For Opinion See 2006 WL 3230162, 445 F.Supp.2d 400, 2006 WL 453215, 414 F.Supp.2d 469

United States District Court, S.D. New York.
M.K.B., O.P., L.W., M.A., Marieme Diongue, M.E., P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs,
v.
Verna EGGLESTON, as Commissioner of the New York City Human Resources Administration, Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance, and Antonia C. Novello, as Commissioner of the New York State Department of Health, Defendants.
No. 05 Civ. 10446 (JSR) (FM).
May 5, 2006.

State Defendants' Memorandum of Law in Support of Their Motion to Vacate the Court's February 16, 2006 Order as to Them, and in Further Opposition to Plaintiffs' Application for a Preliminary Injunction

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Preliminary Statement

The plaintiffs brought this action on December 12, 2005 seeking a broad spectrum of

prospective relief with respect to the determinations of eligibility of aliens for cash assistance, food stamps and Medicaid benefits at Job Centers operated by the New York City's (NYC) Human Resources Administration (HRA) (or City defendant). Plaintiffs sued the Commissioners of the New York State Office of Temporary and Disability Assistance (OTDA) and the New York State Department of Health (DOH), claiming that they failed adequately to supervise the City defendant's staff agencies, in administering the federal Food Stamp and Medical program in violation of plaintiffs' federal rights.

The City and State Defendants had filed opposition to plaintiffs' request for a preliminary injunction and class certification of this action as a class action, plaintiffs filed reply papers and oral argument was held before this Court on February 2, 2006. In response to a direction by this Court, all defendants, by letter of February 8, 2006, promised this Court that they voluntarily would take specific actions to ameliorate or eliminate problems with respect to the eligibility determinations which the plaintiffs identified at the February 2, 2006 argument. The Court memorialized the defendants' promises in an Order of February 16, 2006. As set forth more completely below, and in the accompanying State Defendants' Proposed Findings of Fact (FOF), the State Defendants fulfilled the voluntary promises made, mooting the Court's February 16, 2006 Order as to them.

Expedited discovery was then taken by the parties and an evidentiary hearing was conducted by this Court from March 14, 2006 through March 24, 2006.

In accord with the schedule set by the Court, State Defendants herewith submit this supplemental memorandum of law, their proposed findings of fact and conclusions of law and affidavits detailing additional voluntary measures they have undertaken with respect to alleged problems which arise in eligibility determinations.

POINT I

STATE DEFENDANTS HAVE COMPLETELY FULFILLED THEIR PROMISES INCORPORATED BY THE COURT IN ITS FEBRUARY 16, 2006 ORDER; THE ORDER SHOULD BE VACATED AS MOOT.

In its February 16, 2006 Order, this Court directed OTDA to complete four actions which OTDA had voluntarily promised to do by various dates certain in its February 8, 2006 letter to the Court. These actions were that OTDA:
(1) answer a set of questions posed to it by HRA by February 9, 2006;
(2) remove the requirement, by April i, 2006, from the Welfare Management System (WMS) that if an applicant is categorized as a battered qualified alien, so that the Alien Citizenship Indicator (ACI) is coded as “B” that there also be an entry in the WMS field for Alien Registration Number or the eligibility transaction would not be processed by WMS successfully;
(3) amend by March 8, 2006, the list of aliens potentially eligible for food stamps in the food stamp section of denial notices generated by the state's computerized Central Notice System(CNS), to include battered qualified aliens; and
(4) issue a new informational document concerning the eligibility of battered qualified aliens (along with an updated Alien Eligibility Desk Guide) in six weeks (March 22, 2006).

These four actions, which were voluntarily undertaken, were completed in accord with the Court's Order. FOF 1,8-10. Voluntarily actions taken by a defendant to eliminate an alleged violation of rights, whether private or public, moot the claims which are based on the alleged violations. *Lillbask v. State of Connecticut Department of Education*, 397 F.3d 77, 88(2nd Cir. 2005); *City of New York v. Nexicon, Inc.*, 2006 WL 647716 at *4 (S.D.N.Y. March 15, 2006). The fact the State defendant was complying with the Court's injunction does not alter the analysis. *Haley v. Pataki*, 60 F.3d 137, 140-41 (2nd Cir. 1995). This is true notwithstanding that other claims remain. *Lamar Advertising of Penn, LLC v. Town of Orchard Park*, 356 F.3d 365, 376, 379 (2d Cir. 2004).

Moreover, in the circumstances of the history of this case, a claim of the possibility of any of the four actions being reversed by OTDA is not a basis for denial of the application to vacate the Court's February 16, 2006. Only if the violation is capable of repetition would it be correct that this Court decide that the claims which led to the OTDA actions are not moot. The test is that there not be a reasonable expectation that OTDA would change these positions (and that the problem is eliminated, as it has been here). *Id.* at 375. This court should not decide that these matters are not moot absent evidence that the purported misconduct will recur. *Id.* at 377. In this case the evidence is that it is highly unlikely the actions by OTDA will be reversed. These actions involved computer programming changes for two of the voluntary actions, and significant staff efforts and higher level approvals were required to accomplish the other two. Moreover, the evidence is that OTDA is undertaking yet additional voluntary actions to improve the system of eligibility determinations which should lead to HRA's reduction of the number of alleged incorrect benefit decisions.

In order to avoid the possibility of an HRA worker incorrectly changing the date of qualified status of an applicant, OTDA and DOH voluntarily instituted a lock on the appropriate date field in WMS. FOF 66. This change was accomplished without any Order being entered. When amending the CNS notices section regarding denial of cash assistance, also known as public assistance (PA), OTDA has, without a Court Order, voluntarily broadened the description of battered qualified aliens and the description of who would be eligible for state funded benefits if the alien was someone categorized as Permanently Residing Under Color of Law (PRUCOL)[FN1] FOF 1112.

> FN1. This amendment to the notice regarding PRUCOL, which affects solely state-funded benefits, would not be within the Court's power to order. See Point I.B.I. of State Defendants' Memorandum of Law submitted January 25, 2006. However, the fact that the change was made is evidence that OTDA would not take action in the future to undo voluntary changes made to improve the distribution of benefits to eligible aliens.

The alien eligibility module used in training of HRA Job Center supervisors, which began before the hearing ended and is ongoing, already included battered qualified aliens as an alien group potentially eligible for benefits. FOF 106. Improvements were voluntarily made to the module, in this example driven training, to include fact examples involving battered aliens. FOF 107. This was done within the time al-

lotted by the Court to add to the record. Tr. 1432.[FN2]

FN2. “Tr.” refers to the transcript of the evidentiary hearing held in this case from March 14, 2006 through March 24, 2006.

The informational letter issued March 22, 2006 has been further improved and the Alien Eligibility Desk Guide with it. FOF 108. Additionally the Food Stamp Source Book has also been revised. FOF 109.

The voluntarily changes described above are strong evidence that OTDA is highly unlikely to undo the voluntary changes which were made previously, and had thus complied with the Court's Order of February 16, 2006. Determining that this is so requires that the Court dismiss the underlying specific claims. *Lamar Advertising, supra,* 356 F.3d at 379. There are two further reasons for concluding that there is no reasonable expectation that the changes embodied in the Order will not be reversed. First, government entities are to be given deference when indicating the purported violations have been eliminated. *Id.* at 377 Moreover, the fact that there is no evidence in the record that even suggests that there is any expectation at all, that the specific alleged violations will recur, strongly supports a decision that the specific claims are moot. *Id.*

Because the matters embodied in the Court's Order of February 16, 2006 are now moot as to the State Defendants, the Order should be vacated as to the State defendants. *Id.* at 379.

POINT II

THE EVIDENCE DOES NOT DEMONSTRATE THAT STATE DEFENDANTS' CURRENT SUPERVISORY MECHANISMS WILL CAUSE THE CITY DEFENDANT TO SYSTEMATICALLY DEPRIVE ELIGIBLE IMMIGRANTS OF BENEFITS IN VIOLATION OF THE FEDERAL FOOD STAMP OR MEDICAID ACT, LET ALONE DEMONSTRATE THAT THE SOUGHT-AFTER INJUNCTION AGAINST THE STATE DEFENDANT IS NECESSARY IN ORDER TO PREVENT THE CITY DEFENDANT FROM SYSTEMATICALLY DEPRIVING ELIGIBLE IMMIGRANTS OF FEDERAL FOOD STAMPS OR MEDICAID.

This action is premised upon 42 U.S.C. § 1983 (Complaint at parag, 1), which states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, *subjects, or causes to be subjected,* any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress .....

(Emphasis added).

Under *Ex parte* *Young,* 209 U.S. 123 (1908), this Court's jurisdiction over the State defendants is limited to redressing, on a prospective basis, ongoing violations of federal law. *See* *Kentucky v. Graham,* 473 U.S. 159, 167 n. 14.

Also, under Article III of the Constitution's standing requirement, a “plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful

conduct and likely to be redressed by the requested relief." *Allen v. Wright,* 468 U.S. 737, 751 (1984), *reh. denied,* 468 U.S. 1250 (1984), citing *Valley Forge christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 472 (1982).

Such lack of a causative link against a supervisory defendant was the basis for Supreme Court's holding in *Rizzo v. Goode,* 423 U.S. 362 (1976), that class action plaintiffs failed to satisfy Article III's case or controversy requirement for an injunction against the Police Commissioner which was aimed at curtailing alleged unconstitutional misconduct by the Commissioner's police officers:
As the facts developed, there was no affirmative link between the occurrences of the various incidents of police misconduct and the adoption of any plan or policy by petitioners -- express of otherwise -- showing their authorization or approval of such misconduct.
Instead, the sole causal connection found by the District Court between petitioners and the individual respondents was that in the absence of a change in police disciplinary procedures, the incidents were likely to continue to occur, not with respect to them but as to the members of the classes they represented.

423 U.S. at 371.

Thus, in order to succeed in a § 1983 claim, the plaintiffs must show that the defendants' alleged misconduct or omission will cause the deprivation of a federal right claim. *E.g.,* *Kentucky v. Graham,* 473 U.S. 159, 166 (1985) (State governmental liability requires that it be the moving force leading to the deprivation of a federal right). This applies to any claim based on a federal violation. *See, e.g.,* *Rockefeller v. Powers,* 74 F.3d 1367, 1379 (2nd Cir. 1996) (Equal Protection); *Intimate Bookshop, Inc. v. Barnes & Noble, Inc.,* 2003 WL 22251313 (S.D.N.Y. Sept. 30, 2003) (price discrimination).

The standard that there must be evidence of causation applies to whether or not to issue a preliminary injunction. *Rockefeller, supra,* at 1369, 1378 at n. 17, 1383; *Bolduc v. Beal Bank, SSB,* 167 F.3d 667; 673-74 (1st Cir. 1999) (Equal Credit Opportunity Act).

"That a suit may be a class action ... adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.' " *Lewis v. Casey,* 518 U.S. 343, 357 (1996), quoting *Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 40, n. 20 (1976).

While assuming *arguendo,* plaintiffs' counsel cite certain omissions within the State defendants' training materials, the plaintiffs have not demonstrated that these omissions actually caused the violation of plaintiffs' federal rights under the food stamp or Medicaid acts. This is especially true with respect to training materials and the OTDA Alien Desk guide. With respect to training materials omissions, plaintiffs' counsel contend that there were training materials which omitted the category of battery qualified aliens from a list of qualified aliens who are poten-

tially eligible for benefits. Plaintiffs' FOF[FN3] 260 and 262. When a training omission is claimed, in order to succeed in a § 1983 claim, a plaintiff must show that there was a direct causal link between the government action and the deprivation of federal rights.[FN4] *Board of County Commissioners of Bryan County v. Brown,* 520 U.S. 397, 400 (1997); *Amnesty America v. Town of West Hartford;* 361 F.3d 113, 129-130 (2nd Cir. 2004). In the circumstances, as here, where evidence has been taken, the requirement means that the plaintiffs must show that the specific deficiency they have purportedly proven (omission of battered qualified aliens from the list in the training materials).is closely related to the ultimate injury such that it "actually caused the violation of the federal right". *Amnesty America, supra,* 361 F.3d at 130. This the plaintiffs have not done. Moreover, this should apply with equal force to any claimed deficiency in the computer systems or any other part of the support for the relief they seek against the State Defendants.

FN3. Plaintiffs' FOF refers to Plaintiffs' Proposed Findings of Fact.

FN4. In *Kentucky v. Graham,* 473 U.S. 159, 166 (1985), the Court stated that to establish liability against a State entity under 42 U.S.C. § 1983, the plaintiff had to prove that the governmental entity itself was the "moving force" behind the deprivations of the federal right. The Court cited 2 municipal liability cases, one of which was *Monell,* as support. 473 U.S. at 166 and n. 12. Thus, it is correct to apply this standard for municipal liability, at a minimum, where the defendant is a sovereign state.

First, this case was specifically brought about HRA job centers and so the training material with which Steven Ptak was cross-examined, used in food stamp centers, has not been shown to have any impact on job center workers. *See* Tr. 1153-1155. Second, the HRA workers are regularly trained on HRA materials. FOF 54-56. The HRA Alien Eligibility Desk Guides for 2003, 2004 and 2005, received in evidence, all include battered qualified aliens as potentially eligible for cash assistance, food stamps and Medicaid benefits. Exh. 505, 506, 509, and 515. All of these guides include the several kinds of documentation as common documentation, which plaintiffs have emphasized. The evidence is that the City workers do turn to the HRA guide when faced with questions about alien eligibility. Tr. 1010. In light of these facts, there is no evidence that the omission of battered qualified aliens from the list in the food stamp training materials resulted in plaintiffs being denied benefits, which is the violation of a federal right which plaintiffs claim. There were four job center workers who were witnesses, none of whom testified that they were influenced or even saw the OTDA-HRA training materials in question. Thus, this evidence about OTDA's training materials[FN5] does not demonstrate that the omissions "actually caused the violation of the federal right" as required. *Amnesty America, supra,* 361 F.3d at 130.[FN6]

FN5. No evidence was introduced regarding training materials generated by NYS DOH.

FN6. Similarly, there was no evidence that the omission of battered qualified aliens from the list of potentially eligible benefit recipients on a public

> assistance or food stamp denial notice generated by CNS, deterred applicants from continuing to seek benefits. That notice was exhibit 14 to the declaration of Wendy Josephs but there is no mention in her declaration that she failed to continue to pursue benefits because of this omission. Declaration of Wendy Joseph executed September 30, 2005 ¶¶ 25 26. There was no testimony adduced at the hearing to this effect, either. Thus, there is no causal link demonstrated between this notice and any denial of benefits.

Moreover, there is no evidence that any of these omissions were anything other than allegedly negligent and "negligence is not a valid basis for liability under 42 U.S.C. § 1983. *Iwachin v. NYS Department of Motor Vehicles,* 299 F.Supp.2d 117, 121 (E.D.N.Y. 2004) (citations omitted) (negligent maintenance of computer system) *aff'd* 396 F.3d 525, 527 (2nd Cir. 2005) (affirmed with respect to the substantive claims substantiately for the reasons stated by the District Court). *Accord, Shannon v. Jacobowitz,* 394 F.3d 90, 93 (2nd Cir. 2005) (mechanical failure of voting machine).

Nor is there evidence of a causal link between the two computer issues raised in the requests for a preliminary injunction against the State defendants and the violation of any plaintiff's federal rights under the Food Stamp or Medicaid Act, let alone, a systematic denial of benefits.

The plaintiffs' seek preliminary injunctive relief requiring that a second date field be created in WMS because of the slight chance that federal cash and Medical assistance will not be provided to an otherwise eligible immigrant. The potential applicants at risk is very likely to be a very small number because only those people who entered the United States before August 22, 1996 are eligible and it is now 10 years beyond that. The lack of this second date field does not affect anyone else, even in theory. FOF 67-22. In this case, there is no practical effect on any member of the plaintiffs' proposed class because such a person would receive like benefits from the state SNA and Medicaid programs. FOF 68-72. The funding source would be transparent to the benefit recipient. Accordingly, this feature of WMS attacked by plaintiffs, does not have any causal connection to the claimed irreparable harm to proposed class members, *i.e.* denial of benefits. Where the evidence doesn't prove the causal connection, a preliminary injunction is not supported. *Rockefeller, supra,* 74 F.3d at 1379; *Bolduc, supra,* 167 F.3d at 673. The likelihood of injury and the causal connection are not to be presumed on a motion for a preliminary injunction. *Barris/Fraser Enterprises v. Goodson-Todman Enterprises, Ltd.,* 638 F. Supp. 292, 294 (S.D.N.Y. 1986) (Weinfeld, J.). The only evidence potentially regarding a benefit recipient and a computer issue date was the case of Galinka Rybalko. She was not an individual who entered the United States before August 22, 1996 and there was no mention of the computer entries having caused her problem. *See* Plaintiffs' FOF 64-77. Any claim that the date and a benefit recipient became a qualified alien could be changed to a more recent date in WMS due to a change in qualified status is now moot. FOF 73.

Similarly, the request for a specific example regarding aliens and opening multi-suffix cases in the Authorization of Grants manual and specific targeted training for the entire HRA staff with respect to multi-suffix cases is not supported by a

evidence of a causal connection of a systematic denial of benefits to proposed class members. Rather, the evidence is that the situation involving splitting a case into a multi-suffix cases and benefits for aliens is rare. FOF 87, 91. Where it is necessary to do so, assistance by the various help desks, and the experience by the worker utilizing the assistance provided by the help desk, results in these problems being resolved more quickly. FOF 86. Thus, the causal connection between the alleged harm and the purported deficiencies in the system manual is not demonstrated sufficiently to support the issuance of an injunction on by this Court on this record. *Bolduc, supra,* 167 F.3d 675 (A finding of success sufficient to support a preliminary injunction would require evidence of the causal connection not just assertion).

CONCLUSION

For the foregoing reasons, plaintiffs' motion for a preliminary injunction against the State defendants and class certification should be denied.

M.K.B., O.P., L.W., M.A., Marieme Diongue, M.E., P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs, v. Verna EGGLESTON, as Commissioner of the New York City Human Resources Administration, Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance, and Antonia C. Novello, as Commissioner of the New York State
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