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

JOSE RIOS-DIAZ, ELIGIO DURAN-SANCHEZ, DELVIO 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 GENRAL TIM FOX, in his official capacity as head of the MONTANA DEPARTMENT OF JUSTICE,

Defendants.

CV-13-77-BU-DLC-CSO

FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE

This case involves allegations of racial profiling by Montana Highway Patrol ("MHP") officers. It is alleged that MHP officers, using race and ethnicity as bases for suspecting illegal presence in the United States, unlawfully seize and detain Latino persons for prolonged periods while the officers contact federal immigration agencies.

Plaintiffs are the Montana Immigrant Justice Alliance and four Latino individuals – Jose Rios-Diaz, Eligio Duran-Sanchez, Delfio Mejia-Ochoa, and Eduardo Barragan-Naranjo – who appear on behalf of both themselves and all others similarly situated (collectively "Plaintiffs"). They name two defendants, each in their official capacity: Colonel Tom Butler, MHP's Chief Administrator, and Tim Fox, Montana's Attorney General and head of its Justice Department (collectively "Defendants").

Plaintiffs assert the following five counts: (1) under 42 U.S.C. § 1983, violation of Fourteenth Amendment equal protection rights (Count I), *Cmplt. (ECF 1) at 42-44*[1]; (2) also under 42 U.S.C. § 1983, violation of Fourth and Fourteenth Amendment rights to be free from unreasonable searches and seizures (Count II), *id. at 44-45*; (3) violation of Article II, §§ 4 and 11, of Montana's Constitution (Counts III and IV), *id. at 45-46*; and (4) race discrimination in federally funded programs in violation of Title VI, 42 U.S.C. § 2000d (Count V), *id. at 46-47*. Plaintiffs seek declaratory and injunctive relief, as well as

[1]"ECF" refers to the document as numbered in the Court's Electronic Case Files. *See The Bluebook, A Uniform System of Citation, § 10.8.3.* Citations to page numbers are to those assigned by the ECF system.

attorneys' fees and costs. *Id. at 48-49.* They do not seek any compensatory damages. *Id.; see also Resp. in Opposition to Defts' Mtn. to Dismiss (ECF 17) at 2.*

Pending is Defendants' motion to dismiss some of Plaintiffs' claims under Rule 12(b)(6).[2] Having carefully considered the parties' briefs and the applicable law, the Court enters the following Findings and Recommendations.

I. BACKGROUND

In addressing a Rule 12(b)(6) motion, the Court accepts all factual allegations in the complaint as true and construes the pleadings in the light most favorable to the nonmoving party. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Because Defendants, through the instant motion, are challenging Plaintiffs' legal theories and not their factual allegations, the Court will not recite Plaintiffs' factual allegations in detail. Rather, the Court notes only that Plaintiffs generally allege that the MHP unlawfully discriminates against Latino persons when MHP officers prolong traffic stops while the officers contact federal authorities to ascertain whether such Latino persons

[2]References to rules are to the Federal Rules of Civil Procedure unless otherwise noted.

are in the country legally. It is from this general allegation that Plaintiffs assert the five claims listed above. Defendants dispute the allegation that they discriminate against Latinos or against any other class. They maintain in the motion now before the Court, however, that some of Plaintiffs' claims should be dismissed under Rule 12(b)(6) because they fail to state a claim upon which relief can be granted.

II. LEGAL STANDARD

"Dismissal under Rule 12(b)(6) is proper only when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)).

III. DISCUSSION

In maintaining that some of Plaintiffs' claims are legally insufficient and should be dismissed, Defendants argue that: (1) Plaintiffs' state law claims are barred by Eleventh Amendment immunity, *Defts' Opening Br. (ECF 16) at 4-7*; (2) Plaintiffs' Title VI claim fails because Plaintiffs are suing individuals but Title VI applies only to programs and entities receiving federal funding and not to

individuals, *id. at 8-10*; and (3) Plaintiffs' Fourth Amendment claim fails because Plaintiffs are impermissibly "doubling up" this claim with their claim that Defendants violated the Fourteenth Amendment's equal protection clause, *id. at 10-12*.[3] The Court addresses each argument in turn.

A. Eleventh Amendment Immunity Bars State Law Claims

1. Parties' Arguments

Defendants note that Plaintiffs' Counts III and IV, which allege violations of the Montana Constitution, are based solely on state law and that Plaintiffs' other claims are based, in part, on alleged violations of state law. Defendants argue that all of these claims, to the extent that they are based on state law, are barred by Eleventh Amendment immunity. *ECF 16 at 4*. They argue that state officials are immune from suits in federal court based on violations of state law, including those seeking prospective injunctive relief under state law, unless the

[3]Defendants originally also sought dismissal of not only the foregoing claims against Attorney General Fox but also dismissal of Plaintiffs' Fourteenth Amendment claim against him. In their reply brief, however, Defendants withdrew that portion of their motion seeking dismissal of the Fourteenth Amendment claim against Fox. *Defts' Reply Br. (ECF 18) at 15.*

state waives its immunity. *Id. at 5*. Here, Defendants argue, Montana has not waived its immunity. *Id. at 6*. Thus, Plaintiffs' "Counts III and IV, which are based solely on alleged violations of the Montana Constitution, are barred and should be dismissed .... [and Plaintiffs' other claims] to the extent that they are based on state law, are barred under the Eleventh Amendment and should be dismissed." *Id. at 6-7*.

In response, Plaintiffs argue that their claims that Defendants violated state law are cognizable in a § 1983 action "to the extent that the challenged conduct [also] violates the U.S. Constitution[.]" *ECF 17 at 10*. They maintain that since their claims that Defendants violated Montana's Constitution are brought under § 1983 "in an official capacity suit for prospective injunctive relief, they do not violate the Eleventh Amendment[ ]" because such claims "are not treated as actions against the State." *Id*. Plaintiffs further argue that Defendants overreach in arguing that all aspects of Plaintiffs' federal claims that mention violations of state law also are subject to Eleventh Amendment dismissal. They maintain that such references to state law are not "claims" that can be dismissed and add that state laws are relevant to the reasonableness of an arrest under the Fourth Amendment.

2. Analysis

The Eleventh Amendment to the U.S. Constitution states:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. CONST., amend XI.

Immunity afforded by this provision "extends beyond the literal terms of the [Eleventh] Amendment[.]" *William W. Schwarzer, A. Wallace Tashima & James M. Wagstaffe*, FEDERAL CIVIL PROCEDURE BEFORE TRIAL § 2:4755 (2014) (citing *Alden v. Maine*, 527 U.S. 706, 736 (1999) ("[t]he bare text of the Amendment is not an exhaustive description of the States' constitutional immunity from suit."). It has been interpreted to bar suits against a state by its own citizens as well as by citizens of other states. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).

"The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state." *Krainski v. Nevada ex rel. Board of Regents*, 616 F.3d 963, 967 (9th Cir. 2010) (citations and internal quotations omitted). Its "jurisdictional

bar applies regardless of the nature of relief sought and extends to state instrumentalities and agencies." *Id.* (citation omitted).

The Eleventh Amendment also "shields state officials from official capacity suits[ ]" with one "narrow exception" – "where the relief sought is prospective in nature and is based on an ongoing violation of the plaintiff's *federal* constitutional or statutory rights." *Id.* at 967-68 (emphasis in original) (quoting *Central Reserve Life of N. Am. Ins. Co. v. Struve*, 852 F.2d 1158, 1161 (9th Cir. 1988); *Papasan v. Allain*, 478 U.S. 265, 277-78 (1986); *Independent Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644, 660 (9th Cir. 2009) ("[A] plaintiff may ... maintain a federal action to compel a state official's prospective compliance with the plaintiff's federal rights.") (citations omitted)); *see also Vasquez v. Rackauckas*, 734 F.3d 1025, 1041 (9th Cir. 2013) ("'A federal court[ ]' may not 'grant' injunctive 'relief against state officials on the basis of state law,' when those officials are sued in their official capacity.") (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984)).

Applying the foregoing authority to the case at hand, the Court concludes that the Eleventh Amendment bars Plaintiffs' Counts III and

IV, which allege violations of the Montana Constitution. As an initial matter, Plaintiffs name Butler and Fox in their official capacities. *ECF 1 at ¶¶ 23 and 25*. Suits against state officials in their official capacities are no different from a suit against the state itself. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Thus, Plaintiffs' action against Defendants is essentially an action against the State of Montana.

The next question is whether Montana has expressed "unequivocal consent" to be sued. It has not. Montana has waived its immunity only for tort claims brought against it in its own state courts, but has not waived its Eleventh Amendment immunity. *Klepper v. Montana Dep't of Transportation*, 2011 WL 6122748, *1 (D. Mont., Dec. 8, 2011) (citing *Montana v. Gilham*, 133 F.3d 1133, 1139 (9th Cir. 1998), *Montana v. Peretti*, 661 F.2d 756, 758 (9th Cir. 1981), and *Peretti v. State*, 777 P.2d 329, 332 (Mont. 1989)).

Because Montana has not otherwise waived immunity, the Eleventh Amendment bars claims against it unless the other noted exception applies – that is, where Plaintiffs seek prospective relief for ongoing violations of their *federal* constitutional or statutory rights. In

the case at hand, Plaintiffs seek prospective injunctive relief in Counts III and IV exclusively for violations of Article II, §§ 4 and 11, of Montana's Constitution. *ECF 1 at ¶¶ 45-46.* These two counts contain no allegation that Defendants violated federal law, and the relief Plaintiffs seek regarding these two counts does not derive from ongoing violations of federal law. Only state law is implicated. These claims, therefore, are barred by Eleventh Amendment immunity. *Vasquez*, 734 F.3d at 1041 (citing *Pennhurst State Sch. & Hosp.,* 465 U.S. at 106). The Court will recommend that Defendants' motion be granted to the extent it seeks dismissal of Counts III and IV of Plaintiffs' Complaint.

As noted, in addition to the foregoing, Defendants raise the additional argument that Plaintiffs' other claims, to the extent they are based on state law, are barred under the Eleventh Amendment and should be dismissed. It is unclear at this juncture precisely how Defendants would have the Court parse out alleged violations of state law from Plaintiffs' three remaining claims premised on alleged violations of federal law. Rather than attempt to carve out such allegations from Plaintiffs' federal law claims at this point in the proceedings, the Court believes the better approach would be to permit

Defendants to object, as they see fit, to Plaintiffs' reliance on alleged violations of state law as the case develops.

B. Legal Sufficiency of Plaintiffs' Title VI Claim

1. Parties' Arguments

Defendants argue that Plaintiffs' claim in Count V that they violated Title VI of the Civil Rights Act of 1964 fails as a matter of law. *ECF 16 at 8*. They argue that "Title VI, by its plain language, applies to only programs or entities that are recipients of federal funding, not [to] individuals." *Id*. Because Plaintiffs have brought this claim against two individuals, even though named in their official capacities, Defendants argue, "their claim fails and should be dismissed." *Id. at 9-10*.

In response, Plaintiffs argue that their Title VI claim is proper because they are bringing it under 42 U.S.C. § 1983, which "generally supplies a remedy for the vindication of rights secured by federal statutes." *ECF 17 at 12-13*. They also argue that: (1) Defendants, named in their official capacities, are "stand-ins" for the MHP and the Montana Department of Justice, which are the real parties in interest, so the claim is actually against entities and not against individuals, *id.*

at 13; (2) the claim is proper because Plaintiffs seek only prospective injunctive relief and not money damages, *id.*; and (3) the cases that Defendants cited for the proposition that Plaintiffs cannot sue individual defendants under Title VI are distinguishable because none involved "official capacity § 1983 suits seeking solely prospective declaratory and injunctive relief, so that the state entities were the real parties in interest[,]" *id. at 14* (emphasis omitted).

In reply, Defendants argue that: (1) Plaintiffs have not alleged in their Complaint that they are bringing their Title VI claim under § 1983 but rather "allege only a direct action under Title VI[ ]" so if they intend to rely on § 1983, their claim is not properly pled, *Defts' Reply Br. (ECF 18) at 10*; (2) Plaintiffs have failed to cite any authority supporting their argument that it is proper to state a Title VI claim against an individual in his or her official capacity, *id.*; (3) although the Ninth Circuit has not addressed the issue, other courts have concluded that a plaintiff cannot maintain a Title VI claim against an individual even if the claim is brought against the individual in his or her official capacity, *id. at 11*; and (4) even if Plaintiffs can bring their Title VI claim against Defendants in their official capacities, the claim fails to

the extent it challenges Defendants' implementation of Title VI regulations, *id. at 11-12*.

2. Analysis

Title VI of the Civil Rights Act of 1964 provides:

> No person in the United States 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.

Individuals, such as Plaintiffs in this case, may sue under Title VI for intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). As an initial matter, Plaintiffs' argument that their "Title VI claim, like the Fourth and Fourteenth Amendment claims [in their Complaint], is brought under § 1983 and must be reviewed under applicable precedent[ ]" is not persuasive. Plaintiffs maintain that, because they stated their Title VI claim under § 1983, they may proceed as though their claim for prospective injunctive relief against Defendants in their official capacities "is, in all respect other than name, to be treated as a suit against the entities that the [D]efendants are agents of." *Id*. (citing cases). The problem with this argument,

however, is that Plaintiffs have not pleaded in their Complaint that their Title VI claim is brought under § 1983. *See ECF 1 at ¶¶ 205-209 and Demand for Relief at ¶ D.* Thus, they cannot proceed, on this basis alone, as though their Title VI claim is actually against the entities that Defendants represent.

As noted, the precise issue here actually is whether Plaintiffs may sue individuals, named in their official capacities, under Title VI for prospective injunctive relief. The Ninth Circuit has not squarely addressed this question. In *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 978 n.7 (9th Cir. 2004), the court declined to reach the argument that "programs that receive federal funding, rather than individual defendants who [the plaintiff] sued," were the proper defendants in a Title VI action because the plaintiff in *Cholla* failed to state a Title VI claim.

Other circuit courts have concluded that individuals in their individual capacities are not subject to Title VI liability because they are not recipients of federal funding. *See, e.g., Whitfield v. Notre Dame Middle Sch.*, 412 Fed. Appx. 517, 521 (3d Cir. 2011) ("Individual liability may not be asserted under Title VI.") (citations omitted); *Price*

ex rel. Price v. Louisiana Dep't of Educ., 329 Fed. Appx. 559, 561 (5th Cir. 2009) (citations omitted); *Shotz v. City of Plantation*, 344 F.3d 1161, 1171 (11th Cir. 2003) ("It is beyond question ... that individuals are not liable under Title VI.")[4]; *Buchanan v. City of Bolivar, Tenn.*, 99 F.3d 1352, 1356 (6th Cir. 1996); and *United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1044 n.9 (5th Cir. 1984) ("Title VI requires that the public bodies or private entities receiving the benefits of any such loan refrain from racial discrimination") (internal quotation omitted).

Similarly, several lower federal courts have concluded that the proper defendant in a Title VI action is an entity or program receiving federal funding rather than an individual. *See, e.g.*, *New Jersey Sand Hill Band of Lenape & Cherokee Indians v. Corzine*, 2010 WL 2674565, at *15 (D. N.J. June 30, 2010) ("The Court agrees that individuals are

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[4]The court in *Shotz* cited the following cases from other courts that had considered the issue and that "generally concluded that individuals may not be held liable for violations of Title VI because it prohibits discrimination only by recipients of federal funding[ ]": *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1356 (6th Cir. 1996); *Folkes v. N.Y. Coll. of Osteopathic Med. of N.Y. Inst. of Tech.*, 214 F. Supp.2d 273, 292 (E.D. N.Y. 2002); *Steel v. Alma Pub. Sch. Dist.*, 162 F. Supp.2d 1083, 1085 (W.D. Ark. 2001); *Powers v. CSX Transp., Inc.*, 105 F. Supp. 2d 1295, 1311-12 (S.D. Ala. 2000); *Wright v. Butts*, 953 F. Supp. 1343, 1350 (M.D. Ala. 1996); *Jackson v. Katy Indep. Sch. Dist.*, 951 F. Supp. 1293, 1298 (S.D. Tex. 1996). *Shotz*, 344 F.3d at 1169, n.11.

not the proper defendants in a Title VI case."); *Gomiller v. Dees*, 2007 WL 1031359, at *3 (N.D. Miss. Mar. 28, 2007) ("[T]he Court finds that individual liability does not lie in Title VI."); *Ajiwoju v. Cottrell*, 2005 WL 1026702, at *1 (W.D. Mo. May 2, 2005) (holding that individuals cannot be held personally liable under Title VI); *Steel v. Alma Public School Dist.*, 162 F.Supp.2d 1083, 1085 (W.D. Ark. 2001) ("[I]n the Title IX context, [ ] school officials may not be sued in their individual capacities.... As Title IX and Title VI are parallel to each other and operate in the same manner.").

And at least one federal district court has concluded that "no claim may be maintained against an individual under Title VI even in his official capacity." *TC v. Valley Cent. Sch. Dist.*, 777 F.Supp.2d 577, 594 (S.D. N.Y. 2011); *see also Karlen ex rel. J.K. v. Westport Board of Educ.*, 638 F.Supp.2d 293, 302 (D. Conn. 2009) ("Although there is no consensus in this Circuit, it seems unlikely that a claim can be stated against an individual defendant sued in her official capacity for violation of Title VI, as the individual does not receive Federal funding.") (citation omitted). In these cases, however, the requested relief was not, as here, limited to declaratory and injunctive relief.

Although the foregoing authority supporting Defendants' motion is compelling, the Court is not inclined to recommend that the motion be granted to the extent it seeks dismissal of Plaintiffs' Title VI claim. First, the Ninth Circuit has not addressed this issue. *See, e.g., Butler v. Scripps Green Hosp.*, 2010 WL 1292147, at *4 (S.D. Cal. Mar. 30, 2010) (declining to dismiss Title VI claim against individual defendants because only cases outside the Ninth Circuit cited in support of motion to dismiss); *see also T.M. ex rel. Benson v. San Francisco United Sch. Dist.*, 2010 WL 291828, at *5 (N.D. Cal. Jan. 19, 2010) (holding "there is no right of action against individuals under Title VI[,]" but allowing Title VI claim for prospective injunctive relief against individual in her official capacity to survive motion to dismiss).

Second, it can reasonably be inferred from Plaintiffs' allegations that Defendants Butler and Fox, named solely in their official capacities, are sufficiently representative of their respective agencies to be named in their stead. And, Plaintiffs have alleged that both the MHP and Montana's Justice Department are recipients of federal funds. *See ECF 1 at ¶ 206*. Thus, the Court is not inclined to recommend dismissal of Plaintiffs' Title VI claims at this juncture.

Third, while the Ninth Circuit has not addressed the issue at hand, a recent Ninth Circuit case – although legally and factually distinguishable from this case – noted the broad definition of "any program or activity" receiving federal funds contemplated in 42 U.S.C. § 2000d as including " 'all of the operations of" a state agency or department, 'any part of which is extended Federal financial assistance.' " *Braunstein v. Arizona Dep't of Transportation*, 683 F.3d 1177, 1188 (9th Cir. 2012) (quoting 42 U.S.C. § 2000d-4a). While certainly not determinative of the question at hand, this broad view of § 2000d's reach, coupled with the foregoing reasons, persuades the Court that dismissal of Plaintiffs' Title VI claim at this juncture is not warranted. In sum, without controlling authority from the Ninth Circuit, the Court is not inclined to recommend that the district court rule, as a matter of law, that Plaintiffs have failed to state a Title VI claim against the individual Defendants, named only in their official capacities and only for prospective injunctive relief.

Finally, respecting Defendants' argument that Plaintiffs' claim also fails to the extent it challenges Defendants' implementation of Title VI's regulations, the Court declines to address the issue.

Defendants raised this argument for the first time in their reply brief and, generally, "[c]ourts decline to consider arguments that are raised for the first time in reply." *Stewart v. Wachowski*, 2004 WL 2980783 (C.D. Cal. 2004) (citing *Halliburton EnergyServices, Inc. v. Weatherford International, Inc.*, 2003 WL 22017187, * 1, n.1 (N.D. Tex. Aug. 26, 2003) ("Halliburton offers additional grounds for reconsideration in its reply [;] however, the grounds are not proper under Rule 59(e), ... and the Court will not consider an argument raised for the first time in a reply brief")); *Dietrich v. Trek Bicycle Corp.*, 297 F.Supp.2d 1122, 1128 (W.D. Wis.2003) ("Defendant raised this argument for the first time in its reply brief. Because this argument should have been raised earlier or not at all, I will not consider it"); *Public Citizen Health Research Group v. National Institutes of Health*, 209 F.Supp.2d 37, 44 (D. D.C. 2002) ("The Court highly disfavors parties creating new arguments at the reply stage that were not fully briefed during the litigation.... By placing a new argument in the Reply, Plaintiff does not permit Defendant or Intervenor–Defendant to competently respond to such an argument"); *Grupo Gigante S.A. de C.V. v. Dallo & Co., Inc.*, 119 F.Supp.2d 1083, 1103, n.15 (C.D. Cal. 2000) ("Although the defendants

raised a laches defense in their opposition to the plaintiffs' motion for summary judgment, the first time they raised a statute of limitations defense was in their reply brief. The Court need not, and does not, consider arguments raised for the first time in a reply brief"); *see also Montana Fair Hous., Inc. v. City of Bozeman*, 854 F. Supp. 2d 832, 846 (D. Mont. 2012) ("Because Bozeman has not had an opportunity to respond [to] this specific argument, raised for the first time on reply, the Court declines to address it here."). Thus, to the extent Defendants' motion seeks dismissal of Plaintiffs' claim challenging Defendants' implementation of Title VI's regulations, the motion should be denied.

C. Plaintiffs' Fourth Amendment Claim

1. Parties' Arguments

Defendants argue that Plaintiffs' Fourth Amendment claim fails as a matter of law and should be dismissed. *ECF 16 at 10*. They note that Plaintiffs allege in Count I that Defendants violated their Fourteenth Amendment equal protection rights by discriminating against them based on race. And they note that Plaintiffs in Count II "similarly allege [Defendants] violated [Plaintiffs'] Fourth Amendment rights because [Defendants] detained [Plaintiffs] 'pretextually, for

racially motivated reasons and without probable cause or reasonable suspicion.' " *Id.* But, Defendants argue, although "conduct may implicate more than one constitutional right, [Plaintiffs] cannot multiply their claims of discrimination as they have done in Count I and Count II." *Id.*

In other words, Defendants argue, where, as here, Plaintiffs allege that law enforcement officers have performed racially-motivated traffic stops, Plaintiffs may assert a claim under the Fourteenth Amendment's Equal Protection Clause because it provides an "explicit textual source" for claims of racial discrimination. *Id. at 11.* But Plaintiffs may not also assert a claim for the same conduct under the Fourth Amendment because doing so would impermissibly "double up" multiple constitutional claims arising from a single tortious act. *Id. at 11-12.*

Plaintiffs respond that their Fourth Amendment and Fourteenth Amendment claims are sufficiently different from one another to avoid dismissal based on Defendants' assertion that the claims are impermissibly duplicative. *ECF 17 at 4.* Plaintiffs argue that their "Fourth Amendment claim is based on different facts and laws, and

does not necessarily depend on the existence of racial discrimination." *Id.* Whereas their Fourteenth Amendment claim is based on racial discrimination, Plaintiffs argue, their Fourth Amendment claim is based on allegations that Defendants seize and detain persons "without probable cause for the purpose of checking into civil immigration status[,]" and such allegations do not necessarily depend on racial discrimination. *Id. at 5-6.* And, Plaintiffs argue, if the Court dismisses their Fourth Amendment claim, their Fourteenth Amendment claim "would not provide a remedy for all of the unconstitutional conduct that is challenged in the complaint." *Id. at 6.*

Finally, Plaintiffs argue that, although Fourth Amendment violations are not necessarily dependent on racial discrimination, racial bias can inform conduct giving rise to a Fourth Amendment violation. Such an allegation of racial bias does not foreclose a Fourth Amendment claim as duplicative of a Fourteenth Amendment claim, they argue, but rather is merely relevant to consideration of a Fourth Amendment claim. *Id. at 7-8.*

In reply, Defendants argue that: (1) Plaintiffs' argument that their Fourth Amendment and Fourteenth Amendment claims are

distinct "is belied by the plain language of their complaint[ ]" which expressly alleges that the traffic stops for extended periods were for "racially motivated reasons ...[,]" *ECF 18 at 12*; (2) "doubling up" of claims when both are based on allegations of racial discrimination is impermissible, *id. at 13-14*; (3) racial motivation for alleged traffic stops is irrelevant to the question of whether MHP officers violated the Fourth Amendment, *id. at 14*; and (4) Plaintiffs' reliance on cases in which both Fourth and Fourteenth Amendment claims were allowed to proceed together is misplaced because neither the district nor appellate courts involved were asked to address the question, posed here, of whether the Fourth and Fourteenth Amendment claims were duplicative, *id. at 14-15*.

2. Analysis

Having considered the parties' arguments and the relevant authority, the Court concludes that dismissal of Plaintiffs' Fourth Amendment claim is not appropriate at this juncture. The Ninth Circuit has noted that, "[w]here a claim can be analyzed under 'an explicit textual source' of rights in the Constitution, a court may not also assess the claim under another, 'more generalized,' source."

Ramirez v. Butte–Silver Bow Cnty., 298 F.3d 1022, 1029 (9th Cir. 2002) (as amended), *affirmed*, 540 U.S. 551 (2004); *see also Graham v. Connor*, 490 U.S. 386, 395 (1989) ("Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.").

But here, the Court is not convinced that Plaintiffs have alleged a Fourth Amendment claim amenable to analysis under only the "explicit textual source" of the Fourteenth Amendment and which would preclude consideration under all other sources. Rather, the Court concludes that Plaintiffs' Fourth Amendment and Fourteenth Amendment claims are sufficiently distinct that they are not impermissibly duplicative.

In stating their Fourth Amendment claim, Plaintiffs allege that:

> Defendants, acting under color of law and in concert with one another, stopped, seized, searched, arrested and/or impermissibly extended stops of Plaintiffs, pretextually, for racially motivated reasons *and without probable cause or reasonable suspicion that they had violated the law*. Such conduct violated the Fourth Amendment guarantee against unreasonable searches and seizures, the Fourteenth Amendment, and 42 U.S.C. § 1983.

ECF 1 at ¶ 194 (emphasis added); *see also ¶ 196*.

While their Fourth Amendment claim alleges racially motivated reasons for the stops, arrests, and seizures, it also alleges that the stops, arrests, and seizures were made "without probable cause or reasonable suspicion[.]" *Id*. This claim can reasonably be read to allege a basis for the Fourth Amendment violation that is distinct from and independent of actions that are solely racially motivated. Thus, at this juncture in the proceedings, the Court cannot conclude that the Fourth Amendment claim is a mere "doubling up" of Plaintiffs' Fourteenth Amendment claim as Defendants argue. The motion to dismiss, to the extent it seeks dismissal of Plaintiffs' Fourth Amendment claim (Count II), therefore, should be denied.

IV. CONCLUSION

Based on the foregoing, IT IS RECOMMENDED that Defendants' motion to dismiss (*ECF 15*) be GRANTED to the extent it seeks dismissal of Counts III and IV, but DENIED in all other respects, as discussed herein.

NOW, THEREFORE, IT IS ORDERED that the Clerk shall serve a copy of the Findings and Recommendations of United States

Magistrate Judge upon the parties. The parties are advised that pursuant to 28 U.S.C. § 636, any objections to the findings and recommendations must be filed with the Clerk of Court and copies served on opposing counsel within fourteen (14) days after entry hereof, or objection is waived.

DATED this 1st day of April, 2014.

/s/ Carolyn S. Ostby
United States Magistrate Judge