EXHIBIT I

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARMANDO SERRANO, Plaintiff, v. REYNALDO GUEVARA, et al., Defendants. and JOSE MONTANEZ, Plaintiff, v. REYNALDO GUEVARA, et al., Defendants.	No. 17 CV 2869 and No. 17 CV 4560 Judge Manish S. Shah

ORDER

Defendants' motion to consolidate plaintiffs' trials is granted. A telephone status hearing is set for June 29, 2021, at 10:30 a.m.

STATEMENT

Plaintiffs Armando Serrano and Jose Montanez filed separate lawsuits alleging largely identical claims. *See generally* [88]; [289].* The two cases have been consolidated for purposes of discovery and summary judgment, with the two plaintiffs reserving their position on whether consolidation for trial is appropriate. [47]. Defendants now move to consolidate the cases for trial. [305].

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* Bracketed numbers refer to entries on the *Serrano* district court docket, No. 17-cv-2869, unless otherwise indicated. Referenced page numbers are taken from the CM/ECF header placed at the top of filings.

Federal Rule of Civil Procedure 42(a)(1) authorizes a court to join actions (including all matters at issue in the actions) for trial if they involve "a common question of law or fact." All parties agree that the two cases involve many common questions. *See* [308] at 2 (Plaintiffs would not have consented to consolidation for discovery purposes if common questions did not exist); No. 17-cv-4560 [279] at 1 ("The parties agree that these cases involve many of the same underlying facts").

Plaintiffs oppose consolidation on the basis of prejudice. Among Montanez's worries: the optics of sitting near Serrano, the effect on his case if the jury heard evidence implicating Serrano in unseemly efforts to conceal or destroy evidence, and the fear that a jury will award less money per plaintiff in a joint trial. Similarly, Serrano is worried about evidence that might come in about Montanez, and a litigation strategy that might set the two plaintiffs against each other.

Without deciding the admissibility of the evidence at issue, I am confident that the evidence is not so unfairly prejudicial that separate trials are necessary. *See* Fed. R. Civ. P. 42(b) (to avoid prejudice, a court *may* order a separate trial) (emphasis added). Finger-pointing or mutually antagonistic litigation theories do not justify separate trials in criminal cases, *see United States v. Plato*, 629 F.3d 646, 650 (7th Cir. 2010), and so too here: to the extent the trial is intended to expose the truth, having a single jury sort out competing arguments that everyone admits center around the same core legal theories and facts is a feature not a bug. Although plaintiffs say that limiting instructions cannot address their worries about prejudicial evidence in a combined trial, I don't see why not. Courts assume that the jury follows the instructions. *Schandelmeier-Bartels v. Chicago Park Dist.*, 634 F.3d 372, 387 (7th Cir. 2011). And nothing about the worrisome evidence seems so inflammatory that a jury will not be able to apply it to the instructions given. Both plaintiffs' credibility will be at issue (whether in one or two trials) and the grisly common facts—murder, police and prosecutorial misconduct, imprisonment, recantations, and dismissal of charges—make it unlikely that the jury will be unfairly prejudiced by additional sordid tales at the margins. There will be no minitrials over collateral matters. So long as evidence is properly admitted, and if necessary guided by limiting instructions, all parties will receive a fair trial. And Montanez's speculation that a properly instructed jury would not award the same amount of damages in a joint trial is just that—speculation—not unfair prejudice.

Separate trials would be a significant drain on resources. Having witnesses testify twice and summoning two pools of jurors consumes time and effort from non-litigants. Forcing one plaintiff and all defendants to wait for a second trial before receiving a result is an unnecessary delay. And scheduling two multi-week civil trials that must necessarily compete for time with criminal cases involving speedy-trial rights is an additional burden on court resources that risks unfair delay for the litigants. The efficiencies gained by a single trial greatly outweigh the plaintiffs' worries about how they will look if tried together.

The motion to consolidate is granted.

ENTER:

Manish S. Shah
United States District Judge

Date: June 23, 2021