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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

)
)
) **MARTIN VICTOR HILL, PRO SE** Civil Action No. 5:12-CV-00827
)
) **Plaintiff,**
)
) **vs.**
)
) **THE TEXAS DEPARTMENT OF**
) **PUBLIC SAFETY, YOLANDA**
) **AGUINAGA, AND KEVIN** Jury
) **MARMOR**
)
Defendants

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT**

Plaintiff, Martin Victor Hill, requests that this Court deny Defendant’s Motion for Summary Judgment. Defendants Marmor and Aguinaga have failed to show good cause for this motion.

INTRODUCTION

Law enforcement officials must be held to constitutional and societal standards, particularly because they are granted substantial discretion that may be misused to deprive individuals of

1 their liberties. *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1035-36 (1991) (observing that "[t]he
2 public has an interest in [the] responsible exercise" of the discretion granted police.)

3 The public interest in deterring 4th Amendment violations, providing civil remedies to
4 persons violated by police, and in holding Defendants accountable weighs in favor of denying
5 Defendant's Motion for Summary Judgment.
6

7 **STATEMENT OF FACTS**

8 Defendants claim that The Texas Transportation Code Sections 521.021 and 521.025 justify
9 their illegal acts. This is clearly not the case. Throughout these proceedings, Defendants have
10 denied that they forced Hill to exit the sleeper berth or to show his ID. Now, they do a 180
11 degree turn and claim something entirely opposite of their own written admissions; they now
12 claim that they did demand Plaintiff's ID and that they had a right to demand the ID under
13 state law.
14

15 In their Motion for Summary Judgment, Defendants state:

16 "The Texas Transportation Code Sec. 521.021. LICENSE REQUIRED. A person, other
17 than a person expressly exempted under this chapter, may not operate a motor vehicle on
18 a highway in this state unless the person holds a driver's license issued under this
19 chapter."
20

21 Defendants additionally claim:

22 "The Texas Transportation Code section 521.021 states that "[a] person, other than a
23 person expressly exempted under this chapter, may not operate a motor vehicle on a
24 highway in this state unless the person holds a driver's license issued under this chapter."
25

26 Furthermore, section 521.025 states that "[a] person required to hold a license under
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1 Section 521.021 shall: ... (2) display the license on the demand of a magistrate, court
2 officer, or peace officer.” These sections of the Texas Transportation Code have never
3 been declared unconstitutional. It was objectively reasonable for the Defendants to rely
4 upon these laws when Aguinaga merely requested and Trooper Marmor later
5 demanded Hill’s CDL and therefore they are entitled to qualified immunity from this
6 claim.”
7

8 However, the Defendants employer, The Texas Department of Public Safety has acknowledged
9 in writing as a result of the internal affairs investigation of this case in December 2010 that
10 neither The Texas Transportation Code section 521.021 or Sec. 521.021. apply to this case,
11 because the Plaintiff was never operating a vehicle, was under no obligation to show ID, and
12 was not in the passenger seat of the commercial vehicle at the time of the stop. Both the Texas
13 Department of Public Safety and the Defendants themselves have acknowledged that Plaintiff
14 Martin Hill was not driving and that he was off duty in the sleeper berth at the time the
15 Plaintiff’s partner pulled in to a weigh station and was cited for having an overweight load.
16 Defendants Marmor and Aguinaga then forced the Plaintiff to exit his bed, come out of the
17 sleeper berth, and demanded his ID unlawfully, clearly in violation of the 4th Amendment.
18
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20 Police have no right to randomly demand ID from people without cause. This has been
21 affirmed countless times in the U.S. Supreme Court. In their Motion for Summary Judgment,
22 Defendants Marmor and Aguinaga once again lie, bear false witness, and try to twist the truth,
23 falsely asserting that the Plaintiff was driving when it is an established and acknowledged fact
24 that the Plaintiff was never driving the vehicle at any time during this traffic stop in Texas. If the
25 Plaintiff had been driving, he would have indeed been obligated, as a commercial driver, to
26 show his ID to an officer upon demand. This was clearly not the case and is not what this case is
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1 about.

2 This case is about Defendants Marmor and Aguinaga, under color of law, willfully
3 demanding ID of Plaintiff without any legal justification whatsoever. This is why Defendants
4 were punished by their employer. In this case, both officers were recorded with the Plaintiff's
5 recording device and the Texas Department of Public Safety admitted wrongdoing in writing on
6 behalf of the two officers only one month after an internal affairs complaint was filed against the
7 officers in November 2010. The admission letter, dated December 20, 2010 and signed by
8 Captain Kenneth Plunk of the Waco Commercial Vehicle Enforcement Division, stated that
9 "**corrective action was needed**" against both officers and that "**additional training has been**
10 **taken**" by both officers. (Appx p. 7).

13 In addition, in case it couldn't be more clear, The internal Texas Dept. of Public Safety
14 document which Defendants were forced to release in initial disclosures revealed that the Texas
15 Dept. of Public Safety also officially admitted specifically that the Plaintiff Martin Hill was
16 never obligated to show Marmor or Aguinaga his ID. As the TX DPS stated, "**The passenger is**
17 **under no obligation to comply with request**" for ID.

19 Supervisor Captain Kenneth Plunk, CVE, Region VI, THP Division wrote in a TEXAS
20 DEPARTMENT OF PUBLIC SAFETY INTEROFFICE MEMORANDUM dated 12-15-10 that
21 the Plaintiff Martin Hill was at no time obligated to show ID to any officer. (Appx p. 8.) Plunk
22 stated, in part,

24 "I have reviewed the information provided by Sergeant Christopher McGuairt and the
25 complainant Mr. Martin Hill and formulate the following conclusion. I concur with most
26 of Sergeant McGuairt's findings **however a few items need to be addressed.** Sergeant
27 McGuairt is accurate in his statement that it is a legal practice to attempt identification of
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1 the driver and passengers, regardless if articulated facts exist to support this request for
2 identification. **Though there may be no issue with attempting to identify a passenger,**
3 **unless you have an articulate reason regarding your or other's safety or criminal**
4 **activity is present, the passenger is under no obligation to comply with this request.**
5 When Mr. Hill asked Trooper Marmor if he (Marmor) was requesting or demanding his
6 driver license, Trooper **Marmor stated "I'm telling you" - this statement is not a**
7 **request it is a demand.** At no time did Trooper Marmor state to Mr. Hill that he would
8 be arrested, **however he did tell him that it was a "jailable offense" for Failure to**
9 **Identify. The charge of Failure to Identify under Penal Code 38.02 would not be**
10 **applicable to this contact. Sergeant McGuairt has addressed with Trooper Marmor**
11 **his requirements to identify himself properly on future contacts. Sergeant McGuairt**
12 **will also address with Trooper Marmor proper procedure and additional training**
13 **regarding the offense of Failure to Identify and how it relates to roadside contacts."**
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17 The Defendant's own supervisors at the TEXAS DEPARTMENT OF PUBLIC SAFETY
18 punished both defendants, Yolanda Aguinaga and Kevin Marmor, on the record and in writing
19 for wrongdoing. This is not a complicated case.
20

21 In their Motion for Summary Judgement, Defendants quote The Texas Transportation Code
22 Section 521.021 and 521.021, as if this is some magical justification for their illegal actions. In
23 reality neither of these codes apply at all - since Plaintiff was never operating a motor vehicle.
24

25 Both Marmor and Aguinaga acknowledged that Hill was sleeping in the sleeper berth.
26

27 Sec. 521.025. states:
28

“ LICENSE TO BE CARRIED AND EXHIBITED ON DEMAND; CRIMINAL PENALTY.

- 1 (a) A person required to hold a license under Section 521.021 shall:
2 (1) have in the person's possession **while operating a motor vehicle** the class of driver's
3 license appropriate for the type of vehicle operated; and
4 (2) display the license on the demand of a magistrate, court officer, or peace officer.
5 (b) A peace officer **may stop and detain a person operating a motor vehicle** to determine
6 if the person has a driver's license as required by this section.
7 (c) A person who violates this section commits an offense. An offense under this
8 subsection is a misdemeanor punishable by a fine not to exceed \$200,..."

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11 Defendants also list Section 521.025, yet conveniently neglect to include the first line of the
12 Code, Section (a)(1), which states:

13
14 "Sec. 521.025. LICENSE TO BE CARRIED AND EXHIBITED ON DEMAND; CRIMINAL
15 PENALTY.

- 16
17 (a) A person required to hold a license under Section 521.021 shall:
18 (1) **have in the person's possession while operating a motor vehicle** the class of driver's
19 license appropriate for the type of vehicle operated; and
20 (2) display the license on the demand of a magistrate, court officer, or peace officer."
21

22 This case has never been about showing one's driver license while driving. The Federal Motor
23 Carrier Safety Administration (FMCSA) Regulations clearly outline that any person who is in
24 the sleeper berth is not driving. As The FMCSA 'Interstate Truck Driver's Guide to Hours of
25 Service' states. (Appx. 2 pp. 7-10).

26
27 "a) What is On-Duty Time? All other time in a truck unless you are resting in a sleeper berth".
28

1 The person in the sleeper berth is not "operating a motor vehicle." They are NOT required to
2 show anyone ID *Brown v. Texas*, 443 U.S. 47 (1979). Nor are they subject to the whims of
3 corrupt, power-starved criminal cops who believe they can violate the God-given rights of
4 Americans with impunity.
5

6 The clearly unethical, corrupt, abusive and dishonest nature of the civil rights violations and
7 clear violations of the 4th Amendment violations under color of law which Defendants Marmor
8 and Aguinaga perpetrated in this case have nothing whatsoever to do with a citizen who was
9 driving.
10

11 **BRIEF IN SUPPORT:**

12 **QUALIFIED IMMUNITY**

13 **The Defendant s are not entitled to qualified immunity.**

14 The qualified immunity doctrine protects government officials from liability for civil damages
15 "insofar as their conduct does not violate clearly established statutory or constitutional rights of
16 which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
17 In determining whether an official is entitled to qualified immunity, we (1) identify the specific
18 right allegedly violated; (2) determine whether the right was "clearly established;" and (3)
19 determine whether a reasonable officer could have believed that his or her conduct was lawful.
20 *Alexander v. City and County of San Francisco*, 29 F.3d 1355, 1363-64 (9th Cir. 1994).
21

22 Courts apply the test articulated by the Supreme Court in *Anderson v. Creighton*, 483 U.S.
23 635 (1987), to determine whether the right is "sufficiently clear that a reasonable official would
24 understand that what he is doing violates that right." *Id.* at 639-40. It is not necessary that the
25 specific action in question previously have been declared unconstitutional, so long as the
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2 unlawfulness was apparent in light of preexisting law. *Id.* at 640. The consideration is whether
3 "the particular facts of [the] case support a claim of clearly established right." *Backlund v.*
4 *Barnhart*, 778 F.2d 1386, 1389 (9th Cir. 1985). In this case, the Plaintiff's 4th Amendment
5 rights were clearly violated. The right to privacy and to be free from compulsory, warrantless ID
6 checks is long established both in Texas and across the United States. During the illegal seizure,
7 Defendant Marmor admitted while recorded, the policy and practice of troopers to ID everyone,
8 in blatant violation of the 4th Amendment:
9

10 "So I mean, I don't know how far you want to take it- But in Texas, if you fail to
11 ID, that's a jailable offense...we damn sure can ID you... I don't know what it is in
12 California but in Texas, when we have a vehicle stop, we ID everybody in the vehicle.
13 Truck drivers, everybody. Because I mean we get a lot of people that are wanted. Uh, we
14 get runaways, and- of course you're not a runaway. But I mean we get juveniles and stuff
15 like that that are runaways. So it's a common practice for us to ID everybody in the
16 vehicle. That cuts out 'well why'd you ID me and, ya know, uh the last two vehicles you
17 didn't ID everybody'. We ID everybody. We stop you, everybody's getting out."

18 This is not only in direct violation of the Constitution but also *Brown v. Texas*, 443 U.S. 47
19 (1979), *Brinegar v. United States*, 338 U.S. 160, 176 (1949), *Florida v. Royer*, 460 U.S. 491,
20 500 (1983), and *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). Defendants know now and knew
21 then that their conduct was completely unlawful, which is why they have since given numerous
22 conflicting answers, and why they deny that they demanded Plaintiff's ID under threat of arrest
23 while at the same time insisting that they had probable cause, despite being video recorded and
24 punished by their employer TX DPS, whom admitted wrongdoing. Long-standing principles of
25 constitutional litigation entitle public officials to qualified immunity from personal
26 liability arising out of actions taken in the exercise of discretionary functions. See *Harlow v.*
27 *Fitzgerald*, 457 U.S. 800,807 (1982); *Barton v. Clancy*, 632 F.3d 9, 21 (1st Cir. 2011). The
28 qualified immunity doctrine "balances two important interests -- the need to hold public officials

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2 accountable when they exercise power irresponsibly and the need to shield officials from
3 harassment, distraction, and liability when they perform their duties reasonably." *Pearson v.*
4 *Callahan*, 555 U.S. 223, 231 (2009). In this case, the "constitutional question" is "beyond
5 debate." *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2083 (2011). This constitutional violation was
6 "self-evident" and do not require particularized case law to substantiate them. *Cf. Lee v. Gregory*,
7 363 F.3d 931, 936 (9th Cir.2004) It is clearly evident to conclude that "the state of the law at the
8 time of the alleged violation gave the defendant[s] fair warning that [their] particular conduct
9 was unconstitutional." *Maldonado v. Fontanes*, 568 F.3d 263, 269 (1st Cir. 2009).

10
11 The Fourth Amendment requires that an arrest be grounded in probable cause, *Martínez-*
12 *Rodríguez v. Guevara*, 597 F.3d 414, 420 (1st Cir. 2010); *Holder v. Town of Sandown*, 585 F.3d
13 500, 504 (1st Cir.2009) Officers are entitled to qualified immunity "so long as the presence of
14 probable cause is at least arguable." *Ricci v. Urso*, 974 F.2d 5, 7 (1st Cir. 1992) (quoting *Prokey*
15 *v. Watkins*, 942 F.2d 67, 72 (1st Cir. 1991)). In this case there is none.

16 17 18 **DISCUSSION**

19 The presence of probable cause was not even arguable here. The allegations of the
20 complaint establish that the Plaintiff was sleeping in the sleeper berth of his commercial vehicle
21 and was woken up by the officers, who then demanded ID with no probable cause whatsoever.

22
23 Therefore, the defendants are not entitled to qualified immunity. When the defense seeks to
24 invoke qualified immunity, dismissal is typically improper -- further factual development will be
25 required. See *Young v. Selsky*, 41 F.3d 47, 54 (2d Cir. 1994) ("the defendant must establish that
26 he had an objectively reasonable belief that his act violated no clearly established rights.")
27
28

1 In *Liffiton v. Keuker*, the Second Circuit Court of Appeals held that, "[a] defense of qualified
2 immunity cannot ordinarily support dismissal under Fed. R. Civ. P. 12(b)(6)." *Liffiton v. Keuker*,
3 850 F.2d 73, 76 (2d Cir. 1988). Plaintiff's Complaint alleges sufficient facts to establish a claim
4 for relief which is plausible on its face. These allegations set forth a prima facie case for relief
5 under 42 U.S.C. § 1983. To offer qualified immunity to prevent discovery would be manifestly
6 unjust. Defendants' motion for protective order based upon qualified immunity must fail.
7

8 CONCLUSION

9 Defendant's memorandum in support of its motion for summary judgment is a glib blend of
10 omission or misstatement of critical fact and misleading recitations of the law. Defendants have
11 revealed that they are confused as to the genuine issues as to material facts.
12

13 Defendants falsely allege that the Plaintiff was "operating a motor vehicle" and was therefore
14 obligated to show ID under Texas Transportation Code Sections 521.021 and 521.025.

15 Defendants also claim qualified immunity, falsely alleging that they had no way of knowing that
16 demanding ID from a sleeping off-duty vehicle occupant was a violation of the 4th Amendment.
17 Their own employer has stated otherwise.
18

19 The judiciary has an obligation to exercise justice and uphold the law, particularly in regards
20 to police abuse; and should therefore reject the Defendant's Motion for Summary Judgment.
21

22 Defendants quote in their motion "that person does not taint a proper arrest by
23 contemporaneously shouting 'police officers are corrupt.'" *Mesa v. Prejean*, 543 F.3d 264, 273
24 (5th Cir. 2008).

25 In this case, however, there was no **proper** arrest, and the police in question, the two
26 Defendants Marmor and Aguinaga, who were punished by their own employer, the TX Dept.of
27 Public Safety, are clearly indeed "corrupt". The only question here is whether or not "The State,"
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2 in this case the federal judiciary of Western Texas, will allow and condone these human rights
3 abuses, or whether they will hold these Defendants, public servants who swore an oath to uphold
4 the Texas State and Federal Constitution, accountable.

5 For all of the above-stated reasons, Plaintiff respectfully requests this Court deny Defendant's
6 Motion for Summary Judgment.

7
8 Respectfully submitted,

9
10 Martin Victor Hill
11 *Appearing Pro Se*

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14 **Notice of Electronic Filing**

15 I, Martin Victor Hill, do hereby certify that I have electronically submitted for
16 filing, a true and correct copy of the above and foregoing in accordance with the
17 Electronic Case Files System of the Western District of Texas, on this the 3rd day
18 of February, 2014.

19
20 /s/ Martin Victor Hill
21 MARTIN VICTOR HILL
22 *Appearing Pro Se*

23 **Certificate of Service**

24 I, Martin Victor Hill, do hereby certify that a true and correct copy of the above
25 and foregoing **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S**
26 **MOTION FOR SUMMARY JUDGMENT** has been served by means of the Western
27 District of Texas's CM/ECF filing system, in accordance with the Federal Rules of Civil
28

1 Procedure on this the 3rd day of February, 2014, addressed to all parties of record.

2
3 /s/ Martin Victor Hill
4 MARTIN VICTOR HILL
5 *Appearing Pro Se*

6 **IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
7 TEXAS SAN ANTONIO DIVISION**

8 **MARTIN VICTOR**) **Civil Action**
9 **HILL,**) **No.5:2012cv00827**
10 **Plaintiff,**)
11 **vs.**)
12 **TDPS, ET. AL.,**)
13 **Defendants**)

14 **ORDER**

15 Came on to be heard **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO**
16 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**, and any responses thereto.

17 This Court, after considering the pleadings of the parties filed herein, is of the
18 opinion that the following order should issue: It is hereby ordered that
19 **Defendants' Motion for Summary Judgment** is hereby DENIED.
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22 SIGNED on this the _____ day of _____, 2013.
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26 JUDGE PRESIDING
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