

1 Ken Augustine  
53 Mark Drive  
2 San Rafael, CA 94903  
3 Plaintiff in Pro Per  
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FILED

04 NOV 17 PM 2:29

RICHARD W. WIEKING  
CLERK - U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 Robert-John: Foti, Joe Neufeld, Ken  
Augustine,

CASE-NO: C 04-2567 PJH

11 Plaintiffs

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR SUMMARY JUDGEMENT

12 vs.

Hearing Date:

13 Officer McHugh and other unknown number  
14 of unnamed officers of the U.S. Marshall's  
Service and the Federal Protective Services,  
15 U.S. Marshall's Service, Federal Protective  
Services, Does: 1 -50

Time:

Courtroom:

16 Defendants.  
17



18  
19 **STATEMENT OF THE CASE**

20 This matter involves the issue of an attempt by the government to deny litigants access to  
21 the Federal Courts. This case was brought by three pro per litigants. All three of the Plaintiffs  
22 herein are involved in different actions before this court. Plaintiff Ken Augustine has brought suit  
23 against the County of Marin for what he contends is a false imprisonment, and various violations  
24 of his civil rights. That matter is still pending. That matter is: **Augustine vs. Marin County**, Case  
25 Number: C 04 - 0624 MEJ. The court is hereby requested to take judicial of that matter, its  
26 docket and the various requirements under the Federal Rules of Civil Procedure, and the Local  
27 Rules, all of which require litigants to have constant contact with the court, and various personal  
28 appearances during the pendency of the action.

As a result of the pendency of those actions, Plaintiff Ken Augustine has had to make

1 appearances in this court house. Mr. Augustine, for personal reasons, does not wish to obtain  
2 either a California Driver's license, nor a California identification card. Thus he has no  
3 identification issued by a governmental authority. As set forth in his declaration (and alleged in  
4 the complaint on file in this matter), filed herewith, he has repeatedly been refused entrance to this  
5 court, when he was required to make an appearance, such as Status Conferences, etc.

6 Mr. Augustine is known to the various U.S. Marshals as set forth in his declaration, and  
7 despite that fact, he has been refused entrance to this court, despite his willingness to subject  
8 himself to electronic searches, etc.

9 Plaintiff contends that such refusal to allow admission to the Federal Court system,  
10 because he failed to have State-issued identification violates his constitutional right to access to  
11 the United States Court System, and therefore this court should enjoin the U.S. Marshall from  
12 excluding him.

### 13 ARGUMENT

14 Plaintiff is entitled, without undue restriction, to access to the court system. In *Hibel v.*  
15 *Sixth Judicial District Court of Nevada* (2004) 12 S.Ct. 2451, the court held that a mere request  
16 for information, including identity information, which can be refused ***without any negative***  
17 ***consequences beyond the encounter itself***, is not coercive (emphasis added). In *Florida v.*  
18 *Bostick* (1991) 501 US 429, the court held that the police may ask question without any basis for  
19 suspicion "as long as the police do not convey a message that compliance with their request is  
20 required". In this instance, Plaintiff is being asked to identify himself, which he is more than  
21 willing to do, AND to provide identification, which he does not have, and is not required by any  
22 statute to have, and which he does not wish to obtain, in order to gain entrance to a  
23 constitutionally protected right, i.e., access to the Federal Court System if he wishes to avail  
24 himself the power of the courts to exercise his constitutional rights.

25 The request from various US Marshals, who know the identity of the party, that he provide  
26 them with "papers" to obtain entrance to a public building, where he has constitutionally protected  
27 business, is a coercive demand that is something that is a constitutional violation of Plaintiff's  
28 right to seek redress through the Federal Court system.

1 As can be seen from the declaration of Ken Augustine, he attempted to obtain access to the  
2 court, on May 21, 2001, and was refused, despite the need for him to be present in court. In fact,  
3 given the conduct of the U.S. Marshals, as set forth in the declaration of Ken Augustine, when  
4 they don't even verify the identification, and after people have already been electronically  
5 "searched" (which is probably unconstitutional in and of itself, but is not being contested here),  
6 the identification request serves no purpose. It does not further the purpose of deterring people  
7 from carrying weapons or explosives into a public building, since they have already been searched  
8 prior to any request for identification.

9 Even if the court accepts that a constitutional right can be broken in this matter because of  
10 the public interest, the requirement that State issued identification is a pre-requisite to entrance to  
11 a Federal Courthouse, makes little or no sense. Given the rise of computer technology, one's  
12 name is more than a mere identifier: it is a key to many databases containing vast amounts of  
13 personal identification, such as the National Crime Information Center ("CNIC") given  
14 governmental access to those databases, the request for State issued identification is meaningless,  
15 and unwarranted as an intrusion upon Plaintiff's right to access to the courts.


16 The Supreme Court has repeatedly warned that administrative searches must not be  
17 allowed to serve ordinary law enforcement purposes "to prevent such intrusions from becoming a  
18 routine part of American life". *Indianapolis v. Edmond* (2000) 531 U.S. 32, at page 42. In  
19 *Simmons v. United State* 390 U.S. 389, the court held that it was intolerable that one constitutional  
20 right should have to be surrendered in order to assert another. That is precisely what is occurring  
21 in this instance: for Plaintiff, Ken Augustine to assert his right to access to the Federal Court  
22 system, he is required to waive his right of privacy, his right to not be subject to search and  
23 seizure. What is involved here is the free access to the court. The government has no  
24 accommodation for anyone not wanting to be searched in an unlawful manner, or not having the  
25 State issued identification. That is unlawful, and should be restrained.

### 26 CONCLUSION

27 Based upon the above, it is respectfully urged that this court grant the motion for summary  
28 judgement in that Defendants have no right to require identification to be presented by Plaintiffs

1 herein, and that any such requirement is unlawful, and violates Plaintiff's constitutional right to  
2 access to the Federal Court System.

3 Dated: 11/16/04

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6 Ken Augustine

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