

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CESAR PAZ NEGRETE,

Petitioner,

v.

SECRETARY OF HOMELAND SECURITY,
et al.,

Respondent.

Case Nos. SACV 16-0003 GW (SS)
SACV 16-0112 GW (SS)

MEMORANDUM DECISION AND ORDER:

- (1) CONSOLIDATING CASES; AND**
(2) APPOINTING COUNSEL

On December 28, 2015, Cesar Paz Negrete ("Petitioner"), then a federal immigration detainee proceeding pro se, constructively filed two Petitions for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (See Paz-Negrete v. Sec. Homeland Security, C.D. Cal. SACV 16-0003 GW (SS) (the "003 Petition"), and Paz-Negrete v. Sec. Homeland Security, C.D. Cal. SACV 16-0112 GW (SS) (the "112 Petition").¹ Both Petitions name the "Secretary of Homeland

¹ Under the "mailbox rule," a pro se prisoner's pleading is deemed filed on the date the prisoner delivers it to prison authorities for mailing to the court clerk, not the date on which the pleading may be received by the court. See Houston v. Lack, 487 U.S. 266, 270 (1988). Absent other proof, the Ninth Circuit deems a habeas "petition constructively 'filed' on the date it is signed."

1 Security" and "Immigration and Customs Enforcement" as joint
2 respondents. (003 Petition, Dkt. No. 1 at 1-2; 112 Petition, Dkt.
3 No. 1 at 1-2). In addition, both Petitions implicate Petitioner's
4 2014 conviction for assault with a deadly weapon other than a
5 firearm (Cal. Penal Code § 245(a)(1)), for which Petitioner was
6 sentenced, following a jury trial, to a three-year term in state
7 prison. (003 Petition, Dkt. No. 1 at 2; 112 Petition, Dkt. No. 1
8 at 2).

9
10 The 003 Petition ostensibly challenges Petitioner's 2014
11 conviction. In the final version of Petitioner's claims, the 003
12 Petition raises four grounds for federal habeas relief, based on:
13 (1) the trial court's failure to give a requested jury instruction;
14 (2) ineffective assistance of trial and appellate counsel;
15 (3) Petitioner's unknowing waiver of the right to testify; and (4)
16 prosecutorial misconduct during closing argument. (003 Petition,
17 Dkt. No. 19, at 5-6). The 112 Petition raises one ground for
18 federal habeas relief, alleging that DHS improperly obtained an
19 immigration detainer based on Petitioner's 2014 conviction, even
20 though the conviction was still under appeal and "[t]he possibility
21
22

23 Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010); see
24 also Butler v. Long, 752 F.3d 1177, 1178 n.1 (9th Cir. 2014) ("We
25 assume that [petitioner] turned his petition over to prison
26 authorities on the same day he signed it and apply the mailbox
27 rule."). Although the Court received the Petitions in the 003
28 Petition and the 112 Petition three weeks apart, both were executed
on December 28, 2015. Because neither Petition attached a proof
of service, the Court adopts the date the Petitions were signed as
their constructive filing date.

1 of proving [Petitioner's] innocence still exists."² (112 Petition,
2 Dkt. No. 1 at 4). According to evidence submitted in both the 003
3 Petition and the 112 Petition, Petitioner was deported to Mexico
4 on May 23, 2017. (003 Petition, Dkt. No. 33 at 2, 5; 112 Petition,
5 Dkt. No. 19 at 2, 5). While Petitioner's address of record remains
6 a private residence in Santa Ana, California, the return address
7 on the envelope containing his most recent communication with the
8 Court appears to be a private residence in Tijuana, Mexico. (003
9 Petition, Dkt. No. 30 at 2). Although the Court entered judgment
10 in the 112 Petition in November 2017 based on Petitioner's apparent
11 failure to prosecute, (id., Dkt. No. 24), on February 6, 2018, the
12 Court vacated that judgment and re-opened the case. (Id., Dkt.
13 No. 25).

14
15 Pursuant to Federal Rule of Civil Procedure 42, "[i]f actions
16 before the court involve a common question of law or fact, the
17 court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2).
18 "A district court generally has 'broad' discretion to consolidate
19 actions," which is reviewed under an abuse of discretion standard.
20 Pierce v. Cnty. of Orange, 526 F.3d 1190, 1203 (9th Cir. 2008);
21 see also Investors Research Co. v. U.S. Dist. Court for Cent. Dist.
22 of California, 877 F.2d 777, 777 (9th Cir. 1989) (broad discretion
23 to consolidate actions pending in the same district).

24
25 _____
26 ² The Court notes that its initial order dated February 22, 2016
27 advised Respondent that "[w]here the Petitioner challenges a final
28 order of removal, Respondent SHALL NOT remove Petitioner prior to
the resolution of this action without providing reasonable notice
to the Court." (Dkt. No. 3 at 2, ¶ 3). A review of the docket
indicates that Respondent failed to comply with this aspect of the
Court's Order.

1 Although Petitioner split his claims into the 003 and 112
2 Petitions, the issues they raise are intertwined. Reading the 003
3 and 112 Petitions together, Petitioner appears to contend that he
4 was improperly detained because the purported justification for
5 his detention was an invalid underlying conviction. The Ninth
6 Circuit instructs that "[a] habeas petition challenging the
7 underlying conviction is never moot simply because, subsequent to
8 its filing, the petitioner has been released from custody." Wilson v. Terhune, 319 F.3d 477, 479 (9th Cir. 2003) (quoting
9 Chacon v. Wood, 36 F.3d 1459, 1463 (9th Cir. 1994) (finding that
10 as long as there is a possibility of collateral consequences from
11 a conviction, the release of a prisoner does not moot his habeas
12 petition)). Furthermore, the Ninth Circuit has also found that a
13 petitioner's deportation does not automatically render his claim
14 moot. Abdala v. I.N.S., 488 F.3d 1061, 1064 (9th Cir. 2007) (citing
15 Chacon and Zegarra-Gomez v. INS, 314 F.3d 1124, 1126-27 (9th Cir.
16 2003)). Accordingly, in the interest of judicial economy and to
17 avoid unnecessary costs or delay, the Court ORDERS that these
18 actions are consolidated as one action under case number SACV 16-
19 0003 GW (SS).

21
22 Furthermore, based upon its review of the Petitions, the Court
23 finds that Petitioner's claims raise complex issues of law and fact
24 that would be difficult to litigate pro se in light of Petitioner's
25 removal to Mexico while his claims were pending. Accordingly, the
26 Court concludes that the interests of justice would be served by
27 the appointment of counsel here. The Court has the inherent
28

