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

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)
) **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 MOTION FOR SUMMARY JUDGMENT WITH BRIEF IN
SUPPORT**

Plaintiff, Martin Victor Hill, Pursuant to Rule 56 of the Federal Rules of Civil Procedure, files this motion for summary judgment. For reasons provided in the supporting Memorandum, Plaintiff contends that there is no genuine disputed issue as to any material fact. Thus, Plaintiff is entitled to judgment as a matter of law.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories,

1 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as
2 to any material fact and that the moving party is entitled to a judgment as a matter of law.” *FED.*
3 *R. CIV. P. 56(c); Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Diamond v. Atwood*, 43
4 F.3d 1538, 1540 (D.C. Cir. 1995). In deciding whether there is a genuine issue of material fact,
5 the court is to view the record in the light most favorable to the party opposing the motion,
6 giving the non-movant the benefit of all favorable inferences that can reasonably be drawn from
7 the record and the benefit of any doubt as to the existence of any genuine issue of material fact.
8 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157-59 (1970). To determine which facts are
9 "material," a court must look to the substantive law on which each claim rests. *Anderson v.*
10 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A "genuine issue" is one whose resolution could
11 establish an element of a claim or defense and, therefore, affect the outcome of the action.
12 *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 248.

15 **INTRODUCTION**

16 Law enforcement officials must be held to constitutional and societal standards, particularly
17 because they are granted substantial discretion that may be misused to deprive individuals of
18 their liberties. *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1035-36 (1991) (observing that "[t]he
19 public has an interest in [the] responsible exercise" of the discretion granted police.)
20

21 The public interest in deterring 4th Amendment violations, providing civil remedies to
22 persons violated by police, and in holding Defendants accountable weighs in favor of granting
23 Plaintiff's Motion for Summary Judgment.
24

25 **STATEMENT OF FACTS**

26 1. Plaintiff Martin Hill was employed as a commercial truck driver on November 10, 2010.
27 He was in the sleeper berth of his commercial 18-wheeler truck getting his federally required 10
28

1 hours of sleep and his partner John Doe was driving. Doe pulled into a weigh station in Devine,
2 Texas and was cited for having an allegedly overweight load. (Exhibit 1, pp. 9-14, 17)

3 2. In a commercial truck driving 'Team' operation, while one person is driving, the other
4 must be off-duty in the "sleeper berth" uninterrupted for a minimum of ten hours, according to
5 federal law. [FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION Hours of service
6 of drivers § 395.1] (Exhibit 2). State and Federal law mandates that all commercial drivers
7 maintain "logs", which document every moment of their time.
8

9 3. Plaintiff had been in the sleeper berth for at least three hours. TX DPS employee
10 inspector Yolanda Aguinaga instructed John Doe to get Plaintiff's identification. John Doe woke
11 up Plaintiff and told Plaintiff that Aguinaga demanded to see his identification. Without
12 discussing the matter, Aguinaga walked away and told both John Doe and Plaintiff to go back
13 and wait in a small office building next to the weigh station scales.
14

15 4. Defendants confirm this. TX DPS Interoffice Memo from Aguinaga dated 11-19-10,
16 states: "I said to them, "go into the 1st door and have a seat, I'll be back as soon as I place this
17 seal on the trailer," (Exhibit 1 p. 17) Under duress, Plaintiff walked to the office as directed, and
18 waited there for approximately five minutes.
19

20 5. Plaintiff then attempted to return to the truck to resume his interrupted sleep. At that
21 time Plaintiff was approached by Inspector Yolanda Aguinaga, ID # L0339. Plaintiff asked why
22 he was woken up, to which Aguinaga replied "I just wanted your CDL" (Commercial
23 Drivers License).
24

25 6. Defendant Aguinaga acknowledged while being recorded that she knew that the Plaintiff
26 Hill was sleeping in the sleeper berth and Aguinaga knew that Plaintiff was not driving. (Exhibit
27 3, Audio Transcript. pp. 3-4) .
28

1 “Hill: Why did you wake me up when I’m off duty, I’m in the sleeper?
2 Aguinaga: I don't know why he woke you up, I just asked him to get your drivers’
3 license.
4 Hill: He doesn't have my drivers’ license, I have it in my pocket.
5 Aguinaga: Okay.
6 Hill: So he has to, by definition, wake me up to get it.
7 Aguinaga: Okay.
8 Hill: I'm asking why – What-
9 Aguinaga: Because I asked him to get it from you.
10 Hill: Is that a legal demand or a request?
11 Aguinaga: It is a request.
12 Hill: Okay. Uh, I'm not driving, I'm not even-
13 Aguinaga: That’s Correct.
14 Hill: Okay. Uh, if it's a request, I'm refusing.
15 Aguinaga: Okay. That's fine.
16 Hill: Buh-bye.”

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7. Aguinaga then contacted Marmor and “advised that the co-driver had refused to present his Driver License.” (Testimony of Marmor- Exhibit 1, p. 13)

8. Aguinaga Told Marmor that the Plaintiff “was refusing to give me his CDL, and that he was angry for being woken up.” (Testimony of Aguinaga, Exhibit 1, p. 17)

9. Plaintiff returned to his truck and went inside to attempt to go back to sleep, at which time Trooper Kevin Marmor approached the cab of the truck on the passenger side and hopped up on the running board, placing his arms inside the window.

10. Marmor, in the internal affairs complaint interview conducted by his superiors, testified “I completed the conversation with Aguinaga and exited my patrol unit to meet with the co-driver (Hill.) As I walked towards the truck, I observed the co-driver opening the passenger side door of his truck. I attempted to get his attention by saying "hey" in a loud enough voice so that he could hear me over all the traffic from the interstate. As I attempted to get his attention, the co-driver had opened the passenger side door of the truck and was in the process of entering the cab. I noticed that the driver sat down in the passenger seat when I asked him if there was a problem. He responded by saying he was a libertarian and knew his civil rights. I advised him that I would need to see his Driver License. He advised me that when speaking with the Inspector he asked her if she was requesting or demanding his license. He stated that she told him that it was a request. He advised me that he refused the request. I then explained that the

1 reason for identifying him was a common practice and that all passengers in a vehicle or
2 commercial vehicle that had been stopped would be identified. He responded saying that he
3 wanted to see my ID. I told him that I was in full uniform including a clearly displayed badge
4 and gun, which identified me a Peace Officer. The co-driver asked me if I was requesting or
demanding his Driver License. I responded by saying, "I'm telling you" at which time the co-
driver complied." (Exhibit 1, PP. 13-14.)

5 11. Marmor and Aguinaga were recorded by Plaintiff on his cell phone- videos which were
6 later copied and sent to defendant's counsel at their request. The youtube.com urls are also listed
7 in the TRANSCRIPT (Exhibit 3, pp. 1-2).

8 12. Sergeant Christopher S. McGuairt of TX DPS referenced these three videos in the course
9 of investigating the internal affairs complaint filed by Martin Hill. McGuairt found them on the
10 internet and confirmed in an interoffice memo dated 12/9/10 that it was indeed officers Aguinaga
11 and Marmor in the videos, which were posted on youtube. (Exhibit 1, pp. 9-12).

12 13. Marmor was recorded by Plaintiff admitting that he knows the Plaintiff was not driving
13 and that Marmor has a policy of demanding ID from everyone who he pulls over - drivers and
14 passengers alike- without probable cause: (Exhibit 3, pp. 4-9) Excerpts:

- 15 •"If you fail to ID, then you can go the other route...
- 16 •Let me stop you right there...
- 17 •I don't know how far you want to take it- But in Texas, if you fail to ID, that's a jailable offense.
- 18 • But, when the federal motor carrier stuff- when you're in the vehicle, and you're being
- 19 inspected, and- your log book is off limits, I mean, if you're not driving, unless you're sitting up
- 20 here...If you're in the sleeper berth, then sure, we don't have any right to ask for your logbook,
- 21 but we damn sure can ID you."
- 22 •That's part of the penal code.
- 23 •We're talking about criminal law.
- 24 •I don't know what it is in California but in Texas, when we have a vehicle stop, we ID
- everybody in the vehicle. Truck drivers, everybody.
- 25 •We ID everybody. We stop you, everybody's getting out."

26 14. On the recording, Hill asks Marmor "You have a right to wake up the person in the
27 sleeper?" to which Marmor replied "Yes we do. She (Aguinaga) does too. She can enforce the
28

1 Federal Motor Carrier law but as far as state law goes, you know that's part of the penal code. I
2 don't know what ya'll call it in California- Well, vehicle code, is probably for traffic. We're
3 talking about criminal law. I don't know what it is in California but in Texas, when we have a
4 vehicle stop, we ID everybody in the vehicle. Truck drivers, everybody. Because I mean we get a
5 lot of people that are wanted. Uh, we get runaways, and- of course you're not a runaway. But I
6 mean we get juveniles and stuff like that that are runaways. So it's a common practice for us to
7 ID everybody in the vehicle. That cuts out 'well why'd you ID me and, you know, uh
8 the last two vehicles you didn't ID everybody'. We ID everybody. We stop you, everybody's
9 getting out. We're out here to enforce the federal law and also the state law. Federal has vehicle
10 inspectors. Now Texas has a policy when inspectors are working then we will have a trooper out
11 here". (Exhibit 3, pp. 4-9).

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15 15. Under threat of arrest after being illegally detained, Plaintiff showed his ID to
16 Marmor under duress.

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18 16. In his TX DPS internal affairs 'Complaint Response' dated 11/29/10, Defendant Marmor
19 wrote: "The co-driver asked me if I was requesting or demanding his Driver License. I responded
20 by saying, "I'm telling you" at which time the co-driver complied. The California License was
21 checked via in-car computer. The return came back clear. I returned to the passenger side door of
22 the co-driver and returned his license. To my knowledge there was no further communication
23 between the two of us." (Exhibit 1, p. 13).

24 17. On November 18, 2010, Plaintiff Martin Hill filed an official complaint with the Texas
25 Department of Public Safety, the agency which employed Aguinaga and Marmor. (Exhibit 5)

26 18. The Texas Department of Public Safety admitted wrongdoing in writing on
27 behalf of the two officers only one month after an internal affairs complaint was filed against the
28

1 officers. The admission letter, dated December 20, 2010 and signed by Captain Kenneth Plunk of
2 the Waco Commercial Vehicle Enforcement Division, stated that "**corrective action was**
3 **needed**" against both officers and that "**additional training has been taken**" by both officers.
4 (Exhibit 7).

5 19. In addition, a TX DPS INTEROFFICE MEMORANDUM dated 12/15/10
6 from Supervisor Captain Kenneth Plunk, CVE, Region VI, THP Division admitted specifically
7 that the Plaintiff Martin Hill was never obligated to show Marmor or Aguinaga his ID and that
8 the. (Exhibit 1 p. 8). Plunk stated, in part,

9
10
11 "Subject: Citizen Complaint by Mr. Martin Hill

12 I have reviewed the information provided by Sergeant Christopher McGuairt and the
13 complainant Mr. Martin Hill and formulate the following conclusion. I concur with most
14 of Sergeant McGuairt's findings however a few items need to be addressed.

15 Sergeant McGuairt is accurate in his statement that it is a legal practice to attempt
16 identification of the driver and passengers, regardless if articulated facts exist to support
17 this request for identification. **Though there may be no issue with attempting to**
18 **identify a passenger, unless you have an articulate reason regarding your or other's**
19 **safety or criminal activity is present, the passenger is under no obligation to comply**
20 **with this request.** When Mr. Hill asked Trooper Marmor if he (Marmor) was requesting
21 or demanding his driver license, Trooper Marmor stated "I'm telling you" - this statement
22 is not a request it is a demand.

23 At no time did Trooper Marmor state to Mr. Hill that he would be arrested, however he
24 did tell him that it was a "jailable offense" for Failure to Identify. **The charge of Failure**
25 **to Identify under Penal Code 38.02 would not be applicable to this contact.**

26 Sergeant McGuairt has **addressed with Trooper Marmor his requirements to identify**
27 **himself properly on future contacts. Sergeant McGuairt will also address with**
28 **Trooper Marmor proper procedure and additional training regarding the offense of**
Failure to Identify and how it relates to roadside contacts."

29 ARGUMENTS

- 30 1. Plaintiff brings claims pursuant to 42 U.S.C. §1983. Plaintiff has a valid claim under this

1 statute because Plaintiff has cognizable liberty interests to due process of law and to be free from
2 illegal search and seizure pursuant the Fourth, Fifth and Fourteenth Amendments of the United
3 States Constitution.

4
5 2, At all times, Inspector Aguinagua and Trooper Marmor and were acting under color of their
6 office and employment, as troopers with the Texas Department of Public Safety. Plaintiff has
7 cognizable liberty interests to be free from illegal search and seizure pursuant the Fourth and
8 Fourteenth Amendments of the United States Constitution. Plaintiff was deprived of his liberty
9 interest and right to earn a living when he was falsely arrested and detained due to the actions of
10 Troopers Aguinaga and Marmor.

11
12 **3. FEDERAL LAW REQUIRES TRUCKERS GET UNINTERRUPTED SLEEP**

13
14 A. "The fact that risk remained the same regardless of team status suggests that increased
15 risk of fatality is associated with nonconsecutive sleep rather than disturbance from the motion of
16 the truck while sleeping" [Id., p. 11]. Hertz, R.P., "Tractor-Trailer Driver Fatality: The Role of
17 Nonconsecutive Rest in a Sleeper Berth," Insurance Institute for Highway Safety, October 1987
18 (Revised February 1988).

19 B. 48. HOURS-OF-SERVICE RULES for Property-Carrying CMV Drivers (Valid Until
20 July 1, 2013) include an 11-Hour Driving Limit. (Exhibit 2, FEDERAL MOTOR CARRIER
21 SAFETY ADMINISTRATION -INTERSTATE TRUCK DRIVER'S GUIDE TO HOURS OF
22 SERVICE)

23 C. Drivers using the Sleeper Berth Provision must take at least 8 consecutive hours in the
24 sleeper berth, plus a separate 2 consecutive hours either in the sleeper berth, off duty, or any
25 combination of the two. Prior to February 27, 2012, "On-duty time provision Included any time
26 in CMV (Commercial Motor Vehicle) except sleeper-berth". On November 10, 2010, when the
27 subject of this lawsuit occurred, the Plaintiff was required to have ten hours uninterrupted in the
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1 sleeper berth, not the present rule of 8 hours. (Exhibit 2).

2
3 **D. Interstate Truck Driver's Guide to Hours of Service**

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

5
6 b) What Is Off-Duty Time? In order for time to be considered off duty, you must be relieved of
7 all duty and responsibility for performing work. You must be free to pursue activities of your
8 own choosing and be able to leave the place where your vehicle is parked.

9 c) How Does the Sleeper Berth Provision Work? If you drive a truck that has a sleeper berth that
10 meets the requirements of the safety regulations, you may use it to get the required off-duty time
11 in three ways: 1. You may spend time in your sleeper berth to get some of, or all of, the 10
12 consecutive hours of off-duty time. When getting your 10 consecutive hours of off-duty time,
13 what is most important is that you do not go on duty or drive during those 10 hours. At the end of
14 the 10 consecutive hours of combined sleeper and/or off-duty time, your 11-hour driving and 14-
15 hour duty-period limits would completely restart.

16 **E. Hours of service of drivers § 395.1 Scope of rules in this part.**

17 "(g) Sleeper berths—(1) Property-carrying commercial motor vehicle—(i) In General. A driver
18 who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as
19 defined in §§395.2 and 393.76 of this subchapter, **(A) Must, before driving, accumulate (1) At
20 least 10 consecutive hours off duty; (2) At least 10 consecutive hours of sleeper-berth time;
21 (3) A combination of consecutive sleeper-berth and off-duty time amounting to at least 10
22 hours...**"

23 **4. TRUCK DRIVER ACCIDENTS AND FATALITIES DUE TO INTERRUPTED SLEEP**

24 **A. IMPACT OF SLEEPER BERTH USAGE ON DRIVER FATIGUE: FINAL
25 REPORT (Exhibit 8, 'Notice of Initial Disclosures' 6/11/13)**

26 "Driver fatigue is recognized as a major factor in accidents involving long-haul truck drivers.
27 One way in which long-haul truck drivers decrease their fatigue level is through the use of
28 tractors equipped with sleeper berth units. However even with these units, the quality and
quantity of sleep that a driver obtains may not equal what they would receive if they were
sleeping at home. With that in mind, the primary goal of this project was to assess the impact

1 that sleeper berth usage has on operator alertness."

2 "There were a number of findings as part of this study that indicated that the quality and depth of
3 sleep was worse on the road, particularly for team drivers. Team drivers have significantly more
4 sleep disturbances than do single drivers. In addition, for team drivers who sleep while the
5 vehicle is in motion, factors such as vibration and noise affected their sleep, although lighting
6 and temperature aspects of the environment did not appear to be much of a factor. These findings
7 suggest that while the vehicle was in motion, the noise and motion environment in the sleeper
8 berth degraded the drivers' sleep. This finding has design implications for sleeper berths and
9 indicates that when the truck is in motion, greater attention should be paid to reducing the
10 amount of vibration and noise that invade the sleeper berth."

11
12 B. White House Report: "Rebuttal of Edgeworth Economics Review of FMCSA's
13 Regulatory Impact Analysis" Advocates for Highway and Auto Safety: October 2011
14 (Exhibit 8, 'Notice of Initial Disclosures' 6/11/13)

15 "The FMCSA has acknowledged that driver fatigue is grossly underreported for various reasons.
16 Advocates and others have pointed out in public comments to the 2008 proposed rule as well as
17 prior HOS rules that the agency has, in recent years, repeatedly grossly underestimated fatigue as
18 a factor in truck crashes... "FMCSA acknowledged in the 2000 NPRM that "The agency
19 tentatively estimates that 15 percent of all truck-involved fatal crashes are "fatigue-relevant,"
20 that is, fatigue is either a primary or secondary factor... The National Transportation Safety
21 Board (NTSB) estimated that driver fatigue is a factor in 31% of all fatal-to-driver heavy truck
22 crashes, and found fatigue to be a factor in even a higher percentage of all truck crashes
23 investigated by NTSB.

24 C. FMCSA: DRIVER FATIGUE (Exhibit 8, 'Notice of Initial Disclosures' 6/11/13)

25 "Trucks are a vital component of the U.S. economy. That contribution comes from moving
26 raw and finished products, as well as some bulk goods, long distances. Because of the long
27 distances and long driving times involved in these contributions to our economy, driver hours of
28 service (HOS) have been regulated for more than 70 years. Research on the safety implications
of truck driver work hours were investigated in pioneering research during the 1970s (e.g., Harris
and Mackie, 1972; Mackie and Miller, 1978). (Exhibit 8, 'Notice of Initial Disclosures' 6/11/13)

5. CONSTITUTIONAL PROTECTIONS FROM WARRANTLESS SEARCHES AND COMPULSORY ID

29 A. In this case, Plaintiff Martin Hill had no reason whatsoever to be bothered by police. He
30 was off-duty sleeping in the sleeper berth of a commercial vehicle. There were no "exigent
31 circumstances", there was no "reasonable suspicion" that a crime had been committed or was
32 about to occur; *Terry v. Ohio*, 392 U.S. 1 (1968). There were no grounds for a warrantless
33

1 search or arrest, detainment, Terry stop, or for a demand for identification or driver license.

2 B. *Brown v. Texas* held that absent reasonable suspicion of criminality, the
3 police can not simply stop people and ask for their names. *Brown v. Texas*, 443 U.S. 47 (1979)
4 "Detaining appellant to require him to identify himself constituted a seizure of his person subject
5 to the requirement of the Fourth Amendment that the seizure be "reasonable."
6
7 *Cf. Terry v. Ohio*, 392 U. S. 1; *United States v. Brignoni-Ponce*, 422 U. S. 873. The Fourth
8 Amendment requires that such a seizure be based on specific, objective facts indicating that
9 society's legitimate interests require such action, or that the seizure be carried out pursuant to a
10 plan embodying explicit, neutral limitations on the conduct of individual officers. *Delaware v.*
11 *Prouse*, 440 U. S. 648. Here, the State does not contend that appellant was stopped pursuant to a
12 practice embodying neutral criteria, and the officers' actions were not justified on the ground that
13 they had a reasonable suspicion, based on objective facts, that he was involved in criminal
14 activity. **Absent any basis for suspecting appellant of misconduct, the balance between the**
15 **public interest in crime prevention and appellant's right to personal security and privacy**
16 **tilts in favor of freedom from police interference."**
17

18
19 C. *Miranda v. Arizona* - 384 U.S. 436 (1966)

20
21 D. The right of privacy may not be intruded upon by the government absent probable cause, see
22 *Dunnaway v. New York*, 442 U.S. 200, 208 (1979); indeed, it is the probable cause requirement
23 that "safeguard[s] citizens from rash and unreasonable interferences with [their] privacy."
24 *Brinegar v. United States*, 338 U.S. 160, 176 (1949).

25
26 E. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975.)

27 **The government agents cannot stop and search all vehicles;** that is not reasonable under the
28

1 Fourth Amendment. The exception to the Fourth Amendment is an exceedingly narrow one,
2 *United States v. Place*, 462 U.S. 696 (1983)

3 F. *Florida v. Royer*, 460 U.S. 491, 500 (1983) "The person approached, however, need not
4 answer any questions put to him; indeed, he may decline to listen to the questions at all and may
5 go on his way" *Id.* at 497-98. "Failure to observe these limits converts to a Terry encounter into a
6 full-fledged arrest under the Fourth Amendment that can only be justified by probable cause."

7
8 *Royer*, 460 U.S. at 1325; *Dunaway*, 442 U.S. at 216; *Brignoni-Ponce*, 422 U.S. at 881-82.

9
10 G. *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973) the Fifth Amendment "not only protects the
11 individual against being involuntarily called as a witness against himself in a criminal
12 prosecution, but also privileges him not to answer official questions put to him in any other
13 proceeding, civil or criminal, formal or informal, where the answers might incriminate him in
14 future criminal proceedings"

15
16 H. *Haynes v. United States*, 390 U.S. 85, 97 (1968)

17 I. *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000) "If they do not learn facts rising to the level of
18 probable cause, an individual must be allowed to go on his way."

19
20 J. *Brinegar v. United States* - 338 U.S. 160 (1949) "The citizen who has given no good cause for
21 believing he is engaged in [criminal] activity **is entitled to proceed on his way without**
22 **interference**" (Page 338 U. S. 177)

23
24 K. *Kolender v. Lawson*, 461 U.S. 352, 369 (1983). Probable cause, and nothing less, represents
25 the point at which the interests of law enforcement justify subjecting an individual to any
26 significant intrusion beyond that sanctioned in Terry. See also *Kolender*, 461 U.S. at 366-67
27 noting that states "cannot abridge this constitutional rule by making it a crime to refuse to answer
28

1 police questions during a Terry encounter."

2 L. Texas may not criminalize by statute or practice conduct that is Constitutionally protected

3 *Coates v. Cincinnati*, 402 U.S. 611, 616 (1971)

4 M. *Berkemer v. McCarty*, 468 U.S. 420 (1984) An individual stopped pursuant to Terry is not "in
5 custody" for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966), precisely because the
6 individual remains free to ignore or otherwise decline to respond to an officer's questions.
7

8 N. *Michigan v. DeFillippo*, 443 U.S. 31, 40 (1979)

9 O. *Adams v. Williams*, 407 U.S. 143 (1972)

10 P. *Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967)

11 Q. *United States v. Robinson*, 414 U.S. 218, 227-28 (1973)

12 R. *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) "A statute which serves as "merely
13 the cloak" for arrests which would not otherwise be lawful is a pernicious affront to the Fourth
14 Amendment and cannot be upheld."
15

16 S. In *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004), The issue was
17 whether someone who had been lawfully subject to a Terry stop can also be required to provide
18 his name to the police officer who stopped him. The justices answered yes (5-4) but all nine
19 justices agreed that a person who is not behaving in a way that gives rise to an articulable
20 suspicion of criminality may not be required to state his name or show identification. The Hiibel
21 majority took care not to disturb precedents like *Brown v. Texas*.
22
23

24 T. TRAFFIC CITATIONS DO NOT WARRANT A SEARCH OF VEHICLE, DETAINMENT
25 OF PASSENGERS, OR COMPULSORY ID FROM VEHICLE OCCUPANTS.

26 In *Knowles v. Iowa*, 525 U.S. 113 (1998), The Supreme Court held that the Fourth Amendment
27 does not authorize a full automobile "search incident to citation". The Fourth Amendment
28

1 prohibits a police officer from further searching a vehicle which was stopped for a minor traffic
2 offense once the officer has written a citation for the offense: "the need to discover and preserve
3 evidence does not exist in a traffic stop, for once Knowles was stopped for speeding and issued a
4 citation, all evidence necessary to prosecute that offense had been obtained. Iowa's argument
5 that a "search incident to citation" is justified because a suspect may try to hide evidence of his
6 identity or of other crimes is unpersuasive."

8 CONCLUSION

9 Congress provided 42 U.S.C. § 1983 as a method for seeking relief against a state
10 official for a federal constitutional violation. *Hearth, Inc. v. Department of Public*
11 *Welfare*, 617 F.2d 381, 382-383 (5th Cir. 1980). 42 U.S.C. § 1983 states that any person, acting
12 under color of state law, who deprives a United States citizen "of any rights, privileges, or
13 immunities secured by the Constitution" shall be liable to such citizen.

14 Plaintiff has properly specified actions by Defendants that give rise to violations of
15 liberty and privacy rights under the Fourteenth Amendment.
16

17 The practice of compulsory ID is unconstitutional under the U.S. Constitution.

18 Contrary to Defendants' assertions, the rights articulated by Plaintiff are clearly established
19 rights. Plaintiff has made a strong showing that only matters of law need be considered for his
20 motion for summary judgment. The various implicated rights are well-established and Plaintiff is
21 due judgment as a matter of law.
22

23 As a result, Plaintiff respectfully requests that this Court grant him summary judgment.
24

25 WHEREFORE the plaintiff requests that this Honorable Court:

- 26 A. Grant his motion for Summary Judgment;
27 B. Award him nominal damages; and
28 C. Grant whatever additional relief is necessary and just.

1
2 Respectfully submitted,

3 Martin Victor Hill
4 *Appearing Pro Se*

5
6
7 **Notice of Electronic Filing**

8 I, Martin Victor Hill, do hereby certify that I have electronically submitted for
9 filing, a true and correct copy of the above and foregoing in accordance with the
10 Electronic Case Files System of the Western District of Texas, on this the 3rd day
11 of February, 2014.
12

13 /s/ Martin Victor Hill
14 MARTIN VICTOR HILL
15 *Appearing Pro Se*

16 **Certificate of Service**

17 I, Martin Victor Hill, do hereby certify that a true and correct copy of the above
18 and foregoing **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S**
19 **MOTION FOR SUMMARY JUDGMENT** has been served by means of the Western
20 District of Texas's CM/ECF filing system, in accordance with the Federal Rules of Civil
21 Procedure on this the 3rd day of February, 2014, addressed to all parties of record.
22

23 /s/ Martin Victor Hill
24 MARTIN VICTOR HILL
25 *Appearing Pro Se*

26 **IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF**
27 **TEXAS SAN ANTONIO DIVISION**
28

1 **MARTIN VICTOR**)
2 **HILL,**)
3 **Plaintiff,**)
4 vs.)
5 **TDPS, ET. AL.,**)
6 **Defendants**)

Civil Action
No.5:2012cv00827

7 **ORDER**

8 Came on to be heard **PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT WITH**
9 **BRIEF IN SUPPORT**, and any responses thereto.

10 This Court, after considering the pleadings of the parties filed herein, is of the
11 opinion that the following order should issue: It is hereby ordered that
12 **PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT** is hereby **GRANTED**.
13

14
15 SIGNED on this the _____ day of _____, 2014.
16
17
18

19 _____
20 **JUDGE PRESIDING**
21
22
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