APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Opinion in the United States Court of Appeals for the Fifth Circuit (January 6, 2023) . . . . App. 1

Appendix B Order in the United States District Court Eastern District of Louisiana (March 30, 2022) . . . . App. 18

Appendix C Notice of Interlocutory Appeal (April 12, 2022) . . . . App. 38

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-30181

[Filed: January 6, 2023]

REMINGTYN A. WILLIAMS, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS SIMILARLY SITUATED; LAUREN E. CHUSTZ, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS SIMILARLY SITUATED; BILAL ALI-BEY, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS SIMILARLY SITUATED,

Plaintiffs—Appellees,

versus

LAMAR A. DAVIS, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE LOUISIANA STATE POLICE,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-cv-852

Before HIGGINBOTHAM, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

While marching across a bridge, protestors were met with non-lethal force exercised by police officers. On behalf of a putative class, three of those protestors now seek to maintain a suit against the superintendent of the Louisiana State Police ("LSP"), whose troopers were allegedly "bystanders" at the event. As we find that these plaintiffs are unable to maintain this suit, we REVERSE and RENDER JUDGMENT in favor of the LSP's superintendent.

Factual Background and Procedural History

In June of 2020, several hundred protestors gathered to cross the Crescent City Connection bridge ("CCC") as part of protests in the wake of George Floyd's death. Among those protestors were the three named plaintiffs in this case: Remingtyn Williams, Lauren Chustz, and Bilal Ali-Bey ("Plaintiffs"). These protestors approached a police barricade primarily consisting of New Orleans Police Department ("NOPD") officers with support from Jefferson Parish Sheriff's Office deputies and equipment. Louisiana State Police troopers were allegedly "bystanders" at the event. Protestors requested permission to pass through the barricade but were denied. At some point, "a small group of agitated demonstrators passed through an opening in the police line." NOPD officers fired tear gas

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* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

and other non-lethal munitions into the crowd and the crowd dispersed.

The Plaintiffs asserted various claims relating to alleged violations of their constitutional and statutory rights against individual officers and law enforcement agencies. Relevant to this appeal are the claims against Colonel Lamar Davis ("Davis"), Superintendent of the LSP. In summary, the Plaintiffs sued Davis alleging *Monell* and supervisory liability under 42 U.S.C. § 1983 for violations of the First, Fourth, and Fourteenth Amendments, *see Monell v. Dep't of Soc. Servs.*, 436 U.S. 685 (1978), violations of various Louisiana constitutional and statutory provisions, and violations of Title VI of the Civil Rights Act of 1964. Davis filed a motion to dismiss for failure to state a claim, stating in part that he was protected by Eleventh Amendment sovereign immunity and that the Plaintiffs lack standing to proceed against him.

The district court granted the motion as to the *Monell* claims and the Title VI claim but denied it as to the § 1983 claims and the state law claims. The court did not address the state law claims in detail as it found it unnecessary to do so given its findings on the federal claims. Evaluation of the § 1983 claims began with an inquiry into standing, which concluded: "[T]he Plaintiffs allege their constitutional rights have been violated, such violations are ongoing or may occur again at a later protest, and this Court can remedy those risks with prospective relief, namely injunctions curtailing LSP's policies. Therefore, at this time, the Plaintiffs have standing to bring this suit." The court also concluded that the Plaintiffs adequately pleaded

§ 1983 claims to fit within the relevant exception to Eleventh Amendment immunity as they "sued Col. Davis in his official capacity, 'allege[] ongoing violations of federal law by LSP,' and seek prospective relief." Davis promptly filed a notice of interlocutory appeal seeking review of the denial of Eleventh Amendment sovereign immunity.

Standard of Review

"This court reviews denials of Eleventh Amendment immunity *de novo*." *McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 412 (5th Cir. 2004) (citing *Cozzo v. Tangipahoa Par. Council—President Gov't*, 279 F.3d 273, 280 (5th Cir. 2002)). We likewise review questions concerning standing *de novo*. *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 671 (5th Cir. 2022).

Discussion

I. Jurisdiction

"This court has a continuing obligation to assure itself of its own jurisdiction, *sua sponte* if necessary." *United States v. Pedroza-Rocha*, 933 F.3d 490, 493 (5th Cir. 2019) (citing *Bass v. Denney*, 171 F.3d 1016, 1021 (5th Cir. 1999)). Orders denying Eleventh Amendment sovereign immunity are reviewable under the "collateral order doctrine." *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993).

Less clear, however, is whether we have jurisdiction to review the district court's finding of standing. The Supreme Court has held that reviewable issues under the collateral order doctrine are those which "'[1] conclusively determine the disputed question,

[2] resolve an important issue completely separate from the merits of the action, and [3] [are] effectively unreviewable on appeal from a final judgment.'" *P.R. Aqueduct*, 506 U.S. at 144 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)). The Eleventh Circuit has explicitly considered whether standing is one such issue: "In contrast to the question of Eleventh Amendment immunity, however, we have held that a district court's denial of a motion to dismiss on justiciability grounds is *not* immediately appealable under the collateral order doctrine." *Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1334 (11th Cir. 1999) (citation omitted) (emphasis in original). Under Eleventh Circuit precedent, then, the "*only*" way the court can review a district court's finding of standing on interlocutory appeal is via the "pendent appellate jurisdiction doctrine." *Summit Med. Assocs.*, 180 F.3d at 1335 (emphasis in original).

This comports nicely with the nature of the collateral order doctrine. Eleventh Amendment immunity cannot effectively be reviewed "on appeal from a final judgment," *P.R. Aqueduct*, 506 U.S. at 144 (quoting *Coopers & Lybrand*, 437 U.S. at 468), because as immunity is "an immunity from suit rather than a mere defense to liability … it is effectively lost if a case is erroneously permitted to go to trial." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (ellipses in original, internal quotation marks omitted) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526, (1985)). Standing, however, can and often is reviewed on appeal without such loss, in part because the question of standing is often "intertwined" with that of the merits. *See Barrett Comput. Servs., Inc. v. PDA, Inc.*, 884 F.2d 214, 219

(5th Cir. 1989). This makes questions of standing inappropriate for collateral review. If we are to address standing on the merits, therefore, it must be by the exercise of pendent appellate jurisdiction.

II. Whether to Exercise Pendent Appellate Jurisdiction

Pendent appellate jurisdiction may only be exercised in one of two "carefully circumscribed" circumstances: "(1) If the pendent decision is 'inextricably intertwined' with the decision over which the appellate court otherwise has jurisdiction, pendent appellate jurisdiction may lie, or (2) if 'review of the former decision [is] necessary to ensure meaningful review of the latter.'" *Escobar v. Montee*, 895 F.3d 387, 391 (5th Cir. 2018) (quoting *Swint v. Chambers Cty. Comm'n*, 514 U.S. 35, 51 (1995)).

This court has previously exercised pendent appellate jurisdiction to address justiciability issues such as standing. In *Hospitality House, Inc. v. Gilbert*, it was held: "where … we have interlocutory appellate jurisdiction to review a district court's denial of Eleventh Amendment immunity, we may first determine whether there is federal subject matter jurisdiction over the underlying case." 298 F.3d 424, 429 (5th Cir. 2002). As standing indisputably goes to whether or not a court has subject matter jurisdiction, *see, e.g., Abraugh v. Altimus*, 26 F.4th 298, 301 (5th Cir. 2022), this panel can exercise pendent appellate jurisdiction to address standing issues. In fact, while reviewing a denial of Eleventh Amendment immunity, the panel in *Whole Woman's Health v. Jackson* determined that through the exercise of pendent

appellate jurisdiction it had jurisdiction over justiciability issues such as standing. 13 F.4th 434, 446 (5th Cir. 2021).

Exercise of pendent appellate jurisdiction is not mandatory – as appellees point out, the Supreme Court carefully noted that "no one contest[ed] th[e] decision" to review standing on appeal in *Whole Woman's Health*. *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 537 (2021). Though that is not the case here, this court's jurisprudence nonetheless permits this panel to exercise pendent appellate jurisdiction. For one, "our Article III standing analysis and *Ex parte Young* analysis 'significant[ly] overlap.'" *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019) (quoting *Air Evac EMS, Inc. v. Tex.*, 851 F.3d 507, 520 (5th Cir. 2017)). In fact, "our caselaw shows that a finding of standing tends toward a finding that the *Young* exception applies to the state official(s) in question." *Id.* Additionally, "[w]e … address standing … when there exists a significant question about it." *K.P. v. LeBlanc*, 627 F.3d 115, 122 (5th Cir. 2010). The *K.P.* court even addressed standing before proceeding to an *Ex parte Young* analysis even though "neither party … raised the issue of standing." *Id.*

Appellees recommend against exercising pendent appellate jurisdiction in this case for two main reasons. First, they note that as not all defendants are participating in this appeal, ruling on standing will "prematurely instruct the district court on how to decide this case for all of the defendants who are not participating in this appeal." But while the Plaintiffs stress this point, they submit no caselaw or other

reasoning for why this would be problematic in itself. More persuasive are Plaintiffs' cites to *Swint* for the proposition that "a rule loosely allowing pendent appellate jurisdiction would encourage parties to parlay … collateral orders into multi-issue interlocutory appeal tickets." *Swint*, 514 U.S. at 49–50. We are conscious of the risk of encouraging parties with potential Eleventh Amendment immunity claims (or other claims which are appealable on an interlocutory basis) to file "meritless immunity appeals just so they could seek premature interlocutory review of standing, allowing them to short-circuit the normal appeals process when other defendants do not enjoy that same privilege." *See Abney v. United States*, 431 U.S. 651, 663 (1977) ("Any other rule would encourage criminal defendants to seek review of, or assert, frivolous double jeopardy claims in order to bring more serious, but otherwise nonappealable questions to the attention of the courts of appeals prior to conviction and sentence.").However, this immunity appeal is not meritless; further, we find that review of the *Ex parte Young* factors in this particular case is inextricably bound up with the issue of standing.

In sum, an exercise of pendent appellate jurisdiction "'is only proper in rare and unique circumstances.'" *Byrum v. Landreth*, 566 F.3d 442, 449 (5th Cir. 2009) (quoting *Thornton v. Gen. Motors Corp.*, 136 F.3d 450, 453 (5th Cir. 1998)). But our jurisprudence suggests that review of standing challenges in evaluating Eleventh Amendment immunity claims is often relevant as the issues may be both "'inextricably intertwined'" and "'necessary to ensure meaningful review.'" *Escobar*, 895 F.3d at 391 (quoting *Swint*, 514

U.S. at 51). While panels should review each case to determine whether or not it is an appropriate case for such an exercise, Fifth Circuit precedent suggests that cases such as this are "rare circumstances" in which pendent appellate jurisdiction may be exercised to review standing. As "our Article III standing analysis and *Ex parte Young* analysis 'significant[ly] overlap,'" *City of Austin*, 943 F.3d at 1002 (citation omitted), this case presents an appropriate opportunity to exercise pendent appellate jurisdiction to review standing, and we thus do so.

III. Standing on the Merits

"[T]he irreducible constitutional minimum of standing contains three elements:" (1) "an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, … and (b) 'actual or imminent,' not conjectural or hypothetical;" (2) "a causal connection between the injury and the conduct complained of;" and (3) "it must be likely … that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (cleaned up). Davis contends that the Plaintiffs have no standing because their alleged future injuries are speculative.

The parties suggest that the standing debate largely turns on whether this case is more akin to *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) or *Hernandez v. Cremer*, 913 F.2d 230 (5th Cir. 1990). In *Lyons*, a plaintiff sued the City of Los Angeles and several of its police officers after he was placed in a chokehold. *Lyons*, 461 U.S. at 97. The Supreme Court found that while he had standing to pursue his claim of being

subjected to a chokehold, he was without standing to seek injunctive relief to enjoin the Los Angeles police force from the use of chokeholds because he had demonstrated neither that he was likely to have another encounter with the police nor "(1) that *all* police officers in Los Angeles *always* choke any citizen with whom they happen to have an encounter, whether for the purpose of arrest, issuing a citation or for questioning or, (2) that the City ordered or authorized police officers to act in such manner." *Id.* at 106 (emphasis in original). *Hernandez* involved an American citizen born in Puerto Rico who presented a birth certificate indicating his place of birth while attempting to re-enter the United States from Mexico. *Hernandez*, 913 F.2d at 232. He was initially denied entry by an INS official who doubted the authenticity of the birth certificate; after several attempts, Hernandez was granted entry by another INS official. *Id.* at 232-33. Both Lyons and Hernandez sought to change an allegedly unconstitutional government policy. The *Hernandez* panel distinguished the case from *Lyons* by noting that "Hernandez (unlike Lyons) was engaged in an activity protected by the Constitution." *Id.* at 234.

The Plaintiffs here submit that they were engaged in activity protected by the First Amendment, that they would engage in such activity again in the future if not for the officers' actions, and that the LSP "employs policies, practices, and customs that violate the plaintiffs' First, Fourth, and Fourteenth Amendment rights." They contrast the behavior of police officials at the CCC protest to police behavior at "protests attended by largely White attendees," noting that

pro-confederate protests and anti-Covid-restriction protests were not met with tear gas or the like despite violations of state law. The Plaintiffs state that the LSP's actions have had "a chilling effect upon the rights of African American citizens (and those who directly and actively support them) to freely and lawfully protest without fear of police interference, harassment, intimidation or abuse." They contend, therefore, that they have adequately pleaded both that the policies in question are authorized by the superintendent and that the policies have chilled their speech. *See Laird v. Tatum*, 408 U.S. 1, 11, (1972) ("[C]onstitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights.").

Unlike the plaintiff in *Hernandez*, these Plaintiffs were not engaged in constitutionally protected activity. Certainly, the right to peacefully protest is protected by the First Amendment. But "[e]xpression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions." *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). One such reasonable restriction is a restriction on protesting on public highways, as the Louisiana Supreme Court has recognized. *See Doe v. McKesson*, 2021-00929 (La. 3/25/22), 339 So. 3d 524, 533. In their briefing, the Plaintiffs retort that they had been protesting in the same way the five days preceding the events on the CCC and that they had even protested on another "elevated roadway" the night before. It is unclear why prior misconduct should justify further misconduct. More compellingly, the Plaintiffs suggest

that they would "'lawfully' protest racial injustice and police misconduct in the future but for the discriminatory policies, practices, and customs of the [LSP.]" Had the Plaintiffs been "lawfully" protesting at the time of their confrontation with law enforcement, perhaps there would have been a different outcome. The allegation that they were undisturbed in the five days prior to the CCC encounter only further suggests that a lawful protest may have been addressed differently.

In fact, the only other evidence of the LSP's attitude towards protesting comes in a discussion about how the LSP "did not intervene at all" while monitoring an anti-Covid-restrictions protest outside the Governor's mansion. It is alleged that the LSP officers likewise declined to intervene during the protest on the CCC. Both protests were allegedly unlawful and the LSP responded passively to both. This comparison, far from bolstering Plaintiffs' case, helps demonstrate why their injury is at best speculative. Their own complaint seems to allege that the LSP responds more or less identically to unlawful protests involving "overwhelmingly white" attendees as it did to this protest on the CCC. Plaintiffs attempt to place this incident in the context of the LSP's allegedly "well-documented history of racism against Black people" and "discriminatory use of excessive force against [Black people]" by pointing to various instances involving LSP officers' use of excessive force against minorities. The LSP is not here, however, on excessive use of force grounds, and none of these Plaintiffs were subjected to any discriminatory conduct by the LSP. None of the incidents the Plaintiffs bring to the court's

attention which are alleged to show unconstitutional conduct by the LSP demonstrate an "actual or imminent" risk of "concrete and particularized" harm to these Plaintiffs by the LSP. *Lujan*, 504 U.S. at 560 (cleaned up).

The *Hernandez* panel comfortably distinguished *Lyons* by noting that "[t]he injury alleged to have been inflicted did not result from an individual's disobedience of official instructions and Hernandez was not engaged in any form of misconduct; on the contrary, he was exercising a fundamental Constitutional right." *Hernandez*, 913 F.2d at 234–35 (footnote omitted). Here, neither of those factors is present. Some individuals did indeed disobey official instruction and attempted to pass through the barricade and the Plaintiffs were certainly engaged in misconduct by protesting atop the CCC at all. A section of *Lyons* is particularly illustrative:

> Although Count V alleged that the City authorized the use of the control holds in situations where deadly force was not threatened, it did not indicate why Lyons might be realistically threatened by police officers who acted within the strictures of the City's policy. If, for example, chokeholds were authorized to be used only to counter resistance to an arrest by a suspect, or to thwart an effort to escape, any future threat to Lyons from the City's policy or from the conduct of police officers would be no more real than the possibility that he would again have an encounter with the police and that either he would illegally resist arrest or detention or the officers would disobey their instructions and

> again render him unconscious without any provocation.

Lyons, 461 U.S. at 106. Likewise, though the complaint alleges that the LSP authorizes unlawful passivity in the face of unlawful usage of force by other police officers, the future threat from the LSP for the Plaintiffs is "no more real than the possibility that [they] would again have an encounter with the police and that either [they] would illegally [protest] ... or the officers would disobey their instructions." *Id.* This conclusion is especially strong given that the LSP officers are not alleged to have used excessive force themselves.

"[P]ast wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy." *Id.* at 103. Plaintiffs may or may not have a stronger case against the officers and offices who were responsible for direct action, but against the LSP the Plaintiffs have not demonstrated more than a speculative future injury with little to no basis in past practice.

IV. Eleventh Amendment Immunity

Eleventh Amendment sovereign immunity generally "bars private suits against nonconsenting states in federal court." *City of Austin*, 943 F.3d at 997 (citing *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 253 (2011)). Although this suit was brought against Davis rather than the state, "a suit against a state official in his or her official capacity ... is no different from a suit against the State itself." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (citations omitted). In

order to maintain a suit against a state, a litigant must generally take advantage of a state waiver or a Congressionally created exception to state sovereign immunity. *See Va. Off. for Prot. & Advoc.*, 563 U.S. at 253–54. It is undisputed here that Louisiana has not waived sovereign immunity in this case and that no Congressional loophole applies.

The Supreme Court has provided one alternative means by which litigants may sue a non-consenting state: the *Ex parte Young* exception, so named for the seminal Supreme Court case which codified it. *See Ex parte Young*, 209 U.S. 123, 155-56 (1908). "[I]n order to fall within the *Ex parte Young* exception, a suit must: (1) be brought against state officers who are acting in their official capacities; (2) seek prospective relief to redress ongoing conduct; and (3) allege a violation of federal, not state, law." *Freedom from Religion Found. v. Abbott*, 955 F.3d 417, 424 (5th Cir. 2020) (citing *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 394–95 (5th Cir. 2015)). It is through this exception that the Plaintiffs seek to maintain this suit.

The suit is brought against Davis in his official capacity, so the first *Young* prong is satisfied. Although Davis contends that he cannot be sued under § 1983 because he is not a "person" under § 1983, the very case he cites for that proposition rejects that contention: "Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" *Will*, 491 U.S. at 71 n.10 (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)).

As is made clear in our analysis of standing, however, the Plaintiffs have not demonstrated that they "seek prospective relief to redress ongoing conduct." *Freedom from Religion Found*, 955 F.3d at 424 (citation omitted). The Plaintiffs have not pleaded any "ongoing conduct" on behalf of the LSP that can be redressed prospectively. At oral argument, counsel made clear that the theory of standing underlying Plaintiffs' claims is that of chilled speech – namely, that the LSP's failure to act to restrain or otherwise inhibit the NOPD's use of force on the CCC that night is part of "decades-long policies and patterns of conduct" wherein LSP officers fail to intervene to aid (or prevent harm from coming to) protestors who are either minorities or speaking out in favor of minorities. As we have already mentioned, this claim is unsupported by the complaint and is far too vague to support a continuation of the action under the *Ex parte Young* standard. The LSP allegedly failed to intervene at this protest. Plaintiffs do not and cannot adequately demonstrate the relation between this failure to act in a case in which they were engaged in misconduct and the chilling of their lawful First Amendment rights. As there is no "ongoing conduct" in the pleadings in this case, they have failed to satisfy the *Ex parte Young* standard and these claims are barred by sovereign immunity.

Several of the Plaintiffs' claims independently fail the third prong as they assert violations of state law rather than federal law. The district court indisputably erred in not dismissing the state law claims asserted against Davis. "[S]ince state law claims do not implicate federal rights or federal supremacy concerns,

the *Young* exception does not apply to *state* law claims brought against the state." *McKinley v. Abbott*, 643 F.3d 403, 406 (5th Cir. 2011) (emphasis in original) (citation omitted). Appellees do not contest that this was error. To the extent that the Plaintiffs' claims are for violations of state law they are barred by the Eleventh Amendment.

Conclusion

The Plaintiffs have failed to demonstrate that they have standing to bring this suit and have relatedly not met their burden to proceed with their federal law claims under the *Ex parte Young* standard. Accordingly, we REVERSE the district court's order and reasons and RENDER JUDGMENT in favor of Davis.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

NO: 21-852

SECTION: T(5)

[Filed: March 30, 2022]

REMINGTYN WILLIAMS, ET AL.)
)
VERSUS)
)
SHAUN FERGUSON, ET AL.)
)

ORDER

Before the Court is Defendant Lamar Davis's *Motion to Dismiss*.[1] The Plaintiffs, Remingtyn Williams, Lauren Chustz, and Bilal Ali-Bey, filed a response.[2] For the following reasons, the motion is **GRANTED IN PART** and **DENIED IN PART**.

[1] R. Doc. 20.

[2] R. Doc. 27.

BACKGROUND

On the night of June 3, 2020, Remingtyn Williams, Lauren Chustz, and Bilal Ali-Bey, along with several hundred other protestors, gathered on the Crescent City Connection to demonstrate against the "death of George Floyd."[3] Around 9:30 p.m., the protestors marched up the westbound lanes of Highway 90 toward the bridge.[4] On the roadway, New Orleans Police Department ("NOPD") officers were waiting at a police barricade.[5] When the protestors reached the barricade, they asked the officers to "put down their shields [and] batons" in "solidarity" with the demonstration.[6] After a lengthy standoff, the officers declined and a "group of agitated demonstrators passed through an opening in the police line."[7] At that time, 10:25 p.m., the officers started firing tear gas and rubber bullets at the

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[3] R. Doc. 1 at 3, 17-18, 21; R. Doc. 27 at 3-4. The Plaintiffs, along with other protestors, had demonstrated in New Orleans for the "five days" prior. R. Doc. 1 at 17.

[4] R. Doc. 1 at 3, 17-18, 21; R. Doc. 27 at 3-4.

[5] *Id.* at 17-18. The Plaintiffs allege Louisiana State Police ("LSP") and Jefferson Parish Sheriff's Office ("JPSO") officers were on-scene or nearby, too. *Id.* at 18-19.

[6] *Id.* at 18-19.

[7] *Id.* at 20.

protestors.[8] The protestors largely dispersed and quickly withdrew from the bridge.[9]

Now, the Plaintiffs have brought suit against NOPD, LSP, and JPSO. Generally, the Plaintiffs contend the "Defendants had no legitimate basis to disperse the peaceful gathering on the night of June 3, 2020 with such extreme use of force" and without warning.[10] Specifically, the Plaintiffs raise nearly a dozen claims against the police officers and their supervisors: (1) aggravated assault and battery; (2) state law freedom of speech violations; (3) Equal Protection clause violations; (4) Substantive Due Process violations; (5) negligence; (6) intentional infliction of emotional distress; (7) negligent infliction of emotional distress; (8) *Monell* and Supervisory liability for First Amendment freedom of speech violations; (9) *Monell* and Supervisory liability for Fourth Amendment excessive force violations; (10) vicarious liability for aggravated assault and battery; and (11) Title VI violations.[11] The Plaintiffs have categorized the Defendants and their claims against them accordingly: the first claim is raised

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[8] *Id.* at 20-21. The protestors allege the officers did so without warning.

[9] *Id.* at 21-22.

[10] R. Doc. 1 at 7. The Plaintiffs contend their protest was peaceful, noting "[v]iolent and illegal conduct, e.g., rioting, is not constitutionally protected and is not something Plaintiffs and their counsel defend." *Id.*

[11] The Plaintiffs also request a class be formed.

against the "Defendant Officers," claims (2)-(7) are brought against "All Defendants," and the remaining claims target the "Defendant Supervisors" exclusively.

I. The Motion to Dismiss

Colonel Lamar Davis is the Superintendent of the Louisiana State Police and is categorized by the Plaintiffs as a "Defendant Supervisor." Therefore, the Plaintiffs raise ten claims, and four specifically, against Col. Davis including various forms of supervisory liability related to allegations that "officers of LSP's Troop N ...witnessed the excessive force being executed by [NOPD] officers" against protestors but "failed to intervene" due to LSP policies that promote, or are at least are indifferent, to constitutional violations and LSP's failure to supervise its officers.[12]

In the present motion, Col. Davis asks this Court to "dismiss all claims against him" for five reasons.[13] First, Col. Davis argues the Plaintiffs' Title VI claim must fail because "only public and private entities can be held liable" under Title VI, not an "individual."[14] Second, Davis contends any *Monell* claim against him must fail because "*Monell* does not apply to State officials," only municipalities and city officials.[15] Third, Col. Davis, as Superintendent of LSP, asserts Eleventh

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[12] *Id.* at 17, 61-66.

[13] R. Doc. 20-1.

[14] *Id*. at 11.

[15] This argument is raised in Col. Davis's reply. R. Doc. 30 at 4-5.

Amendment immunity to suit. Col. Davis contends that, "in his official capacity as a state official, [he] is not a 'person' amenable to suit under Section 1983."[16] Additionally, Col. Davis argues *Ex parte Young* does not apply to the present case because the Plaintiffs "request no viable prospective relief" as required by the exception.[17] Col. Davis classifies each of the Plaintiffs' requested remedies as either injunctive or declaratory in nature, but argues neither is appropriate. Col. Davis contends any declaration that the Plaintiffs' rights were violated is "backwards-looking" and "tantamount to an award of damages for [a] past violation of law" as barred by the Fifth Circuit.[18] Further, as seen below, Col. Davis argues the Plaintiffs lack standing to seek an injunction.

Fourth, Col. Davis contends the Plaintiffs lack standing because they "assert[] no 'actual or imminent' or 'certainly pending' future injury which could be redressed [by] an injunction."[19] In support of his argument, Col. Davis relies on *City of Los Angeles v. Lyons*.[20] There, the plaintiff was injured by an allegedly unlawful police maneuver during a traffic stop. Ultimately, the Supreme Court found the plaintiff lacked standing because he failed to show a "real and

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[16] R. Doc. 20-1 at 5.

[17] *Id.*

[18] *Id.* at 8-9.

[19] *Id.* at 8.

[20] 461 U.S. 95 (1983). *See* R. Doc. 30 at 6-7.

immediate threat that [he] would again be stopped…by an officer who would illegally choke him into unconsciousness" once more.[21] To establish standing, the Supreme Court reasoned, the plaintiff would have had to "make the incredible assertion" that he "would again have an encounter with the police and that either he would illegally resist arrest or detention or the officers would disobey their instructions and again render him unconscious without any provocation."[22] Here, as in *Lyons*, Col. Davis argues it is "speculative and conjectural" for the Plaintiffs to assert "[they will] engage in misconduct by blocking off a highway, are met with resistance from the New Orleans Police Department, and LSP troopers respond to the scene but allegedly fail to intervene to prevent NOPD from using

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[21] *See Id.*

[22] *Id.* at 105-106 (emphasis in original). Additionally, Col. Davis argues the Plaintiffs' reliance on *Hernandez v. Cremer* to argue standing is misplaced. 913 F.2d 230 (5th Cir. 1990). *Hernandez* dealt with an American citizen who was being hassled upon reentry into the United States due to his Puerto Rican birth. The plaintiff requested an injunction to halt harassment for engaging in an "activity protected by the Constitution," namely asserting one's right to travel. There was a threat of future harm because the plaintiff expressly planned to travel outside of the country again in the future. Col. Davis argues the threat of future harm here, unlike *Hernandez*, is speculative. Further, Col. Davis argues the *Hernandez* court distinguished the plaintiff's actions from "misconduct" or "disobedience of official instructions." Col. Davis contends that, because Plaintiffs blocked a highway in violation of Louisiana laws, they were engaged in "misconduct," not a protected activity.

excessive force."[23] Consequently, Col. Davis argues the Plaintiffs' stated injuries, namely the existence of LSP policies that could cause harm at a future protest, are insufficient to meet the standing requirements.

Finally, and relatedly, Col. Davis argues this Court lacks subject matter jurisdiction over the state law claims brought against him.[24] Col. Davis contends that, under Supreme Court precedent, any exception to Eleventh Amendment immunity still does not allow state law claims to be brought in federal court.[25]

II. The Plaintiffs' Response

The Plaintiffs filed a response addressing Col. Davis's arguments.[26] First, the Plaintiffs contend that, under Title VI precedent, "individual defendants may be held personally liable" on official capacity claims because it is an "alternative" means of naming the State as a party.[27] The Plaintiffs argue that, "[i]n suing Davis in his official capacity, Plaintiffs and Class Members assert their Title VI claim against LSP—not

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[23] R. Doc. 30 at 7-8.

[24] R. Doc. 20-1 at 4.

[25] *Id.*; R. Doc. 30 at 3.

[26] R. Doc. 27.

[27] *Id.* at 18. The Plaintiffs admit, however, that in the Fifth Circuit the "question appears unsettled whether a plaintiff may bring a Title VI claim against a government official in his official capacity." *Id.*

against Davis personally."[28] Second, the Plaintiffs, in response to Col. Davis's assertion of Eleventh Amendment immunity, raise the *Ex parte Young* exception because they are "su[ing] Davis in his official capacity," the violation of their constitutional rights by LSP's polices is ongoing and can be cured by action of this Court.[29] Accordingly, the Plaintiffs argue their requests for injunctive and declaratory relief are prospective, not "backwards-looking," because they would change "the pattern and practice of law enforcement officers in Louisiana."[30]

Third, as for standing, the Plaintiffs contend that, under *Hernandez v. Cremer*, they have put forth a concrete and redressable injury.[31] Generally, to satisfy standing "when seeking prospective relief," a plaintiff must allege a "threat of *future* injury."[32] In *Hernandez*, the "theory of future injury was premised on [the plaintiff's] stated desire to again engage in constitutionally protected conduct," namely exercising the right to travel between Puerto Rico and the continental United States.[33] Here, the Plaintiffs assert their intent to engage in a "constitutionally protected

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[28] *Id.*

[29] *Id.* at 15-16.

[30] *Id.*

[31] 913 F. 2d 230 (5th Cir. 1990).

[32] *Id.* at 10 (emphasis added).

[33] *Id.* at 12.

activity," specifically peaceful assembly, but cannot do so out of fear of existing LSP policies.[34] The Plaintiffs argue Col. Davis and LSP promote policies and police responses that have had a "chilling effect on the exercise of their First Amendment rights," and an injunction would allow Plaintiffs to protest without fear of retaliation.[35]

Finally, the Plaintiffs assert their state law claims should weather Eleventh Amendment immunity as they are inextricably tied to the federal claims. Additionally, the Plaintiffs argue dismissal of the state law claims would be "premature."[36]

LAW & ANALYSIS

Federal Rule of Civil Procedure 12(b)(6) provides that an action may be dismissed "for failure to state a claim upon which relief can be granted."[37] To survive a motion to dismiss, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to

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[34] *Id*. "Plaintiffs have expressly alleged they wish to participate in future peaceful protests objecting to police misconduct—an exercise of their First Amendment rights to free speech, peaceable assembly, and petitioning state officials for redress of grievances—but they are fearful of doing so because of the threatened harm of LSP's ongoing unconstitutional policies, practices, and customs." *Id.*

[35] *Id*. at 12-13.

[36] *See id.*

[37] Fed. R. Civ. P. 12(b)(6).

relief that is plausible on its face.'"[38] Federal Rule of Civil Procedure 8 demands "simple, concise, and direct" allegations which "give the defendant fair notice of what the claim is and the grounds upon which it rests."[39] In reviewing a motion to dismiss, a court "must take the factual allegations ... as true and resolve any ambiguities or doubts regarding the sufficiency of the claim in favor of the plaintiff."[40] Accordingly, such motions are viewed with disfavor and rarely granted because "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[41]

Federal Rule of Civil Procedure 12(b)(1) is the initial vehicle for parties to raise a "lack of subject-matter jurisdiction" defense.[42] "The standard of

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[38] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[39] Fed. R. Civ. P. 8(d)(1); *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

[40] *Jefferson v. Lead Indus. Ass'n, Inc.*, 930 F. Supp. 241, 244 (E.D. La. 1996); *Lovick v. Ritemoney Ltd.*, 378 F.3d 433, 437 (5th Cir. 2004) (citing *Herrmann Holdings Ltd. v. Lucent Techs., Inc.*, 302 F.3d 552, 558 (5th Cir. 2002)). However, the court is not obligated to accept, as true, legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

[41] *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982); *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977) (per curiam) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)).

[42] Fed. R. Civ. P. 12(b)(1).

review applicable to...Rule 12(b)(1) is similar to that applicable to motions to dismiss under Rule 12(b)(6)," but the court may review a broader range of materials in considering subject-matter jurisdiction.[43] "Courts may dismiss for lack of subject matter jurisdiction on any one of three different bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts."[44]

I. The § 1983 Claims

Under 42 U.S.C. § 1983, any "person" who subjects a "citizen of the United States" to the "deprivation of any rights…secured by the Constitution and laws[] shall be liable to the party injured in an action at law." However, the Eleventh Amendment to the United States Constitution immunizes any State from "suits brought in federal courts by her own citizens as well as by citizens of another state."[45] "There may be a question, however, whether a particular suit in fact is a suit against a State" when the named defendants are

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[43] *Thomas v. City of New Orleans*, 883 F. Supp. 2d 669, 676 (E.D. La. Aug. 2, 2012) (citing *Williams v. Wynne*, 533 F.3d 360, 364–65 n. 2 (5th Cir. 2008).

[44] *Clark v. Tarrant Cty., Texas*, 798 F.2d 736, 741 (5th Cir. 1986).

[45] *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-100 (1984) (quoting *Employees of Dept. of Public Health and Welfare v. Dept of Public Health, Missouri*, 411 U.S. 279, 280 (1973). This does not apply when the State or Congress has expressly waived the Eleventh Amendment's protections.

state officials.[46] When "the state is the real, substantial party in interest" or the case is "nominally against an officer" of the State, the suit is barred.[47]

However, a "suit challenging the constitutionality of a state official's actions is not one against the State."[48] This exception, known as *Ex parte Young*, holds that when a state official acts in violation of the United States Constitution, "any immunity from responsibility to the supreme authority of the United States" is lost.[49] To fall within the *Ex parte Young* exception, a petitioner must sue "state officers who are acting in their official capacities" and seek redress of an ongoing violation of federal law.[50] Also, the "relief sought must be declaratory or injunctive in nature and prospective in effect."[51] Monetary relief, as well as "backwards-looking, past-tense declaratory judgment[s]" that are "tantamount to an award of damages for a past violation of law," is prohibited.[52] Ultimately, a court should look to the "substance rather than to the form of

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[46] *Id.* at 100.

[47] *Id.* at 100-101.

[48] *Id.* at 101-102.

[49] *Id.* at 102 (quoting *Ex parte Young*, 209 U.S. 123, 160 (1974).

[50] *Freedom From Religion Found. v. Abbott*, 955 F.3d 417, 424 (5th Cir. 2020).

[51] *Saltz v. Tennessee Dep't of Emp. Sec.*, 976 F.2d 966, 968 (5th Cir. 1992).

[52] *Abbott*, 955 F. 3d at 425.

the relief sought" to determine the nature of the petitioner's request and whether *Ex parte Young* applies.[53]

A plaintiff must always have standing to bring suit in federal court. Standing requires an injury in fact, namely a "concrete and particularized" harm, that can be redressed by action of a federal court.[54] By their very nature, requests for injunctive or declaratory relief, the two permissible remedies under § 1983 and *Ex parte Young*, can only redress a "continuing injury or threatened future injury."[55] Ultimately, a future injury "must be certainly impending," not based on "allegations of possible" injury, a "speculative chain of possibilities," or the plaintiff's own "subjective apprehensions."[56]

After reviewing the parties' filings and the applicable law, the Court finds the Plaintiffs have, under 12(b)(6), sufficiently pled factual allegations that (1) grant them standing and (2) support their § 1983 claims. First, for standing, the Plaintiffs must show a "continuing injury or [a] threatened future injury" that may be remedied by prospective relief. Here, the

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[53] *Id.*

[54] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

[55] *Crawford*, 1 F.4th at 376 (citing *Lyons*, 461 U.S. at 102).

[56] *Barber v. Bryant*, 860 F.3d 345, 357 (5th Cir. 2017) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2012)); *Lyons*, 461 U.S. at 107, n. 8. Notably, past instances of injury can be evidence of a "real and immediate threat of repeated injury." *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019).

Plaintiffs have alleged an intent to protest in the future.[57] The Plaintiffs' contentions, when viewed in their favor as required by law, allege that LSP officers were on-scene the night of June 3rd and failed to intervene in NOPD's allegedly excessive show of force.[58] Additionally, the Plaintiffs allege Col. Davis and LSP failed to supervise their officers and developed policies that encouraged the use of excessive force, or at least discouraged intervention.[59] Specifically, the "Complaint includes a detailed discussion of numerous instances in which officers from... LSP...disproportionally responded to protests" similar in nature to the Plaintiffs' demonstrations.[60] Finally, the Plaintiffs allege Col. Davis, as superintendent of LSP, "has not curtailed these unconstitutional practices" and policies, "making it reasonably certain they will occur again if this Court

[57] "Plaintiffs stated they would protest again…but for LSP's demonstrated pattern and practice of engaging in or allowing unconstitutionally excessive and unprovoked force" against minority protestors." R. Doc. 1 at 14. The Plaintiffs also noted the "chilling" effect LSP's policies and lack of supervision has had on their right to protest.

[58] "Upon information and belief, LSP Bystander Officers were also in and/or near the police barricade on the CCC on the night of June 3. LSP's 'Troop N units responded to [the CCC] providing assistance to the NOPD units until the protest peacefully disbursed from the location.'" (R. Doc. 1 at 19).

[59] *Id.* at 61-66.

[60] *Id.* at 13.

does not enjoin them."[61] In short, the Plaintiffs allege their constitutional rights have been violated, such violations are ongoing or may occur again at a later protest, and this Court can remedy those risks with prospective relief, namely injunctions curtailing LSP's policies.[62] Therefore, at this time, the Plaintiffs have standing to bring this suit.

Second, as for § 1983 and *Ex parte Young*, the Plaintiffs satisfy the exception's three requirements under 12(b)(6). The Plaintiffs sued Col. Davis in his official capacity, "allege[] ongoing violations of federal law by LSP," and seek prospective relief.[63] Specifically,

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[61] *Id.* at 13-14. The Plaintiffs contend various instances of bystander liability.

[62] When viewed in a light most favorable to the Plaintiffs, they sufficiently allege "concrete and particularized" risks of "future harm," namely threats to the Plaintiffs' constitutional rights to assemble and to be free from the use of excessive force. "Like the plaintiff in *Hernandez*, Plaintiffs seek to enjoin LSP from again engaging in unconstitutional policies, practices, or customs that will continue to either place a chilling effect on the exercise of their First Amendment rights or actually deter Plaintiffs and Class Members from engaging in constitutionally protected activity. In this case, Plaintiffs have expressly alleged they wish to participate in future peaceful protests objecting to police misconduct—an exercise of their First Amendment rights to free speech, peaceable assembly, and petitioning state officials for redress of grievances—but they are fearful of doing so because of the threatened harm of LSP's ongoing unconstitutional policies, practices, and customs… Plaintiffs also allege that LSP (Davis's office) failed to supervise and train their employees and agents with respect to constitutionally protected activity." R. Doc. 27 at 12-13.

[63] R. Doc. 27 at 15-16.

the Plaintiffs state "they would participate in future peaceable protestors" but for LSP policies that prevent them from doing so and violate their First, Fourth, and Fourteenth Amendment rights.[64] To remedy these alleged harms, the Plaintiffs ask this Court for "prospective relief to address the ongoing systemic policies and customs" that will lead to further harm, namely a "permanent injunction barring Defendants from engaging in the unconstitutional conduct alleged" and various forms of declaratory relief.[65] Under 12(b)(6), such relief would constitute forward-looking resolutions of the Plaintiffs' injuries. Therefore, when viewed in a light most favorable to the Plaintiffs, the Court finds they have pled sufficient factual allegations to posit § 1983 claims at this time. Accordingly, in regard to the § 1983 claims brought against Col. Davis, the motion is **DENIED**.[66]

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[64] *Id.* at 15. The Plaintiffs allege several harms, including that LSP has a policy or practice of using excessive force on the basis of race that has had a "disparate impact" upon them, that LSP has failed to train or supervise its officers on crowd control, and that LSP generally exhibits a deliberate indifference to the Plaintiffs' rights. *Id.* at 12-16.

[65] *Id.* at 16-17; R. Doc. 1 at 36-41. At this time, the Court finds the Plaintiffs' request for declarations of constitutional injury are not the "backwards-looking" type barred by binding precedent. *Abbott*, 955 F. 3d at 425. Instead, these requests are prospective in nature as they ask this Court to declare the Defendants" conduct violated their rights and institute injunctions to bar such declared violations in the future.

[66] The Court notes that Rule 12(b)(6) motions are not dispositive in regard to a suit's ultimate merits.

II. *Monell* Liability Under § 1983

While the Eleventh Amendment bars certain suits against the States, "Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies."[67] Therefore, under *Monell*, "[l]ocal governing bodies" can be sued for policies "adopted and promulgated by that body's officers."[68] However, *Monell* applies only to municipalities and "local" officers, not agents of the State. Col. Davis is the Superintendent of the Louisiana State Police, one of the State's law enforcement agencies, and is appointed by the Governor. Therefore, he is a state actor, not a local actor. Further, the Plaintiffs have already put forth the proper vehicle for bringing claims against Col. Davis: § 1983 and *Ex parte Young*. Accordingly, in regard to the Plaintiffs' *Monell* claims against Col. Davis, the motion is **GRANTED,** and the claims are **DISMISSED WITH PREJUDICE**.

III. The Title VI Claim

Under Title VI of the Civil Rights Act of 1964, "[n]o 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

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[67] *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978).

[68] *Id.* at 690-691.

activity receiving Federal financial assistance."[69] However, although the law uses the term "persons," Title VI "permits suits only against public or private entities receiving funds and not against individuals."[70]

After reviewing the parties' filings and the applicable law, the Court concludes that Col. Davis "is not a proper defendant under Title VI."[71] The Plaintiffs admit "the question appears unsettled whether a plaintiff may bring a Title VI claim against a government official in his official capacity," but ask this Court to settle that matter.[72] There is no case in the Fifth Circuit allowing an individual to be sued in their official capacity, but there are cases dismissing Title VI suits against individuals sued in their individual capacity.[73] Accordingly, this Court will rely on related

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[69] 42 U.S.C. § 2000.

[70] *Muthukumar v. Kiel*, 478 Fed. Appx. 156, 159 (5th Cir. 2012); *see also Price v. La. Dep't of Educ.,* 329 Fed. Appx. 559, 560 (5th Cir. 2009).

[71] *Mayorga Santamaria ex rel. Doe Child. 1-3 v. Dallas Indep. Sch. Dist.*, 2006 WL 3350194, at *48 (N.D. Tex. Nov. 16, 2006) ("Plaintiffs have pointed the court to no cases, and the court has found none on its own, holding that an individual may be sued under Title VI. Accordingly, based on the above-cited law, the court concludes that Defendant Principal Parker, sued in her individual capacity, is not a proper defendant under Title VI.").

[72] R. Doc. 27 at 18.

[73] *Muthukumar*, 478 Fed. Appx. 156 (holding suit against individual professor under Title VI, which prohibits discrimination

Fifth Circuit precedent, and the Title VI claim against Col. Davis is **DISMISSED WITH PREJUDICE**.

IV. The State Law Claims

The Court finds that, because the Plaintiffs have sufficiently pled one or more federal claims against Col. Davis, it is not necessary at this time to address whether the Plaintiffs' state law claims are properly intertwined with the Plaintiffs' pending federal claims.[74] Accordingly, in regard to the state law claims brought against Col. Davis, the motion is **DENIED**.

CONCLUSION

For the foregoing reasons, **IT IS ORDERED** that the motion is **DENIED IN PART** and **GRANTED IN PART**.

IT IS FURTHER ORDERED that, in regard to the § 1983 claims brought against Col. Davis, the motion is **DENIED**.

IT IS FURTHER ORDERED that, in regard to the Plaintiffs' *Monell* claims against Col. Davis, the motion is **GRANTED,** and the claims are **DISMISSED WITH PREJUDICE**

IT IS FURTHER ORDERED that, in regard to the Title VI claim against Col. Davis, the motion is

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under program or activity receiving federal financial assistance, was not permitted); *see also Smith v. Amedisys Inc.*, 298 F.3d 434, 448 (5th Cir. 2002).

[74] 28 U.S.C. § 1367.

GRANTED, and the claim is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that, in regard to the state law claims brought against Col. Davis, the motion is **DENIED**.

New Orleans, Louisiana, this 30th day of March, 2022.

/s/ Greg Gerard Guidry
Hon.Greg Gerard Guidry
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NUMBER 21-CV-00852

JUDGE GREG G. GUIDRY

MAGISTRATE JUDGE MICHAEL NORTH

[Filed: April 12, 2022]

REMINGTYN WILLIAMS, ET AL.)
Plaintiffs)
)
VERSUS)
)
SHAUN FERGUSON, ET AL.)
Defendants)
)

NOTICE OF INTERLOCUTORY APPEAL

PLEASE TAKE NOTICE that Defendant Lamar A. Davis, named solely in his official capacity as the Superintendent of the Louisiana State Police, will appeal this Court's order dated March 30, 2022 [R.Doc. 72] denying his claim of Eleventh Amendment sovereign immunity to the U.S. Fifth Circuit Court of Appeals. An order denying a State or State agent's motion to dismiss on Eleventh Amendment grounds is immediately appealable under the collateral order

doctrine. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 147 (1993).

Respectfully Submitted,

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