1996 WL 66136
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Peso CHAVEZ, Plaintiff,
v.
ILLINOIS STATE POLICE, Gregory Lee, Anthony W. Thomas, Linda Thomas, Terrance W. Gainer, individually, and in his official capacity as Director of the Illinois State Police, Larry Thomas, Daniel Gillette, Robert P.Cesna, Trooper Butler, Robert Lauterbach, Dale Fraher, Craig Graham, and other presently unknown officers of the Illinois State Police, in their individual capacities, et al.

No. 94CV5307. | Feb. 13, 1996.

MEMORANDUM AND ORDER

MANNING, District Judge.

***1** This matter comes before the court on the motion of defendants Illinois State Police, Terrance W. Gainer, Larry Thomas, Daniel Gillette, and Craig Graham (hereinafter referred to as "defendants") to strike and dismiss portions of the plaintiff's class action complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

Defendants assert four positions in support of their motion. First, defendants assert that plaintiffs' request for equitable relief must be stricken pursuant to 12(b)(1). Second, defendants assert that plaintiff's right to travel claims must be stricken pursuant to 12(b)(1) and 12(b)(6). Third, defendants assert that plaintiffs conspiracy claims pursuant to 42 U.S.C. Sections 1983 and 1985(3) are legally insufficient and should be stricken pursuant to 12(b)(6). Fourth, defendants assert that Count II of plaintiff's complaint must be dismissed because Title VI and the federal regulations are not implicated under the facts in this case.

For the following reasons, we find:

(a) Defendant's motion to strike plaintiff's request for equitable relief will be denied pursuant to 12(b)(1) and granted pursuant to 12(b)(6);

(b) Defendant's motion to strike plaintiff's right to travel claims will be denied pursuant to 12(b)(1) and granted pursuant to 12(b)(6);

(c) Defendant's motion to dismiss plaintiffs' conspiracy claims pursuant to 42 U.S.C. 1983 and 1985(3) will be granted;

(d) Defendant's motion to dismiss Count II of plaintiff's complaint will be denied.

PROCEDURAL HISTORY

Plaintiffs amended their complaint on February 16, 1995 adding defendants Gregory Lee, Anthony W. Thomas, Linda Thomas, Robert P. Cesna and Trooper Butler. A second amended complaint was filed on March 14, 1995 which added defendant Robert Lauterbach and Dale Fraher. "Once an amended pleading is interposed, the original pleading no longer performs any function in the case... [T]he original pleading, once superseded, cannot be utilized to cure defects in the amended pleading, unless the relevant portion is specifically incorporated in the new pleading." 6 C. *Wright, A. Miller & Mary Kay Kane, Federal Practice and Procedure A* 1476 at 556-57, 559 (1990). It is well established that the amended pleading supersedes the original pleading. *See Nisbet v. Van Tuyl,* 224 F.2d 66, 71 (7th Cir. 1955); *Lubin v. Chicago Title and Trust Co.,* 260 F.2d 411, 413 (7th Cir. 1958); *Fry v. UAL Corp.,* 895 F.Supp. 1018 (N.D. Ill. 1995), quoted in *Wellness Community,* 70 F.3d 46, 48 (1995).

Court transcripts from March 14, 1995 reveal that both parties are in agreement that the substance of plaintiff's first and second amended complaint is the same. The second amended complaint adds two additional defendants unknown to plaintiffs when the first amended complaint was filed. Upon oral motion, defendants have agreed that their motion is applicable to plaintiffs' second amended complaint.

FACTS

Plaintiffs have filed a three count civil rights action which challenges the alleged practice of the Illinois State Police (hereinafter referred to as "police"). Plaintiffs assert that

the police unlawfully detain, stop and search individuals on the basis of race.

***2** Plaintiffs Peso Chavez ("Chavez"), Gregory Lee ("Lee"), Anthony W. Thomas ("Mr. Thomas") and Linda Thomas ("Ms. Thomas") are the named plaintiffs who bring this class action under Rule 23 of the Federal Rules of Civil Procedure.

Chavez is a Hispanic resident of Santa Fe, New Mexico who has a law degree and is licensed as a private investigator by the State of New Mexico.

Lee is an African-American resident of Chicago who has a master's degree in criminal justice and is a former employee of the Illinois Department of Corrections.

Mr. Thomas is an African-American resident of Hanover Park, Illinois. He is on disability leave after sixteen years as a Cook County Sheriff's deputy.

Ms. Thomas is an African-American resident of Hanover Park, Illinois.

The named defendants are the Illinois State Police ("the State Police"), Defendant Terrance Gainer ("Gainer") the Director of the State Police, Defendants Larry Thomas ("Thomas"), Sergeant Daniel Gillette ("Gillette"), Craig Graham ("Graham"), Robert P. Cesna ("Cesna"), Trooper Butler ("Butler"), Robert Lauterbach ("Lauterbach") and Dale Fraher ("Fraher"). Plaintiffs also sue other, unknown officers of the Illinois State Police who effectuated the stops, detections and searches of the named plaintiffs, as well as unknown officers of the Illinois State Police who have effectuated the stops, detections and searches of the other class members. These officers are sued in their individual capacities.

In Count I, plaintiff alleges violations of Article IV, Section 2 of the Constitution, the Fourth Amendment to the Constitution and the Equal Protection Clause of the Fourteenth Amendment pursuant to 42 U.S.C. Section 1983, 42 U.S.C. Section 1985(3), 42 U.S.C. Section 1988 and 28 U.S.C. Section 2201. In Count II, plaintiff requests declaratory and injunctive relief for violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d and 28 C.F.R. Section 42.101, pursuant to 42 U.S.C. Section 1983, 42 U.S.C. Section 1988 and 28 U.S.C. Section 2201. Additionally, plaintiffs invoke supplemental jurisdiction pursuant to 28 U.S.C. Section 1376 and assert claims under Illinois constitutional law and Illinois common law for money damages.

Plaintiffs seek to represent, pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), a class of persons who have been unlawfully stopped, detained and searched by the Illinois State Police.

I. Equitable relief

In their motion requesting dismissal of plaintiff's complaint, defendants assert that plaintiffs' claims for equitable relief are not sufficient to provide this court with subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Yet, in their memorandum in support of this motion, defendants analyze plaintiffs' equitable relief under what could generously be called a 12(b)(6) analysis. We have considered both a 12(b)(1) and 12(b)(6) analyses for the purposes of defendants' motion to dismiss plaintiffs' equitable relief claims.

***3** Federal Rule of Civil Procedure 12(b)(1) provides that a complaint may be dismissed if this court does not possess subject matter jurisdiction.*Fed. Rule. Civ. Pro. 12(b)(1)(1993).* As a first principle of federal law, federal courts are courts of limited jurisdiction. *Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 541 (1986); *Abercrombie v. Office of Comptroller of Currency,* 833 F.2d 672, 674 (7th Cir. 1987).Article III, Section 2 of the constitution extends federal judicial power to all cases which arise under the constitution or laws of the United States. See 28 U.S.C. Section 1331 (1980).

When ruling on a motion to dismiss under Rule 12(b)(1), the district court must accept as true all well-pleaded factual allegations and draw reasonable inferences in favor of the plaintiff. *Sladek v. Bell System Management Pension Plan,* 880 F.2d 972, 975 (7th Cir. 1989). The plaintiff has the burden of demonstrating that the district court has subject matter jurisdiction.*Northern Trust v. Peters,* 69 F.3d 123 (7th Cir. 1995). A district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists. *Grafon Corp. v. Hauserman,* 602 F.2d 781, 783 (7th Cir. 1979). In the event the court concludes it does not have jurisdiction, it can dismiss the case without ever reaching the merits.*Shockley v. Jones,* 823 F.2d 1068, 1070 (7th Cir. 1987).

A. Federal Question Jurisdiction under 28 U.S.C. Section 1331

Before a district court entertains a claim for recovery under the Constitution or federal statutes, it must conduct an initial review of the face of the complaint to determine whether the merits are sufficiently substantial to engage the subject matter jurisdiction of the court. *See e.g., Ricketts v. Midwest Nat'l Bank,* 874 F.2d 1177, 1180-82 (7th Cir. 1989). If the court determines the claim is "wholly insubstantial and frivolous", the court does not have the power to decide the case and the complaint must be dismissed for lack of subject matter jurisdiction. *Ricketts,* 874 F.2d at 1182,*see also Joyce v. Joyce,* 975 F.2d 379, 383 (7th Cir. 1992).

This circuit adheres to the "well-pleaded complaint" doctrine. Under this doctrine, federal law must create the cause of action, or some substantial, disputed question of federal law must be an element in the plaintiff's claim.*Napoleon Hardwoods, Inc. v. Professionally Designed Benefits, Inc.,* 984 F.2d 821, 822 (7th Cir. 1993)*citing Franchise Tax Bd. v. California Laborers Vacation Trust,* 463 U.S. 1, 27-28, 103 S.Ct. 2841, 2855-56, 77 L.Ed.2d 420 (1983). Federal question jurisdiction exists so long as "it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims, or that one or the other claim is 'really' one of federal law".*Franchise Tax Bd.,* 463 U.S. at 13 (1983).

***4** Plaintiff's complaint asserts that this court has jurisdiction pursuant to 28 U.S.C. Section 1331 and 1343(a)(3) and 1343(a)(4) for counts I and II. 28 U.S.C. Section 1331, or federal question jurisdiction, provides that the district courts shall have original jurisdiction of all civil actions which arise under the Constitution, laws or treaties of the United States. 28 U.S.C. 1331 (1980).28 U.S.C. Section 1343(a)(3) and (a)(4) generally provide that federal district courts have jurisdiction over civil actions brought to redress constitutional deprivations under color of state law. 28 U.S.C. Section 1343(a)(3)-(4)(1979). Neither of these statutes have a jurisdictional amount requirement.

Here, Count I of plaintiffs' complaint is essentially a claim for declaratory relief, injunctive relief and money damages under 42 U.S.C. Section 1983, 42 Section 1985(3) and 28 U.S.C. Section 2201 et seq. for violations of Article IV, Sec. 2 of the Constitution, the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment.

Defendants here have contested subject matter jurisdiction with respect to plaintiffs' claims for equitable relief in Count I which is brought pursuant to 42 U.S.C. Section 1983, 1985(3) and 28 U.S.C. Section 2201 for violations of the Fourth Amendment to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs claim in Count I is clearly a federal one -- plaintiffs allege individually and collectively that the defendants unlawfully engaged in stopping and detaining plaintiffs, searching their cars, persons and possessions in violation of their existing constitutional rights. We can conclude that this court has subject matter jurisdiction over plaintiff's equitable claims for relief pursuant to 28 U.S.C. Section 1331, 1343(a)(3) and 1343(a)(4). However, this does not end the inquiry for the purposes of defendant's motion to dismiss. Those who seek to invoke injunctive relief must satisfy the jurisdictional requirement of the federal courts imposed by Article III by alleging an "actual case or controversy".*Flast v. Cohen,* 392 U.S. 83, 94-101, 88 S.Ct. 1942, 1949-1953 (1968); *Jenkins v. McKeithen,* 395 U.S. 411, 421-425, 89 S.Ct. 1843, 1848-50 (1969).

B. Federal Court Jurisdiction over claims for injunctive relief

A federal court's jurisdiction over those claims which seek equitable relief extends only to "actual, ongoing cases or controversies".*Lewis v. Continental Bank,* 494 U.S. 472 (1990).

To establish a "case or controversy" for Article III purposes, plaintiffs must demonstrate a "personal stake in the outcome" in order to assure that constitutional issues presented to the court will properly be resolved.*Baker v. Carr,* 369 U.S. 186, 204, 82 S.Ct. 691, 703 (1962). It is not enough for the plaintiff to abstractly show injury. See, e.g., *Golden v. Zwickler,* 394 U.S. 103, 109-110, 89 S. Ct. 956, 960 (1969); *United Public Workers v. Mitchell,* 330 U.S. 75, 89-91, 67 S. Ct. 556 (1947). The basic tenets of equitable relief require the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. *See O'Shea v. Littleton,* 414 U.S. 488, 94 S.Ct. 669 (1974), *vacatedSpomer v. Littleton,* 414 U.S. 514, 94 S.Ct. 669 (1974).

***5** *City of Los Angeles v. Lyons,* 461 U.S. 95, 103 S.Ct. 1660 (1982) is instructive. First, the plaintiff must show that he "has sustained or is immediately in danger of sustaining some direct injury".*Lyons,* 461 U.S. at 101. The injury or threat of injury must be both "real and immediate", not merely "conjectural" or "hypothetical".*Lyons,* 461 U.S. at 101.

Past "exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief.. if

unaccompanied by any continuing, present adverse effects."*Lyons,* 461 U.S. at 101. Just because a party anticipates a future violation does not mean that the threat is "sufficiently real and immediate".*See Lyons,* 461 U.S. at 103. In other words, past wrongs do not always add up to the "real and immediate threat of injury" necessary to satisfy the case or controversy requirement of Article III. *See Lyons,* 461 U.S. at 103.

This demanding threshold, specific to claims for injunctive relief, led the Supreme Court to reverse the lower court in Lyons, finding that the plaintiff lacked standing to seek injunctive relief. It was not enough for the plaintiff to speculate about the actions of the Los Angeles Police force. Lyons had an obligation to articulate predictable and certain actions of the police force so that the court could conclude that a "present, live controversy" was before it. *See Lyons,* 461 U.S. at 104. Lyons did not specifically allege he would have had another encounter with the police. Lyons, 461 U.S. at 104. He also did not allege that a policy existed which led Los Angeles police officers to choke any citizen with whom they have an encounter. Lyons, 461 U.S. at 104. Lyons had an obligation to allege that the City authorized such officers to act in this manner. *See Lyons,* 461 U.S. at 104.

Absent a sufficient likelihood that an individual will be again wronged in a similar way, that individual is not entitled to an injunction. *Warth v. Seldin,* 422 U.S. 490, 95 S.Ct. 2197 (1975); *Schlesinger v. Reservists to Stop the War,* 418 U.S. 208, 94 S.Ct. 2925 (1974).

The Supreme Court has cautioned that federal courts must recognize "[t]he special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law".*Stefanelli v. Minard,* 342 U.S. 117, 120, 72 S.Ct. 118, 120 (1951). Further, federal authority counsels restraint in the issuance of injunctions against state officers who are engaged in the administration of the states' criminal laws if there is an absence of "great and immediate" irreparable injury. *O'Shea,* 414 U.S. at 499, *Younger v. Harris,* 401 U.S. 37, 46, 91 S.Ct. 746, 751 (1971).

In this circuit, we take direction from the opinion of *Daniels v. Southfort,* 6 F.3d 482 (7th Cir. 1993). In *Daniels,* The plaintiff alleged the defendants had violated his constitutional rights by seizing a car leased to him, stealing his dog, destroying his property and arresting him. *Daniels,* 6 F.3d at 486. The district court concluded that plaintiff had alleged a number of past incidents where the defendants had allegedly violated his constitutional rights. *Daniels,* 6 F.3d at 486. However, plaintiff had failed to identify a "pervasive pattern of intimidation" which flowed from defendants' violations. *Daniels,* 6 F.3d at 486. The seventh circuit has found that the inquiry does not end when the movant shows past instances of misconduct.*Daniels,* 6 F.3d at 486. The plaintiff must also establish a reasonable probability that the conduct was part of an official policy and plead facts sufficient for the court to conclude that there is a substantial likelihood that future violations will occur. *Daniels,* 6 F.3d at 486.

***6** A plaintiff has a threshold requirement to plead facts sufficient for the court to conclude that "substantial and immediate irreparable injury" will occur if injunctive relief is not granted. The standard for injunctive relief in this circuit is articulated in *Daniels:*

> Injunctive relief is appropriate in those cases where the moving party can demonstrate that (1) no adequate remedy at law exists; (2) it will suffer irreparable harm absent injunctive relief; (3) the irreparable harm suffered in the absence of injunctive relief outweighs the irreparable harm respondent will suffer if the injunction is granted; (4) the moving party has a reasonable likelihood of prevailing on the merits; and (5) the injunction will not harm the public interest.

See Daniels, 6 F.3d at 485.

Here, plaintiff Chavez has not alleged that he anticipates travel in Illinois in the near future -- he is a resident of New Mexico. Plaintiff Lee wishes to be free to travel on interstate highways but is "inhibited from doing so". Plaintiffs Anthony W. and Linda Thomas have not alleged any instances with the police which have taken place after the stop which is detailed in their complaint. Plaintiff's complaint states the following:

> 97. Unless restrained by this court, defendants will continue their practice of stopping, detaining and searching persons and their vehicles on the basis of race and without legally sufficient cause or justification. Plaintiffs are likely to be subject to this practice in the future.
>
> 98. Plaintiffs have suffered irreparable injury and, in the absence of injunctive relief, will continue to suffer irreparable injury. They have no adequate remedy at law.

"[L]ikely to be subject to the practice in the future" is not

a likelihood of "substantial, immediate and irreparable injury". Injunctive relief which seeks to enjoin police conduct is considered an extraordinary remedy. *Daniels,* 6 F.3d at 485. If the plaintiffs in this case will suffer irreparable injury, it is incumbent on them to articulate this specifically to the court. Plaintiffs, individually and collectively, have not pled facts sufficient to lead this court to conclude that a "real and immediate" potential for injury is present if injunctive relief is not granted.

Finding this, we do not conclude whether the alleged practices of defendants violated plaintiff's constitutional rights. Plaintiffs still have alternative remedies available to them in their attempts to resolve this issue. However, this court is simply not able to entertain every injunctive claim by any or all citizens who only assert that certain practices are unconstitutional. *See Warth,* 422 U.S. at 490.

We have accepted as true all well-pleaded factual allegations, drawn all reasonable inferences in favor of the plaintiff and found an insufficient basis for plaintiff's injunctive relief claim. *See Sladek v. Bell System Management Pension Plan,* 880 F.2d 972, 975 (7th Cir. 1989). Therefore, defendant's motion to dismiss plaintiff's claim for injunctive relief is granted pursuant to 12(b)(6) for its failure to present an "actual case or controversy" before the court. This dismissal is without prejudice and with leave to amend the complaint.

II. The Right to Travel

A. Jurisdiction under 1343

***7** Defendants have also raised subject matter jurisdiction with respect to plaintiff's right to travel in Count II.

In Count II, plaintiffs seek declaratory and injunctive relief pursuant to 42 U.S.C. Section 1983, 1988 and 28 U.S.C. Section 2201 for violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d and 28 C.F.R. Section 42.101. Plaintiffs assert jurisdiction over these claims pursuant to 28 U.S.C. Section 1343.

Section 1343 of Title 28 provides in pertinent part:

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (3) to redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) to recover damages or secure equitable or other relief under any Act of Congress providing for the protection of civil rights, ...

28 U.S.C. Section 1343(a)(3)-(4)(1979).

All actions arising under the civil rights statutes are within the district court's jurisdiction, independent of the amount in controversy. *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 88 S.Ct. 2186 (1968). Because plaintiff alleges violations of the "right to travel" which is guaranteed by Article IV, Section 2 of the constitution, there is sufficient jurisdiction under Section 1343.

B. The right to travel

The Supreme Court has already established that an act which deters or penalizes interstate movement is an unconstitutional classification unless it is shown to be necessary to promote a compelling government interest. *See Shapiro v. Thompson,* 394 U.S. 618, 634 (1969). Reviewing plaintiffs' claims we fail to find any allegations of interstate travel as a result of the actions of the defendants. Defendants' alleged practice is to stop and search individuals on Illinois highways -- each named plaintiff's specific allegations occur in the state of Illinois. We can only conclude that intrastate travel is raised by the allegations of plaintiff's complaint.

Neither the Supreme Court nor the Seventh Circuit have addressed whether intrastate travel is afforded the same protection under constitutional principles as interstate travel. We decline to make such a conclusion.

Therefore, defendant's motion to dismiss plaintiff's travel claims will be granted pursuant to 12(b)(6). Interstate travel is not raised by the allegations of plaintiff's complaint and plaintiff has failed to state a claim upon which relief can be granted with regard to any intrastate travel allegations.

III. The Intracorporate Conspiracy Doctrine

In *Travis v. Gary Community Mental Health Center, Inc.,* the seventh circuit has found that Section 1985(3) does not encompass conspiracies within a single entity - only

conspiracies among independent entities are actionable.*Travis v. Gary Community Mental Health Center, Inc.,* 921 F.2d 108 (7th Cir. 1990).

***8** Here, all of the defendants are agents of the same entity -- the Illinois State Police. Therefore, plaintiffs claims are barred by the intra-corporate conspiracy doctrine. We find plaintiffs' conspiracy claims pursuant to both 42 U.S.C. Sections 1983 and 1985(3) are legally insufficient and must be dismissed pursuant to Rule 12(b)(6).

IV. Title VI and the Federal Regulations

To have standing to bring a private action pursuant to Title VI, a plaintiff must be an "intended beneficiary of, an applicant for, or a participant in a federally funded program."*Simpson v. Reynolds Metals Co.,* 629 F.2d 1226, 1235 (7th Cir. 1980).

Before the Supreme Court decision of *Grove City College v. Bell,* 465 U.S. 555, 104 S.Ct. 1211 (1984), only the program that benefitted from federal funds was subject to regulations prohibiting discrimination. *Grove Bell* was overruled in 1988 by Congress' passage of the Civil Rights Restoration Act of 1987, ("CRRA"), which is codified under 42 U.S.C. Section 2000d-4a. This statute was intended to ensure that various civil rights statutes would apply to the entire state or local institution that had a program or activity funded by the federal government. *See Schroeder v. City of Chicago,* 927 F.2d 957, 962 (7th Cir. 1991).

Plaintiffs' generally allege that defendants have engaged in a pervasive "practice" of racial discrimination "in all areas of the State of Illinois...on a persistent, recurrent basis". (Second Amended Complaint, para. 18-19). Plaintiffs further allege that they are intended beneficiaries of federal funds received by the Illinois State Police. We find the grants provided to the Illinois State Police could be construed as grants given to an "operation" of "a department, agency, special purpose district, or other instrumentality of a State or of a local government" consistent with the language of 2000d-4a. We find plaintiff's have sufficiently alleged a cause of action under Title VI.

Defendants' motion to strike and dismiss pursuant to 12(b)(6) will be struck in its entirety with respect to Count II.

.