

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CITY OF EL CENIZO, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

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**CIVIL NO. 5:17-CV-404-OLG
[Consolidated/Lead case]**

**OPPOSED IN PART AND UNOPPOSED IN PART MOTION FOR LEAVE
TO AMEND COMPLAINT BY PLAINTIFFS CITY OF SAN ANTONIO, ET AL.**

Plaintiffs City of San Antonio, Bexar County, City of El Paso, Rey A. Saldaña, Workers’ Defense Project (“WDP”), La Union del Pueblo Entero (“LUPE”), and Texas Association of Chicanos in Higher Education (“TACHE”) (collectively referred to as “San Antonio Plaintiffs”) move to amend their complaint pursuant to Fed. R. Civ. P. 15(a), Fed. R. Civ. P. 20(a), the Court’s scheduling order (Dkt. 269), and the Court’s order granting an extension to submit motions to amend or supplement pleadings. Dkt. 272.

San Antonio Plaintiffs seek to add and drop parties, and to add and drop claims. Defendants do not oppose removing claims from the lawsuit but do oppose the addition of parties and claims.

I. San Antonio Plaintiffs Amend Their Complaint Pursuant to the Court’s Scheduling Order and Consistent with the Fifth Circuit’s Order on Remand.

The Court “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). *See also Foman v. Davis*, 371 U.S. 178, 182 (1962) (holding that “[i]n the absence of any apparent or declared reason . . . the leave sought should, as the rules require, be ‘freely given.’”) (internal citation omitted); see also *Halbert v. City of Sherman, Tex.*, 33 F.3d 526, 529

(5th Cir. 1994) (“[T]he decision to grant or deny leave is one left to the sound discretion of the district court.”).

Under Rule 15(a), a plaintiff may add claims through amending the complaint. *See In Martin v. Virgin Islands Nat. Bank*, 455 F.2d 985 (3d Cir. 1972) (allowing plaintiff to amend his original complaint that alleged false arrest to add a claim for false imprisonment). Similarly, the addition of parties to a complaint is permissible under Rule 15(a). *See Overbay v. Lilliman*, 572 F. Supp. 174 (W.D. Mo. 1983) (plaintiff’s motion to amend the complaint would be granted because the addition of the new defendant did not prejudice any other parties, but only served to redefine further and focus the claim of plaintiff).

Here, the San Antonio Plaintiffs seek leave to add as parties:

- Plaintiff San Antonio Police Chief William McManus, against whom SB 4 has been applied in an unconstitutional manner by Defendants.
- Plaintiff Celestino Gallegos, Immigration Liaison for the City of San Antonio, whose constitutional rights are violated through the operation and application of SB 4.
- Plaintiff Ana Sandoval, San Antonio City Councilmember for District 7, whose constitutional rights are violated through the operation and application of SB4.
- Plaintiff Maria Teresa Valladarez who was unconstitutionally seized and detained pursuant to SB 4 by officers of the City of Rowlett Police Department.
- Plaintiff Armando Simon who was unconstitutionally seized and detained pursuant to SB4 by officers of the City of Rowlett Police Department.
- Defendant City of Rowlett, Texas which has a policy or custom, pursuant to SB4, of detaining individuals based on their immigration status;

- Defendant William M. Brodnax, City of Rowlett Chief of Police, in his official capacity, who maintains the city's policy or custom, pursuant to SB4, of detaining individuals based on their immigration status;
- Defendant Officer Jason Welk, in his individual and official capacity, who unconstitutionally detained Plaintiff Valladarez and Plaintiff Simon pursuant to SB 4; and
- Defendant Officer B. Rickman, in his individual and official capacity, who unconstitutionally detained Plaintiff Valladarez and Plaintiff Simon pursuant to SB 4.

Also, San Antonio Plaintiffs also seek leave to add the following claims:

- As-applied claims by City of San Antonio, Police Chief McManus and Celestino Gallegos against current Defendants for the unconstitutional application of SB4 to them;
- As-applied claims by Plaintiff Valladarez and Plaintiff Simon against current Defendants, as well as proposed Defendants Rowlett, Texas, William M. Brodnax, Officer Jason Welk, and Officer B. Rickman for the unconstitutional application of SB4 to them.

San Antonio Plaintiffs also seek leave to drop the following claims:

- Plaintiffs' claim under the federal Voting Rights Act; and
- Plaintiffs' claim under the Contracts Clause of the U.S. Constitution.

San Antonio Plaintiffs also seek leave to drop the following party:

- Plaintiff San Antonio City Councilmember Rey A. Saldana as he is no longer a city councilmember.

Leave to amend is warranted and should be freely given. First, the amendment is not sought for the purpose of undue delay and is not the result of bad faith or dilatory motive. Plaintiffs seek to amend their complaint to add as-applied claims that were specifically encouraged by the Fifth Circuit Court of Appeals, which suggested in the appeal of this Court's preliminary injunction that "if violations occur, the proper mechanism is an as-applied, not a facial challenge." *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 190 (5th Cir. 2018); *see also* Defendants' Response to Supplemental Post-Hearing Motions for Preliminary Injunction, Dkt. 172 at 20 (" . . . those scenarios could be appropriate to raise in an as-applied challenge to a specific detention."). Plaintiffs seek to amend their complaint to advance as-applied challenges to SB 4, consistent with the Fifth Circuit's opinion and order.

This motion also conforms with the Court's scheduling order which permits the parties to move to amend or supplement the pleadings. *See Geiserman v. MacDonald*, 893 F.2d 787, 790 (5th Cir.1990) (holding that the district court has "broad discretion to preserve the integrity and purpose of the pretrial order[.]").

II. Addition of Parties is Permissible Because the new Parties and Claims Arise out of the Passage and Enforcement of SB 4.

The addition of parties and claims is also allowed under Fed. R. Civ. P. 20(a). Plaintiffs satisfy the requirements of permissive joinder when "(1) a right to relief [is] asserted by, or against, each plaintiff or defendant relating to or arising out of same transaction or occurrence, or series of transactions or occurrences, and (2) some question of law or fact common to all parties [arises] in the action." *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974). *See also Applewhite v. Reichhold Chems., Inc.*, 67 F.3d 571, 574 (5th Cir.1995) (citing *Mosley*, 497 F.2d at 1332–33). All "logically related" events "generally are regarded as comprising a transaction or occurrence." *Mosley*, 497 F.2d at 1333; *see also Kosadnar v. Metro. Life Ins. Co.*

(*In re Kosadnar*), 157 F.3d 1011, 1015 (5th Cir.1998) (holding that courts should consider whether the equities of the case would be served by joinder).

Here, the first prong of the joinder test is met because the causes of action of proposed plaintiffs Ms. Valladarez and Mr. Simon arise from the enforcement of SB 4. Ms. Valladarez and Mr. Simon were unlawfully detained by the proposed defendants pursuant to SB 4 and based only on their immigration status, not any suspected criminal act. Similarly, the as-applied claims of Police Chief McManus, Celestino Gallegos, City Councilmember Ana Sandoval and the remaining San Antonio Plaintiffs arise from the enforcement of SB 4. These as-applied challenges serve to advance and focus the current constitutional challenge to SB 4. Therefore, the first requirement is met.

The second prong of the joinder test is also met. The second prong requires that some question of law or fact be common to the parties but not all issues have to be common to all plaintiffs. *See Mosley*, 497 F.2d at 1334 (“The rule does not require that all questions of law and fact raised by the dispute be common.”). Here, the common question of law is the constitutionality of SB 4.

Last, the claims involve common actors: Defendants State of Texas, Attorney General Ken Paxton, and Governor Greg Abbott. *See Jackson v. Texas Parks & Wildlife Dep’t*, No. A-14-CV-748-LY-ML, 2015 WL 12862879, at *3 (W.D. Tex. Oct. 2, 2015), *report and recommendation adopted*, No. 1:14-CV-748-LY, 2015 WL 12909434 (W.D. Tex. Oct. 21, 2015) (concluding that involvement of common actor and similar claims were enough to warrant joinder).

III. Conclusion

San Antonio Plaintiffs' proposed amendments are allowed pursuant to Fed. R. Civ. P. 15(a) and Fed. R. Civ. P. 20(a). The proposed amendments are also consistent with this Court's scheduling order and the Fifth Circuit's opinion on appeal of the preliminary injunction. For the reasons set out above, San Antonio Plaintiffs respectfully request leave to amend their complaint.

Dated: December 13, 2019

Respectfully submitted,

**MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND**

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CERTIFICATE OF CONFERENCE

The undersigned counsel hereby certifies that on the 2nd day of December 2019, she emailed counsel of record for all Defendants and all Plaintiffs, to request their position on this motion. Defendants responded that they oppose the motion insofar as it seeks to add claims and parties but that Defendants do not oppose dropping claims.

/s/ Nina Perales
Nina Perales

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2019, I served a copy of the foregoing document on all counsel registered to receive NEFs through this Court's CM/ECF system. All attorneys who are not registered to receive NEFs have been served via email.

/s/ Nina Perales
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