

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 08-cv-02223-REB-BNB

INGRID M. CARTINELLE,
PAMELA K. HELSPER,
DWAIN BROWN, and
JOHN F. NOBLE,

Plaintiffs,

v.

JANET NAPOLITANO, Secretary, DEPARTMENT OF HOMELAND SECURITY (DHS),
and
TRANSPORTATION SECURITY ADMINISTRATION (TSA),

Defendants.

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the **Recommendation of United States Magistrate** [#44] filed May 4, 2010; (2) plaintiffs' **Response and Objection to Recommendations of Magistrate Judge** [#48] filed May 14, 2010; and (3) **Defendant's Partial Objection to the Recommendation on Motion To Dismiss Claims of Helsper and Brown** [#49] filed May 20, 2010. I overrule the objections and adopt the recommendation.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and have considered carefully the recommendation, objections, and applicable caselaw. The recommendation is detailed

and well-reasoned. Contrastingly, both plaintiffs'¹ and defendant's² objections are imponderous and without merit.

Therefore, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate** [#44] filed May 4, 2010, is **APPROVED AND ADOPTED** as an order of this court;
2. That the objections in plaintiffs' **Response and Objection to Recommendations of Magistrate Judge** [#48] filed May 14, 2010, are **OVERRULED**;
3. That the objections in **Defendant's Partial Objection to the Recommendation on Motion To Dismiss Claims of Helsper and Brown** [#49] filed May 20, 2010, are **OVERRULED**;
4. That **Defendant's Motion To Dismiss the Claims of Plaintiffs [sic] Helsper and Brown** [#35] filed January 28, 2010, is **GRANTED IN PART** and **DENIED IN**

¹ Plaintiffs' suggestion that their former *pro se* status supports equitable tolling ignores well-established precedent in this area. "Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." **Baldwin County Welcome Center v. Brown**, 466 U.S. 147, 152, 104 S.Ct. 1723, 1726, 80 L.Ed.2d 196 (1984). Both the Tenth Circuit and federal district courts in Colorado have followed this mandate in the specific context in which the magistrate judge applied it here. **See Montoya v. Chao**, 296 F.3d 952, 957 (10th Cir. 2002); **Castaldo v. Denver Public Schools**, 2007 WL 2472064 at *7 (D. Colo. Aug. 28, 2007), **aff'd**, 276 Fed. Appx 839 (10th Cir. May 5, 2008). Moreover, and even if it were relevant, plaintiffs have failed to come forward with any evidence to support their assertion that they were diligently seeking counsel during the time their previous cases languished. **See Jarrett v. US Sprint Communications Co.**, 22 F.3d 256, 260 (10th Cir.) (plaintiff bears burden of coming forward with evidence to support even a brief period of equitable tolling of Title VII's procedural requirements), **cert. denied**, 115 S.Ct. 368 (1994).

² Defendant's suggestion that plaintiffs' second claim for relief, clearly delineated in the complaint as asserting wrongful discharge and intentional infliction of emotional distress, is in fact a Title VII claim, defies credulity.

PART;

5. That the motion is **GRANTED** as follows:

a. The claims of all plaintiffs asserted in their First Claim for Relief (**Amended Complaint ¶¶ 20-23 [#21]** filed December 7, 2009), insofar as they purport to assert a cause of action pursuant to 28 U.S.C. § 1915, are dismissed; and

b. The claims of plaintiffs Pamela K. Helsper and Dwain Brown asserted in the First Claim for Relief (**Amended Complaint ¶¶ 20-23 [#21]**, filed December 7, 2009) for relief under Title VII, are dismissed as barred by the applicable statute of limitations;

6. That at the time final judgment enters, judgment **SHALL ENTER** on behalf of defendant, Janet Napolitano, Secretary, Department of Homeland Security (DHS), and against plaintiffs as follows:

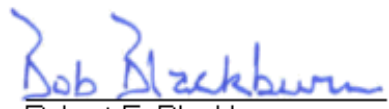
a. Against plaintiffs, Ingrid M. Cartinelle, Pamela K. Helsper, Dwain Brown, and John F. Noble, on plaintiffs' First Claim for Relief, insofar as it asserts a claim pursuant to 28 U.S.C. § 1915; and

b. Against plaintiffs, Pamela K. Helsper and Dwain Brown, on plaintiffs' First Claim for Relief, insofar as it asserts a claim pursuant to Title VII; and

7. That the motion is **DENIED** otherwise.

Dated June 22, 2010, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge