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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 Opposition to defendant's Motion to dismiss first Amended Complaint 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.

Preliminary Statement

1. One can imagine the scenario, "Pappas please, Bitte?" Jackbooted thugs, but wearing suits now, standing in the entrance to a courthouse (which used to be someplace everyone had the Right to Free Access (due process) so they were able to monitor and participate unencumbered the workings of the great judiciary of a great free country), conducting suspicionless searches for papers, not any papers, but specific government identification papers that no one is required to have. When someone tries to gain entrance who does not have these papers, papers no one are required to have, they are assaulted and removed forcefully (arrest without process/kidnapping), or made to suffer escort through the building, at the thugs whim and caprice (which is nothing short of involuntary servitude), denied the freedom of association with their fellow people in the courthouse (freedom of association), are obstructed and denied the ability to prosecute their cases (petition and redress), all because some Americans do not have government IDs they are not required to have. The thugs are demanding relinquishment by Americans of the Right to be free from unreasonable searches in order to enjoy a bevy of other clearly enumerated rights, and justify their acts because they take place at a security checkpoint? These thugs are told to believe that because they are conducting a security checkpoint the Fourth Amendment does not apply. The thugs act like a search for "papers" is merely, somehow, a legitimate request from the suspicionless and may be done because they are at a security checkpoint, despite the Fourth Amendment, despite *Brown v Texas*; 443 US 47, (1979), *Kolender v Lawson,* 461 U.S. 352 (1983), *Carey v Nevada Gaming Authority, et al,* 279 F.3d 873, *United States v Christian*, 356 F.3d 1103, 1106 (Jan. 2004), ("Nothing in our case

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[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. Bagans 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)

law prohibits officers from asking for, or even demanding a suspect's identification.") and then despite *Hiibel v. Sixth Judicial Dist. Court of Nevada*, __ U.S. __, 124 S.Ct. 2451 where the supreme Court opined that asking for documents of identification is verboten, suspect or not, and despite the glaring fact that no one is required to have the "papers" defendants demand at their "well-established security practices," in the first instance. So, their "well-established security practices" violate clearly established law and are punishing otherwise legitimate and lawful people JUST FOR NOT HAVING WHAT IS NOT REQUIRED. OH! It's not a scenario from a third world country. It is, in a nutshell, the description of this case.

2. When, after swearing the oath to support and defend the constitution as written, do the public officers we have seen decide to subvert the constitution, as convenient?

Housecleaning

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

4. Also, a central issue of this case is the sanctions put upon us for not having Government issued IDs that are demanded in the unlawful search by defendants (contrary to defendants lie that we refuse to produce such). Why are our demand for declaratory judgment on the issue itself of any requirement for compulsory government ID, being ignored equally by this judge and defendant's counsel? Is it that the People are not to know that government issued identification documents are not required in order to live and carry on daily activities in this free country?

Under no circumstances is there reason to believe Plaintiffs bring this suit under the Federal Tort Claims Act.

5. Defendants appear to claim that the Federal Tort Claims Act (FTCA) is the remedy Plaintiffs must be demanding, then set up a complete defense for that proposition, ignoring the fact that at no time is it mentioned in the complaint any reference to the FTCA[4]. Plaintiffs are not proceeding under

[4] "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,

the FTCA. The complaint cannot be dismissed under this theory advanced by the defendants. This is an old ploy, a trick to convolute, confuse and corrupt the issue and by now should be sanctionable. The courts have squarely addressed this ploy.

> It cannot be doubted therefore that it was the pleaders' purpose to make violation of these Constitutional provisions the basis of this suit. Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. **For to that extent 'the party who brings a suit is master to decide what law he will rely upon, and ... does determine whether he will bring a 'suit arising under' the ... (Constitution or laws) of the United States by his declaration or bill.'** The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 33 S.Ct. 410, 411. Though the mere failure to set out the federal or Constitutional claims as specifically as petitioners have done would not always be conclusive against the party bringing the suit, where the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions later noted, must [327 U.S. 678, 682] entertain the suit. Thus allegations far less specific than the ones in the complaint before us have been held adequate to show that the matter in controversy arose under the Constitution of the United States. Wiley v. Sinkler, 179 U.S. 58, 64, 65 S., 21 S.Ct. 17, 20; Swafford v. Templetion, 185 U.S. 487, 491, 492 S., 22 S.Ct. 783, 784, 785. The reason for this is that the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy. BELL v. HOOD, 327 U.S. 678 (1946) [Emphasis added]

6. The complaint, read in its entirety, state claims brought under the constitution and laws of the United States, save two, assault and battery and kidnapping which Plaintiffs believe are actionable under the theory of pendent jurisdiction in this court as they relate to the acts of defendants in violation of the constitution and laws of the United States, and plaintiffs

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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.

believe this is clear in their complaint. Any and all reference to FTCA must be disregarded and are no grounds to dismiss.

7. We ask that if these things are not clear in the complaint and because we are not attorneys and are not being assisted by counsel (not surprising we can find no attorney willing to take on this tyranny by defendants), we have ample opportunity to amend the complaint to make it perfectly clear.

The sovereign immunity claim is frivolous as to constitutional violations committed by agencies and officers of the government because, if allowed, the government could, by sovereign immunity, dissolve the very "chains that bind them."[5]

8. Congress could just make sure it never waived sovereign immunity in its officers and agencies violation of constitutional provisions and, viola, the constitution is gone, as no one would have relief coming. The claim of sovereign immunity is poppycock.

> There is no issue here of Congress' ability to preclude the federal courts from granting a remedy for a constitutional deprivation. Even if Congress repealed all statutory remedies for constitutional violations, the power of federal courts to grant the relief necessary to protect against constitutional deprivations or to remedy the wrong done is presumed to be available in cases within their jurisdiction. See Bell v. Hood, 327 U.S. 678, 684 (1946); Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 396 (1971); id. at 400-406 (Harlan, J., concurring) cited in SMITH v. ROBINSON, 468 U.S. 992 (1984)
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> 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).
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> The federal courts' power to grant relief not expressly authorized by Congress is firmly established. Under 28 U.S.C. 1331, the

[5] I think it was Thomas Jefferson who stated something to the effect of: Let the Constitution be the chains that bind government.

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)

Relief does not rely on an Act of Congress, sovereign immunity or no

9. There is no issue here of Congress' ability to preclude the federal courts from granting a remedy for a constitutional deprivation. Even if Congress repealed all statutory remedies for constitutional violations, the power of federal courts to grant the relief necessary to protect against constitutional deprivations or to remedy the wrong done is presumed to be available in cases within their jurisdiction. See Bell v. Hood, 327 U.S. 678, 684 (1946); Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 396 (1971); id., at 400-406 (Harlan, J., concurring) cited in SMITH v. ROBINSON, 468 U.S. 992 (1984)

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

Officers are responsible to guard against Constitutional invasion

11. Whenever an officer conducts a search, he alone, is responsible to see that it is lawfully conducted.

"It is incumbent on the officer[s] executing a search warrant to ensure the search is lawfully authorized and lawfully conducted." *Groh*, 124 S.Ct. at 1293. The *Groh* Court emphasized that unless there are exigent circumstances, officers are required to carefully ensure that constitutional requirements are met when searching a

person's residence, and are not entitled to qualified immunity when they do not. *Id.* at 1294 n.9. The same care, if not more, must be taken when the officers are searching without a warrant, under an exception to the warrant requirement. *Groh v. Ramirez*, ___ U.S. ___, 124 S.Ct. 1284, 1291 (2004)

Not only that, those officers have a duty to restrain their own from constitutional violations.

12. Not one officer has restrained another in their gross treatment of us. They have joked about it, participated in it, or sat back and watch it happen. Their friendship with their fellow tyrants seem to be more important than their Oaths to support the Constitution they voluntarily took, but what is expected in a Police State?

Each of the other officers either participated in harassing and intimidating Motley and her child during the search, or failed to intervene to stop the harassment. *See United States v. Koon*, 34 F.3d 1416, 1447 n.25 (9th Cir. 1994) ("[A]n officer who failed to intercede when his colleagues were depriving a victim of his Fourth Amendment right to be free from unreasonable force in the course of an arrest would, like his colleagues, be responsible for subjecting the victim to a deprivation of his Fourth Amendment rights."); *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (holding that "a prison official can violate a prisoner's Eighth Amendment rights by failing to intervene" when another official acts unconstitutionally); *O'Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988) ("A law enforcement officer has an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in his presence by other officers.").

The claim of defendants that are entitled to qualified immunity because there is no clearly established law prohibiting federal officials from requesting identification at a security checkpoint in a federal courthouse is not with merit and must fail.

13. The defendant's lawyer is attempting to color the activity. Defendants want "papers" such as license, passport, or other government issued documents of identification. What the marshals are doing is a search for "papers," nothing less. They are not merely "requesting" a name. If they do

not get the specific "papers" they are searching for, there are heavy penalties inflicted.

14. Defendants assert that there is no law prohibiting a search at a security checkpoint in a federal courthouse, specifically, but recent cases refute this defense. The issue is if there is notice that their conduct violates clearly established law. The only thing not clearly established is the imagination of government to come up with many different "novel" places to conduct their unlawful searches.

> "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
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> 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.)

Have these officers had notice?

15. 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).

16. 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]

17. 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 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."

18. 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).

19. 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. 305 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.

20. We reclaim here and now that our rights are being quashed by the acts of the government defendants at their unlawful search simply for not showing any "papers" that no one is required to possess upon demand in violation of clearly established law; in case it is not sufficiently clear in our complaint.

21. 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 can 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).

ARGUMENT

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

22. 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 a host of other unconstitutional penalties.

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

23. 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.

24. 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").[6]

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[6] 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.

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

26. 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[7]. 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 choices we plaintiffs have is to leave and "fail to appear", or be denied that most fundamental right of free access to the courts, unacceptable choices for us. It should be noted here that Judge Illston of this court in case C 00-4783 SI, has already used in an order against me that I did not appear, even though I was in the lobby denied access.

27. 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

[7] Place also found that to detain luggage for 90 minutes was an unreasonable deprivation of the individual's "liberty interest in proceeding with his itinerary," which also is protected by the Fourth Amendment. United States v. Place, 462 U.S. 696 (1983), at 708-710.

men and restricted their liberty of movement, the arrest, for purposes of this case, was complete").

28. 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.

29. 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.

We do not know why the papers are demanded

30. 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 a search not with reason, an unreasonable search.

31. 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.

32. The defendants seem to allude to a domestic security concern after 911, but that claim rings hollow. Domestic Security cannot justify violations of the Forth Amendment.

> "The danger to political dissent is acute where the Government attempts to act under so vague a concept as the power to protect 'domestic security.' Given the difficulty of defining the

domestic security interest, the danger of abuse in acting to protect that interest becomes apparent." United States v United States District Court for the Eastern Dist. of Mich., 407 U.S. 297, 314 (1972)

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.

33. 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 search serves it; especially in light of the fact that no one is required to have it anyway.

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.[8]

34. 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 "show your papers" mentality is a normal part of the

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

American fabric. History has to be a good teacher. Every Country with compulsory identification papers for internal travel and the carrying on of daily basic activities are tyrannical.

35. 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.

36. 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 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. Anyone like the Plaintiffs who just do not want to have government credentials, which are not required and cannot be required, will be banned from doing anything in this country

37. 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).

38. 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.

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

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

40. 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[9] and anonymity[10] 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.

41. The supreme Court has stated: "We find it intolerable that one Constitutional Right should have to be surrendered in order to assert

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

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

another." *Simons vs. United States*, 390 US 389.

42. 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[11]. 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.

43. In this instance, Plaintiffs are being asked to identify himself, which we are more than willing to do, AND to provide identification, which they do not have, is not required by any statute to have, and which he does not wish to obtain, in order to gain entrance to a constitutionally protected right, i.e., access to the Federal Court System if he wishes to avail himself the power of the courts to exercise his constitutional rights. To this end, it is more that ironic, a gross conflict in fact, that defendants can keep Plaintiff out of the very courtroom Plaintiffs are suing defendants in.

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

CONCLUSION

45. Security is a serious problem but does not relieve the government of

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[11] 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).

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. These gaping factual holes should be enough to deny the Motion to Dismiss. Plaintiffs had the right to be where they were.[12] Plaintiffs were arrested and subjected to a host of other constitutional violations for not producing "papers" they are not required to have at an illegal search.

46. 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, it is an unreasonable search.

47. This issue is so well litigated, it defies reason it must be litigated all over again, notwithstanding the violation occurred in a public building and 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" in an unlawful search at a security checkpoint is still an unlawful search and false arrest no matter where it occurs. To compound it by refusing access to the courts and the host of other violations inflicted on Plaintiffs, and if the allegations have any foundation in truth, the plaintiffs' legal rights have been ruthlessly violated, surely takes this case "over the top" as to set new heights in constitutional violations. The defendants choose to be deliberately ignorant by designed abstinence from inquiry to escape notice (willful blindness). But, "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,

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[12] "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.

497 (1983)[13] To rely on superior's 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."

48. This opposition is based on all the evidence and documents in this case and are incorporated herein by this reference.

49. The search and seizure violates clearly established law defendants knew or should have known.

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 Seventh day of December 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
[signature] 04/12/07

for J. Neufeld
by [signature] 04/12/07

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[13] (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]; (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]