

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,

v.

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

JUDGMENT

FILED

APR 03 2015

Clerk, U.S. District Court
District Of Montana
Missoula

Defendants served on Plaintiffs an Offer of Judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure and that Offer of Judgment has been accepted. Accordingly, the Court enters the following Judgment:

1. **Adherence to policy:** The Montana Highway Patrol shall adhere to its policy, Montana Highway Patrol GR-9, attached as Exhibit A, which has been duly adopted, and shall adhere to the guidelines for civil immigration issues stated therein in all traffic stops and detentions conducted by the Montana Highway Patrol. The policy may be revoked or amended by the Montana Highway Patrol based upon subsequent changes in controlling case law or if the State enters into a 287(g) agreement.

2. **Training:** All Montana Highway Patrol Troopers are to receive training regarding the application of GR-9.

3. **Monitoring:** Provided funding is appropriated, Defendants shall, for a period of five years, hire and pay for annual racial-profiling studies similar in nature and content to the December 18, 2013 study conducted by Washington State University researchers titled “MHP Traffic Stop Data Analysis Project.” Defendants shall retain the Washington State University researchers who conducted the December 18, 2013 study subject to that entity’s williness and ability to conduct the required analysis. All future studies will conform substantially with the 2013 study and be conducted by the same Washington State University researchers so long as they are able and willing to continue. If unavailable, a similarly-qualified and experienced entity will be retained to conduct the studies. All monitoring reports shall be public and posted on the Montana Department of Justice website.

4. **Additional traffic stop and detention data:** Defendants shall collect additional traffic stop and detention data by providing a box on the Montana Highway Patrol “Citizen Contact Log” that will require a trooper to check the box to indicate whether in the course of a traffic stop the trooper contacted Department of Homeland Security personnel for any reason.

5. **Payment of costs, including attorney’s fees:** Plaintiffs shall be entitled to costs, including attorney’s fees, as allowed by law and in an amount to be determined by the Court.

6. **Racial profiling reports.** The Montana Highway Patrol will submit annual reports to the Montana Department of Justice regarding racial profiling and what actions have been taken by the Montana Highway Patrol to avoid racial profiling in each period covered by the report. The Montana Highway Patrol shall continue to provide such reports so long as it has a legal or policy obligation to do so. These annual reports shall be public and posted on the Montana Department of Justice website.

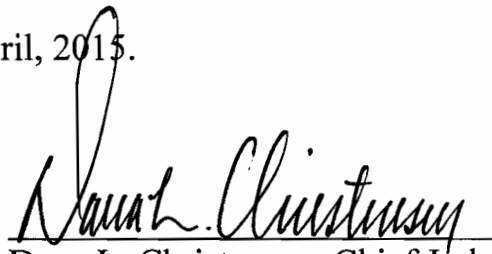
7. **Independent Police Auditor.** The Montana Highway Patrol and the Attorney General shall establish an internal procedure within the Montana Highway Patrol providing for appointment and payment of an Independent Police Auditor (IPA) to review the Montana Highway Patrol’s investigation of and response to complaints from motorists or their representatives relating to claims or allegations of

racial profiling and to determine whether that investigation was adequate. The IPA will provide an objective, third-party analysis of the scope and execution of any such investigation and shall provide the results of IPA reviews to the Montana Highway Patrol. The IPA may not be an employee of the Montana Department of Justice or the Montana Highway Patrol and must be qualified by training and experience to perform the duties of the IPA. The Montana Attorney General shall have sole authority and discretion to make final decisions concerning the appointment of the IPA, the structure and operation of the IPA process, and whether to take actions based on the IPA report.

8. **No determination of liability.** The Defendants have not admitted and do not admit liability. This Judgment is not based upon any admission of liability or determination of liability by the Court. It is based upon the terms of a Rule 68 Offer of Judgment. Liability has not been determined by the Court and is not determined by this Judgment.

9. **Effect of judgment.** This Judgment shall be effective for all purposes in this litigation, including actions to enforce the terms of the Judgment and any proceedings that shall be had to determine fees. It shall not, however, be used in or have any other effect of any kind or nature in any other proceeding and, in particular, shall not have any res judicata or collateral estoppel effect in any other action of any kind, including any action for damages that may be brought in the future.

Dated this 3rd day of April, 2015.



Dana L. Christensen, Chief Judge
United States District Court

Chapter [III]:[GENERAL REGULATIONS]
Section: [GR-9]
Subject: Immigration
Revised: [DATE]

A. **PURPOSE**

The purpose of this policy is to establish guidelines for handling civil immigration issues that arise during stops and detentions. This policy does not limit or restrict the enforcement of federal immigration laws to less than the fullest extent permitted by federal law, nor does it restrict the full enforcement of state laws.

B. **POLICY**

Troopers shall conduct contacts with persons suspected of being unlawfully present in the United States in a manner consistent with federal and state laws regulating immigration and protecting the civil rights, privileges, and immunities of all persons.

Troopers may not stop or detain or unnecessarily prolong a stop or detention solely for the purpose of verifying a person's immigration status, even if the detention for verification purposes is requested by U.S. Customs and Border Protection ("CBP") or Immigration and Customs Enforcement ("ICE").

Troopers may not contact, stop, or detain a person based on race, religion, national origin, gender, sexual orientation, or economic status, except when it is part of a suspect description linking that person to a particular unlawful incident and said description is timely, reliable, and geographically relevant or when otherwise authorized by law.

C. **DEFINITIONS**

Alien

Any person who is not a citizen or national of the United States.

Civil immigration violation

Unlawful presence of an alien in the United States, without more, is not a criminal immigration violation. Examples of civil, as opposed to criminal, immigration violations may include, but are not limited to, an alien whose visa has expired and has not timely filed for a change of status, or an alien who engages in unauthorized employment in violation of the terms of a visa.

Criminal immigration violation

In certain instances, violations of federal immigration laws are criminal in nature. Examples include but are not limited to violations of: 8 USC § 1324 (smuggling or harboring of certain undocumented aliens); 8 USC § 1325(a) (illegal entry of an alien in the presence of an officer); and 8 USC § 1326 (reentry of aliens previously excluded or deported).

EXHIBIT

A

Chapter [III]:[GENERAL REGULATIONS]
Section: [GR-9]
Subject: Immigration
Revised: [DATE]

CBP

United States Customs and Border Protection

ICE

United States Immigration and Customs Enforcement

Immigration status

Legal standing of an alien's presence in the United States.

Reasonable period of time

The amount of time necessary for a trooper to diligently pursue a means of investigation that is likely to confirm or dispel the trooper's suspicions of criminal activity.

Reasonable suspicion

A particularized and objective basis for suspecting the particular person stopped of criminality. This assessment is to be made in light of the totality of the circumstances. A trooper may stop and investigate a person based on reasonable suspicion alone but may not arrest.

Unlawfully present

Alien whose stay in the United States has not been authorized by the Department of Homeland Security, or a person who entered and remained in the United States without receiving the required authorization from the Department.

D. **GENERAL CONTACTS**

1. During a consensual contact, a trooper may inquire about a person's immigration status if this inquiry is not based solely on a person's race, national origin, or language capabilities, and is based on reasonable suspicion.
2. The person contacted does not have to answer questions about immigration status or produce any documentation relating to immigration status, but may choose to do so voluntarily.
3. In a consensual contact, a trooper may ask but may not demand that a person produce immigration documents.

E. **PERSONS LAWFULLY STOPPED OR DETAINED**

1. If, during a lawful stop or detention, a trooper has reasonable suspicion that a person is unlawfully present in the United States, the trooper may make a reasonable attempt to determine the person's immigration status by using all available facts or evidence, including any government issued identification.

Chapter [III]:[GENERAL REGULATIONS]

Section: [GR-9]

Subject: Immigration

Revised: [DATE]

2. A person's race, national origin, or language abilities are not, by themselves, reasons to suspect that a person is unlawfully present in the United States.
3. If, after reviewing all available facts and evidence, the trooper still reasonably suspects the person is unlawfully present in the United States, the trooper may attempt to verify the person's immigration status by contacting ICE or CBP.
4. A trooper may not stop or detain a person solely for investigating that person's immigration status.
5. A trooper may not prolong a stop or detention solely for purposes of verifying a person's immigration status. This prohibition applies regardless of whether ICE or CBP has been contacted. If the reasonable time necessary to complete the initial stop or detention has expired and ICE or CBP has not yet verified the person's immigration status, then the person must be released unless the officer has reasonable suspicion of additional or different criminal activity. The trooper may, in any case, refer the person's information to ICE or CBP.
6. If a person is lawfully stopped or detained and the trooper has reasonable suspicion of additional or different criminal activity, then the trooper may continue his or her attempt to verify the person's immigration status during, but not beyond, the investigation of the additional or different criminal activity.

F. **CIVIL IMMIGRATION VIOLATIONS**

1. If a trooper believes or has actual knowledge that a person has committed a civil immigration violation, the trooper may not arrest the person for that violation and may not detain the person longer than necessary to complete the contact, even if requested by ICE or CBP.
2. A trooper may not arrest a person solely because the person lacks proper immigration documentation, or chooses not to answer questions that are directed solely to immigration status and which do not have some otherwise related law enforcement purpose.

G. **DRIVER AND PASSENGER IDENTIFICATION**

Nothing in this policy limits a trooper's authority under Montana Code Annotated § 46-5-401 to demand that a lawfully stopped driver produce his or her driver's license and request that a passenger produce identification.