Robert-John:Foti
General Delivery
Woodacre, [94973]
California

Joe Neufeld
General Delivery
Mission San Rafael Station [94902]
California

Ken Augustine
53 Mark Drive
San Rafael [94903]
California

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

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 Reply to defendant's opposition to injunctive relief for Plaintiffs 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.

A three-judge panel is still demanded. Why is this demand, being ignored by Judge Hamilton when wholly sanctioned by the Rules of Court?

As is so typical of police state tactics, the government has shifted the argument from one thing to another in order to convolute confuse and corrupt the issue. The defendants take one sentence of a 30-page complaint out of context and attempt to mislead a judge into believing that that is the issue. The real issue is the unlawful search by the marshals and the other unconstitutional consequences that arise after the Marshals demand for identification "papers" and do not get them, that is, whether or not the "papers" they demand are a search prohibited by the Fourth Amendment and also if such identification ("papers") is required by law for anyone to possess in the first instance. If law required the having of such papers, we would be charged with a crime and fully prosecuted, wouldn't we? Of course the defendants ignore and leave out those parts of the complaint. Plaintiffs seek an order enjoining the marshals from conducting unlawful searches. Government IDs are a dime a dozen. The 9-11 terrorists had 63 licenses from 5 States. They are not a reliable source of information. But, they are most assuredly, "papers" which the Fourth Amendment protects from suspicionless searches ANYWHERE. See Plaintiff's Motion for Summary Judgment and related documents, which are by this reference included herein as though fully set out herein.

The cases Plaintiffs bring to the attention of the court are merely to demonstrate some of the Rights that the Marshals impede or violate when the "papers" they demand, which no one is required to have, are not presented. They are not authorities for injunction but the Fourth Amendment

---

[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 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)

is. The government can't violate constitutional rights with impunity, not yet anyway, although we see that day coming[4]. Now I know defendants are going to say the Amendments do not implicitly contain a provision for injunction, but it has been the practice of the courts to grant injunctive relief when violations of constitutional rights are invaded.

> Petitioners' complaint asserts that the Fourth and Fifth Amendments guarantee their rights to be free from unauthorized and unjustified imprisonment and from unreasonable searches and seizures. They claim that respondents' invasion of these rights caused the damages for which they seek to recover and point further to 28 U.S.C. 41(1), 28 U.S.C.A. 41(1), [now 28 U.S.C. 1331] which authorizes the federal district courts to try 'suits of a civil nature' where the matter in controversy 'arises under the Constitution or laws of the United States,' whether these are suits in 'equity' or at 'law.' Petitioners argue that this statute authorizes the Court to entertain this action at law and to grant recovery for the damages allegedly sustained. Respondents contend that the Constitutional provisions here involved are prohibitions against the federal government as a government and that 28 U.S.C. 41(1), 28 U.S. C.A. 41(1), [now 28 U.S.C. 1331] does not authorize recovery in money damages in suits against unauthorized officials who according to respondents are in the same position as individual trespassers.
>
> Respondents' contention does not show that petitioners' cause is insubstantial or frivolous, and the complaint does in fact raise serious questions, both of law and fact, which the district court can decide only after it has assumed [327 U.S. 678, 684] jurisdiction over the controversy. The issue of law is whether federal courts can grant money recovery for damages said to have been suffered as a result of federal officers violating the Fourth and Fifth Amendments. That question has never been specifically decided by this Court. [It has now in Bivens] That the issue thus raised has sufficient merit to warrant exercise of federal jurisdiction for purposes of adjudicating it can be seen from the cases where this Court has sustained the jurisdiction of the district courts in suits

---

[4] "An evil exists that threatens every man, woman, and child of this great nation. We must take steps to ensure our domestic security and protect our homeland." - Adolf Hitler, proposing the creation of the Gestapo in Nazi Germany.

brought to recover damages for depriving a citizen of the right to vote in violation of the Constitution. 3 **And it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution** 4 and to restrain individual state officers from doing what the 14th Amendment forbids the state to do.5 **Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.** 6 **And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.** 7 Whether the peti- [327 U.S. 678, 685] tioners are entitled to recover depends upon an interpretatin of 28 U.S.C. 41(1), 28 U.S.C.A. 41(1) (now 28 USC 1331), and on a determination of the scope of the Fourth and Fifth Amendments' protection from unreasonable searches and deprivations of liberty without due process of law. [Emphasis added, footnotes omitted] Bell v. Hood, 327 U.S. 678 (1946)

The Supreme Court has made it clear that Bell is simply one of a "long line of cases in which the Court has held that if a right of action exists to enforce a federal right and Congress is silent on the question of remedies, a federal court may order any appropriate relief." Franklin v. Gwinnett County Pub. Schools, 503 U.S. 60, 68 -69 (1992) (emphasis added).

Defendants do not claim Plaintiffs cause is insubstantial or frivolous or without merit.

The defendants have remained silent on whether there is a authority and compelling public interest in conducting such warrantless searches for "papers" and the opposition to injunctive relief should be overruled just on that gaping omission alone. But the defendants also remain silent on any requirement for anyone to have the "papers" searched for and they are silent on whether the marshals have authority to sanction anyone for not having what is not required, at a security checkpoint, or anywhere else for that matter. Since there is no requirement for anyone to have, hold and show, government ID, **there is no reason to demand** such and, by definition, makes the search **unreasonable. Defendant's acts are the pinnacle of unreasonable search.** It should be noted here that Judge Hamilton is also

ignoring our demand for declaratory judgment on this point. She seems to be following suit of defendant's attorney in ignoring this point.

As far as not being able to succeed on the merits of unreasonable searches? Brown did in *Brown v Texas*; 443 US 47, (1979); Kolender did in *Kolender v Lawson*, 461 U.S. 352 (1983); Carey did in *Carey v Nevada Gaming Authority, et al*, 279 F.3d 873; And then came Hiibel v. Sixth Judicial Dist. Court of Nevada, __ U.S. __, 124 S.Ct. 2451, in which is ruled police demanding identification documents is verboten, suspicion of wrong-doing or not.

As far as showing irreparable harm, the following is dispositive of that question: A deprivation of a constitutional right is looked upon as an irreparable injury. See *Brewer v. The West Irondequoit Centeral School District*, 32 F. Supp.2d 619,625 (1999), to wit: "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir.1996) (quoting 11 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2948, at 440 (1973)), cert. denied, 520 U.S. 1251, 117 S.Ct. 2408, 138 L.Ed.2d 174 (1997); accord Mitchell v. Cuomo, 748 F.2d 804, 806 (2d Cir.1984); See also, *Scelsa v. City Univ. of New York*, 806 F.Supp. 1126, 1135 (S.D.N.Y.1992) ("The law in this Circuit is that a constitutional deprivation constitutes per se irreparable harm"); *Gour v. Morse*, 652 F.Supp. 1166, 1173 (D.Vt.1987) ("Constitutional rights are so basic to our society that their deprivation is almost by definition irreparable"). In addition, "it is the alleged violation of a constitutional right that triggers a finding of irreparable harm." Jolly, 76 F.3d at 482.

Plaintiffs have been unable to prosecute their other cases, further tipping the balance of hardships certainly in our favor[5].

Injunctive relief in this case is well justified and well within the authority of this court:

---

[5] Absent any basis for suspecting appellant of misconduct, the balance between the public interest in crime prevention and appellant's right to personal [443 U.S. 47, 48] security and privacy tilts in favor of freedom from police interference. Pp. 50-53. *Brown v Texas*, 443 U.S. 47 (1979)

The federal courts' power to grant relief not expressly authorized by Congress is firmly established. Under 28 U.S.C. 1331, the federal courts have jurisdiction to decide all cases "aris[ing] under the Constitution, laws, or treaties of the United States." This jurisdictional grant provides not only the authority to decide whether a cause of action is stated by a plaintiff's claim that he has been injured by a violation of the Constitution, Bell v. Hood, 327 U.S. 678, 684 (1946), but also the authority to choose among available judicial remedies in order to vindicate constitutional rights. This Court has fashioned a wide variety of nonstatutory remedies for violations of the Constitution by federal and state officials. 12 The cases most relevant to the problem before us are those in which the Court has held that the Constitution itself supports a private cause of action for damages against a federal official. Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971); Davis v. Passman, 442 U.S. 228 (1979); Carlson v. Green, supra. [462 U.S. 367, 375]

In Bivens the plaintiff alleged that federal agents, without a warrant or probable cause, had arrested him and searched his home in a manner causing him great humiliation, embarrassment, and mental suffering. He claimed damages on the theory that the alleged violation of the Fourth Amendment provided an independent basis for relief. The Court upheld the sufficiency of his complaint, rejecting the argument that a state tort action in trespass provided the only appropriate judicial remedy. The Court explained why the absence of a federal statutory basis for the cause of action was not an obstacle to the award of damages:

"That damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials should hardly seem a surprising proposition. Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty. See Nixon v. Condon, 286 U.S. 73 (1932); Nixon v. Herndon, 273 U.S. 536, 540 (1927); Swafford v. Templeton, 185 U.S. 487 (1902); Wiley v. Sinkler, 179 U.S. 58 (1900); J. Landynski, Search and Seizure and the Supreme Court 28 et seq. (1966); N. Lasson, History and Development of the Fourth Amendment to the United States Constitution 43 et seq. (1937); Katz, The Jurisprudence of Remedies: Constitutional

Legality and the Law of Torts in Bell v. Hood, 117 U. Pa. L. Rev. 1, 8-33 (1968); cf. West v. Cabell, 153 U.S. 78 (1894); Lammon v. Feusier, 111 U.S. 17 (1884). Of course, the Fourth Amendment does not in so many words provide for its enforcement by an award of money damages for the consequences of its violation. But `it is . . . well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.' Bell v. Hood, 327 U.S., at 684 (footnote omitted). The present case involves no special factors counseling hesitation in the absence of affirmative [462 U.S. 367, 376] action by Congress. We are not dealing with a question of `federal fiscal policy,' as in United States v. Standard Oil Co., 332 U.S. 301, 311 (1947)." 403 U.S., at 395 -396.

The Court further noted that there was "no explicit congressional declaration that persons injured by a federal officer's violation of the Fourth Amendment may not recover money damages from the agents, but must instead be remitted to another remedy, equally effective in the view of Congress." Id., at 397.

In his separate opinion concurring in the judgment, Justice Harlan also thought it clear that the power to authorize damages as a remedy for the vindication of a federal constitutional right had not been placed by the Constitution itself exclusively in Congress' hands. Id., at 401-402. Instead, he reasoned, the real question did not relate to "whether the federal courts have the power to afford one type of remedy as opposed to the other, but rather to the criteria which should govern the exercise of our power." Id., at 406. In resolving that question he suggested that "the range of policy considerations we may take into account is at least as broad as the range of those a legislature would consider with respect to an express[ed] statutory authorization of a traditional remedy." Id., at 407. After weighing the relevant policies he agreed with the Court's conclusion that the Government had not advanced any substantial policy consideration against recognizing a federal cause of action for violation of Fourth Amendment rights by federal officials.

In Davis v. Passman, supra, the petitioner, former deputy administrative assistant to a Member of Congress, alleged that she had been discharged because of her sex, in violation of her constitutional right to the equal protection of the laws. We held that the Due Process Clause of the Fifth Amendment gave her a federal constitutional right to be free from official discrimination and that she had alleged a federal cause [462 U.S. 367, 377] of action. In reaching the conclusion that an award of damages would be an appropriate remedy, we emphasized the fact that no other alternative form of judicial relief was available. 13 The Court also was persuaded that the special concerns which would ordinarily militate against allowing recovery from a legislator were fully reflected in respondent's affirmative defense based on the Speech or Debate Clause of the Constitution. Id., at 246. We noted the absence of any explicit congressional declaration that persons in petitioner's position may not recover damages from those responsible for their injury. Id., at 246-247.

Carlson v. Green, 446 U.S. 14 (1980), involved a claim that a federal prisoner's Eighth Amendment rights had been violated. The prisoner's mother brought suit on behalf of her son's estate, alleging that federal prison officials were responsible for his death because they had violated their constitutional duty to provide him with proper medical care after he suffered a severe asthmatic attack. Unlike Bivens and Davis, the Green case was one in which Congress had provided a remedy, under the Federal Tort Claims Act, against the United States for the alleged wrong. 28 U.S.C. 2671 et seq. As is true in this case, that remedy was not as completely effective as a Bivens-type action based directly on the Constitution.

The Court acknowledged that a Bivens action could be defeated in two situations, but found that neither was present. First, the Court could discern "`no special factors counseling hesitation in the absence of affirmative action by Congress.'" 446 U.S., at 18 -19, citing Bivens, 403 U.S., at 396, and Davis, supra, at 245. Second, there was no congressional [462 U.S. 367, 378] determination foreclosing the damages claim and making the Federal Tort Claims Act exclusive. 446 U.S., at 19, and n. 5. No statute expressly declared the FTCA remedy to be a substitute for a Bivens action;

indeed, the legislative history of the 1974 amendments to the FTCA "made it crystal clear that Congress views FTCA and Bivens as parallel, complementary causes of action." 446 U.S., at 19 -20.

This much is established by our prior cases. The federal courts' statutory jurisdiction to decide federal questions confers adequate power to award damages to the victim of a constitutional violation. When Congress provides an alternative remedy, it may, of course, indicate its intent, by statutory language, by clear legislative history, or perhaps even by the statutory remedy itself, that the courts' power should not be exercised. In the absence of such a congressional directive, the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counseling hesitation before authorizing a new kind of federal litigation. **BUSH v. LUCAS, 462 U.S. 367 (1983)**

If the complaint is not clear on the real issues, that is, constitutional and federal law deprivations committed by defendants falling under 28 USC 1331, we should be able to amend in order to make it clearer, but again, we feel if the complaint is read as a whole, instead of one or two sentences, it adequately reflects the constitutional violations committed by the defendants[6].

As for the defendant's well-established security practices, it is nothing short of (1) indoctrinating an unsuspecting public into thinking the search for and the carrying of government issued identification at all times is lawful and is required, respectively, and (2) merely a workaround for unconstitutional searches. The only thing that is not clearly established is the imagination of government to think of *novel* places in its attempts to sidestep the Fourth Amendment, which, clearly, they do not like.

---

[6] "A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. Therefore, under our rules, the plaintiff's allegations that he is suing in 'criminal libel' should not be literally construed. [3] The complaint is hard to understand but this, with nothing more, should not bring about a dismissal of the complaint, particularly is this true where a defendant is not represented by counsel, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that all pleadings shall be construed as to do substantial justice BURT VS. CITY OF NEW YORK, (2Cir. 1946) 156 F.2d 791.

"officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (noting that the Supreme Court has expressly rejected a requirement that the facts of previous cases be fundamentally or even materially similar). No. 02-56648--9th Circuit, Filed September 21, 2004

We recently ruled that our "analysis used to determine whether a plaintiff alleges a violation of a constitutional right is instructive in determining whether that right was clearly established." *Mena,* 332 F.3d at 1266. We "emphasize[d] that to find that the law was clearly established we need not find a prior case with identical, or even materially similar facts. Our task is to determine whether the preexisting law provided the defendants with fair warning that their conduct was unlawful." *Id.* (citation, internal quotation marks and alteration omitted). *Mena v. City of Simi Valley*, 332 F.3d 1255, 1261 (9th Cir. 2003). Cited in Cox v Boxer, No. 00-35887, Dc No. CV-99-00075-JLQ, Filed February 20, 2004. (9th Cir.)

Some marshals have even told us, "Hiibel only applies outside." Talk about willful blindness.

Public interest does indeed militate for an issuance of an injunction here.

This response is based on all evidence and documents filed in this case and which are incorporated herein by this reference.

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 thirtieth 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

Joseph Neufeld Robert-John: Foti 041130

Case # C 04 2567 PJH
Declaration of Mailing

FILED
04 DEC -2 AM 11:35
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

I, Robert John Foti, state I am over the age of eighteen and that on this date, Nov. 30, 2004, I served the following:

Layman's reply to defendant's opposition to injunctive relief document
041129AA

BY PLACING A TRUE COPY THEREOF INTO AN ENVELOPE BEARING PREPAID POSTAGE, BY VERIFYING THAT EACH SUCH ENVELOPE BORE ONE OF THE ADDRESSES OF EACH PARTY NAMED BELOW, BY SEALING AND BY DEPOSITING EACH SUCH ENVELOPE INTO THE UNITED STATES' MAIL AT: San Rafael, Marin County, California republic, AND MAILING VIA CERTIFIED MATTER delivery contract.

John Ashcroft
U.S. Department of Justice
Office of Attorney General
Washington D.C. 20530
First Class mail

United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
First Class mail

30 pw

THERE IS DELIVERY SERVICE OF THE UNITED STATES' MAIL AT EACH OF THE PLACES SO ADDRESSED, OR THERE IS REGULAR COMMUNICATIONS BY MAIL BETWEEN THE PLACE OF MAILING AND EACH OF THE PLACES SO ADDRESSED.

I DO HEREBY AVER THAT THE FOREGOING IS TRUE AND CORRECT UNDER THE PENALTY OF BEARING FALSE WITNESS UNDER THE LAWS OF THE united STATES OF AMERICA.

EXECUTED ON Nov. 30, 2004, AT San Rafael, Marin Co California republic.

L.S. Robert John Foti
DECLARANT