

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**CELIA VLADEZ, GRACIELA
GRAJEDA, SHAWNA ALLERS, and
JESSE RODRIGUEZ,**

Plaintiffs,

v.

Civ. No. 09-668 JCH/DJS

**MARY HERRERA, in her official capacity
as New Mexico Secretary of State;
KATHRYN FALLS, in her official capacity
as Secretary of New Mexico Human
Services Department; FRED SANDOVAL,
in his official capacity as the Director of the
Income Support Division of the New
Mexico Human Services Department;
CAROLYN INGRAM, in her capacity as
the Director of the Medical Assistance
Division of the New Mexico Human
Services Department; DOROTHY
RODRIGUEZ, in her capacity as the
Secretary of the New Mexico Taxation and
Revenue Department; and MICHAEL
SANDOVAL, in his capacity as the
Director of the Motor Vehicle Division of
the New Mexico Taxation and Revenue
Department,**

Defendants.

ORDER

This matter comes before the Court on Defendants Kathryn Falls, Fred Sandoval, and Carolyn Ingram of the New Mexico Human Services Department's (hereinafter "HSD") *Emergency Motion to Certify Order for Interlocutory Appeal*, filed January 18, 2011 [Doc.137]. The Court, having considered the motion, Plaintiff's Response [Doc. 138], and relevant law, and

being otherwise fully informed, finds that HSD's motion is not well-taken and should be DENIED.

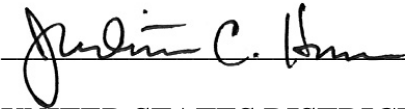
On December 21, 2010 this Court entered a Memorandum Opinion and Order [Doc. 131] granting Plaintiff's Motion for Partial Summary Judgment [Doc. 109] and denying Motions for Summary Judgment [Docs. 57 and 111] by Defendant Mary Herrera and HSD. HSD's motion seeks to have the Court certify for interlocutory appeal, pursuant to 28 U.S.C. § 1292(b), the portion of the Court's Order granting Partial Summary Judgment to Plaintiff. The motion also seeks a stay of proceedings pending such appeal. Presently, this case is set for trial on several remaining issues on February 14, 2011, and has a settlement conference with a Magistrate Judge scheduled for January 26, 2011.

28 U.S.C. § 1292(b) requires a district court to certify an order, not otherwise appealable, for appeal if the district court is of the opinion "that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." Once an order is certified, a party may make an application to the Court of Appeals within ten days, and the Court of Appeals may, in its discretion, hear the appeal. Departure from the general policy of postponing appellate review until after the entry of final judgment is justified only in "extraordinary circumstances." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978). The Tenth Circuit has stated that appeal certification "should be limited to extraordinary cases in which extended and expensive proceedings probably can be avoided by immediate final decision of controlling questions encountered early in the action." *State of Utah v. Kennecott Corp.*, 14 F.3d 1489, 1495 (10th Cir. 1994). This is not such a case.

As an initial matter, HSD's motion does not arise early in this action, but rather comes near the end of the case. This case has been ongoing for over a year and a half, and has already resulted in a settlement agreement with one group of Defendants [Doc. 84] and decisions on several summary judgment motions. HSD has indicated that it would also like to resolve this case by entering into a settlement agreement with Plaintiff. *See* HSD's motion [Doc. 137] at 6. However, HSD contends that it cannot bind itself to an agreement on the issue that was the subject of the Court's grant of partial summary judgment in favor of Plaintiff, because it would lose the right to appeal this issue.

As discussed in the Court's December 21, 2010 Memorandum Opinion and Order, the issues in this case extend substantially beyond the issue resolved in the grant of partial summary judgment, so that resolution of the question of law raised by HSD's motion would not dispose of many remaining issues in this case. HSD admits that the specific legal issue that they seek to appeal is "narrow." HSD's motion at 6. While the issue involved may be "narrow," the Court understands that "it impacts HSD's core policy regarding the NVRA." *Id.* Plaintiff has represented in her Response to HSD's motion that she would agree to a consent order that would specifically leave HSD the option to appeal the Court's decision granting Plaintiff partial summary judgment, while resolving all other issues in this case. *See* Plaintiff's Response [Doc. 138] at 2. Thus, the Court cannot find that an interlocutory appeal is likely to materially advance the ultimate termination of this litigation or that this case presents the "extraordinary circumstances" that must be met for the Court to certify this case for interlocutory appeal under 28 U.S.C. § 1292(b).

IT IS THEREFORE ORDERED that Defendant HSD's *Emergency Motion to Certify Order for Interlocutory Appeal* [Doc. 137] is DENIED



UNITED STATES DISTRICT JUDGE