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United States District Court, D. Minnesota.

Carlos Hilario ARIAS, et al., Plaintiffs,
v.
Julie L. MYERS, Assistant Secretary of Homeland Security for Immigration and Customs Enforcement, et al., Defendants.

Civil No. 07–1959 (ADM/JSM)
|
Signed 01/21/2009

Attorneys and Law Firms

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ORDER

JANIE S. MAYERON, United States Magistrate Judge

***1** The above matter came on before the undersigned on Plaintiff's Motion for Leave to File Fourth Amended Complaint [Docket No. 130]. Daniel R Shulman, Esq., Gloria Contreras Edin, Esq., and Prairie A. Bly, Esq. appeared on behalf of plaintiff; Lonnie F Bryan, Esq. appeared on behalf of defendants Julie L Myers, John P Torres, Scott Baniecke, Peter Berg, Allen Gay and the John Does ICE Agents ("USA Defendants"); Stephanie Angolkar, Esq. appeared on behalf of defendants James A. Kulset, Paul Schmidt, Reed Schmidt, and John Doe Willmar Police Officers ##1–10 ("Willmar Defendants"); Ann R. Goering appeared on behalf of defendants Dan Hartog, Jane Doe Kandiyohi County Probation Official and John Doe Kandiyohi Sheriffs Deputies ##1–10 ("Kandiyohi Defendants").

The Court, being duly advised in the premises, upon all of the files, records, and proceedings herein, and for the reasons stated on the record at the hearing, now makes and enters the following Order.

IT IS HEREBY ORDERED that: Plaintiff's Motion for Leave to File Fourth Amended Complaint [Docket No. 130] is **DENIED**.

MEMORANDUM

Plaintiffs move this Court for an order permitting them to amend their complaint to add class allegations against all current defendants,[1] and adding back in dismissed defendants United States Immigration and Customs Enforcement Division of Homeland Security ("ICE"), United States Department of Homeland Security ("DHS"); and Michael Chertoff, Secretary of DHS. See Affidavit of Daniel R. Shulman, proposed Fourth Amended Complaint ("Prop. Fourth Am. Compl."), ¶¶ 33–35, Counts I and II. The Court denies this motion.

I. FACTUAL BACKGROUND

The present action was initiated in April 2007 in response to raids by the United States Immigration and Customs Enforcement ("ICE") that took place on April 10–14, 2007 in Willmar and Atwater, Minnesota. On April 24, 2007, plaintiffs amended their Complaint and added class allegations on behalf all persons of Hispanic, Honduran, Latin origin or appearance who were arrested, detained, in custody, or deported and affected by immigration operations that took place in Wilmar, Minnesota on or about April 10–14, 2007. See Plaintiffs' Amended

Complaint for Declaratory and Injunctive Relief and Damages [Docket No. 11], ¶¶ 71–80.

***2** On July 27, 2007, plaintiffs amended their Amended Complaint and dropped the class allegations. See Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief and Damages [Docket No. 43] ("Second Amended Complaint"). Subsequently, all defendants brought several dispositive motions, and on April 23, 2008, District Court Judge Ann Montgomery issued an Order and Memorandum granting in part and denying in part these various motions [Docket No. 100]. On April 30, 2008, plaintiffs filed a third complaint—this new complaint also lacked any class allegations. See Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief and Damages ("Third Amended Complaint") [Docket No. 102].

Plaintiffs now seek to amend their Complaint to add class allegations against all defendants, and previously dismissed defendants ICE, DHS and Chertoff on behalf of a class "[p]ersons of Latino origin who reside in the state of Minnesota." Prop. Fourth Am. Compl., ¶¶ 33–35, 103, Counts I and II. Specifically, plaintiffs have alleged that they should be able to purse class allegations against these defendants because:

> Defendants have implemented, enforced, encouraged and/or sanctioned a policy, practice and/or custom of:
>
> (a) entering and searching homes or residences of persons of Latino origin in the state of Minnesota without valid judicial warrants or voluntary consent and in the absence of probable cause and exigent circumstances in violation of the Fourth Amendment to the United States Constitution;
>
> (b) stopping, detaining, investigating, searching and effecting seizures of persons of Latino origin in the state of Minnesota in the absence of a reasonable articulable suspicion of unlawful activity or probable cause in violation of the Fourth Amendment to the United States Constitution; and
>
> (c) identifying and targeting locations with known concentrations of Latino residents and conducting unconstitutional stops and detentions of individuals based solely on the individual's race or apparent national origin in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

Prop. Fourth Am. Compl. ¶ 104.

Plaintiffs seek a permanent injunction prohibiting defendants from engaging in the unlawful and abusive practices alleged in the proposed Fourth Amended Complaint, and a declaratory judgment that the acts alleged by plaintiffs denied them their rights under the Fourth, Fifth and Fourteenth Amendments. Prop. Fourth Am. Compl. ¶¶ 120, 122, 132, 134.

In the proposed Fourth Amended Complaint, plaintiffs allege raids all over the country in 2007 and from February 2008 to September 2008, including in Minneapolis, Minnesota as late as September 2008. Prop. Fourth Am. Compl., ¶ 114. In addition, in support of their motion, plaintiffs allege that other raids occurred in Austin, Minnesota on May 30–31, 2007; throughout the country on other dates in 2007; in Shakopee and Jackson Heights, Minnesota on June 21–22, 2008; and in St. Paul, Minnesota on July 25, 2008. See Declaration of Gloria Contreras Edin ("Contreras Decl."), Ex. 1 (Documentation of Residential Immigration Enforcement Operations by Centro Legal, Inc.).

The deadline for amending pleadings to add claims or parties was October 1, 2008. See Pretrial Scheduling Order. Plaintiffs brought the present motion for leave to filed a Fourth Amended Complaint to add back the class allegations on October 1, 2008, the last day to file motions to amend pleadings.

The case is currently in Phase I, which is designed to address discovery and motion practice relating to the individual defendants' claims of qualified immunity. Pretrial Scheduling Order [Docket No. 129]. Pursuant to this schedule, fact discovery bearing on qualified immunity is to be completed by March 1, 2009, and expert discovery is to be completed by May 1, 2009. Fact depositions of the plaintiffs were to be completed by November 30, 2008. See Amended Order dated October 27, 2008 [Docket No. 150].

II. ANALYSIS

***3** Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend pleadings "shall be freely given when justice so requires." The determination as to whether to grant leave to amend is entrusted to the sound discretion of the trial court. See, e.g., Niagara of Wisconsin Paper Corp. v. Paper Indus. Union Mgmt. Pension Fund, 800 F.2d 742, 749 (8th Cir. 1986) (citation

omitted). The Eighth Circuit has held that "[a]lthough amendment of a complaint should be allowed liberally to ensure that a case is decided on its merits, ... there is no absolute right to amend." Ferguson v. Cape Girardeau County, 88 F.3d 647, 650–1 (8th Cir. 1996) (citing Thompson–El v. Jones, 876 F.2d 66, 67 (8th Cir. 1989); Chesnut v. St. Louis County, 656 F.2d 343, 349 (8th Cir. 1981)). Under Rule 15(a), a district court should deny leave to amend "only in those limited circumstances in which undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the non–moving party can be demonstrated." Roberson v. Hayti Police Dep't, 241 F.3d 992, 995 (8th Cir. 2001); see also United States ex rel. Gaudineer & Comito v. Iowa, 269 F.3d 932, 936 (8th Cir. 2001) ("[D]enial of leave to amend may be justified by 'undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party.' ") (quoting Sanders v. Clemco Indus., 823 F.2d 214, 216 (8th Cir. 1987)).

This Court concludes that the current federal defendants Julie Myers, John Torres and Scott Baniecke in their individual capacities (described by Judge Montgomery in her April 23 and May 16, 2008 Orders [Docket Nos. 100, 105] as the "Bivens Defendants"); County Defendants (Kandoyohi County officials in their individual capacities); and City Defendants (Willmar and Atwater officials in their individual capacities) would be prejudiced and the case would be greatly delayed if plaintiffs were permitted to add the class allegations at this point. The Court reaches this conclusion for several reasons. First, plaintiffs' attempt to re-assert class action claims at this juncture creates a "moving target" for all defendants to focus their defenses. In particular, on April 24, 2007, plaintiffs amended their Complaint and added class allegations; they then amended their Amended Complaint on July 27, 2007, and dropped the class allegations; and they did not include class claims in their April 30, 2008 amendment to the Second Amended Complaint, despite the additional alleged raids that took place on May 30–31, 2007 in Austin, Minnesota and throughout the country in 2007. See Amended Complaint [Docket No. 11], ¶¶ 71–101; Second Amended Complaint [Docket No. 43]; Third Amended Complaint [Docket No. 102]; Contreras Decl., Exs. 1, 2.

Second, none of class allegations or factual support for these allegations (i.e. the affidavits attached to the Contreras Decl. as Exhibit 2) have anything to do with the County Defendants or City Defendants. Rather, the focus of these allegations are on the alleged conduct of ICE and the Bivens Defendants. Prop. Fourth Am. Compl., ¶ 114. Indeed, plaintiffs' counsel conceded at the hearing that neither the County Defendants nor the City Defendants had any control over the alleged continuing raids by ICE. Further, there is nothing before this Court to suggest that the County Defendants or City Defendants are continuing to engage in raids with ICE. If plaintiffs were permitted to pursue their class allegations, the County Defendants and City Defendants would be forced to incur significant time, expense and efforts defending and attending to issues having nothing to do with them.

Third, as the County Defendants and City Defendants pointed out, plaintiffs had asserted in opposition to defendants' motions to sever, (Docket Nos. 57, 62, 74), that severance was not appropriate because the claims against the County Defendants and City Defendants arose out of the same events and transactions. See Docket Nos. 84, 86, 87. Here, where the class allegations do not involve the County Defendants or City Defendants, the rationale relied upon by plaintiffs for keeping these defendants in this case under the joinder provisions of Fed. R. Civ. P. 20(a)[2] falls apart. Plaintiffs should not be able to argue that these local defendants are properly in the case because their activities arose out of the same events and transactions that took place over the course of 4 days in Willmar and Atwater, and then having succeeded in making such an argument, move to significantly expand the suit to allege events that (a) have not occurred, and (b) have nothing to do with these local defendants.

***4** Fourth, a class complaint will greatly expand the discovery, motion practice and as such, the expense involved in addressing class allegations and will significantly delay resolution of the case. Where, as here, there is not a sufficient nexus between the class claims and the claims against the County Defendants and City Defendants, there is not a sufficient basis to justify the expense and delay as to those defendants.[3]

For all the reasons stated above, this Court denies plaintiffs' Motion for Leave to File a Fourth Amended Complaint.

All Citations

Not Reported in Fed. Supp., 2009 WL 10678149

Footnotes

[1] The current defendants are: Julie Myer, Assistant Secretary of DHS; John Torres, Director of Office of Detention and Removal for ICE; Scott Banieke, Field Director for St. Paul Office of Detention and Removal for ICE; Peter Berg, Supervisory Detention and Deportation Officer for St. Paul Office of Detention and Removal for ICE; Allen Gay, Deportation Officer for St. Paul Office of Detention and Removal for ICE; John Doe ICE agents; James Kulset, Chief of Police for the City of Willmar Police Department; John Doe Willmar Police Officers; Reed Schmidt, Chief of Police for City of Atwater Police Department; Paul Schmidt, Police Officer with Atwater Police Department; Dan Hartog, Sheriff for the County of Kandiyohi; and John Doe Kandiyohi Sheriff Department Deputies. If the motion to amend were granted, plaintiffs have stated in the proposed Fourth Amended Complaint that ICE, DHS, and Chertoff would only be added for "the Class Action Claims." See Affidavit of Daniel R. Shulman, proposed Fourth Amended Complaint ("Prop. Fourth Am. Compl."), ¶¶ 33–35.

[2] Rule 20(a)(2) provides for the joinder of defendants "if any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences."

[3] While this Court has not based its decision on futility, it does have significant reservations as to whether class claims could survive dispositive motion practice. As worded, the class counts (Counts I and II), are directed to all defendants (city, county and federal), yet plaintiffs have offered no factual allegations in the proposed complaint or via affidavits to support class actions against the County Defendants and City Defendants. See Prop. Fourth Am. Compl., ¶¶ 111–135. Additionally, Judge Montgomery dismissed the United States Defendants (ICE, DHS, and Chertoff, Myers, Torres, Baniecke, Berg and Gray) in their official capacities on several grounds including that plaintiffs had failed to make out a claim for injunctive relief against these defendants. In light of Judge Montgomery's decision that plaintiffs lacked standing to assert claims of injunctive relief (including her reliance on Mancha v. ICE, No. 1:06–CV–2650, 2007 WL 4287766 (N.D. Ga. Dec. 5, 2007)), the Court questions whether Judge Montgomery would find that a cause of action for injunctive relief can now be stated when none of the proposed class members have experienced any real and tangible harm, much less imminent threat of future harm. The Court recognizes that Judge Montgomery stated that "the alleged threat of future harm to these Plaintiffs is too speculative and remote for Plaintiffs to assert claims for injunctive relief," (Docket No. 100, p. 24), and that plaintiffs may be offering the affidavits and statistics about other raids in Minnesota and elsewhere in the country to show that their fears are not speculative. But the fact is there are no allegations or evidence before this Court to show that any named plaintiff has continued to be "raided." Rather, as plaintiffs' counsel indicated at the hearing, the proposed class is made up of those who have yet to be subjected to any raids, i.e., people who fear they will be subjected to raids based on their ethnicity.