAC ¶ 12.) Specifically, he seeks to bar 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 SAC ¶ 12.)

e. Roy Certified Classes

On September 9, 2016, the Court granted, in part, Plaintiffs' Motion for Class Certification. (*See* Dkt. No. 184.) The Court certified the following seven classes for the Roy action:

- (1) The False Imprisonment Equitable Relief Class includes "[a]ll LASD inmates detained beyond the time they are due for release from criminal custody, solely on the basis of immigration detainers, excluding inmates who have a final order of removal as indicated on the face of the detainer." (Dkt. No. 184.)

- (2) The *Gerstein* Equitable relief class includes "[a]ll LASD inmates detained beyond the time they are due for release from criminal custody, solely on the basis of immigration detainers, excluding inmates who have a

final order of removal or ongoing removal proceedings as indicated on the face of the detainer." (Dkt. No. 184.)

- (3) The False Imprisonment Damages Class includes "[a]ll LASD inmates who were detained beyond the time they are due for release from criminal custody, solely on the basis of immigration detainers, excluding inmates who had a final order of removal as indicated on the face of the detainer" and covers those inmates who were detained from November 7, 2011 to the present. (Dkt. No. 184.)

- (4) 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 indicted 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.)

- (5) The Investigative Detainer Class includes "[a]ll LASD inmates who were detained beyond the time they were due for release from criminal custody based solely on 'investigative detainers'" 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.)

- (6) The No Bail Notation Class includes "[a]ll LASD inmates on whom an immigration detainer had been lodged and recorded in LASD's AJIS database, and who were held on charges for which they would have been eligible to post bail" 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).

- (7) 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 (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).

B. Procedural History

1. The Roy Action

The Roy Plaintiffs filed their initial complaint on October 19, 2012, alleging that the LASD's practices constitute false imprisonment and negligence per se, and violate the Fourth and Fourteenth Amendments under 42 U.S.C. § 1983, the California Constitution, article I, sections 7 and 13, California Government Code sections 815.2, 815.6, and the Tom Bane Civil Rights Act, California Civil Code section 52.1. (Dkt. No. 1.)

On June 8, 2015, the Roy Defendants filed a Motion for Judgment on the Pleadings, (Dkt. No. 71), which the Court granted in part and denied in part on July 9, 2015 (Dkt. No. 88). Also on June 8, 2015, the Roy Defendants filed a Motion to Consolidate this case with the Gonzalez Plaintiffs' action (*see* Dkt. No. 72), which the Court granted on July 28, 2015 (Dkt. No. 91). On August 24, 2015, the Roy Plaintiffs filed a Motion Seeking Leave to Amend the Scheduling Order and to Amend the Pleadings (*see* Dkt. No. 96), which the Court granted in part and denied in part (Dkt. No. 107). On October 2, 2015, the Roy Plaintiffs filed their First Amended Complaint. (Dkt. No. 109.) On October 26, 2015, the Roy Defendants filed a Motion to Dismiss and to Strike two paragraphs from the Roy Plaintiffs' First Amended Complaint. (Dkt. No. 112.) The Court granted the Roy Defendants' Motion to Dismiss in part and denied it in part and granted the Motion to Strike. (Dkt. No. 124.) On December 7, 2015, the Roy Plaintiffs filed their Second Amended Complaint. (Dkt. No. 125.) The Roy Defendants filed their Answer to the Second Amended Complaint on December 22, 2015. (Dkt. No. 129.)

2. The Gonzalez Action

Gonzalez filed his initial Complaint on June 19, 2013. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 1.) On July 10, 2013, Gonzalez filed a First Amended Complaint, which added Chinivizyan as a named Plaintiff. (*Gonzalez*, No. 13-cv-04416-

BRO-FFM, Dkt. No. 10.) After the Court granted the Gonzalez Plaintiffs leave to amend the complaint further, they filed a Second Amended Complaint on September 9, 2013. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dtk. No. 24.) On July 28, 2014, the Court granted the Gonzalez Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint and granted the Gonzalez Plaintiffs leave to amend. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 42.)

The Gonzalez Plaintiffs filed a Third Amended Complaint on August 18, 2014. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 44.) The same day, they also moved for class certification. (Dkt. No. 45.) On September 15, 2014, the Gonzalez Defendants filed a Motion to Dismiss for Lack of Jurisdiction. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 53.) On October 24, 2014, the Court granted the Gonzalez Defendants' Motion in part. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 61.) On February 4, 2015, the Gonzalez Defendants filed their Answer to the Third Amended Complaint. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. No. 73.) On June 8, 2015, the Roy Defendants filed a Motion to Consolidate the two cases, which the Court granted on July 28, 2015. (*Gonzalez*, No. 13-cv-04416-BRO-FFM, Dkt. Nos. 88, 95.)

3. The Combined Proceedings

On May 9, 2016, the Gonzalez Plaintiffs and the Roy Plaintiffs filed a Motion for Class Certification. (*See* Dkt. No. 152.) The Court granted Plaintiffs' Motion for Class Certification in part and denied Plaintiffs' Motion in part. (Dkt. No. 184.) The Court certified the seven Roy classes and subclasses and the three Gonzalez classes and subclasses described above. (*See* Dkt. No. 184 at 41–42.)

On February 22, 2017, the Gonzalez Plaintiffs filed a Motion for Partial Summary Judgment as to the Judicial Determination Class and ICE's policy of failing to provide a judicial probable cause determination within forty-eight hours of detention. (Dkt. No. 219.) On June 12, 2017, the Court denied the Gonzalez Plaintiffs' Motion and granted Summary Judgment in favor of Defendant DHS on the issue of the Judicial Determination Class, holding that the Fourth Amendment does not require judicial review of ICE officers' probable cause determinations. (Dkt. No. 264. at 19.)

On May 16, 2017, the Gonzalez Defendants filed the instant Motion to Dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for Partial Summary Judgment. (Dkt. No. 239.) On May 22, 2017, the Roy Defendants filed their notice of Joinder in the Gonzalez Defendants' Motion to Dismiss and for Partial Summary Judgment. (Dkt. No. 259.) On July 7, 2017, the Gonzalez Plaintiffs filed their Opposition to the Gonzalez Defendants' Motion to Dismiss and Motion for Partial Summary Judgment. (Dkt. Nos. 280.) On July 21, 2017, the Gonzalez Defendants replied. (Dkt. No. 296.) On July 27, 2017, the Gonzalez Defendants filed a Motion to Strike Plaintiffs' Expert Witness Declarations that Plaintiffs filed in support of their Opposition to Defendants' Motion to Dismiss and for Partial Summary Judgment. (Dkt. No. 307.) On August 2, 2017, the Gonzalez Plaintiffs filed an Ex Parte Application for Leave to File a Surreply, concurrently lodging their Surreply. (Dkt. 309.) On August 7, 2017, the Court granted Plaintiffs' application. (Dkt. No. 314.) On August 14, 2017, the Gonzalez Plaintiffs filed their Opposition to Defendants' Motion to Strike. (Dkt. No. 315.) On August 21, 2017, Defendants filed their Reply in Support of their Motion to Strike. (Dkt. No. 317.) On August 22, 2017, the Gonzalez Plaintiffs and Defendants stipulated to allow Defendants to substitute their Motion to Strike Reply brief for a shorter version, which complied with the Court's Standing Order that was in effect at the time the parties filed the instant Motions. (Dkt. No. 318.) Defendants filed the Substituted Reply in Support of Defendant's Motion to Strike along with the stipulation on August 22, 2017. (Dkt. No. 318-1.)

On May 16, 2017, the Gonzalez Plaintiffs filed the instant Second Motion for Partial Summary Judgment. (Dkt. No. 247.) On July 7, 2017, the Gonzalez Plaintiffs opposed. (Dkt. No. 272.) On July 21, 2017, the Roy Defendants filed their Notice of Joinder as to the Gonzalez Defendants' Statement of Uncontroverted Facts and Conclusions of Law in Opposition to Plaintiffs' Second Motion for Partial Summary Judgment. (Dtk. No. 302.) On July 21, 2017, the Gonzalez Plaintiffs filed their Reply in Support of their Second Motion for Partial Summary Judgment. (Dkt. No. 297.)

On May 16, 2017, the Roy Plaintiffs filed the instant Motion for Summary Adjudication Regarding Liability. (Dkt. No. 240.) On July 7, 2017, the Roy Defendants opposed the motion. (Dkt. No. 273.) On July 21, 2017, the Roy Plaintiffs replied. (Dkt. No. 303.) On August 22, 2017, proposed Amici Curiae, filed a Motion for Leave to File Brief in Support of Plaintiffs' Motion for Summary Adjudication Regarding Liability.

(Dkt. No. 319.) On August 23, 2017, the Court granted the Amici's Motion. (Dkt. No. 319.)

On May 16, 2017, the Roy Defendants filed the instant Motion for Summary Judgment, or Alternatively, Partial Summary Judgment. (Dkt. No. 242.) On July 7, 2017, the Roy Plaintiffs opposed the motion. (Dkt. No. 278.) On July 21, 2017, the Roy Defendants replied. (Dkt. No. 298.)

Parties in both the Gonzalez and Roy Actions have filed Notices of New or Supplemental Authority since the hearing date. (*See, e.g.*, Dkt. Nos. 329–31, 334.) The Court has considered the supplemental authority in deciding these Motions.

III. EVIDENTIARY OBJECTIONS

A. MOTION TO STRIKE[7]

In support of their Opposition to Defendants' Motion to Dismiss and for Partial Summary Judgment, the Gonzalez Plaintiffs submitted three expert declarations (Dkt. Nos. 286–88 hereinafter collectively, "expert witness declarations") by the following former Immigration and Customs Enforcement ("ICE") and U.S. Citizenship and Immigration Services ("USCIS") employees:

- Roxana C. Bacon, who served as Chief Counsel for USCIS from October 2009 to December 2010, has taught immigration law since 1979, and practiced immigration law for more than 30 years (Dkt. No. 287. ¶¶ 1–4, Declaration of Roxana C. Bacon (hereinafter, "Bacon Decl.")));

- Patricia M. Corrales, who served as an attorney for ICE and the former Immigration and Naturalization Service from 1995 to 2012 and has operated her

[7] The Gonzalez Defendants raise identical objections to Plaintiffs' expert declarations in their Evidentiary Objections. (Dkt. No. 296-9.) Therefore, the Court's discussion of these objections in this section addresses the arguments in Defendants' separately filed Evidentiary Objections. (Dkt. No. 296-9.)

immigration law practice since 2012 (Dkt. No. 286. ¶¶ 2–3, Declaration of Patricia M. Corrales (hereinafter, "Corrales Decl.")); and,

- Rachel Winkler, who served as an Immigration Law Analyst with the USCIS Ombudsman from December 2010 to January 2017. During that time, from 2012 to 2013, she served as a Special Advisor in the Office of the Secretary of the Department of Homeland Security ("DHS"). She is currently Senior Counsel at Frontier Solutions, a Washington, D.C.-based consulting company made up of former ICE and USCIS officials, including the former acting directors of ICE. (Dkt. No. 288. ¶¶ 2–4, Declaration of Rachel Winkler (hereinafter, "Winkler Decl.")).

At issue in the pending Gonzalez motions for summary judgment is whether the Gonzalez Defendants have probable cause when they rely exclusively on electronic databases to make a determination whether to issue a detainer. (*See, e.g.*, Dkt. No. 239-1 at 16–19; Dkt. No. 247-1 at 14–20.) The Gonzalez Plaintiffs claim that they submitted these expert declarations because each of these individuals has significant expertise with respect to the databases at issue in this case, mainly CIS and CLAIMs databases. (Dkt. No. 315 (hereinafter, "Opp'n to Mot. to Strike") at 3.)

DHS has moved to strike the three above-mentioned expert witness declarations on three separate grounds. (Dkt. No. 307, DHS' Motion to Strike Declarations (hereinafter, "Mot. to Strike").) First, DHS claims that Plaintiffs' failure to comply with DHS's *Touhy* regulations governing disclosure of information in litigation by former and present DHS employees, before taking the declarations, is sufficient ground for striking them altogether. (Mot. to Strike at 15.) Second, DHS claims that the declarations should be stricken on grounds that they contain privileged and protected information under attorney-client privilege, attorney work product protection, law enforcement privilege, and the deliberative process privilege. (Mot. to Strike at 4–7.) Finally, Defendants contend that the Court should strike the declarations because they violate Rule 26(a)(2)(B)(i)[8] of the Federal Rules of Civil Procedure (Mot. to Strike at 13–14), which

[8] Defendants incorrectly cite Federal Rule of Civil Procedure 26(a)(2)(B)(i) as subsection (I), which does not exist. *See* Mot. to Strike at 12; Fed. R. Civ. P. 26(a)(2)(B).

requires an expert report to contain "a complete statement of all opinions the witness will express and the basis and reasons for them" and "the facts or data considered by the witness in forming them." Fed. R. Civ. P. 26(a)(2)(B)(i)-(ii).

1. *Touhy* Regulations

First, the Court concludes that the DHS's *Touhy* regulations do not serve as a basis to strike Plaintiffs' expert witness declarations. A "*Touhy*" regulation is an internal federal agency regulation that sets forth the procedure to manage requests by parties in litigation for disclosure of documents or testimony by agency employees. *See Debry v. Dep't of Homeland Sec*., 688 F. Supp. 2d 1103, 1109 (S.D. Cal. 2009). Federal agencies receive authority to promulgate such regulations under 5 U.S.C.S. § 301 which states:

> The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. *This section does not authorize withholding information from the public or limiting the availability of records to the public*.

5.U.S.C.S.§ 301 (LEXIS 2017) (emphasis added). Congress added the last sentence in 1958. *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d. 774, 777 (9th Cir. 1994). "According to the legislative history, Congress was concerned that the statute had been twisted from its original purpose as a housekeeping statute into a claim of authority to keep information from the public and, even, from the Congress." *Id*. (internal quotation marks omitted). The House Report accompanying the 1958 amendment explained "that the original housekeeping statute, enacted in 1789, was enacted to help General Washington get his administration underway by spelling out the authority for executive officials to set up offices and file Government documents." *Id*. (internal quotation marks omitted). "Over the years, executive officers 'gradually moved in' and the housekeeping statute became a 'convenient blanket to hide anything Congress may have neglected or refused to include under specific secrecy laws.'" *Id*. "According to the House Report, the purpose of the 1958 amendment was to 'correct that situation.'" *Id*.

Most federal agencies, including the DHS, have promulgated their own regulations, under section 301, governing the disclosure of information in litigation by agency employees. *See* C.F.R. § 5.44(a) (DHS *Touhy* Regulation).

Critically, the Ninth Circuit held that section 301 does not authorize agency heads to withhold documents or testimony from federal courts. *Exxon*, 34 F.3d at 778. The court acknowledged the government's concern that its employee resources not be commandeered into service by private litigants, but expressed confidence that district courts "can, and will, balance the government's concerns under the general rules of discovery." *Id*. at 779. It noted that the government was free to raise any possible claims of privilege and the district court could handle these issues with the guidance of the Federal Rules of Evidence. *Id*. at 780. Lastly, the court explicitly stated that section 301 "does not create an independent privilege to withhold government information or shield federal employees from valid subpoenas." *Id*.; *see also McElya v. Sterling Med., Inc.*, 129 F.R.D. 510, 514–15 (W.D. Tenn. 1990) (holding that discovery in the case should proceed under the Federal Rules of Civil Procedure without the application of the agency's internal *Touhy* regulations).

Here, DHS is attempting to use noncompliance with its *Touhy* regulation as a basis for striking the expert witness declarations. This is inappropriate under *Exxon*, as section 301 does not create an independent privilege. 34 F.3d at 780; *see also Newton, Newton v. Am. Debt Serv.*, No. 11-03228, 2014 U.S. Dist. LEXIS 66473, at *10–11 (N.D. Cal. May 13, 2014) (refusing to require litigants to comply with relevant *Touhy* procedures before requesting court's assistance in obtaining materials sought). Therefore, because a *Touhy* regulation does not provide an independent ground of privilege, this Court cannot strike the expert witness declarations on that basis alone and should look to the Federal Rules of Civil Procedure, and the rules of privilege within the Rules for guidance. As discussed below, Defendants have not established that the expert witness declarations contain any privileged or protected information.

2. Privilege and Work Product Protection

Second, Defendants fail to cite any statements from Plaintiffs' expert witness declarations that are privileged or work product protected. (*See* Mot. to Strike.)

Therefore, the Court will not strike Plaintiffs' expert declarations on privilege or work product protection grounds.

Defendants argue that the attorney-client privilege, the work product doctrine, the law enforcement privilege, and the deliberative process privilege each serve as a basis for striking Plaintiffs' expert witness declarations. (Mot. to Strike at 4–12.) The attorney-client privilege "protects confidential disclosures made by a client to an attorney . . . to obtain legal advice, . . . as well as an attorney's advice in response to such disclosures." *U.S. v. Ruehle*, 583 F.3d 600, 607 (9th Cir. 2009). The work product doctrine "protects 'from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation.'" *In re Grand Jury Subpoena*, 357 F.3d 900, 907 (9th Cir. 2004).

Courts within the Ninth Circuit have acknowledged that a law enforcement privilege exists. *See United States v. Rigmaiden*, 844 F. Supp. 2d 982 (D. Ariz. 2012); *Doyle v. Gonzalez*, No. MISC. S-11-0066, 2011 U.S. Dist. LEXIS 100639 (E.D. Cal. Sept. 6, 2011); *Ibrahim v. Dep't of Homeland Sec.*, No. C 06-00545, 2009 U.S. Dist. LEXIS 122598 (N.D. Cal. Dec. 17, 2009). While the Ninth Circuit itself has not expressed a single standard governing the law enforcement privilege, district courts within the Ninth Circuit have borrowed standards from other circuits. *Ibrahim*, 2009 U.S. Dist. LEXIS, 122598 at *41–42. The federal privilege applicable to the government interest in preserving the confidentiality of law enforcement records has several names: (1) the "official information privilege[,]" (2) the "law enforcement privilege[,]" and, (3) a type of "executive privilege." *Doyle*, 2011 U.S. Dist. LEXIS, 100639 at *10–11 (internal citations omitted). "The purpose of this privilege is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation." *Id.* at *11. "[T]he law enforcement privilege is not absolute[;]" it is a qualified privilege that requires balancing "the public interest in nondisclosure against the need of the particular litigant for access to the privileged information." *Ibrahim*, 2009 U.S. Dist. LEXIS, 122598 at *42 (internal quotation marks omitted). "When the records are both relevant and essential to the presentation of the case on the merits, the need for disclosure outweighs the need for secrecy, and the privilege is overcome." *Id.* (internal quotation marks omitted). "It is appropriate to conduct the balancing test for determining whether

the law enforcement privilege applies with an eye towards disclosure." *Id*. (internal quotation marks omitted).

"In order to be protected by the deliberative process privilege, a document must be both (1) predecisional or antecedent to the adoption of the agency policy and (2) deliberative, meaning, it must actually be related to the process by which policies are formulated." *United States v. Fernandez*, 231 F.3d 1240, 1246 (9th Cir. 2000) (internal citations and quotations omitted). Documents are pre-decisional when they were generated before the adoption of an agency's policy or decision. *Federal Trade Comm'n v. Warner Commc'ns, Inc*., 742 F.2d 1156, 1161 (9th Cir. 1984). Documents are "deliberative" when they contain opinions, recommendations, or advice about agency policies." *Fernandez*, 231 F.3d at 1246. Shielding such documents from discovery encourages forthright and candid discussions of ideas and, therefore, improves the decision-making process. *Id*. While facts and evidence are not protected by the deliberative process privilege, facts and evidence must be severable from the deliberative material to avoid the scope of the privilege's protection. *See Id*. at 1247.

In the Gonzalez Defendants' Motion to Strike, Defendants do not cite any particular statement from the expert witness declarations that are protected or privileged under any legal basis. (Mot. to Strike at 11–12.) Defendants argue that each of the expert witnesses had access to privileged information during their employment with DHS, and that DHS cannot tell whether their declarations include such information, and that therefore, the declarations should be stricken in their entirety. (Mot. to Strike at 11–12.) However, the fact that Defendants cannot determine whether the declarations include any privileged or protected information highlights that Defendants have not met their burden of establishing that the declarations contain privileged information.

It is Defendants' burden "to demonstrate that the privilege applies to the information in question." *See Tornay v. U.S.*, 840 F.2d 1424, 1426 (9th Cir. 1998); *see also* Mueller and Kirpatrick 2 Federal Evidence § 5:59 (4th ed.) ("In connection with both forms of the official information privilege—the deliberative process privilege or the law enforcement privilege—the government as claimant must bear the burden of raising the privilege *and proving that the privilege applies*.") (emphasis added); *Shah v. Dep't of Justice*, 89 F. Supp. 3d 1074, 1080 (D. Nev. 2015) (holding that "[f]or an agency to

properly invoke the privilege: . . . the official must specify the information that is subject to the privilege and provide an explanation as to why the privilege applies.").

Defendants' failure to identify any information contained in the declarations that is privileged or subject to the work product doctrine, and their admission that they cannot point to specific information that is protected or privileged, warrants denial of Defendants' Motion to Strike on the basis of privilege or protection grounds. *See Tornay*, 840 F.2d 1424; (*see also* Mot. to Strike at 11 ("Of course, Defendants cannot be more specific as to whether (and which) information fell under protected communications, because Plaintiffs failed to seek authorization to disclose DHS information . . . .")).

3. Rule 26(a)(B)(i)

Finally, the Court does not strike Plaintiffs' expert witness declarations on the basis of Rule 26(a)(B)(i). Rule 26(a)(2)(B)(i) provides that an expert report must contain "a complete statement of all opinions that the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(B)(i). The parties' deadline for expert disclosures (and accompanying expert reports) is not until March 16, 2018. (Dkt. No. 343.) Therefore, Plaintiffs' expert witness declarations cannot violate Rule 26(a)(2)(B)(i) at this stage. The expert declarations at issue are based on the declarants' personal observations and experiences. (*See* Dkt. Nos. 286–288.) Plaintiffs' expert declarations are permissible as "[a]n expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed." Fed. R. Evid. 703.

In conclusion, the Court **DENIES** the Gonzalez Defendants' Motion to Strike (Dkt. No. 307).

B. OTHER EVIDENTIARY OBJECTIONS

"In motions for summary judgment with numerous objections, it is often unnecessary and impractical for a court to methodically scrutinize each objection and give a full analysis of each argument raised." *Doe v. Starbucks, Inc.*, No. 08–0582, 2009 WL 5183773, at *1 (C.D. Cal. Dec. 18, 2009). "This is especially true when many of the objections are boilerplate recitations of evidentiary principles or blanket objections without analysis applied to specific items of evidence." *Id.*; *see also Stonefire Grill, Inc.*

v. FGF Brands, Inc., 987 F. Supp. 2d 1023, 1033 (C.D. Cal. 2013) (explaining that "the Court will not scrutinize each objection and give a full analysis of identical objections raised as to each fact"). Per the Standing Order that was in effect at the time the parties filed the instant Motions, the parties are not to "submit blanket or boilerplate objections to the opponent's statements of undisputed fact." (Standing Order Regarding Newly Assigned Cases Rule 8(c)(iii).) "The boilerplate objections will be overruled and disregarded." (Standing Order Regarding Newly Assigned Cases Rule 8(c)(iii).)

The parties raise a number of objections to the evidence proffered in support of and in opposition to the various Motions at issue, which the Court has reviewed. (*See, e.g.*, Dkt. Nos. 276, 299, 311, 304, 296-9.) First, the Court overrules the boilerplate objections without analysis applied to specific items of evidence. *See Starbucks, Inc.*, 2009 WL 5183773, at *1; *see also Stonefire Grill, Inc*, 987 F. Supp. 2d at 1033 (C.D. Cal. 2013); (Standing Order Regarding Newly Assigned Cases). Second, as stated above, the Court addressed the Gonzalez Defendants' objections to the Gonzalez Plaintiffs' expert witness declarations above in the Motion to Strike section. (*See supra* § III.A. (addressing arguments raised in Dkt. No. 296-9).) Finally, the Court **OVERRULES as moot** objections as to evidence that the Court does not consider in deciding Defendants' Motion.[9]

IV. REQUEST FOR JUDICIAL NOTICE

Federal Rule of Evidence 201(b) states that "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Courts "may take judicial notice of records and reports of administrative bodies." *Interstate Nat.*

[9] Many of the parties' objections regard specific deposition testimony upon which the Court does not rely, and thus, these objections are **OVERRULED as moot**. The rest of the objections that the parties raise assert objections without any analysis applied to the particular evidence, and are thus **OVERRULED**.

Gas Co. v. S. Cal. Gas Co., 209 F.2d 380, 385 (9th Cir. 1953). Courts may also take judicial notice of "matters of public record." *Davenport v. Bd. of Trustees of State Ctr. Cmty. Coll. Dist.*, 654 F. Supp. 2d 1073, 1095 (E.D. Cal. 2009); *see also Fisher v. City of N. Myrtle Beach*, No. 4:11-cv-1726-RBH-TER, 2012 WL 3638776, at *1 n.2 (D.S.C. 2012) (stating that courts may take judicial notice of factual information located on government websites).

On July 7, 2017, the Roy Defendants filed a Request for Judicial Notice in Support of Defendants' Opposition to Plaintiffs' Motion for Summary Adjudication Regarding Liability Issues. (Dkt. No. 277.) The Roy Defendants request that the Court take judicial notice of correspondence from Sheriff Jim McDonnell to the Los Angeles County Board of Supervisors concerning the "Report Back Regarding the Priority Enforcement Program." (Dkt. No. 277 at 2.) On July 21, 2017, the Roy Defendants filed a second Request for Judicial Notice (Dkt. No. 301)[10], requesting the Court to take judicial notice of the same correspondence in their July 7, 2017 Request for Judicial Notice. (*Compare* Dkt. No. 277 *with* Dkt. No. 301.) The Court **GRANTS** the Roy Defendants' Requests for Judicial Notice as the LASD report in the September 22, 2015 letter is readily available to the public on a government website. *See Davenport*, 654 F. Supp. 2d at 1095 (E.D. Cal. 2009); *see also Fisher*, 2012 WL 3638776, at *1 n.2.[11]

On May 16, 2017, the Gonzalez Plaintiffs filed a Request for Judicial Notice in Support of their Second Motion for Partial Summary Judgment. (Dkt. No. 253.) The Gonzalez Plaintiffs request that the Court take judicial notice of twelve different records

[10] The Roy Defendants improperly titled this motion as their "Request for Judicial Notice in Support of their Opposition to Plaintiffs' Motion for Summary Adjudication Regarding Liability Issues, which is the same title as their other Request for Judicial Notice. (*Compare* Dkt. No. 301 *with* Dkt. No. 277.) Based on a footer on the blue backing of the chambers copy that the Defendants submitted to the Court and the Court's docket, it appears that Defendants' second Request for Judicial Notice was filed in Support of their Reply to Plaintiffs' Opposition to Motion for Summary Judgment.

[11] The correspondence from Sheriff Jim McDonnell to the Los Angeles County Board of Supervisors is available for public viewing on the Los Angeles County Website, *available at* http://file.lacounty.gov/SDSInter/bos/bc/233871_PEPICEReportBack09-22-15OrigLtr..pdf (last visited September 7, 2017).

or reports from DHS, ICE, the U.S. Department of Justice, Government Accountability Office, and the Census Bureau, all of which are publicly available online. (*See* Dkt. No. 253 at 1–6.) Because it is appropriate for the Court to take judicial notice of records and reports of administrative bodies and other matters of public record, the Court **GRANTS** the Gonzalez Plaintiffs' Request for Judicial Notice. *See Interstate Nat. Gas Co.*, 209 F.2d at 385; *Davenport*, 654 F. Supp. 2d at 1095 (E.D. Cal. 2009); *see also Fisher*, 2012 WL 3638776, at *1 n.2.

V. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate when, after adequate discovery, the evidence demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. A disputed fact is material where its resolution might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine if the evidence is sufficient for a reasonable jury to return a verdict for the non-moving party. *Id.* The moving party bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). The moving party may satisfy that burden by showing "that there is an absence of evidence to support the non-moving party's case." *Id.* at 325.

Once the moving party has met its burden, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, the non-moving party must go beyond the pleadings and identify specific facts that show a genuine issue for trial. *Id.* at 587. Only genuine disputes over facts that might affect the outcome of the lawsuit will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248; *see also Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001) (holding that the non-moving party must present specific evidence from which a reasonable jury could return a verdict in its favor). A genuine issue of material fact must be more than a scintilla of evidence, or evidence that is merely colorable or not significantly probative. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

A court may consider the pleadings, discovery, and disclosure materials, as well as any affidavits on file. Fed. R. Civ. P. 56(c)(2). Where the moving party's version of events differs from the non-moving party's version, a court must view the facts and draw reasonable inferences in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

Although a court may rely on materials in the record that neither party cited, it need only consider cited materials. Fed. R. Civ. P. 56(c)(3). Therefore, a court may properly rely on the non-moving party to identify specifically the evidence that precludes summary judgment. *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). The district court is "not required to comb the record to find some reason to deny a motion for summary judgment." *See Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988); *see also Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001) ("The district court need not examine the entire file for evidence establishing a genuine issue of fact, where the evidence is not set forth in the opposing papers with adequate references so that it could conveniently be found.").

Finally, the evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory or speculative testimony in affidavits and moving papers is insufficient to raise a genuine issue of fact and defeat summary judgment. *Thornhill's Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson*, 477 U.S. at 253.

B. Dismissal Under Federal Rule of Civil Procedure 12(b)(1)

A motion to dismiss an action pursuant to Federal Rule of Civil Procedure 12(b)(1) raises the question of the federal court's subject matter jurisdiction over the action. Fed. R. Civ. P. 12(b)(1). Because federal courts are of limited jurisdiction, they possess original jurisdiction only as the Constitution and statutes authorize. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Moreover, "no matter how important the issue, a court lacking jurisdiction is powerless to reach the merits under

Article III of the Constitution." *Fleck & Assocs., Inc. v. Phoenix, City of, an Ariz. Mun. Corp.*, 471 F.3d 1100, 1107 n.4 (9th Cir. 2006).

An attack on the Court's subject-matter jurisdiction can take either a facial or factual form. *See, e.g., Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial challenge, as Defendants raise here, asserts that "the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Id.* In adjudicating a facial challenge, the Court must presume Plaintiffs' allegations to be true and must draw all reasonable inferences in Plaintiffs' favor. *See, e.g., Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004); *see also African Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir.1996).

The burden rests 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 quotation marks omitted).

VI. DISCUSSION

A. Gonzalez Action

In the Gonzalez Plaintiffs' Second Motion for Partial Summary Judgment, Plaintiffs raise two principal arguments with respect to the Probable Cause Subclass. First, Plaintiffs argue that ICE's issuance of detainers based solely upon the use of the electronic databases violates the Fourth Amendment because such databases are inaccurate and incomplete. (Dkt. No. 247-1 at 14–20.) Second, Plaintiffs argue that ICE's practice of issuing detainers based on the lack of information in the databases, coupled with some indication of foreign birth also violates the Fourth Amendment. (Dkt. No. 247-1 at 20–21.) This scenario is referred to as "foreign born no matches." [12] (Dkt.

[12] The parties refer to this group as: "foreign born no match," "foreign birth-no match," "foreign born no matches," and "foreign born, no match." Despite the slight variance in the terms used for this group, all terms refer to the same group.

No. 247-1 at 21.) As to the Statutory Subclass, Plaintiffs claim that 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 ICE's Motion to Dismiss and for Partial Summary Judgment, ICE argues that this Court lacks subject matter jurisdiction over Plaintiffs' claims because the INA provides exclusive judicial review through the Petition for Review process. (Dkt. No. 239-1 at 10–15.) As to the Probable Cause Subclass, ICE asserts that judgment should be granted in ICE's favor because the Fourth Amendment does not require ICE to alter its practices of using the electronic databases in determining whether probable cause exists to issue a detainer. (Dkt. No. 239-1 at 16–20.) Finally, ICE contends that judgment should be granted in ICE's favor as to the Statutory Subclass because ICE no longer issues detainers without a warrant, rendering Plaintiffs' claims moot. (Dkt. No. 239-1 at 15–16.)

The Court will first address ICE's argument that this Court does not have jurisdiction over Plaintiffs' claims. The Court will next discuss the parties' arguments pertaining to the Probable Cause Subclass. Finally, the Court will address the parties' arguments regarding the Statutory Subclass.

1. Jurisdiction

The Gonzalez Defendants (ICE) seek dismissal of the Gonzalez Plaintiffs' claims under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. (Dkt. No. 239 at 10.) Defendants explain 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 Immigration and Nationality Act ('INA'), 8 U.S.C. § 1252(a)(5), (b)(9), and (g)." (Dkt. No. 239 at 10.) Defendants argue 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.)

Title 8 of the United States Code section 1252(a)(5) titled, "Exclusive means of review," "prescribes the vehicle for judicial review: '[A] petition for review . . . shall be the sole and exclusive means for judicial review of an order of removal . . . .'" *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (citing 8 U.S.C. § 1252(a)(5)). "Lest there be any question about the scope of judicial review, § 1252(b)(9) mandates that '[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a final order . . . ." *Id.* (citing 8 U.S.C. § 1252(b)(9)).

"The Supreme Court has . . . characterized § 1252(b)(9) as a zipper clause . . . explaining that the statute's purpose is to consolidate judicial review of immigration proceedings into one action in the court of appeals." *Id.* (citations and internal quotation marks omitted). "[E]qually importantly, § 1252(b)(9) has built-in limits. By channeling only those questions 'arising from any action taken or proceeding brought to remove an alien,' the statute excludes from the PFR process any claim that does not arise from removal proceedings." *Id.* at 1032. "Accordingly, claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *Id.* (citing *Torres-Tristan v. Holder*, 656 F.3d 653, 658 (7th Cir. 2011) ("Ancillary determinations made outside the context of a removal proceeding, however, are not subject to direct review."); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007) (reading "arising from" "to exclude claims that are independent of, or wholly collateral to, the removal process")). In *J.E.F.M.*, the Ninth Circuit "conclud[ed] that §§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and practices challenges, through the PFR process whenever they 'arise from' removal proceedings." *Id.* at 1035.

The subclasses remaining in the Gonzalez action consist of individuals who were not subject to ongoing removal proceedings and were subject to detainers that were not based upon a final order of removal signed by an immigration judge. (*See* Dkt. 184 at 12–13.) Thus, distinct from the right-to-counsel claims at issue in *J.E.F.M.*, which arose from removal proceedings, Plaintiffs' claims here do not "arise from" removal proceedings because the Gonzalez Plaintiffs were not subject to ongoing removal 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. *See J.E.F.M.*, 837 F.3d at 1031–35; (Dkt. No. 184 at 12–13). "Because [Plaintiffs'] . . . claims relate to the ICE officers'

actions *before* removal proceedings were filed, and do not seek to disrupt the outcome of removal proceedings, the Court finds that they are independent of the removal process. As a result, §§ 1252(a)(5) and 1252(b)(9) do not strip this Court of jurisdiction." *See Medina v. U.S. DHS*, No. C17-218-RSM-JPD, 2017 WL 2954719, at *11 (W.D. Wash. March 14, 2017) (emphasis in original).

Additionally, in *J.E.F.M.*, the Ninth Circuit explained that "while [section 1252(a)(5) and 1252(b)(9) limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeals." *J.E.F.M.*, 837 F.3d at 1031 (emphasis in original). Here, many of the class members, while subject to detainers, were or are never placed in removal proceedings. Therefore, if the Court were to determine that it does not have jurisdiction over Plaintiffs' claims it would be tantamount to denial of judicial review. And as the Ninth Circuit has explained, section 1252(a) and 1252(b) "are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions." *See J.E.F.M.*, 837 F.3d at 1031. Thus, this Court's exercise of jurisdiction is consistent with Ninth Circuit precedent.

Finally, the Ninth Circuit has held that "§ 1252(g) does not bar review of . . . actions that occurred *prior* to any decision to 'commence [removal] proceedings,' if any, . . . or to execute [a] removal order." *Kwai fun Wong v. United States*, 373 F.3d 952, 965 (9th Cir. 2004) (emphasis in original). Therefore, because Plaintiffs' claims challenge action that occurred before any decision to commence removal proceedings, section 1252(g) does not bar this Court's review of Plaintiffs' claims. *See id.*; (Dkt. No. 184 at 12–13).

Therefore, the Court **DENIES** the Gonzalez Defendants' Motion to Dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). (Dkt. No. 239.)

2. Probable Cause Subclass

The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has held that the Fourth Amendment's

protections require law enforcement to have probable cause before detaining a person. *See Terry v. Ohio*, 392 U.S. 1, 38 (1968) ("The infringement on personal liberty of any 'seizure' of a person can only be 'reasonable' under the Fourth Amendment if we require the police to possess 'probable cause' before they seize him."). Probable cause requires "facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.'" *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)).

An ICE agent is required to have probable cause to issue a warrantless detainer. *See Morales v. Chadbourne*, 793 F.3d 208, 211 (1st Cir. 2015). The Gonzalez Plaintiffs argue that ICE lacks probable cause when it issues detainers in sole reliance on federal immigration databases that it knows to be inaccurate, incomplete, and outdated. (Dkt. No. 247-1 at 15.) Defendants argue that the Fourth Amendment does not prohibit ICE from relying on database checks to determine that there is probable cause that a particular individual is removable. (Dkt. No. 239-1 at 18.) [13]

"The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). The Supreme Court has "stated, however, that '[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt,' and that the belief of guilt must be particularized with respect to the person to be searched or seized." *Id.* (citations omitted). "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable . . . officer, amount to' probable cause." *Id.* (citations omitted).

[13] ICE also raises arguments which cannot apply to the Probable Cause Subclass. (Dkt. No. 272 at 11–12.) ICE argues that it does not issue immigration detainers based solely on immigration databases. (Dkt. No. 272 at 12.) However, this argument does not apply to the Probable Cause Subclass because by definition, the Probable Cause Subclass consists of only those individuals subject to detainers in which probable cause was exclusively determined from reliance on databases, not any other individuals subject to detainers in which probable cause was based upon databases *and other methods*, such as interviews with the individual, or reliance on final orders of removal. (Dkt. No. 184 at 12–13.)

Law enforcement agencies may rely on computer databases to establish probable cause if it is reasonable for them to do so. *See Herring v. United States*, 555 U.S. 135, 146–47 (2009) (declining to apply exclusionary rule because officer's reliance on computer database is reasonable where no evidence of routine or widespread errors on computer database exist); *id.* at 146 ("In a case where systematic errors were demonstrated, it might be reckless for officers to rely on an unreliable warrant system."); *Arizona v. Evans*, 514 U.S. 1, 17 (1995) (O'Connor, J., concurring) ("Surely it would *not* be reasonable for the police to rely . . . on a recordkeeping system . . . that routinely leads to false arrests."); *Hudson v. Michigan*, 547 U.S. 586, 605 (Kennedy, J., concurring in part and concurring in judgment) ("If a widespread pattern of violations were shown . . . there would be reason for grave concern."). "Relying on an information system which knowingly and structurally provides for a class of erroneous warrants will result in civil liability. It is one thing to have random errors, which may occur in even the best of systems, but where the information system, by its very design generates false positives of a specific category that can easily be avoided, it may not be reasonably relied upon." *Willis v. Mullins*, 517 F. Supp. 2d 1206, 1225–26 (E.D. Cal. 2007).

Thus, the issue as to whether summary judgment should be entered as to the Probable Cause Subclass turns on whether the databases that ICE uses are complete and reliable such that they are a sufficient source for the probable cause determination.

The Court finds that a factual dispute exists as to the reliability of the databases that ICE uses, and thus summary judgment on this issue is not appropriate. *See Garter-Bare Co. v. Munsingwear, Inc.*, 650 F.2d 975, 980–81 (9th Cir. 1980) (stating that it is a "well-established rule that the trial judge cannot weigh evidence or judge the credibility of witnesses" on a motion for summary judgment"). It is undisputed that "ICE requires contractors and agents issuing detainers on the basis of electronic database checks alone to check only four databases prior to issuing a detainer. Those databases are the following: (1) Central Index System ("CIS"), (2) Computer Linked Application Information Management Systems ("CLAIMS"), (3) Treasury Enforcement Communications System ("TECS"), and (4) Enforcement Case Tracking System ("ENFORCE")/ EARM." (Dkt. No. 297-1 ¶ 70.) It is also undisputed that "there is no requirement that contractors or agents check any other databases; they are left to their discretion to do so if they feel it is necessary." (Dkt. No. 297-1 ¶ 71.) Plaintiffs assert that "[i]n addition to the significant gaps of information in CIS and CLAIMS, CIS and

CLAIMS databases are also replete with errors, of which ICE is well aware." (Dkt. No. 297-1 ¶ 93.) While Plaintiffs cite evidence supporting that ICE encounters errors in CIS in approximately three out of ten cases, ICE cites evidence that an error in one or more of the databases could be overcome by the totality of searches that includes other databases. (Dkt. No. 297-1 ¶ 94.) Because the Court cannot weigh evidence at this stage in the proceedings, the Court finds that the factual dispute as to the reliability of ICE's use of its databases to establish probable cause bars summary judgment as to this issue. *See Garter-Bare Co.*, 650 F.2d at 980–81 (9th Cir. 1980).

As a result, the Court **DENIES** the Gonzalez Plaintiffs' Second Motion for Partial Summary Judgment as to the Probable Cause Subclass, with the exception of the "foreign born no match" group addressed separately and discussed below. The Court also **DENIES** the Gonzalez Defendants' Motion for Partial Summary Judgment as to the Probable Cause Subclass.

3. "Foreign Born No Match"

"Until June 2015, ICE had a policy and practice of issuing detainers based on a person's foreign birth and no records in an immigration database (known as a 'foreign born no match')." (Dkt. No. 296-8 ¶ 136.) "ICE admits that evidence of foreign birth and no match in a federal immigration database is not probable cause of removability." (Dkt. No. 296-8 ¶ 138.) "In 2015, DHS announced that immigration detainers would no longer be issued based on 'Foreign Birth-No Match.'" (Dkt. No. 296-8 ¶ 140.)

ICE argues that Plaintiffs should not be entitled to summary judgment on the "foreign born no matches" group of the Probable Cause Subclass because ICE no longer issues detainers on "foreign born no matches" as of 2015, essentially arguing that Plaintiffs' claim is moot. (Dkt. No. 272 at 18–19.)

"The voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012). "The standard for determining whether a defendant's voluntary conduct moots a case is 'stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably

be expected to recur.'" *Bell v. City of Boise*, 709 F.3d 890, 898 (9th Cir. 2013) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). The party asserting mootness bears a "heavy burden" of establishing that "the challenged conduct cannot reasonably be expected to start up again." *Friends of the Earth*, 528 U.S. at 189. "This heavy burden applies to a government entity that voluntarily ceases allegedly illegal conduct." *Bell*, 709 F.3d at 898–99.

ICE does not meet its heavy burden of establishing that it will not resume its practice of issuing warrantless detainers on "foreign born no matches." ICE has not alleged any facts to support its heavy burden that ICE cannot reasonably be expected to return to its practice of issuing detainers based on "foreign born no matches" in the database. (*See* Dkt. No. 272 at 18–19.) Thus, Plaintiffs' claim is not moot.

Because it is undisputed that "evidence of foreign birth and no match in a federal immigration database is not probable cause of removability," the Court **GRANTS** the Gonzalez Plaintiffs' Second Motion for Partial Summary Judgment as to those individuals in the "foreign born no matches" group. (*See* Dkt. No. No. 296-8 ¶ 138.)

4. Statutory Subclass

The Gonzalez Plaintiffs claim that the undisputed facts establish that it is ICE's policy and practice to issue detainers to those in the Statutory Subclass without making any assessment of flight risk. (Dkt. No. 247-1 at 21.) According to Plaintiffs, this conduct 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.)

Defendants argue that because ICE no longer issues detainers without warrants, judgment should be entered in ICE's favor. (Dkt. No. 239-1 at 15–16.) According to ICE, Plaintiffs' claim challenges prior policy, not current policy, and therefore, Plaintiffs' claim is moot. (Dkt. No. 239-1 at 16.)

Title 8 of the United States Code section 1357(a)(2) "grants INS officers the power to make warrantless civil deportation arrests." *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995). "Section 1357(a)(2) 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.'" *Id.* (emphasis in original). 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." (Dkt. No. 297-1 ¶ 154.) Thus, ICE's practices were in contravention of 8 U.S.C. section 1357(a)(2). 8 U.S.C. § 1357(a)(2); *see also Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1000 (N.D. Ill. 2016) (granting summary judgment in favor of Plaintiffs' statutory class claim that DHS exceeded its statutory authority "by seeking to detain individuals without a warrant and without a determination by ICE that the individuals are 'likely to escape' within the meaning of 8 U.S.C. § 1357(a)(2)").

Just as the Court held above with respect to ICE's practice of detaining those in the "foreign born no match" group, 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. *Friends of the Earth*, 528 U.S. at 189; *Knox*, 132 S. Ct. at 2287. On its face, ICE's 2017 Detainer Policy permits ICE to change its policies as it so chooses. (*See* Dkt. No. 297-1 ¶ 157.) ICE's "2017 Detainer Policy provides that it 'may be modified, rescinded, or superseded at any time without notice' and that 'no limitations are placed by this guidance on otherwise lawful enforcement or litigative prerogatives of ICE.'" (Dkt. No. 297-1 ¶ 157) Thus, Plaintiffs' claim is not moot. *Bell*, 709 F.3d at 898 ("The standard for determining whether a defendant's voluntary conduct moots a case is 'stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'") (quoting *Friends of the Earth, Inc.*, 528 U.S. at 189).

Therefore, the Court **GRANTS** the Gonzalez Plaintiffs' Second Motion for Partial Summary Judgment as to the Statutory Subclass. The Court **DENIES** the Gonzalez Defendants' Motion to Dismiss and for Partial Summary Judgment as to the Statutory Subclass.

B. Roy Action

As stated above, two other Motions pending before the Court are the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240), and the

Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242). In this section, the Court will address the Roy parties' arguments in their cross-motions.

1. Section 1983 Fourth Amendment Claims

a. Investigative Detainer Class

In the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability, Plaintiffs argue that they are entitled to summary adjudication on the "investigative" detainer class. (Dkt. No. 240 at 13–14.) According to Plaintiffs, "the LASD honored . . . immigration detainers that requested detention on the sole grounds that *an investigation had been initiated*, facially communicating that ICE had not yet acquired evidence to support probable cause of removability." (Dkt. No. 240 at 13 (emphasis in original).) Defendants argue that while the language on ICE's detainer forms have been modified several times during the period relevant to the case, "ICE agents have always been required to establish . . . the existence of probable cause of a subject's removability from the United States, prior the issuance of a detainer." (Dkt. No. 273 at 5 (emphasis omitted).)

It is undisputed that "[t]he 8/2010 version of the I-247 Form includes four checkboxes indicating the basis for issuing an immigration detainer; the first box states 'Investigation has been initiated to determine whether this person is subject to removal from the United States.'" (Dkt. No. 275 ¶ 2.) It is also undisputed that "[t]he 6/2011 version of the I-247 Form includes four checkboxes indicating the basis for issuing an immigration detainer; the first box states 'Initiated an investigation to determine whether this person is subject to removal from the United States.'" (Dkt. No. 275 ¶ 3.) "During the class period, ICE issued 21,179 detainers to the LASD with the 'initiated an investigation' or 'investigation has been initiated' box checked, and 2,911 detainers with no detainer reason box checked." (Dkt. No. 275 ¶ 5.)

Plaintiffs argue that the "investigative detainers" expressly disclaim the existence of probable cause on their face. (Dkt. No. 279 ¶ 154.) However, Defendants argue that despite whatever form was used and what the options on the form were, ICE was always required to issue detainers based upon probable cause, meaning that the boxes on the

form were not always indicative of the probable cause basis for the detainer. (*See* Dkt. No. 279 ¶ 83.) Because there is a material factual dispute as to whether the "investigative detainers" were actually based on probable cause, and the box checked indicated something else, or whether they were not based on probable cause and the "investigative detainers" meant that an investigation into probable cause was occurring, rather than some sort of other investigation, summary judgment as to this issue is not proper. *See Anderson*, 477 U.S. at 247–52 (explaining that in deciding motions for summary judgment, the court rules only on questions of law and does not weigh evidence). As a result the Court **DENIES** Plaintiffs' Motion for Summary Adjudication Regarding Liability as to the Investigative Detainer Class.

b. Post-48 Hour *Gerstein* Subclass

In the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability, Plaintiffs argue that they are entitled to summary adjudication on liability for the Post-48 Hour *Gerstein* Class. (Dkt. No. 240 at 10–13.) It is undisputed that "[f]rom October 2010 until June 2014," it was LASD's policy and practice "to detain individuals beyond the time they were eligible for release on the immigration detainer for up to 48 hours excluding weekends and holidays." (Dkt. No. 275.) In the Roy Defendants' Motion for Summary Judgment, Defendants argue that Plaintiffs' claim improperly relies on a rule exclusive to criminal proceedings for providing judicial probable cause determinations within 48 hours of a warrantless criminal arrest. (Dkt. No. 242 at 20.)

To address whether either party is entitled to summary judgment as to the Post-48 Hour *Gerstein* Subclass it is necessary to first discuss the purpose of detainers and determine whether the LASD's practice of holding inmates subject to detainers beyond the date they were eligible for release constitutes an "arrest" under the Fourth Amendment.

i. Purpose of ICE Detainers

ICE is permitted to issue a detainer to a law enforcement agency to "seek[] custody of an alien presently in custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a). "Once the alien has completed her criminal custody and is 'not otherwise detained by a criminal justice agency,' the detainer instructs the agency

to 'maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays[,] in order to permit assumption of custody by [ICE].'" *Morales*, 793 F.3d at 214 (citing 8 C.F.R. § 287.7(d)). A "detainer is a request that [another law enforcement] agency advise [ICE], prior to release of the alien, in order for [ICE] to arrange to assume custody" of the alien. 8 C.F.R. § 287.7(a). "Thus, the sole purpose of a detainer is to request the continued detention of an alien so that ICE officials may assume custody of that alien and investigate whether to initiate removal proceedings against her." *Morales*, 793 F.3d at 214–15. "[F]ederal law leaves compliance with immigration holds wholly within the discretion of states and localities." *Flores v. City of Baldwin Park*, No. CV 14-9290-MWF (JCx), 2015 WL 756877, at *4 (C.D. Cal. Feb. 23, 2016) (citing *Galarza v. Szalczyk*, 745 F.3d 634, 640–43 (3d Cir. 2014) (holding that "immigration detainers are requests and not mandatory orders" and observing that "all federal agencies and departments having an interest in the matter have consistently described such detainers as requests")).

ii. Whether Detainment of Individuals Beyond the Time They are Due For Release Constitutes a New Arrest for Purposes of the Fourth Amendment

It is well-established that "[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). Under the Fourth Amendment, "a fair and reliable determination of probable cause" must be provided "as a condition for any significant pretrial restraint of liberty." *Baker v. McCollan*, 443 U.S. 137, 142 (1979). If an individual is "kept in custody for a new purpose after [the individual is] entitled to release, [that individual] was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification." *Id.* Thus, where a "continued detention exceed[s] the scope of the Jail's lawful authority over the released detainee," the detention "constitute[s] a new arrest, and must be analyzed under the Fourth Amendment." *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014).

Probable cause exists when the facts and circumstances are "sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense." *Gerstein*, 420 U.S. at 111–12 (internal quotation marks omitted). "By its definition, probable cause can only exist in relation to criminal conduct. It follows that civil disputes cannot give rise to probable cause." *Allen v. City of Portland*, 73 F.3d 232, 237 (9th Cir. 1995). "The Supreme Court has characterized deportation and removal proceedings as 'civil in nature.'" *Mercado v. Dallas County, Texas*, 229 F. Supp. 3d 501, 511 (N.D. Tex. 2017) (citing *Padilla v. Kentucky*, 559 U.S. 356 (2010)); *see also Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) ("[B]ecause mere unauthorized presence is not a criminal matter, suspicion of unauthorized presence alone does not give rise to an inference that criminal activity is 'afoot.'").

"Although the Supreme Court has not resolved whether local police officers may detain or arrest an individual for suspected *criminal* immigration violations, the Court has said that local officers generally lack authority to arrest individuals suspected of *civil* immigration violations." *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013). Courts "have universally . . . interpreted *Arizona v. United States* as precluding local law enforcement officers from arresting individuals solely based on known or suspected civil immigration violations." *Id.* (citing 567 U.S. 387 (2012)). "The rationale for this . . . is straightforward[:] A law enforcement officer may arrest a suspect only if the officer has probable cause to believe that the suspect is involved in criminal activity." *Id.* (quoting *Brown v. Texas*, 443 U.S. 47, 51 (1979)) (internal quotation marks omitted). "Because civil immigration violations do not constitute crimes, suspicion or knowledge that an individual has committed a civil immigration violation, by itself, does not give a law enforcement officer probable cause to believe that the individual is engaged in criminal activity." *Id.* "Additionally, allowing local law enforcement officers to arrest individuals for civil immigration violations would infringe on the substantial discretion Congress entrusted to the Attorney General in making removability decisions, which often require the weighing of complex, diplomatic, political, and economic considerations." *Id.* (citing *Arizona*, 567 U.S. at 407–09).

Here, the undisputed evidence establishes that LASD held inmates beyond their release dates on the basis of immigration detainers. (Dkt. No. 275 ¶ 16 (Defendants respond that it is "[u]ndisputed" that "[f]rom October 2010 until June 2014, LASD's policy and practice was to detain individuals beyond the time they were eligible for release on the immigration detainer for up to 48 hours excluding weekends and holidays.").) Because this constitutes a new arrest under the Fourth Amendment, the LASD could only arrest these individuals if LASD officers had probable cause to suspect that the individuals were involved in criminal activity. *See Gerstein*, 420 U.S. at 111–12; *Allen*, 73 F.3d at 237. The LASD officers did not have probable cause that the individuals were involved in criminal activity, but were instead holding these individuals on the basis of civil immigration detainers. (Dkt. No. 275 ¶ 16.) The LASD officers have no authority to arrest individuals for civil immigration offenses, and thus, detaining individuals beyond their date for release violated the individuals' Fourth Amendment rights. *See Santos*, 725 F.3d at 465.

Because the LASD did not have authority to arrest these individuals for suspected civil immigration violations, LASD's detention of those in the Post-48 Hour *Gerstein* Subclass was in contravention of the Fourth Amendment. Therefore, the Court **GRANTS** Plaintiffs' Motion for Summary Adjudication Regarding Liability as to the Post-48 Hour *Gerstein* Subclass. The Court **DENIES** Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment as to the Post-48 Hour *Gerstein* Subclass.

2. No-Bail Notation Class and No-Money Bail Subclass

The Roy Plaintiffs argue that they are entitled to summary adjudication on liability as to the No-Bail Notation Class and the No-Money Bail Subclass. (Dkt. No. 240 at 18–25.) Defendants argue that they are entitled to summary judgment as "to all of Plaintiffs' claims based on an alleged denial of the right to post bail." (Dkt. No. 273 at 14; Dkt. No. 242 at 10–11.)

a. No-Bail Notation Class

"LASD entered immigration detainers into their data system as an additional 'charge' on the inmate." (Dkt. No. 275 ¶ 29.) "Within LASD's database system, some charges or holds have specific bail amounts attached to them, while others do not have a specific dollar amount." (Dkt. No. 275 ¶ 30.) "Charges or holds that do not have a specific dollar amount are designated as 'No Bail' holds." (Dkt. No. 275 ¶ 31.) According to Plaintiffs, "[a]side from ICE holds, the 'No Bail' notation is used exclusively for holds for which the inmate cannot post bail, including state prison holds (indicating that the state prison has custody of the inmate), probation holds indicating that the person may not be released due to probation violation) and warrants for which there is no bail." (Dkt. No. 275 ¶ 32.) Defendants contend that the "No Bail" notation is not used exclusively for holds for which the inmate cannot post bail, but rather, the "No Bail" notation is used for holds when there is no bail amount specified, unlike most criminal charges which are assigned a specific dollar figure. (Dkt. No. 275 ¶¶ 32–34.) Plaintiffs contend that if an inmate was subject to an immigration detainer, the inmate was not allowed to post bail, and Defendants argue that it has always been the LASD's policy and practice to allow inmates subject to immigration detainers to post bail. (*See* Dkt. No. 275 ¶¶ 46–47.)

Defendants argue that "the only Plaintiff seeking any damages claims, Plaintiff Martinez-Perez, has no viable bail-related claim due to the absence of any admissible evidence of any attempt by anyone to post bail on his behalf," and that Defendants are entitled to summary judgment as to the No-Bail Notation Class. (Dkt. No. 273 at 14; Dkt. No. 242 at 10.) Plaintiffs claim that Defendants misconstrue Plaintiffs' liability theories for the no-bail class. (Dkt. No. 278.) According to Plaintiffs, liability does not hinge on whether the LASD specifically communicated to any individual that they could not post bail due to an ICE detainer, but rather, liability turns on whether LASD's practice of characterizing all ICE detainers as "no bail" holds effectively denied ICE-hold inmates the right to post bail. (Dkt. No. 278.)

Because there is a factual dispute as to the meaning and practical implementation of the "No Bail" notation, summary judgment is not appropriate as to the No Bail Notation Class. (*See* Dkt. No. 275 ¶¶ 32–34, 46–47.) Therefore, the Court **DENIES** both Plaintiffs' Motion for Summary Adjudication Regarding Liability and the Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment as to the No Bail Notation Class.

b. No-Money Bail Subclass

It is undisputed that "[i]t is LASD policy not to book anyone into its jails for whom bail is set at $25,000 or less unless they refused to sign the citation, demanded to appear before a magistrate, were charged with a probation violation, or were charged with a disqualifying enumerated charge (e.g. escape from custody, child abuse, domestic violence, etc.)[.]" (Dkt. No. 275 ¶ 56.) It is also undisputed that "[p]ursuant to LASD's Policy of Bail Acceptance, where an individual with bail of less than $25,000 qualified for release without posting bail, watch commanders had discretion to book the person where they could not produce sufficient ID or were intoxicated." (Dkt. No. 275 ¶ 57.) And finally, it is undisputed that "[u]ntil June 2014, LASD's policy of not booking arrestees with bail of less than $25,000 did not apply to those with ICE Detainers." (Dkt. No. 275 ¶ 58.) Thus, the LASD treated Plaintiffs in the No-Money Bail Subclass differently than other arrestees solely on the basis that Plaintiffs were subject to immigration holds. The No-Money Bail Subclass was treated differently on the face of the LASD's policy, thereby establishing the predicate requirement "that a class that is similarly situated had been treated disparately." *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957, 966 (9th Cir. 2017) (citing *Christian Gospel Church, Inc. v. City & Cty. of S.F.*, 896 F.2d 1221, 1225 (9th Cir. 1990), *superseded on other grounds by* 42 U.S.C. § 2000e). "Once that is established, the central inquiry where the group at issue is not entitled to heightened scrutiny is that the differential treatment must be 'rationally related to a legitimate state interest.'" *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). For the state action "to be legitimate, it must be 'properly cognizable' by the government asserting it and 'relevant to interests' it 'has the authority to implement.'" *Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 996 (N.D. Cal. 2012) (quoting *City of Cleburne*, 473 U.S. at 441). Even when the review is rational basis, it "is more searching when a classification adversely affects unpopular groups." *Diaz v. Brewer*, 656 F.3d 1008, 1012 (9th Cir. 2011).

The Court holds that there is no lawful government purpose for this distinction between those arrestees subject to detainers and those not subject to detainers because as explained above, the LASD does not have authority to detain people exclusively on the basis of suspected civil immigration violations. *See Santos*, 725 F.3d at 465. Accordingly, the LASD was asserting and relying on "interests" it lacked "the authority to implement." *See Cleburne*473 U.S. at 441. Therefore, 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 amount of less than $25,000 violates equal protection. As a result, the Court **GRANTS** summary judgment in favor of Plaintiffs as to the No-Money Bail Subclass.

3. Whether Plaintiffs' State Law Claims Are Barred Under California Government Code Section 820.2

Defendants argue that because their challenged decisions were "basic policy decisions" as opposed to purely ministerial acts, Plaintiffs' state law claims are barred under California Government Code section 820.2. (Dkt. 242 at 22.) Plaintiffs argue that discretionary immunity under section 820.2 should not apply to Defendants' actions because "[e]ven if supervisors have discretionary immunity from promulgating unconstitutional policies concerning ICE detainers, employees who carried out the unlawful policies in their ministerial capacity are not immune because '[i]mmune discretionary acts involve planning and policy making whereas unprotected ministerial acts involve operational functions.'" (Dkt. No. 278 at 24 (quoting *Doe 1 v. City of Murrieta*, 102 Cal. App. 4th 899, 912 (Cal. Ct. App. 2002)).)

California Government Code section 820.2 states: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Cal. Gov. Code § 820.2. California Government Code section 815.2(b) states: "Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." Cal. Gov. Code § 815.2(b). "A workable definition of immune discretionary acts draws the line between planning and operational functions of government." *Liberal v. Estrada*, 622 F.3d 1064, 1084 (9th Cir. 2011) (internal quotation marks omitted). "Immunity is reserved for those basic policy decisions [which have] . . . been [expressly] committed to coordinate branches of government, and as to which judicial interference would thus be unseemly." *Id.* (internal quotation marks omitted).

Plaintiffs argue that even if Defendants' policy decisions are entitled to discretionary immunity, the staff implementing those same policy decisions are not

entitled to such immunity. (Dkt. No. 278 at 24–25.) In support of their argument Plaintiffs rely on *Johnson v. State of California*, 69 Cal. 2d 782, 793–97 (Cal. 1968). (Dkt. No. 278 at 24.) *Johnson* supports that there are some instances in which the discretionary policy decision is immune, but other ministerial acts relating to that policy are not. *See* 69 Cal. 2d at 796–97. For example, *Johnson* cites a case in which the decision as to where to place wires across a canyon are assumed to be discretionary, but the failure to warn the pilot about that placement was not immune, *id.* at 796 (citing *United States v. Washington*, 351 F.3d 913, 916 (9th Cir. 1965)), and a case in which the decision to admit a patient to the hospital was discretionary and thus immune, but there was no immunity for the treatment after admitting the patient to the hospital, *id.* (citing *Costley v. United States*, 181 F.2d 723, 724–25 (5th Cir. 1950)). This case is distinct, however, from those cases relied upon in *Johnson*.

Unlike the cases cited in *Johnson*, the purported discretionary policy here is more closely connected to the purported ministerial acts implementing the discretionary policy. The policy of holding individuals beyond their date for release based on ICE's detainers can only be effected through the purported ministerial acts. If the Court were to accept Plaintiffs' argument that all ministerial acts implementing discretionary policies are not immune, it would essentially eviscerate the immunity provided under section 820.2. The fact that ministerial acts are necessary to implement a discretionary policy decision does not lead to the result that section 820.2 immunity does not apply. *See Buzayan v. City of Davis*, 927 F. Supp. 2d 893, 906 (E.D. Cal. 2013). For example, the court in *Buzayan* applied immunity to a policy decision "even though the means by which to implement that decision may well be ministerial." *Id.* The Court focused on the "gravamen" of the plaintiffs' claims which were not the ministerial acts, but rather the discretionary actions. *See id.* at 906 ("Therefore, the decision whether to perform an optional act like releasing the audiotapes is discretionary, even though the means by which to implement that decision may well be ministerial. While Plaintiffs attempt to argue that Defendant Wong's decision about what to redact from the recordings was accordingly ministerial in nature and not subject to immunity, the Court rejects that distinction. Despite their argument to the contrary, the gravamen of Plaintiffs' claim lies not in what was or was not redacted but rather with respect to the Prosecutor's alleged misconduct in releasing any audiotapes related to the arrest without prior juvenile court approval in the first place." (internal citations omitted)).

Here, the gravamen of Plaintiffs' claims are not the ministerial acts used to implement Defendants' policies, but rather the LASD's policy of honoring ICE-issued immigration detainers. The proximate cause of the alleged wrong is the discretionary policy, not the actions of the staff member who happened to have been administratively involved in the release process of a particular inmate with an immigration detainer. Thus, the Court finds that Plaintiffs' state law claims are barred based on Government Code section 820.2.

Plaintiffs also argue that "California Courts have expressly recognized that unlawful arrest does not constitute a 'basic policy decision,' but rather, an operational decision to which Government Code [section] 820.2 does not apply." (Dkt. No. 278 at 24 (citing *Gillian v. City of San* Marino, 147 Cal. App. 4th 1033, 1051, *as modified on denial of reh'g* (Cal. Ct. App. 2007)).) Plaintiffs' reliance on *Gillian*, however, is misplaced because *Gillian* concerned the arrest of one individual and the application of immunity to one officer's decision to arrest one individual, not to an entire department's policies concerning the arrest of a specific group of people. 147 Cal. App. 4th at 1051. And while the Ninth Circuit in *Liberal v. Estrada*, 622 F.3d 1064, 1084 (9th Cir. 2011) held that "[a]s a matter of law, section 820.2 immunity does not apply to an officer's decision to detain or arrest a suspect," the facts in *Estrada* are distinct from the facts in the present case. Similar to *Gillian*, the Court in *Estrada* also analyzed whether section 820.2 immunity applies to claims of false imprisonment based on one officer's decision to detain a suspect, not whether 820.2 immunity applies to an entire Sherriff's Department's policy of detaining a group of individuals. *See id.* at 1085. Therefore, the cases in which courts have rejected the application of section 820.2 immunity to unlawful arrests are not instructive here.

Because section 820.2 immunity bars Plaintiffs' state law claims, the Court **DENIES** Plaintiffs' Motion for Summary Adjudication Regarding Liability and **GRANTS** Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment as to Plaintiffs' state law claims.

4. Roy Plaintiffs' Declaratory and Injunctive Relief Claims

On October 18, 2017, the Roy Plaintiffs filed a Notice of Supplemental Authority describing Senate Bill No. 54, which proposed laws that prohibit local law enforcement

agencies "from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, as specified, and would, subject to exceptions, proscribe other activities or conduct in connection with immigration enforcement by law enforcement agencies." (*See* Dkt. Nos. 331, 331-1 (Law Enforcement Officers–Access–Records and Recordation, 2017 Cal. Legis. Serv. Ch. 495 (S.B. 54) (WEST)).) The newly enacted and amended statutes described in Senate Bill No. 54, which went into effect on January 1, 2018, prohibit the Roy Defendants from engaging in the challenged conduct of detaining an individual on the basis of an immigration hold, and thus, the Roy Plaintiffs' injunctive and declaratory relief claims are moot, as it is "clear that the allegedly wrongful behavior could not reasonably be expected to recur." *See, e.g.*, Cal. Gov't Code § 7284.6(a)(1) ("California law enforcement agencies shall not: (1) Use agency or department moneys or personnel to investigate, interrogate, *detain*, detect, *or arrest* persons for immigration enforcement purposes, including any of the following: (A) Inquiring into an individual's immigration status. (B) Detaining an individual on the basis of a hold request. . . ." (emphasis added)); *Bell*, 709 F.3d at 898 ("The standard for determining whether a defendant's voluntary conduct moots a case is 'stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'") (quoting *Friends of the Earth, Inc.*, 528 U.S. at 189).

Because the Roy Plaintiffs' declaratory and injunctive relief claims are moot, the Court **DENIES** Plaintiffs' Motion for Summary Adjudication Regarding Liability as to Plaintiffs' declaratory and injunctive relief claims, and **GRANTS** Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment as to Plaintiffs' declaratory and injunctive relief claims.

VII. CONCLUSION

For the foregoing reasons, the Court: (1) **DENIES** the Gonzalez Defendants' Motion to Dismiss and for Partial Summary Judgment (Dkt. No. 239); (2) **GRANTS in part** and **DENIES in part** Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240); (3) **GRANTS in part** and **DENIES in part** Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242); (4) **GRANTS in part** and **DENIES in part** Gonzalez Plaintiffs' Second Motion

for Partial Summary Judgment (Dkt. No. 247); and, (5) **DENIES** Gonzalez Defendants' Motion to Strike Plaintiffs' Expert Witness Declarations (Dkt. No. 307).

IT IS SO ORDERED.