IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

JOSE RIOS-DIAZ, ELIGIO DURAN-SANCHEZ, DELFIO MEJIA-OCHOA, and EDUARDO BARRAGAN-NARANJO, on behalf of themselves and all others similarly situated, and MONTANA IMMIGRANT JUSTICE ALLIANCE,

Plaintiffs,

vs.

COLONEL TOM BUTLER, in his official capacity as Chief Administrator of the MONTANA HIGHWAY PATROL, ATTORNEY GENERAL TIM FOX, in his official capacity as head of the MONTANA DEPARTMENT OF JUSTICE,

Defendants.

CV-13-77-BU-DLC-CSO

ORDER

Plaintiffs Jose Rios-Diaz, Eligio Duran-Sanchez, Delfio Mejia-Ochoa, Edurado Barragan-Naranjo, and Montana Immigrant Justice Alliance (collectively "Plaintiffs") filed a complaint pursuant to 42 U.S.C. § 1983 asserting causes of action against Defendants in their official capacities for violations of the Fourth and Fourteenth Amendments of the United States Constitution. Plaintiffs also

assert causes of action against Defendants in their official capacities based on violations of the Montana Constitution and Title VI, 42 U.S.C. § 2000(d). Defendants move to dismiss some of Plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(6).

United States Magistrate Judge Carolyn S. Ostby issued findings and recommendations granting Defendants' motion in part and denying in part. Defendants timely filed objections and are therefore entitled to de novo review of the specified findings and recommendations to which they object. 28 U.S.C. § 636(b)(1). The portions of the findings and recommendations not specifically objected to will be reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). For the reasons stated below, this Court adopts Judge Ostby's findings and recommendations in full. The parties are familiar with the factual and procedural background of this case, so it will not be repeated here.

I. Plaintiffs' Objections

A. State Law Claims

Defendants first object to Judge Ostby's decision not to dismiss Plaintiffs' federal claims to the extent they are premised on alleged violations of state law. Defendants argue that claims based on alleged violations of state law are irrelevant

to a § 1983 claim. Further, claims based on state law are barred by the Eleventh Amendment. Thus, Defendants contend, Plaintiffs' claims that are based on alleged violations of state law should be dismissed.

This Court, like Judge Ostby, declines to address Defendants' argument that violations of state law are irrelevant to a § 1983 claim. The Court agrees with Judge Ostby that the prudent option is to allow "Defendants to object, as they see fit, to Plaintiffs' reliance on alleged violations of state law as the case develops." (Doc. 19 at 11.)

The Court finds that this is the best course of action for two reasons. First, contrary to Defendants' assertions, Plaintiffs' remaining claims appear on their face to be based on conduct by the Montana Highway Patrol ("MHP") that allegedly violates federal law. Plaintiffs do allege conduct by the MHP that violates Montana law, or is not authorized under Montana law, but these allegations do not form the sole basis for Plaintiffs' claims. Plaintiffs merely allege that the MHP's conduct violates both federal law and Montana law. Defendants' objections are better dealt with in a motion in limine or other procedural device rather than a motion to dismiss under Rule 12(b)(6). Second, Defendants do not expressly identify which of Plaintiffs' claims are "based on alleged violations of state law." (Doc. 20 at 8.) The Court is left wondering how

it would practically separate alleged violations of state law from Plaintiffs' claims based on federal law. Thus, at this stage in the proceeding, the Court views the better approach as allowing Plaintiffs' case to develop and Defendants to object as necessary. Defendants' objection is overruled.

B. Title VI Claim

Defendants next object to Judge Ostby's recommendation not to dismiss Plaintiffs' claim under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Judge Ostby declined to dismiss the claim principally because the Ninth Circuit has not addressed the issue of whether a party may sue an individual, named solely in his official capacity, for prospective injunctive relief under Title VI. Defendants argue that a Title VI claim for prospective injunctive relief cannot be brought against an individual, even if the claim is brought against an individual acting in his official capacity. However, after a review of the applicable case law, the Court finds that a Title VI claim may be brought against an individual named in his official capacity.

Defendants are correct that some circuit and district courts have found that individuals, named solely in their individual capacities, cannot be held liable for violations of Title VI. *Shotz v. City of Plantation*, 344 F.3d 1161, 1169 (11th Cir. 2003) ("[I]ndividuals may not be held liable for violations of Title VI because it

prohibits discrimination only by recipients of federal funding."); *Ajiwoju v. Cottrell*, 2005 WL 1026702, at *1 (W.D. Mo. May 2, 2005) (dismissing Title VI claim against parties named in their individual capacities); *Steel v. Alma Pub. Sch. Dist.*, 162 F. Supp. 2d 1083, 1085 (W.D. Ark. 2001) (dismissing Title VI claim against school superintendent named in his individual capacity).

However, when a Title VI claim is brought against an individual acting in his official capacity, and the parties are seeking injunctive relief as opposed to monetary damages, courts have allowed the claims to survive a motion for dismissal. For example, in *Steel*, the court was tasked with determining if Title VI claims could be brought against school officials named in their official and individual capacities. The court dismissed the Title VI claims brought against defendants named in their individual capacities, but allowed the claims against school administrators named in their official capacities to stand. The court determined that official-capacity Title VI claims were appropriate when the individual named in the suit "exercise[d] administrative control over programs and activities within the school district . . . ." *Steel*, 162 F. Supp. 2d at 1085. Applying state law to determine if the administrators had the statutory authority to exercise administrative control over the school district, the court found that the school superintendent, the school board, and director of the state Department of

Education were empowered with this authority. *Id.* The court thus allowed the Title VI claims to stand. *Id.* This approach to official-capacity suits has also been applied by at least one other district court. *Doe ex rel. Doe v. Barger*, 193 F. Supp. 2d 1112, 1118 (E.D. Ark. 2002) (finding liability under Title IX[1] for school superintendent named in his official capacity).

Similarly, at least one circuit court has recognized the potential liability under Title IX for administrators named in their official capacities. In *Smith v. Metropolitan School District Perry Township*, 128 F.3d 1014 (7th Cir. 1997), the Seventh Circuit Court of Appeals examined whether a school principal and vice-principal constituted grant recipients under Title IX in order to determine whether they could be held liable in their official capacities. The Court determined that individuals named in their official capacities must have "administrative control" over the program or activity receiving federal funds in order to be held liable in their official capacity under Title IX. *Smith*, 128 F.3d at 1020 (citing 20 U.S.C. § 1687; § 8801). The Court then applied state law to determine if the principal and vice-principal possessed sufficient administrative control. It concluded that they

[1] Courts have established that case law concerning Title VI and Title IX are to be construed interchangeably. *Mock v. S. Dakota Bd. of Regents*, 267 F. Supp. 2d 1017, 1019 (D.S.D. 2003); *see also Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1170 n. 12 (11th Cir. 2003) ("We construe Titles VI and IX *in pari materia*.").

did not. The Court determined that state law placed administrative control over the school, i.e., the program or activity receiving federal funds, with the school board and school district. *Id.* Thus, the school's principal and vice-principal could not be sued, even in their official capacities, under Title IX. *Id.* at 1021.

Here, the Court will apply the analysis discussed in *Steel* and *Smith*. Title 42 U.S.C. § 2000d defines "program or activity" to "mean all of the operations of . . . a department [or] agency . . . of a State or of a local government." 42 U.S.C.A. § 2000d-4a. As in *Steel*, this Court looks to state law to determine if Defendants Fox and Butler have administrative control over "all of the operations of" their respective agencies. *Id.* If Fox and Butler have administrative control, then they may be held liable in their official capacities under Title VI.

Montana law provides that the Montana Department of Justice ("DOJ") has "control and supervision" over the MHP and the authority to "make, promulgate, and amend rules which prescribe procedures and practice requirements of the [MHP]." Mont. Code Ann. §§ 44–1–101; 44–1–103. The head of the DOJ is the attorney general and the attorney general has the authority to "supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department . . . [and] establish the polic[ies] to be followed by the department and [its] employees." Mont. Code Ann. §§ 2–15–112; 2–15–2001. Thus, Attorney

General Fox, as head of the DOJ, has sufficient administrative control over the operations of the MHP to constitute a grant recipient under Title VI. He may be sued in his official capacity under Title VI.

Second, Montana law provides that the Chief of the MHP "shall have direct control and supervision of all patrol officers, subject to the approval of the attorney general." Mont. Code Ann. § 44–1–301. Further, the Chief of the MHP retains "control" over the "duties and jurisdiction of . . . supervisory personnel." Mont. Code Ann. § 44–1–302. Therefore, Colonel Butler, as Chief of the MHP, has sufficient administrative control over the operations of the MHP to constitute a grant recipient under Title VI. He, too, may be sued in his official capacity under Title VI. Accordingly, the Court overrules Defendants' objection and denies Defendants' motion to dismiss Plaintiffs' Title VI claims.

There being no clear error in any of the remaining findings and recommendations,

IT IS ORDERED that Judge Ostby's Findings and Recommendations (Doc. 19) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Defendants Colonel Tom Butler and Montana Attorney General Tim Fox's Motion to Dismiss (Doc. 15) is GRANTED for Counts III and IV, but DENIED in all other respects.

Dated this 25th day of July 2014.

Dana L. Christensen, Chief Judge
United States District Court