

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| MONROE GROCERY, INC. and FRANCISCO TAVAREZ | : | |
| | : | |
| Plaintiffs | : | CIVIL ACTION NO. 3:17-922 |
| | : | |
| v. | : | (MANNION, D.J.) (SCHWAB, M.J.) |
| | : | |
| UNITED STATES OF AMERICA, GILDA TORRES, and SONNY PERDUE | : | |
| | : | |
| Defendants | : | |
| | : | |

ORDER

Presently before the court is the report and recommendation (“Report”), ([Doc. 70](#)), of Magistrate Judge Susan E. Schwab, which recommends that the Government’s motion for partial judgment on the pleadings, ([Doc. 59](#)), be denied. No objections have been filed to the Report. Based upon the court’s review of the record, Judge Schwab’s Report will be **ADOPTED IN ITS ENTIRETY**, and the Government’s motion for partial judgment on the pleadings will be **DENIED**.

On May 25, 2017, plaintiffs Monroe Grocery, Inc. (“Monroe”) and Francisco Tavaréz (“Tavaréz”), (collectively “plaintiffs”), filed a *pro se* complaint, ([Doc. 1](#)), against Retailer Operation Division, which filed a motion to dismiss, ([Doc. 6](#)), on October 6, 2017. On October 27, 2017, Evan C.

Pappas entered his appearance on behalf of plaintiffs, ([Doc. 10](#)), and Andrew Tapp filed a petition for admission *pro hac vice* to represent plaintiffs, ([Doc. 11](#)), which was granted by Judge Schwab on October 31, 2017, ([Doc. 12](#)).

On December 12, 2017, plaintiffs filed an amended complaint against the United States of America (the “Government”), Gilda Torres (“Torres”), and Sonny Perdue (“Perdue”), (collectively “defendants”), alleging constitutional violations of equal protection and substantive due process. ([Doc. 15](#)). Then, on December 26, 2017, the Government filed a motion to dismiss plaintiffs’ amended complaint or, in the alternative, for summary judgment. ([Doc. 18](#)). The Government filed a brief in support of its motion, ([Doc. 31](#)), and statement of facts, ([Doc. 32](#)), on January 29, 2018. Plaintiffs filed a brief in opposition to the Government’s motion on March 7, 2018, ([Doc. 38](#)), and the Government filed a reply brief on March 21, 2018, ([Doc. 39](#)).

On May 3, 2018, Judge Schwab issued a report and recommendation, which recommended that the Government’s motion to dismiss be granted in part and denied in part. ([Doc. 40](#)). More specifically, Judge Schwab recommended that plaintiffs’ claims seeking damages and their due process claim seeking injunctive relief against defendants, in their official capacities, be dismissed and that plaintiffs be granted leave to file a second amended

complaint. (Doc. 40, at 31). This court adopted Judge Schwab's report and recommendation over the Government's objections. (Doc. 50).

On March 6, 2019, plaintiffs filed a second amended complaint, (Doc. 54), again bringing due process and equal protection claims. The Government filed an answer on March 18, 2019. (Doc. 56). Then, on June 26, 2019, the Government filed a motion for partial judgment on the pleadings, (Doc. 59), to which plaintiffs filed a brief in opposition, (Doc. 65). The Government filed a reply brief. (Doc. 66). Judge Schwab issued the present Report on October 29, 2019, to which no party has filed objections. The matter is now ripe for this court's disposition.

When no objections are made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b) advisory committee's note; see *also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the

findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. L.R. 72.31.

Here, Judge Schwab recommends that the Government's motion be denied because its arguments as to why the complaint should be dismissed do not sufficiently address the specific allegations in the complaint. Having reviewed the Report of Judge Schwab, as well as the record and pleadings, the court finds that Judge Schwab used proper reasoning and evidence to support her Report and arrived at a legally-sound conclusion. Therefore, the court adopts the Report of Judge Schwab as the opinion of this court.

Accordingly, **IT IS HEREBY ORDERED THAT:**

- (1) Judge Schwab's Report, (Doc. 70), is **ADOPTED IN ITS ENTIRETY**;
- (2) The Government's motion for partial summary judgment, (Doc. 59), is **DENIED**.
- (3) This matter is **REMANDED** to Judge Schwab for further proceedings.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: December 17, 2019

17-922-01