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United States District Court, N.D. Illinois, Eastern  
Division.

Peso CHAVEZ, et al. Plaintiffs,  
v.

THE ILLINOIS STATE POLICE, et al. Defendants.

No. 94 C 5307. | July 15, 1999.

## Opinion

### MEMORANDUM AND ORDER

MANNING, District Court J.

\*1 The plaintiffs' objections to Magistrate Judge Bobrick's order denying their Rule 20(a) motion to add Christopher Jimenez as a plaintiff in this 1994 case are before the court. For the following reasons, the objections are overruled.

#### I. Background

For a detailed recitation of the facts, the reader is directed to the court's opinion addressing the defendants' motion for partial summary judgment and a plethora of related motions. *Chavez v. Illinois State Police*, 27 F.Supp.2d 1053 (N.D.Ill.1998). In a nutshell, the plaintiffs claim that the Illinois State Police have a practice of stopping, detaining, and searching African-American and Hispanic motorists based on their race and without legally sufficient cause or justification.

#### A. The Stop

The court's consideration of the plaintiffs' motion to join Christopher Jimenez as a plaintiff requires it to travel back to February 6, 1996. On this date, Jimenez (who is Hispanic) and his girlfriend, Stacie Tiffany (who is white), were driving north on I-55 in Sangamon County, Illinois, in Tiffany's car. Tiffany was driving and admits that she was exceeding the speed limit, as she testified at her deposition that she was driving at approximately 70 miles per hour when she was stopped.<sup>1</sup> According to Jimenez, Illinois State Police Trooper Robert Jennings was parked at the side of the road looking at them through binoculars. Trooper Jennings admits that he has been able to detect the race of an occupant of a vehicle by using his

binoculars in the past. At his deposition, he testified that Tiffany's speeding and the fact that a male passenger (Jimenez) was slumping while wearing a baseball cap drew his attention to Tiffany's vehicle.

Trooper Jennings followed Tiffany's vehicle and saw her fail to signal prior to changing lanes. He then stopped Tiffany, stating that he did so because she was speeding and failed to signal properly. He also asked both Tiffany and Jimenez for their drivers' licenses, and asked Tiffany questions about her relationship with Jimenez. According to Trooper Jennings, he is more likely to ask questions about the relationship between vehicle occupants when they are of different races.

During the stop, Trooper Jennings did not have a "suspicion" or a "strong feeling" that contraband was in the vehicle. He nevertheless asked Tiffany for her permission to search her car. Tiffany consented, and Trooper Jennings did not discover any contraband. Jimenez filed a written complaint with the Illinois State Police one week later. The Illinois State Police deemed Jimenez' complaint unfounded but recommended that Trooper Jennings receive counseling to educate him that some of the words he used could be misinterpreted.

#### B. Magistrate Judge Bobrick's Order

Magistrate Judge Bobrick found that the addition of Jimenez at this stage of the case would be prejudicial, explaining that discovery closed in August of 1997 and the plaintiffs were fully aware of Jimenez and his claims well before that date. He also rejected the defendants' efforts to jettison Jimenez' claims based on the fact that he was neither the owner nor the driver of the vehicle, stating that this argument would be properly addressed in a motion for summary judgment, not a response to a motion to add a new party.

\*2 He then stated the obvious: given the schedules set in this case and the fast-approaching September 7 trial date (which has already been reset several times at the plaintiffs' request), briefing and resolution of any such motion prior to that date is both impractical and "disrespectful of the court and the demands on its resources, not to mention other parties before the court who have proceeded apace with their cases." June 4, 1999 Order at 4. He also agreed that the defendants would be prejudiced by having to pursue further discovery of Jimenez at this stage of the proceedings. Accordingly, he denied the plaintiffs' motion to add Jimenez as an additional named plaintiff. The plaintiffs filed a timely objection.

## II. Discussion

### A. Standard of Review

A motion to join an additional party under Rule 20(a) is a nondispositive pretrial matter. *Pagano v. Frank*, 983 F.2d 343, 345 (1st Cir.1993). Accordingly, the court will review Magistrate Judge Bobrick's order for clear error. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(a).

### B. The Plaintiffs' Motion to Add Jimenez

Rule 20(a) provides that “[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law and fact common to all these persons will arise in the action.” When considering whether to allow the permissive joinder of a new party, the following factors are relevant: (1) any prejudice which would result from joinder; (2) whether the movant delayed in seeking to join the new party; (3) the moving party's reason for seeking the amendment; (4) the closeness of the relationship between the old and new parties; (5) whether joinder would affect the court's jurisdiction; and (6) whether the new party had notice of the pending action. C. Wright and A. Miller, 7 *Federal Practice and Procedure* § 1652 at 373 n. 5 (2 ed.1986), citing *Desert Empire Bank v. Ins. Co. of North America*, 623 F.2d 1371 (9th Cir.1980); *National Union Fire Insurance Co. of Pittsburgh v. Continental Illinois Corp.*, 113 F.R.D. 527, 531–32 (N.D.Ill.1986) (a court may deny a Rule 20(a) motion where joinder would cause undue prejudice, delay, and expense).

The defendants argue that the plaintiffs' delay in seeking to add Jimenez will prejudice them and delay the resolution of this case. They also claim for the first time that venue for Jimenez' claims is improper in this district.<sup>2</sup> For the following reasons, the court finds that Magistrate Judge Bobrick's order denying the plaintiffs' motion to add Jimenez is not clearly erroneous.

#### 1. Would Joinder of Jimenez be Prejudicial?

Prejudice can occur where one or more of the following circumstances are present:

The motion comes on the eve of trial after many months or years of pretrial activity; the amendment would cause undue delay in the final disposition of the case; the amendment brings entirely new and separate claims, adds new parties, or a change in the allegations of the complaint; witnesses have become

unavailable for examination and the memories of others have dimmed; and the amendment would require expensive and time-consuming new discovery.

\*3 *A. Cherney Disposal Co. v. Chicago & Suburban Refuse Disposal Corp.*, 68 F.R.D. 383, 385 (N.D.Ill.1975) (citations omitted). The existence of prejudice is the most critical factor in determining whether the addition of Jimenez at this stage in the proceedings is proper. *Id.*; cf. *Forman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend complaint under Rule 15(a) should be granted “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, etc.”).

With respect to the potential prejudice flowing from the addition of Jimenez, the parties first focus on the fact that the defendants deposed Jimenez in June of 1997 via telephone. The plaintiffs claim that the defendants would not be prejudiced by adding Jimenez because the defendants knew that Jimenez sought damages for racial discrimination when they deposed him, as the complaint sought damages on behalf of all members of the putative class. Despite the fact that fact discovery unequivocally closed on August 30, 1997, after numerous extensions, the plaintiffs also magnanimously offer to make Jimenez available for further questioning. The defendants, on the other hand, contend that they deposed Jimenez less searchingly via telephone because he was not a named plaintiff, and note that his deposition spans only 34 pages, as opposed to 200 pages (for plaintiff Peso Chavez), 164 pages (for plaintiff Gregory Lee), and 244 pages (for plaintiff Joseph Gomez).<sup>3</sup>

The court heavily discounts the plaintiffs' claim that the defendants would not have acted differently had they known that Jimenez was slated to be a named plaintiff. See *A. Cherney Disposal Co. v. Chicago & Suburban Refuse Disposal Corp.*, 68 F.R.D. at 386 (rejecting plaintiff's claim that defendants would not be prejudiced by allowing amendment of a complaint after the completion of extensive discovery, noting that “I am afraid that [plaintiff] cannot both prosecute and defend this action at the same time”). It also declines to retroactively require the defendants' counsel to become specialists in prognostication so they can presage the plaintiffs' future litigation decisions and make corresponding changes in their trial preparation. In short, the defendants were entitled to treat named plaintiffs differently from members of the putative class, and the court will not punish them today for taking a brief telephone deposition in 1997 of an individual who was

not a named plaintiff then.

The court also takes this opportunity to note that it is disturbed by the plaintiffs' apparent belief that the defendants can cure any prejudice arising from adding Jimenez at this late stage by simply redepousing him. Once again, fact discovery in this case closed in 1997. Contrary to the plaintiffs' position throughout much of this case, discovery deadlines do not exist only to be extended. The court is entitled both to set deadlines and to expect that they will be honored, especially when the plaintiffs are before the court in 1999 shortly before trial seeking to extend a 1997 cut off based on events happening and known to them in 1996. Accordingly, the court finds that adding Jimenez in at this time is not the non-event painted by the plaintiffs. The court therefore concludes that the addition of Jimenez would substantially prejudice the defendants.

## **2. Did the Plaintiffs Delay in Seeking to Add Jimenez?**

\*4 The plaintiffs knew of Jimenez and his claims for nearly three years, and for over one year before the close of fact discovery in 1997 but waited until approximately two months prior to trial to seek to add him as a plaintiff. If this is not delay, nothing is. Nevertheless, the plaintiffs now claim that they did not delay, contending that they sought to add Jimenez based on the court's November 5, 1998 ruling and that they waited until the Seventh Circuit ruled on their petition for a writ of mandamus to avoid filing separate African-American and Hispanic class certification motions.

The plaintiffs' attempt to justify their decision to wait to add Jimenez is unavailing. The plaintiffs chose not to react to the court's November, 1998 ruling and to wait until the resolution of their mandamus petition with the Seventh Circuit in March of 1999 regarding discovery from the Illinois Secretary of State. In addition, the plaintiffs' assertion that they were attempting to comply with the court's November ruling is puzzling, given that the court denied the plaintiffs' motion for class certification without prejudice. The court also places little weight on the plaintiffs' proffered explanation since none was presented to the magistrate judge. The court thus finds that, regardless of how the plaintiffs attempt to explain their actions after the fact, it is clear that they knew about Jimenez from the beginning but waited for several years before trying to add him as a named plaintiff for strategic reasons.

Intentional delay, even for strategic reasons, is still delay. As noted above, however, absent prejudice, "mere delay ... should not ordinarily operate to preclude a motion to amend the complaint." See *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 339 (7th Cir.1973). Of course, this is not an ordinary case, as it is almost five years old and has

featured numerous discovery-related delays, including a lengthy delay while the plaintiffs' expert, Martin Shapiro, revised his analysis of statistical data and many extensions of fact discovery. While the court has made every effort to allow the plaintiffs to develop their case, at a certain point the court is entitled to require the parties to go to trial. Nevertheless, because the Seventh Circuit has held that delay is not dispositive, the court will focus on the critical factor in this case—prejudice—rather than the undue delay regarding Jimenez.

## **3. The Plaintiffs' Reasons for Seeking Joinder**

The plaintiffs assert that they are seeking to add Jimenez to provide adequate representation of the putative Hispanic class. The defendants agree, pointing to the fact that one of the named plaintiffs (Joseph Gomez) has been incarcerated since October of 1998 and recently pleaded guilty in both state and federal court to possession with intent to distribute cocaine. Since Gomez will indisputably not be stopped, detained, or searched by the Illinois State Police at any point in the foreseeable future due to his incarceration, he is not the poster child for, among other things, the plaintiffs' standing argument. Of course, since Gomez has been incarcerated since October of 1998, even if the plaintiffs understandably wanted to substitute a more suitable class representative, they still waited for some time before seeking to do so. Delay aside, however, this factor favors the plaintiffs as Jimenez is a more suitable class representative than Gomez.

## **4. The Closeness of the Relationship Between the Old Parties and Jimenez & Jurisdiction**

\*5 The closeness of the relationship between the old parties and Jimenez largely blends into the factors previously discussed. While the defendants knew about Jimenez, they did not know that the plaintiffs planned to try to transform him into a class representative. Moreover, joinder would not affect jurisdiction. Thus, these factors are in equipoise.

## **5. Did Jimenez Know About this Case?**

Finally, the court considers whether Jimenez knew about this case substantially before the plaintiffs sought to add him as an additional named plaintiff. The answer to this question is "yes," as Jimenez pursued his claim as early as one week after the 1996 incident with Tiffany by filing a complaint with the Illinois State Police and subsequently worked with the plaintiffs' counsel as a member of the putative class. In other words, this is not a case where the new plaintiff just found out about the action. Thus, this factor favors the defendants.

### III. Conclusion

After careful consideration of the parties' submissions and the factors discussed above, the court finds that, while there are those who "gather some profitable fruit from ... delay," the plaintiffs are not among their number. *See* Alighieri, Dante, *The Divine Comedy*, Purgatorio: Canto XVII (Henry W. Longfellow trans., Houghton Mifflin 1865). Specifically, the court agrees with Magistrate

Judge Bobrick that, while motions to amend a complaint are ordinarily granted, this is not an ordinary case, and that the addition of Jimenez at this time would substantially prejudice the defendants. Accordingly, the plaintiffs' objections to Magistrate Judge Bobrick's order denying their motion to add Christopher Jimenez as a plaintiff [473-1] are overruled.

#### Footnotes

- 1 The parties dispute whether Tiffany was speeding in a construction zone. Tiffany says she was traveling at 45 miles per hour in the construction zone and then increased her speed outside the construction zone, while Trooper Jennings says that he clocked her at approximately 70 miles per hour while she was in the construction zone. In any event, however, it is undisputed that Tiffany was exceeding the speed limit.
- 2 In light of the court's ruling regarding the prejudicial effect of adding Jimenez, the defendants' venue arguments are moot, so the court will not discuss them further.
- 3 Tiffany's deposition is similarly short, as it spans 37 pages.