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In their own stead

United States Court of Appeals
for the Ninth Circuit

Robert-John: Foti
Joseph Leonard Neufeld
Ken Augustine
Plaintiffs - Appellants

v.

McHugh et. al.
Defendants - Appellees

No. 05-16079
District Ct Case
C-04-2567 PJH

oral argument
requested

Laymen's informal reply to Defendants'
answering brief

Can Plaintiffs be so mistaken about the 4th Amendmet and the cases cited interparting it? Is it not clearly established law that government officials cannot search or seize indiscrimately no matter what the setting absent criminal suspicion?

Isn't this a case about search, not having what was searched for, and false arrest and sanction for not having what was searched for, even though no one is required to have what was search for?

Isn't the officer's duty reserved to fighting crime, not identify law-abiding people? Are not the officers outside their duty?

Defendants finally give the correct quote to United v Christian (even though to Judge Hamilton, they fraudulently left off the word "suspect") admitting, essentially, that demanding identification from anyone, not a "suspect", is violation of clearly established law. Were they not outside their lawful authority?

Judge Hamilton's erroneous opinion is based on an erroneous view that the regulations cited protect areas in public buildings that are behind locked doors or counters like Court Clerks working areas, Judges chambers, Janitors closets, etc. Are not Defendants Attorney now trying to "color" Judge Hamilton's opinion by refering to "closed portions" of the building only as if she meant closed public portions of the building, which is only what the regulation pertains to, not judges chambers and janitors closets.

There has been presented no evidence of delegation of authority, absent criminal suspicion, for the U.S Marshalls and the Federal protective Service officers demanding identity, much less government issued ID, i.e., State Drivers License, US passport, nor could there be. Plaintiffs will not be driveing in the courthouse nor travelling internationally, entering or leaving the country from inside the courthouse. And there certainly cannot be a delegation of authority to search for things there is no law requiring mandatory possession of.

No case is found and neither Judge Hamilton or Attorney General cite any case for their interpertation of the regulations cited. In fact they are grabbing at straws. A simple reading of the regs. in question demonstrate they have nothing to do with the issue at hand. Besides the procedural elements of invoking the regulation were not complied with. The officers themselves had not shown evidence of knowledge of the regulations. This leads Plaintiffs to think it is the attorney's afterthought in a vain attempt to cover the officers butts.

Plaintiffs have not been able to find any standing orders from any court or judge requiring security officers to demand government issued ID to access open public buildings.

We find no published regulations that would give or provide to us with the requisite notice of authority to compel production of government issued identification. Have the Marshalls Service or the Federal Protective Service merely taken it upon themselves to compell the showing of government issued ID? Plaintiffs

have seen no contrary evidence disputing this proposition.

The officers demanded what we do not have and what there is no requirement for us to have then falsely arrested us and sanctioned us for not producing such.

The law cannot punish the impossible. Since we have no government issued ID, it is impossible to produce such. The officers then punish us for not doing the impossible. We think that by definition, their acts are unreasonable and outside their authority. Are they merely performing a compliance test? Testing the police state acceptance rate, so to speak.

Can government "security concern" the fourth amendmet out of existence? There is a legitimate way called amending the constitution.

How long can you ignore that having ID from government is not a requirement and that a search for something that is not required is not with reason. By definition then, the search is unreasonable. By the way, no where does the government

deny that the actions of the officers are not a search.

How many rights do we have to give up for security and protection; something, by the way, the courts have ruled public officials are under no duty to provide? We won't have any rights but we will have security, is that what defendants want us to believe?

The government wants the court to believe that Congress has exclusive authority over the property. 1) no evidence has been presented that the courthouse property is ceded to the government by the state nor accepted by the federal government from the state. A lease does not make federal territory. 2) No evidence is presented that Congress has made requirements for inhabitants to have government issued ID.
Government officials take an oath to support the Constitution and the rights therin guaranteed, not find ways to defeat them.

There is no evidence of lawful authority delegated to the officers involved to effectuate a suspionless search and seizure such as the one complained of. They are outside any protections afforded them by acting outside their authority.

It is nonsensical to believe that court access is not denied because paper can appear, comprehend what is happening at hearings, hear what the opponents and the judge have to say, inspect their demeanor, and report back.

There has been no evidence presented that requiring ID furthers their mission of protecting courts, judges or security concerns.

There has been no evidence presented requiring ID is effective way to deal with security concerns.

By citing the correct view of United States v Christian defendants have knowlege they are violating clearly established rights.

There has been presented to the court no evidence of any rules the officers knew they were upholding.

Defendants repeatedly discuss them rules but have presented no evidence of applicable authority. Do they hope by repitition they don't have to prove a rule exists?

There is no evidence the officers knew about the regulations the lawyers came up with because there were no notice of them presented the public, a rule in the regulation itself.

The regulation itself states that public buildings are to remain open during normal business hours. Defendants like to throw around terms like "necessarily secure" but produce no evidence that an order has been made to "necessarily secure" the public courthouse. There certainly has been no evidence produced that demonstrate the building is "necessarily secure".

The defendants admit we made "claim" through our letters for administrative hearing. The word claim does not appear in the letter but we certainly claim there was no authority for them to do what they were doing.

They certainly did not claim then that the regulations in question gave them the authority, leading one to believe they had no knowledge of such regulation.

The defendants, themselves, reiterate all the instances of denial to the right to access the court.

They do not tell this court that the second circuit opinion was very mindful of court access being denied, and that by not attending to it, the court could be seen as condoning it.

We contend that their authority-less requirement has no more standing than a requirement stating women have to bare their breasts before access to the public court house will be granted. November 30, 2005

Respectively Presented

Joseph Renfield

Robert John Toti

[1] Attached is a news release about our concerns that demands for ID will expand if not nipped in the bud now.

YAHOO! NEWS

Back to Story - Help

Miami Police Take New Tack Against Terror

AP Associated Press

By CURT ANDERSON, Associated Press Writer

Mon Nov 28, 7:20 PM ET

Miami police announced Monday they will stage random shows of force at hotels, banks and other public places to keep terrorists guessing and remind people to be vigilant.

Deputy Police Chief Frank Fernandez said officers might, for example, surround a bank building, check the IDs of everyone going in and out and hand out leaflets about terror threats.

"This is an in-your-face type of strategy. It's letting the terrorists know we are out there," Fernandez said.

The operations will keep terrorists off guard, Fernandez said. He said al-Qaida and other terrorist groups plot attacks by putting places under surveillance and watching for flaws and patterns in security.

Police Chief John Timoney said there was no specific, credible threat of an imminent terror attack in Miami. But he said the city has repeatedly been mentioned in intelligence reports as a potential target.

Timoney also noted that 14 of the 19 hijackers who took part in the Sept. 11 attacks lived in South Florida at various times and that other alleged terror cells have operated in the area.

Both uniformed and plainclothes police will ride buses and trains, while others will conduct longer-term surveillance operations.

"People are definitely going to notice it," Fernandez said. "We want that shock. We want that awe. But at the same time, we don't want people to feel their rights are being threatened. We need them to be our eyes and ears."

Mary Ann Viverette, president of the International Association of Chiefs of Police, said the Miami program is similar to those used for years during the holiday season to deter criminals at busy places such as shopping malls.

"You want to make your presence known and that's a great way to do it," said Viverette, police chief in Gaithersburg, Md. "We want people to feel they can go about their normal course of business, but we want them to be aware."

CERTIFICATE OF SERVICE

Case Name: Robert John Foti et al v. McHugh et al

Case No.: C-05-26079

IMPORTANT: You must send a copy of ALL documents filed with the court and any attachments to counsel for ALL parties in this case. You must also file a certificate of service with this court telling us that you have done so. You may use this certificate of service as a master copy, and fill in the title of the document you are filing. Please list below the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below. You must attach a copy of the certificate of service to each of the copies and the copy you file with the court.

I certify that a copy of the Laymans Optional Reply Brief
(Name of document you are filing (i.e., opening brief, motion, etc.)
and any attachments was served, either in person or by mail, on the persons listed below.

Robert John Foti
Signature
Notary NOT required

Name	Address	Date Served
A. Simmons	Attorney General's office 450 Golden Gate Ave San Francesco, 94102 California	Dec 1, 2005 ~~Nov 30, 2005~~
Alberto Gonzales	US Department of Justice Office of Attorney General Washington D.C 20530	Dec 1, 2005