

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>Asian Prisoner Support Committee et al Plaintiff/Petitioner(s) VS. California Department of Corrections and Rehabilitation et al Defendant/Respondent (s)</p>	<p>No. 23CV031986 Date: 11/16/2023 Time: 12:14 PM Dept: 16 Judge: Tara Desautels ORDER re: Ruling on Submitted Matter filed by California Department of Corrections and Rehabilitation (Defendant); Jeff Macomber (Defendant) on</p>
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The Court, having taken the matter under submission on 10/20/2023, now rules as follows:
Defendants' demurrer is OVERRULED.

BACKGROUND

Plaintiffs Asian Prisoner Support Committee, Root & Rebound, Roth Chan, and Anouthinh “Choy” Pangthong filed suit against Defendants California Department of Corrections and Rehabilitation and Jeff Macomber, Secretary of the California Department of Corrections and Rehabilitation. Plaintiffs allege that CDCR operates a discriminatory immigration-enforcement system, referring all “foreign-born” people in its custody to U.S. Immigration and Customs, including U.S. citizens and lawful residents.

Plaintiffs assert taxpayer causes of action seeking declaratory and injunctive relief for (1) violation of the Equal Protection Clause of the Constitution of California, (2) violation of Government Code sections 11135 and 7284.10(b). Plaintiffs also petition for a writ of mandate compelling Defendants to perform their duties under each of these statutes.

Defendants demur to the mixed complaint and petition on the following grounds: (1) plaintiffs fail to establish taxpayer standing or standing as real parties in interest; (2) plaintiffs’ equal protection claims arose as early as 1992 and no later than 2004, and their statutory claims under Government Code sections 11135 and 7284.10, subdivision (b) arose in 2017 and 2018, respectively, such that their claims exceeded the respective two and three-year limitations

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periods; (3) plaintiffs have an adequate, alternative remedy at law that precludes relief in mandamus; (4) plaintiffs have not demonstrated violation of a non-discretionary, ministerial duty; and (5) the individual plaintiffs' claims should be denied as moot because they are no longer subject to immigration-related holds or detainers and they cannot be granted any relief.

At the October 11, 2023 hearing on this motion, Defendants renewed a request for leave to file a reply of more than ten (10) pages. The request was granted, and Defendants' previously filed reply was accepted. Plaintiffs were granted leave to file a brief responding to the arguments in the reply. The parties then presented oral argument on the merits, agreeing that the matter would be submitted after the filing of Plaintiffs' responsive brief. Plaintiffs filed their sur-opposition to the demurrer on October 19, 2023.

LEGAL STANDARD

A court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A court must "give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Ibid.*)

REQUESTS FOR JUDICIAL NOTICE

The parties' requests for judicial notice are granted. A court may take judicial notice of court records under Evidence Code section 452, but it "cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 382.)

DISCUSSION

Taxpayer Causes of Action

Defendants' demurrer to the taxpayer causes of action based on lack of standing is overruled. "Section 526a provides a mechanism for controlling illegal, injurious, or wasteful actions by those officials. That mechanism, moreover, remains available even where the injury is insufficient to satisfy general standing requirements under section 367." (*People for Ethical Operation of Prosecutors & L. Enf't v. Spitzer* (2020) 53 Cal.App.5th 391, 398.) "The *raison d'être* of taxpayer standing, as well as the related doctrine of public interest standing in mandamus proceedings, is to confer standing on the public at large to hold the government accountable to fulfill its obligations to the public." (*Id.* at pp. 395–96.) Plaintiffs allege that they have all "paid taxes in California within the past year." (Compl. ¶¶ 73, 82, 91.) This "alone" is "sufficient to confer standing under section 526a." (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 693.) "Cases that challenge the legality or constitutionality of governmental actions fall squarely within the purview of section 526a." (*California Dui Laws. Ass'n v. California Dep't of Motor Vehicles* (2018) 20 Cal.App.5th 1247, 1261 [rejecting argument that "allegedly unconstitutional action is 'legal'" on demurrer].) And "ample precedent

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permits the use of Code of Civil Procedure section 526a to challenge an agency's expenditure of funds for activity carried out in a manner violative of constitutional or statutory provisions." (Raju v. Superior Ct. (2023) 92 Cal.App.5th 1222, 1246 [no depletion of funds is required where the complained-of activity is itself unlawful].)

Defendants' demurrer to the taxpayer causes of action on the grounds that Plaintiffs Chan and Pangthong failed to exhaust administrative remedies is overruled. Defendants argue that Plaintiffs were required to exhaust a grievance process, citing penal regulations that provide administrative remedies for inmates and parolees "to dispute a policy, decision, action, condition, or omission by the department or departmental staff." (Code Regs. tit. 15, § 3481.) The regulations describe a process for resolving a "claim," which is defined as a "single complaint arising from a unique set of facts or circumstances." (Code Regs. tit. 15, § 3480.) Here, in contrast, Plaintiffs seek "wholesale change" in a "state level" process. (See Collins v. Thurmond (2019) 41 Cal.App.5th 879, 912.) Nothing in the cited regulations would provide the relief sought. Collins is distinguishable because, in that case, proceedings were "specifically designed" to resolve the allegations at issue at the local level. (See *ibid.*)

Defendants' demurrer to the taxpayer causes of action on statute of limitations grounds is overruled. Plaintiffs seek "to restrain a current, ongoing program" and are "not seeking damages for past acts." (See Spitzer, *supra*, 53 Cal.App.5th at p. 411.) "Plainly, the statute cannot have run to restrain a violation that is ongoing." (*Ibid.* [overruling demurrer to taxpayer and mandate causes of action].) Defendants acknowledge this holding but argue that the claims are not ongoing because Pangthong is no longer in custody, and the immigration hold was removed shortly before his parole. (See Reply at pp. 20–21.) Because the taxpayer causes of action challenge Defendants' expenditure of funds for activity carried out in a manner violative of constitutional and statutory provisions, the status of the individual plaintiffs is not relevant to the statute of limitations analysis.

Defendants' demurrer to the individual taxpayer causes of action based on mootness is overruled. "[D]irectly aggrieved parties and taxpayers have concurrent standing to bring suit to enjoin government action." (Mendoza v. Cnty. of Tulare (1982) 128 Cal.App.3d 403, 415.) Defendants' removal of holds and detainers for Plaintiffs Chan and Pangthong is not relevant to their taxpayer causes of action.

Writ of Mandate Causes of Action

Defendants' demurrer to the writ causes of action based on lack of beneficial interest is overruled. An "attempt to enforce antidiscrimination statutes" falls "squarely within the public interest exception to the rule, which otherwise requires a beneficial interest in mandate actions" for all Plaintiffs. (Hector F. v. El Centro Elementary Sch. Dist. (2014) 227 Cal.App.4th 331, 342; see also Spitzer, *supra*, 53 Cal.App.5th at p. 410 [constitutional rights "are public rights that every citizen has an interest in upholding"].) "The existence of policies and programs that systematically violate constitutional rights may be attacked without directly interfering in any particular criminal proceeding." (Spitzer, *supra*, 53 Cal.App.5th at p. 410.) The Court, therefore,

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need not address Chan’s individual arguments as to beneficial standing.

Defendants’ demurrer to the writ causes of action on the grounds that Plaintiffs Chan and Pangthong failed to exhaust administrative remedies is overruled for the same reasons discussed above. (See Collins, supra, 41 Cal.App.5th at p. 919 [“In order to require exhaustion of administrative remedies, those remedies must provide the complainant with relief.”].)

Defendants’ demurrer to the writ causes of action on statute of limitations grounds is overruled for the reasons discussed above. (See Spitzer, supra, 53 Cal.App.5th at p. 411; see also Howard Jarvis Taxpayers Ass’n v. City of La Habra (2001) 25 Cal.4th 809, 821–22 [no statute of limitations barring mandamus or declaratory relief causes of action where challenged tax collection was ongoing].) Defendants argue that “Spitzer merely held that the complaint portion of the pleading was not time-barred by the statute of limitations,” seeking to distinguish between the taxpayer and mandate claims. Spitzer does not make that distinction, and Defendants do not provide a reasoned basis for it.

Defendants’ demurrer to Plaintiff Chan’s mandate causes of action based on adequate remedy is overruled. No individual habeas petition could result in the requested policy relief. Defendants argue that taxpayer causes of action for declaratory and injunctive relief provide an adequate remedy at law. Pleading in the alternative, however, is permitted, and mandate and taxpayer claims often proceed simultaneously. (See, e.g., Hector F., supra, 227 Cal.App.4th at p. 342; Spitzer, supra, 53 Cal.App.5th at p. 411.)

Defendants’ demurrer to the mandate causes of action based on failure to state a prima facie case for violation of the underlying statutes is overruled. Plaintiffs allege that CDCR’s policies unlawfully discriminate on the basis of national origin—and perceived national origin based on other protected characteristics like race and ethnicity—against all those it believes were born abroad, by referring them to ICE for immigration enforcement and denying them less restrictive custodial classifications and programming. (Compl. ¶¶ 7–10; 36–39; 42–48.) The allegations are sufficient to withstand a demurrer.

Defendants argue that Plaintiffs are challenging CDCR’s interpretation and enforcement of Penal Code section 5024 and that a writ of mandate cannot be used to force the exercise of discretion in a particular manner. “Generally, mandamus may only be employed to compel the performance of a duty that is purely ministerial in character.” (Morris v. Harper (2001) 94 Cal.App.4th 52, 62.) Defendants, however, do not have discretion to discriminate. There is no question that a writ of mandate may be used to further the public interest in enforcing antidiscrimination statutes like the constitution and Government Code provisions at issue here. (See, e.g., Hector F., supra, 227 Cal.App.4th at p. 342 [Gov’t Code, § 11135]; Molar v. Gates (1979) 98 Cal.App.3d 1, 25 [California’s equal protection clause].) The “judicial inquiry in an ordinary mandamus proceeding addresses whether the public entity’s action was arbitrary, capricious or entirely without evidentiary support, and whether it failed to conform to procedures required by law.” (Spitzer, supra, 53 Cal.App.5th at p. 410.) Defendants’ arguments go to the merits of the claims, rather than the sufficiency of pleading.

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Defendants' demurrer to the individual writ causes of action based on mootness is overruled for the reasons discussed above. Defendants' removal of holds and detainers for Plaintiffs Chan and Pangthong is not relevant to their requests for mandamus relief made in the public interest.

ORDER

Defendants' demurrer is **OVERRULED**. Defendants must file a responsive pleading within thirty (30) days of notice of entry of this order.

Dated : 11/16/2023



Tara Desautels / Judge