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Sovereign-State-Parties
In their own Stead[1]

Original
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UNITED-STATES-DISTRICT-COURT

NORTHERN-DISTRICT OF CALIFORNIA

Robert-John:Foti as to Counts 1-46 Joe Neufeld as to counts 2,5-8, 10,11,14 Ken Augustine as to counts 5-7, 10,11,21,39,40,41-46 Plaintiffs[2], v. Officer McHugh and other unknown number of unnamed officers of the U.S. Marshall's Service and the Federal Protective Services U.S. Marshall's Service Federal Protective Services (John-Doe: 1-50) Respondents.	CASE-NO: C 04-2567 PJH Layman's Motion for Summary Judgment Rule 56(a) Date: To be announced Time: To be announced Courtroom 3, 17th Floor Trial by Jury Demanded THREE JUDGE COURT CR 9(i)[3]

[1] We are not attorneys. We should not be held to the same standard as an attorney and does request from this court an honest judgment. We trust any deficiencies and imperfections that may be contained herein will be liberally construed as the law favors form less than substance. This document is prepared without the assistance of counsel and is subject to whatever corrections are found necessary if and when the court so recommends.

[2] The court said in Pike v. Dickson, 9.Cir. 323 F.2d. 856, at 857: "Chief Judge Sobeloff in United States v. Glass, 4 Cir., 317 F.2d 200, 202 said as follows: `Where the laymen's papers clearly show what he is driving at, it is usually in the interest of justice and

To all parties and their attorneys of record:
Please take notice that as soon as the court sets a date or as soon thereafter as may be heard in Courtroom 3 of the above-entitled court, located at the Federal Building, 450 Golden Gate Avenue, 17th Floor, San Francisco, California, Plaintiff will move the court for Summary Judgment.

I. Preliminary Statement to answer question posed in court by Judge Hamilton about whether the Federal Marshals have the Right to make regulations in order to demand identification at a security checkpoint.

1. The answer is NO! In the first place, we think the question demonstrates an apparent bias in that it appears Judge Hamilton is poised to switch the argument and make new law, and not follow existing clearly established law, which Defendants violated. As to any acceptable regulation, "Where rights secured by the Constitution are involved, there can be NO LEGISLATION, OR RULE-MAKING which would abrogate them." [Emphasis added] Miranda v Arizona, 384 U.S. 436.

2. Secondly, this case is not about a request for identification. It is a case about government officials demanding "papers," official government issued "papers." We have found no law that compels anyone to have such "papers." Then, when the "papers" we are not required to have, are not produced, all kinds of restrictions, sanctions and loss of basic rights are imposed upon us. People who do not have that which is not required of them are treated far differently from those who voluntarily have that which is not required. The Government has not evidenced any requirement that we Plaintiffs must have the government issued "papers" that defendants are demanding. If we are not required to have what the defendants are demanding of us, there can be no reason to ask us for it. By definition,

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may in the long run save time to temper the reading of the papers with a measure of tolerance.' This court has applied the same rule of construction of a layman's pleadings in Thomas v. Teets, 9 Cir. 205 F.2d 236,238. Note 1" Note 1: `Thomas' application being drawn by an inexperienced layman is to be construed to give its allegations effect, though inartfully drawn. Darr v. Burford, 339 U.S. 200, 203, 70 S.Ct. 587, 94 L.Ed. 761; Price v. Johnston, 334 U.S. 266, 292, 68 S.Ct. 1049, 92 L.Ed. 1356'" 370 F.2d. at 40 (1966)

[3] The constitutional claim could be adjudicated only by a three-judge court, but the statutory claim was within the jurisdiction of a single district judge. Hagans v Levine, 415 U.S. 528, 543 (1974) See also: Hohn v. United States 524 U.S. 236 (1998); Connolly v. Pension Benefit Guaranty Corporation 475 U.S. 211 (1986) Summary Dismissal claim court overruled; Walters v. National Association of Radiation Survivors 473 U.S. 305 (1985); Washington v. Confederated Bands and Tribes of the Yakima Indian Nation 439 U.S. 463 (1979); Tully v. Griffin, Inc. 429 U.S. 68 (1976); Whalen v. Roe 423 U.S. 1313 (1975); Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade 412 U.S. 800 (1973); San Antonio Independent School District v. Rodriguez 411 U.S. 1 (1973); Shapiro v. Thompson 394 U.S. 618 (1969); Reynolds v. Sims 377 U.S. 533 (1964); Stratton v. St. Louis Southwestern Railway Co. 284 U.S. 530 (1932)

then, the search is unreasonable and a direct violation of the Fourth Article of Amendment to the Constitution *for* the United States of America.

3. Thirdly, Rights belong only to the People. Ninth Article Amendment to the Constitution *for* the United States of America. Government has NO Rights, only powers. Tenth Article Amendment to the Constitution *for* the United States of America. Government is a fiction. It exits in the mind only. Officers of Government are fictions created by statute. This official capacity is artificial, again existing in concept and in the mind only. That which is artificial can have no rights is an indubitable truth. The man behind and outside the office, in his private capacity, may inquire who we are. He has that right, but he lacks the power to compel an answer. In his official capacity, however, he possesses no power of search for papers of the suspicionless.

4. If, then, the question becomes whether the Federal Marshals have the power to make regulations demanding "papers" from the suspicionless, the answer again is NO! Such demand is clearly in violation of existing clearly established law. Regulations, or even laws, do not trump the constitution. McCollaugh v. Com. of Virginia, 172 U.S. 102 (1898)[4]

II. SUMMARY OF CASE

5. The Fourth Amendment "generally bars officials from undertaking a search or seizure absent individualized suspicion. Searches conducted without grounds for suspicion of particular individuals have been upheld, however, in certain limited circumstances." Chandler v. Miller, 520 U.S, 305,308 (1997) (internal quotation marks and citation omitted).

6. The Fourth Article of Amendment to the Constitution *for* the United States of America reiterates the People have the Right, which "shall not be violated", "to be secure in their persons, houses, *papers,* and effects, against unreasonable searches and seizures," [*emphasis* added]

7. A key question presented by this case is whether the Fourth Amendment permits the government, without having suspicion of wrongdoing, to demand from, which is a search, every would-be visitor to a

[4] "It is elementary law that every statute is to be read in light of the Constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of legislature to reach" McCollaugh v. Com. of Virginia, 172 U.S. 102 (1898)

public building or court official government identity credentials, "papers", or else be denied the right to enter a courthouse or otherwise have a host of other punishments, penalties sanctions, restrictions, or retributions inflicted upon them; keeping also in mind the government has not demonstrated that anyone must have such government issued "papers."

8. Under the Ninth Circuit Court's decisions, generalized law enforcement searches are unconstitutional. United States v. Davis, 482 F.2d 893, 910 (9th Cir. 1973); United States V. $124,570 US. Currency, 873 F.2d 1240, 1243 (9th Cir. 1989).

9. In this case, the government has failed to show that it is legally authorized to demand official ID from would-be court visitors, that such demands further any purpose, or that such demands are reasonable for any other constitutionally permissible administrative purpose. The government has also failed to show that the demanded "papers" are required to be possessed by anyone and the government is silent on the power of such personnel to impede the progress of, or detain, court visitors for failing to show such "papers". Accordingly, we argue that the demands for identity credentials at issue in this case do not "fit within the closely guarded category of constitutionally permissible suspicionless searches," Chandler, 520 U.S. at 309, and violate the Fourth Amendment. Any law or rule that would force The People outside government employment, who are strictly private, to possess such "papers" would, in itself, be unconstitutional under any circumstances. Such "show your papers" demand ("internal passports" and/or "internal document checkpoints") is anathema to a free society.

10. We reclaim here and now that our rights are being quashed by the acts of the government defendants for not showing any "papers" upon demand in violation of clearly established law; in case it is not sufficiently clear in our complaint.

11. The facts are not in dispute. The judges and attorney generals pass and observe the unlawful search on their way to their jobs everyday and have first hand knowledge. The defendants do demand from us "papers" as is clearly prohibited by the Fourth Amendment and when we do not produce any, subject us to punishment, arrest, involuntary servitude, and the host of other sanctions and indignities complained about in this case (notwithstanding the possibility we may not bring this matter before the court like lawyers).

III. ARGUMENT

A. Demands for Identity credentials pursuant to a security checkpoint violate the Fourth Amendment.

12. This district court found that the Fourth Amendment was not implicated by the demand for identity credentials because "[i]dentification requests unaccompanied by detention, arrest, or any other penalty, other than the significant inconvenience of being unable to fly, do not amount to a seizure within the meaning of the Fourth Amendment." Gilmore v Ashcroft, 2004 WL 603530, *5 (N.D. Cal. 2004). While not giving credence to this erroneous decision, it clearly substantiates that our case does indeed implicate the Fourth Amendment as matter of law because the identification request was accompanied by detention, arrest, and other penalties.

B. In our case, the demand for identity papers is not a mere request for identification.

13. A non-coercive request for identification is not the same as a coercive demand for official ID credentials that cannot be refused without loss of freedom of movement and the other penalties inflicted in our case. The former does not implicate the Fourth Amendment; the latter does.

14. The first difference is between a request and a demand. A mere request for information, including identity information, which can be refused without any negative consequences beyond the encounter itself, is not coercive. Hiibel v. Sixth Judicial District Court of Nevada, 124 S.Ct. 2451, 2458 (2004), citing INS v. Delgado, 466 U.S. 210,216 (1984) (noting that a police ID request "does not, by itself, constitute a Fourth Amendment seizure").[5]

15. A request that cannot be refused without negative consequences is coercive, however. Delgado, 466 U.S. at 216-17 ("if the person refuses to

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[5] Hiibel does not help the government in this case. First, Hiibel is distinguishable on its facts because the request for ID at issue in Hiibel was grounded in reasonable suspicion. Hiibel, 124 S.Ct. at 2457 ("there is no question that the initial stop was grounded in reasonable suspicion"). Hiibel is thus irrelevant to suspicionless administrative searches. Second, the ID demand in Hiibel was based on a statute that was authoritatively construed to require only the disclosure of one's name. Id. In this case, the government has cited no statutory or regulatory authority that establishes a legislative or quasi-legislative basis for demanding official identity credentials.

answer and the police take additional step ... to obtain an answer, then the Fourth Amendment imposes some minimal level of objective justification to validate the detention or seizure"); Florida v. Bostick, 501 U.S. 429, 435 (1991) (police may ask questions without basis for suspicion "as long as the police do not convey a message that compliance with their requests is required") (internal citations omitted).

16. The request in this case, and the requirement to show "papers" to get into a public building generally, is a coercive demand that a would-be visitor or court participant or viewer is not truly free to refuse. Absent the governmental ID requirement, the person would be able to visit the courts or conduct any business they may have — plaintiffs in this case on May 21, 2004, for instance, because they passed the x-ray and magnetic screening would have proceeded to their intended destination had they not been required to show ID. Any person who refuses to show ID is kept out of the building, and in our case, the courtroom. We are unable to prosecute our cases. To characterize this choice as voluntary, as a search that a would-be visitor is free to refuse, is to elevate legal fiction over social fact. The only other choice we plaintiffs have is to leave and "fail to appear", an unacceptable choice for us.

17. The governmental ID requirement therefore restricts the would-be court visitor's freedom or liberty of movement and implicates the Fourth Amendment. Brower v. County of Inyo, 489 U.S. 593, 596-97 (1989) ("a Fourth Amendment seizure [occurs] . . . only when there is a governmental termination of freedom of movement through means intentionally applied") (emphasis in original); United States v. Jacobsen, 466 U.S. 109, n. 5 (1984) ("seizure" of person defined as "meaningful interference, however brief, with an individual's freedom of movement"); Florida v. Royer, 460 U.S 491,498 (1983) (an individual "may not be detained even momentarily without reasonable, objective grounds for doing so"); Henry v. United States, 361 U.S. 98, 103 (1959) ("When the officers interrupted the two men and restricted their liberty of movement, the arrest, for purposes of this case, was complete").

18. The second difference is between a demand for identification and a demand for official identity papers. It is one thing to be asked one's name; it is another to be required to produce proof via official identity credentials. The Supreme Court recently made exactly this point in distinguishing the statutory demand for "credible and reliable" identification at issue in Kolender v. Lawson, 461 U.S. 352 (1983), from the Nevada statute at

issue in Hiibel, which "does not require a suspect to give the officer a driver's license or any other document." Hiibel, 124 S.Ct. at 2457.

19. In short, this case does not involve a request for ID "by itself" It is a case in which the police demand a "search" of "papers" not with suspicion of any wrongdoing and punish those who do not comply.
Accordingly, as a matter of law the Fourth Amendment is implicated by the demand for plaintiff's identity papers.

C. We do not know why the papers are demanded

20. The Marshals merely look in the identification papers direction. They don't compare names to a terror list or anything else for that matter. There appears no reason for the ID requirement, so by definition, it is an unreasonable search.

21. The government has not justified demands for identity credentials. The physical processes of magnetometer and x-ray screening, are clearly connected to the detection of weapons and explosives. Requiring visitors to present identity credentials is not. Nothing is "looked at" when you or your carried items pass the magnetometer or x-ray machine. The process merely rules out the presence of weapons etc. The demand for ID is clearly superfluous.
Nowhere has the government explained how the ID requirement furthers a legitimate government concern.

D. Demands for official; identity papers cannot otherwise be justified as administrative searches, especially in light of the danger that the search will be infected by ordinary law enforcement goals.

22. Just as identifying visitors does not obviously further the "essential purpose" of deterring people from carrying weapons or explosives into a public building, it also does not obviously further the detection of any other kind of threat. The government has not introduced evidence that ID requirements help identify terrorists or any other kind of threat. The objective, whatever that may be as the government has not said what the objective is, may be compelling, but there has been no showing that the ID requirement serves it.

E. Even if the Court were to accept for the sake of argument that the ID requirement furthers a public interest, there is a significant risk that

it will be corrupted by general law enforcement goals.[6]

23. More generally, given the rise of computer technology, one's name is more than a mere identifier: it is a key to many databases containing vast amounts of personal information, such as the National Crime Information Center ("NCIC") and the Multi-State Anti-Terrorism Information Exchange ("MATRIX"). The NCIC, for example, makes criminal history information available to law enforcement officials throughout the United States. See Bureau of Justice Statistics, Report of the National Task Force on Privacy, Technology and Criminal Justice Information, NCL 187669, at 47 (Aug. 2001) (BJS Report), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mtfptcj.pdf> The temptation to use information from ID checkpoints to match against NCIC or other systems of records will be great, yet there is no obvious way to hold the government accountable for such data-mining, or even to know whether the government uses public building ID searches for ordinary law enforcement purposes once the "produce your papers" mentality is a normal part of the American fabric.

24. Finally, the court must look at the ID requirement in general, not plaintiff's facts in particular. See Bulacan, 156 F .3d at 967 (in administrative search case, court must "consider the entire class of searches permissible under the scheme, rather than focusing on the facts of the case before it"; $124,570 U.S. Currency, 873 F.2d at 1244 (same), This distinction is significant because the ordinary warrantless search involves a case-specific factual detention, and if the search is upheld, "the approval covers that case only." Id. "An administrative search is different. By approving a warrantless search under this rationale, a court places its stamp of approval on an entire class of similar searches," with "general, long-term implications." Id.

25. The obvious long-term implication is the untrammeled expansion of governmental ID checking throughout society. We must not ignore the coercive element of requiring ID in order to conduct normal business in a public building which accepts without evidentiary justification the government's assertions of the need to check ID, and which does not even require that the government produce duly promulgated laws or regulations establishing the metes and bounds of the authority to demand ID A regime

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[6] Bulacan, 156 F .3d at 969 ("an unlawful secondary purpose invalidates an otherwise permissible administrative search scheme").

of ID checking could be established for virtually any public place grounded solely in the need to verify whether a person is on a list of known or suspected terrorists. Searches would be OK at malls, theaters, sporting events, Post Offices, etc.

26. Because administrative search schemes "require no warrant or particularized suspicion, " they "invest[] the Government with the power to intrude into the privacy of ordinary citizens," a power that "carries with it a vast potential for abuse." United States v. Bulacan, 156 F.3d 963,967 (9th Cir. 1998). Accordingly, administrative searches of would-be passengers at airports are constitutional only if tightly limited. $124,570 US. Currency, 873 F.2d at 1244 (Supreme Court has "repeatedly emphasized the importance of keeping criminal investigatory motives from coloring administrative searches"; need to keep administrative searches from becoming "infected by general law enforcement objectives, and the concomitant need for the courts to maintain vigilance"). This vigilance is articulated by the administrative search doctrine's requirements that "the search serves a narrow but compelling administrative objective" and that the intrusion is as "limited. . . as is consistent with the administrative need that justifies [it]" $124,570 US. Currency, 873 F.2d at 244-45 (internal quotation marks and citations omitted). These limits are necessary because if administrative searches are allowed to serve "the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life." Indianapolis v. Edmond, 531 U.S. 32,42 (2000).

27. This case is precisely why the Supreme Court warned that administrative searches must not be allowed to serve ordinary law enforcement purposes: "to prevent such intrusions from becoming a routine part of American life." Edmond, 531 U.S. at 42. Searches have already moved from airports to federal buildings. Where next for these unlawful searches are merely by whim of where government wants them next if they are not stopped here.

28. The Supreme Court has made clear that the danger of terrorism, in itself, is not a "special need." Edmond, 531 U.S. at 44.

IV. MAY GOVERNMENT COMPEL THE RELINQUISMENT OF ONE RIGHT TO EXERCISE ANOTHER?

29. In this case defendants condition plaintiffs Rights, to be free from

unlawful arrest, to free access of the court, to be free of involuntary servitude, Due Process, Redress of Grievances, Freedom of Association Privacy, Anonymity, and the Right to be free from government interference in exercising those Rights, upon compliance of an unreasonable search. In short we have to give up the Fourth Amendment protection, privacy[7] and anonymity[8] in order to exercise a host of other Rights; notwithstanding Plaintiffs cannot comply with the search demand even if we wanted to because the demand is for something no one is required to have and we do not have it..

30. The supreme Court has stated: "We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another." *Simons vs. United States*, 390 US 389.

31. Here the Right to Free Access of the Courts, among others, is conditioned upon sacrifice of another fundamental Right, the Right to be free of unlawful search[9]. The government has not evidenced any accommodation for anyone not wanting to be searched in this unlawful manner or not having the "paper" demanded, quite simply, we have been unable to get to our cases. Obviously, those in government believe that everyone must have "papers" and they are surreptitiously going to make everyone get them, but that is coercion in the constitutional sense.

32. Complying with an unlawfully search in order to exercise all the other Rights mentioned is unacceptable to the Plaintiffs. The courts have in other instances stated, and the premise is applicable in this case; "[forcing] one to choose between that necessity [of travel] and the exercise of a constitutional right is coercion in the constitutional sense." United States v. Albarado. 495 F.2d 799. 807 (2d Cir. 1974\; See also. United States v. Kroll.481 F.2d 884. 886 (8th Cir. 1973\ ("Compelling the defendant to choose between exercising Fourth Amendment rights and his right to travel constitutes coercion."); United States v. Lopez. 328 F. Supp. 1077. 1093 (E.D.N.Y. 1971) ("Nor can the government properly argue that it can

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[7] Cf. Griswold v. Conn.. 381 U.S. 479. 484-85 (1965) (recognizing the penumbral rights to privacy and repose);

[8] McIntyre v. Ohio Elections Comm'n. 514 U.S. 334. 342 (1995) (recognizing First Amendment right to speak anonymously).

[9] In Aptheker v. Secretary of State, for example, the Supreme Court held that the right to travel is unconstitutionally burdened if an individual is required to give up another fundamental right in order to be allowed to travel. 378 U.S. 500 (1964) (holding that it was unconstitutional to prevent plaintiff from traveling unless he gave up his First Amendment right to membership in the Communist Party).

condition the exercise of the defendant's constitutional right to travel on the voluntary relinquishment of his Fourth Amendment rights.").

V. CONCLUSION

33. Security is a serious problem but does not relieve the government of the duty to promulgate solutions in accordance with the rule of law or the burden of justifying its proposed solutions. Both the record and the government arguments in this case show that there is no statutory or regulatory authority and no evidentiary justification for suspicionless government ID demands of all would-be court or public building visitors. Plaintiffs had the right to be where they were.[10] Plaintiffs were arrested and subjected to a host of other constitutional violations for not producing papers at an illegal search.

34. The government has not demonstrated any reason for asking for such identifying "paper" that no one is required to have in order to justify a search, therefore, the search is not with reason and by definition, is unreasonable.

35. This issue is so well litigated, it defies reason it must be litigated all over again, notwithstanding the violation did not occur at a gambling casino, the side of a highway, in an ally, or at a nightclub. False arrest in violation of the Fourth Article of Amendment to the Constitution *for* the United States of America because someone could not produce identifying "papers" at a security checkpoint is still false arrest no matter where it occurs. The defendants choose to be deliberately ignorant by designed abstinence from inquiry to escape notice (willful blindness). "Forcing one to identify oneself or arresting one for not identifying is "so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws" (*Florida v. Royer*, 460 U.S. 491, 497 (1983)[11] To

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[10] "It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justices in the several states. ... The rights to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the federal Constitution." Crandall v Nevada, 6 Wallace 35 or 73 US 35 (1868) [Emphasis added]
Due Process protects the right of access to the courts, **TENNESSEE *v.* LANE *et al***, certiorari to the United States court of appeals for the sixth circuit No. 02-1667. Argued January 13, 2004--Decided May 17, 2004.

[11] (Interrogation relating to one's identity or a request for identification by the police, without more, does not constitute a fourth Amendment Seizure.") Hiibel v. Sixth Judicial Dist. Court of Nevada, __ U.S. __, 124 S.Ct. 2451 (2004) [emphasis added];

rely on superiors opinions or orders is no defense. See Nuremberg Trials. Plaintiff Foti was even told by one of the Marshals for his justification, "It's what they're paying us to do. I do not want to lose my job."

36. The search and seizure violates clearly established law defendants knew or should have known, and Plaintiffs are entitled to Summary Judgment as matter of law.

37. This motion is based on all the evidence and documents filed in this case which are by this reference included herein.

VI. Judgment

For the above reasons;
We want each unknown defendant be identified, also including Nov 10;
Judgment in the amount of 25,000 to each Plaintiff for each count they were involved in from each defendant for each count they were involved in;
The Court orders the agencies to cease and desist the unlawful searches as they are placing their officers in peril;
The damages prayed for in case number C 00-4783 SI because of Judge Illston and Wilfred Fong private acts to deny Robert-John:Foti's Right to prosecute that case and all other constitutional deprivations;
Whatever other just remedies that is appropriate from the court.

I, Robert-John:Foti, Joe Neufeld and Ken Augustine are the Complainants in the above-entitled action and competent men able to state the following: We have read the foregoing and know the contents thereof. The same is true of our own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, we believe them to be true, and we will testify as to its veracity.
The foregoing is true and correct and not misleading under penalty of bearing false witness.

Dated this 15th day of November in the year of our Lord two thousand and four and of the Independence of America the two hundred and twenty-ninth.

Respectively Presented

Robert-John:Foti; Joseph Neufeld Kenneth Augustine 04/11/15

(explaining that *Carey* and similar cases stand for the proposition that "failure to identify oneself cannot, on its own, justify an arrest," but noting that "nothing in our case law prohibits officers from asking for, or even demanding a suspects identification.") United States v Christian, 356 F.3d 1103, 1106 (9th Cir. 2004) [emphasis added]; (person approached pursuant to Terry "need not answer any question put to him [and] may decline to listen to the questions at all and may go on his way")) *Carey v Nevada Gaming Authority, et al*, 279 F.3d 873 [emphasis added]