Chavez v. Illinois State Police

United States District Court for the Northern District of Illinois, Eastern Division
June 11, 1999, Decided ; June 15, 1999, Docketed
No. 94 C 5307

Reporter: 1999 U.S. Dist. LEXIS 9145
PESO CHAVEZ, et al., Plaintiffs, vs. ILLINOIS STATE POLICE, et al., Defendants.

Disposition: [*1] Recommended that plaintiffs' motions to reinstate their claims for equitable relief and certify class DENIED.

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Judges: EDWARD A. BOBRICK, United States Magistrate Judge. HONORABLE BLANCHE M. MANNING, JUDGE, UNITED STATES DISTRICT COURT.

Opinion by: EDWARD A. BOBRICK

Opinion

HONORABLE BLANCHE M. MANNING, JUDGE

UNITED STATES DISTRICT COURT

HONORABLE JUDGE:

REPORT AND RECOMMENDATION of Magistrate Judge Edward A. Bobrick

Before the court are plaintiffs' motion for reinstatement of their claim for equitable relief, and their motion for certification of a class.

I. BACKGROUND

This matter has been the subject of enough motions and rulings that we need not delve into the facts too thoroughly. The plaintiffs originally filed in August of 1994, claiming, essentially, that the Illinois State Police maintain a practice of detaining and searching African-American and Hispanic motorists solely on the basis of race and without [*3] legally sufficient cause or justification. Presently at issue is the plaintiffs' claim for equitable relief under Title VI, which is a putative class action. They seek an injunction against the Illinois State Police's alleged practice of stopping, detaining, and searching motorists based on race. Their claim was dismissed on February 9, 1996, and again on November 5, 1998, after two amendments. Those dismissals were based in large part on plaintiffs failure to establish standing to seek equitable relief. In the November 5 dismissal, Judge Manning invited plaintiffs to seek reinstatement of their claim for equitable relief "if warranted by further proceedings with respect to the claims which survive defendants' motion for partial summary judgment." *Chavez v. Illinois State Police*, 27 F. Supp. 2d 1053, 1081 (N.D.Ill. 1998). In addition, Judge Manning denied plaintiffs' motion for class certification, mostly because it was unclear from plaintiffs' submissions upon which

claim it rested. *Id.* at 1084. As with plaintiffs' claim for equitable relief, Judge manning invited plaintiffs to renew their motion for class certification based on claims surviving summary judgment. *Id.* The [*4] judge also hinted that a motion for summary judgment from defendants might be the most efficient means of resolving what might be left of plaintiffs' class certification motion -- that is, plaintiffs' Title VI claim.

In the wake of that ruling, plaintiffs filed their motion to reinstate their claim for equitable relief, which is based solely on their claims under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* Despite Judge Manning's suggestions, and although they have indicated repeatedly over the course of this case that they would, defendants chose not to file a motion for summary judgment on the Title VI claim, which has been pending now for nearly three years. Instead, they chose to proceed on the class certification issue, filing a motion for resolution of that question on March 9, 1999. Plaintiffs responded with their own motion for certification of a class. At this point, then, given Judge Manning's "invitation" and defendants' reluctance to timely pursue summary judgment on the Title VI claim, we review the present motions with the presumption that the Title VI claim has "survived" summary judgment.

II. ANALYSIS

The issues presented by [*5] the plaintiffs' two motions -- standing, availability of equitable relief, and class certification -- are somewhat interwoven. Of these, standing to pursue equitable relief would appear to be our primary concern. If none of the named plaintiffs purporting to represent a class can establish the requisite case or controversy with the defendants, none may seek relief on behalf of themselves or any other member of the class. *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S. Ct. 669, 675, 38 L. Ed. 2d 674 (1974). Accordingly, we will address standing for equitable relief first.

A. Title VI Equitable Relief

Under *O'Shea*, we begin with the question of the standing of the named plaintiffs to seek injunctive relief. Judge Manning has found plaintiffs have failed to establish standing on two occasions: on February 9, 1996, and again on November 5, 1998. The court applied *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983) both times. Under *Lyons*, "the plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the challenged official conduct and the injury or threat of injury must [*6] be both real and immediate, not conjectural or hypothetical." 461 U.S. at 101-102, 103 S. Ct. at 1665. Furthermore, 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." 461 U.S. at 101-102, 103 S. Ct. at 1665. In her November 5, 1998 ruling, Judge Manning essentially found that plaintiffs had added nothing to the record to establish standing under *Lyons* since her previous ruling, and that the absence of class certification doomed their claim for such relief as a class. 27 F. Supp. 2d at 1080-81. As already noted, the court left the door open to plaintiffs to pursue the matter at a later time should developments warrant. *Id.*

Pursuant to Judge Manning's invitation, plaintiffs move to have their claim for equitable relief reinstated; the motion is limited to plaintiffs' Title VI claims. The question now, given the posture of this case and Judge Manning's two prior rulings, is whether anything has changed to affect the named plaintiffs' standing to pursue equitable relief. According to plaintiffs, there have been significant changes: (1) they seek equitable [*7] relief for only their Title VI claims, which the defendants have not attacked on summary judgement and the court has not previously considered, (2) they have presented additional statistical evidence to demonstrate the risk of future harm, and (3) they have submitted the affidavits of Peso Chavez and Gregory Lee to support their claims of imminent future harm. (*Memorandum in Support of Plaintiffs' Motion for Reinstatement of Equitable Relief* ("*Pl.Rein.*), at 3). Returning to *O'Shea*, though, we first must consider how these factors affect the named plaintiffs' standing to seek equitable relief.

1. Viability of Title VI Claims and Plaintiffs' Statistical Evidence

The first change that plaintiffs submit has been made in the record is the focus on their Title VI claims. Prior to the instant motion, the court has not had occasion to address these claims, and defendants have never attacked their viability. Now, although they have chosen not to move for summary judgment, defendants argue that plaintiffs' motion must be denied because their Title VI claims are flawed. Defendants assert, without much support, that because plaintiffs' Equal Protection claims have failed, their [*8] Title VI claim is defective as well. They claim that, as with the Equal Protection claims, plaintiffs must identify similarly situated white individuals who were treated differently from them in order to support their Title VI claim. Defendants' position in this instance is incorrect.

Title VI provides that no person "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d. While Title VI itself reaches only instances of intentional

discrimination, actions having an unjustified disparate impact on minorities can be redressed through agency regulations implementing the purposes of Title VI. *Alexander v. Choate*, 469 U.S. 287, 293, 105 S. Ct. 712, 716, 83 L. Ed. 2d 661 (1985). Here, where Department of Justice funds are involved, the pertinent regulation states that a recipient of funds "may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." 28 C.F.R. § 42.104(b)(2). The regulation, [*9] then, concerned with activities having the *effect* of discrimination, reaches not just intentional discrimination but unintentional discrimination as well. The disparate impact plaintiffs seek to redress here is the purportedly inordinate numbers of Hispanics that are stopped, detained, and search pursuant to the Operation Valkyrie program. While the plaintiffs' statistical analysis was unacceptable to support their Equal Protection claims, it is the generally accepted means of proving a disparate impact claim. *See, e.g., Harper v. Board of Regents, Illinois State University*, 35 F. Supp. 2d 1118, 1124 (C.D.Ill. 1999). Accordingly, despite defendants' contentions to the contrary, plaintiffs' Title VI claims remain viable, and their statistical evidence may be relevant to support those claims.

2. Standing of Individual Plaintiffs

While their Title VI claims may be viable, plaintiffs still must establish that the individual named plaintiffs have standing to seek equitable relief. Here, plaintiffs have a problem. Despite the five years that have passed since plaintiffs filed this action, despite the volume of materials plaintiffs have filed and have sought to file [1], despite [*10] the three occasions on which they have sought to certify a class, they have yet to arrive at a roster of named plaintiffs. In their equitable relief motion, plaintiffs cite three individuals as plaintiffs: Peso Chavez, Gregory Lee, and Christopher Jimenez [2]. (*Pl.Rein.*, at 7). In their motion for class certification, plaintiffs submit that their named plaintiffs are Peso Chavez, Christopher Jimenez, and Joseph Gomez, omitting mention of Gregory Lee. (*Renewed Motion for Certification of Plaintiff Class*, P 3). They also state that the class they seek to certify consists of "all persons of Hispanic race or color who in the past have been, and in the future will be, unlawfully stopped, detained and also often searched…" Gregory Lee, however, has already been identified as an African-American in these proceedings. Thus, after all this time, plaintiffs' current round of motions present more questions than they answer. Who are the putative named plaintiffs? Does the roster of named plaintiffs include Lee or Gomez? What is the putative class? Is it a class limited to Hispanic individuals? If so, why is Lee submitted as a named plaintiff? Frankly, the court is left at a loss as to [*11] which class, fronted by which set of named plaintiffs, plaintiffs seek to have certified as a class, and on whose behalf they hope to gain equitable relief. Obviously, plaintiffs cannot expect to succeed on their motions given such a blatant error; they should be denied out of hand. Rather than engender a fourth round of briefing on these matters, however, we will assume that the mistake plaintiffs' counsel made was including Lee as a named plaintiff, and we will proceed to analyze these matters assuming the putative class is limited to Hispanic individuals.

That means the new [*12] evidence consists of the affidavits of Peso Chavez and Christopher Jimenez. Plaintiffs submit the affidavits of these two individuals to demonstrate the realistic threat of future harm under *Lyons*. According to Peso Chavez, although he lives in New Mexico, he travels outside that state about one week of every month. He has clients in Illinois and his work for them requires him to travel. He is "confident [he] will travel to Illinois in the future." (*Pl.Rein.*, Ex. A). Christopher Jimenez lives in Fennville, Michigan, approximately 145 miles from Chicago. He states that he travels to Illinois, especially Chicago, several times a year for shopping, baseball games, or other tourist activities. (*Id.*, Ex. C). Thus, one named plaintiff is "confident" he will travel Illinois highways, while the other says he does several times a year.

At the time of Judge Manning's initial consideration of the standing issue, Chavez claimed that he "anticipated" traveling Illinois highways, and another then-named plaintiff wanted to travel Illinois highways but felt "inhibited" from doing so. She felt this was insufficient to establish standing under *Lyons*. The new evidence, by way of the [*13] affidavits of Chavez and Jimenez does not appear significantly different. If "anticipating" future travel does not amount to a "real and immediate" threat of future injury, then being "confident" of future travel is similarly deficient. As for Jimenez, he has testified that he traveled to Illinois "at least a dozen times" in the year-and-a-half following his incident and was never stopped. (*Defendants' Response to Plaintiffs' Motion to Add New Plaintiff*, Deposition of Jimenez, at 30-31). Thus, in the wake of the "past wrong" of which he complains,

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[1] Indeed, a month after briefing closed on this more recent round of motions, plaintiffs sought leave to file supplemental memoranda on these matters. Unfortunately, the memoranda do not correct their standing problem.

[2] Plaintiffs seek to add Jimenez as a plaintiff in a separate motion. We proceed here under the assumption he is already a named plaintiff, notwithstanding our Report and Recommendation dated June 4, 1999.

there has been *no injury*, despite many opportunities for one. The affidavits of these plaintiffs simply do not add anything of substance to the record in regard to standing. Accordingly, we cannot find, given Judge Manning's previous rulings on the issue, that the named plaintiffs have established the requisite individual standing to seek equitable relief. Under *O'Shea*, this dooms not only plaintiffs' motion to reinstate their claims for equitable relief, but their motion for class certification as well. If Chavez and Jimenez do not have individual standing to seek equitable relief, they cannot seek it on behalf of a class. Nevertheless, [*14] for the sake of thoroughness and because we cannot say with certainty what type of evidence Judge Manning would feel meets the requirements of her previous ruling, we will consider the issues attendant plaintiffs' motion for certification of a class. [3]

B. Class Certification

Plaintiffs seek certification under *Fed.R.Civ.P. 23(b)(2)* of a "class consisting of all persons of Hispanic race or color who in the past have been, and in the future will be, unlawfully stopped, detained, and also often searched" pursuant to an alleged Illinois State Police practice of taking such actions "on the basis of race or color with or without legally sufficient cause or justification." [*15] (*Memorandum in Support of Plaintiff's Renewed Motion* ("*Pl.Mem.*"), at 1-2). Once again, they proceed solely under their Title VI claim. *Rule 23(b)(2)* permits class actions for declaratory or injunctive relief where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Civil rights cases, such as the instant case, where parties "are charged with unlawful, class-based discrimination are prime examples." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 138 L. Ed. 2d 689, 117 S. Ct. 2231, 2245 (1997)(*citing* Adv.Comm.Notes). To certify a class, however, the plaintiffs must also demonstrate that: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. *Fed.R.Civ.P. 23(a)*.

Defendants raise four objections [*16] to the certification of a class: (1) the class plaintiffs propose is overly broad and vague; (2) plaintiffs proposed class fails to meet *Rule 23(a)*'s commonality and typicality requirements; (3) plaintiffs' Title VI claim is subject to the same analysis as their Equal Protection claim and is therefore doomed, and (4) injunctive relief is inappropriate. We have already addressed the third and fourth arguments in connection with plaintiffs' motion to reinstate their claim for equitable relief. Accordingly, we will consider only defendants' first two contentions in connection with the certification issue.

1. Broadness or Vagueness of the Class

Defendants argue that the proposed class is overly broad or vague in two aspects: it does not include a reasonable time frame, and the phrase "persons of Hispanic race or color" is ambiguous. (*Defendants' Response to Plaintiffs' Renewed Motion* ("*Def.Rsp.*"), at 5-7). As for the first problem, defendants seem to fear that the class will encompass those whose claims would be beyond the statute of limitations. (*Id.* at 6). Plaintiffs state that since they are seeking only prospective equitable relief, they have no problem limiting [*17] the class to those whose claims would not be time-barred. (*Reply Memorandum*, at 2-3). Should a class be certified, it must be limited in that manner.

The second problem involves the plaintiffs' use of the phrase "persons of Hispanic race or color." This is definitely ambiguous. In their *Reply Memorandum*, through seven pages of text, plaintiffs fail to even hazard a guess as to what they mean by "a person of Hispanic color." This is aside from the fact that, in seeking equitable relief, they posit an African-American as a member of this putative class. Accordingly, we find that the defining phrase will have to be edited before a class can be certified.

Defendants also find fault with plaintiffs' reference to Hispanics as a race, arguing that "Hispanic" is not really a race, relying on the 1982 case of *Carrillo v. Illinois Bell Telephone Co.*, 538 F. Supp. 793 (N.D.Ill. 1982). (*Def.Rsp.*, at 6-7). While this may technically be true, defendants' authority is out of date, and in the wake of the Supreme Court's decision in *St. Francis College v. Al-Khazraji*, 481 U.S. 604, 107 S. Ct. 2022, 95 L. Ed. 2d 582 (1987), courts have not concerned themselves with the anthropology [*18] textbook definition of "race." In *Al-Khazraji*, the Court held that a "race" could include identifiable classes of persons who are subjected to discrimination solely because of their ancestry or ethnic characteristics. 481 U.S. at 613, 107 S. Ct. at 2028. Furthermore, defendants cannot be taken seriously when they themselves classify "Hispanic," "Mexican," and

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[3] Class certification also impinges on standing to seek equitable relief. The court may not grant relief to non-parties; without class certification, the named plaintiffs cannot seek an injunction that, in effect, grants relief to individuals other than themselves. *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997).

"Puerto Rican" in their own field reports. (*Reply Memorandum*, at 5). Thus a class of "person of Hispanic race" -- although the phrase Hispanic persons would make more common sense -- does not pose the problems defendants attempt to manufacture here. Accordingly, the time-bar limitation, and reference to "Hispanic color," are the only flaws in plaintiffs' putative class in terms of over broadness and vagueness.

2. Commonality and Typicality

Defendants next argue that the proposed class fails to meet the requirements of commonality and typicality. The commonality and typicality requirements of *Rule 23(a)* tend to merge; and tend to merge with the adequacy of representation requirement, as well. *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13, 102 S. Ct. 2364, 2370, 72 L. Ed. 2d 740 (1982). [*19] They serve as guideposts for determining whether, under the circumstances of the case, maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. *Id.* "Suits alleging racial or ethnic discrimination are often by their very nature class suits, involving classwide wrongs. *Id.* at 157, 102 S. Ct. at 2370. On the other hand, "the mere fact that a complaint alleges racial or ethnic discrimination does not in itself ensure that the party who has brought the lawsuit will be an adequate representative of those who may have been real victims of discrimination." *Id.* Here, our concern is representation of those who may have been real victims of discrimination.

"A common nucleus of operative fact is usually enough to satisfy the commonality requirement of *Rule 23(a)(2)*." *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir.1998). The requirement is typically met where the defendants have engaged in standardized conduct toward members of the proposed class. *Id.* Here, plaintiffs maintain that the standardized conduct directed [*20] toward class members is the stopping and searching of motorists based on their Hispanic ethnicity. Defendants argue that a State Trooper could not know if someone were Hispanic before a stop is made (*Def.Rsp.*, at 10), but there is at least some evidence presently in the record that suggests otherwise. Some State Troopers have indicated in testimony that they use binoculars to observe motorists or pull up beside them prior to stops, or run license plates thereby revealing their surnames. (*Reply Memorandum*, at 6-7).

Defendants also argue that, because they intend to show that each stop had a legal basis and occurred under varying circumstances, commonality is absent. Such factual variations among the claims of class members do not necessarily defeat a class action. *Keele*, 149 F.3d at 594. Similarly, the fact that defendants may present particularized defenses against the various claims of class members does not necessarily rule out certification of a class. *Wagner v. Nutrasweet Co.*, 95 F.3d 527, 534 (7th Cir. 1996). The class members claims here are linked by a significant, common issue: whether state troopers act on ethnic or racial bias when choosing whom to pull over [*21] and whom to search. That is enough to meet *Rule 23(a)*'s commonality requirement.

The typicality requirement is said to limit the class claims to those fairly encompassed by the named plaintiffs' claims. *General Telephone Co. of the Northwest v. EEOC*, 446 U.S. 318, 330, 100 S. Ct. 1698, 1706, 64 L. Ed. 2d 319 (1980). The named plaintiffs' claims will be regarded as typical if they arise "from the same event or practice or course of conduct that gives rise to the claims of the other class members and. . . are based on the same legal theory." *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 597 (7th Cir. 1993). Plaintiffs submit -- in their class certification motion at least -- that the claims of named plaintiffs Peso Chavez, Christopher Jimenez, and Joseph Gomez, are typical of the class. (*Pl.Mem.*, at 15-16). All three claim to have been targeted by defendants for stops and/or searches because they are Hispanic. [4] Based on the record already before the court, however, it is clear that their claims were not "typical" of those of the class plaintiffs hope to certify.

[*22] As already established in previous proceedings, Chavez was hired by a private investigator to emulate, as closely as possible, the conditions that led to the stop, detention and search of a *white* motorist. 27 F. Supp. 2d at 1062. This was an intricate recreation including type of vehicle, state of its origin, and appurtenances such as visible luggage, trash, and maps, which, hopefully, would attract police attention. *Id.* When Chavez finally succeeded in his assignment to be stopped, the trooper doing so listed him as "white" in his report, despite there being a category for "Hispanic" *Id.* Thus, Chavez -- hired to emulate a white motorist and identified as white by the state trooper who eventually stopped him -- cannot be said to be typical of a class of individuals stopped because they Hispanic.

Jimenez was a passenger in a car driven by his girlfriend, who is white. According to his claims, the trooper they encountered stopped their vehicle not because he was Hispanic, but because he and his girlfriend were a "mixed race couple." (*Plaintiffs' Reply in Support of Their Motion to Add New Plaintiff*, at 3-4). According to Jimenez, the

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[4] Obviously, among plaintiffs' "other" set of named plaintiffs, the claims of Gregory Lee would not be typical of the putative class.

trooper indicated that "mixed-race" [*23] couples -- as opposed to Hispanic individuals -- might be more likely to be carrying drugs. (*Id.*). Assuming Jimenez's claims are true, a bias against mixed-race couples does not equate to a bias against Hispanic individuals. Finally, Gomez presented the trooper who stopped him with a an arrest record that included a drug offense. (*Plaintiffs' Statement of Additional Facts That Require Denial of Summary Judgment*, Ex. 9). None of the putative named plaintiffs, then, present claims typical of a class of motorists stopped and searched because they are Hispanic. Thus, plaintiffs fail to meet the typicality requirement of *Rule 23(a)(3)*, meaning their putative class cannot be certified.

III. CONCLUSION

In the wake of two previous adverse rulings on the issues of standing to seek equitable relief and class certification, plaintiffs have returned to court, pursuant to Judge Manning's invitation, to pursue those issues a third time. They have failed to add significantly to the record on the issue of their individual standing to seek equitable relief, and their claim for such relief cannot be reinstated. Furthermore, the plaintiffs have not met all the prerequisites to class [*24] certification, given the problems with the vagueness of their class definition and, more importantly, the fact that the claims of the named plaintiffs are not typical of those of the putative class. Even if plaintiffs had established individual standing to seek equitable relief, then, their claim would be doomed by the absence of class standing.

For the foregoing reasons, it is hereby recommended that plaintiffs' motions to reinstate their claims for equitable relief and certify a class be DENIED.

Respectfully submitted,

EDWARD A. BOBRICK

United States Magistrate Judge

DATE: June 11, 1999

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 88 L. Ed. 2d 435, 106 S. Ct. 466 (1985); *The Provident Bank v. Manor Steel Corp.*, 882 F.2d 258 (7th Cir. 1989).