UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LAS VEGAS DIVISION

JOSE DECASTRO,
Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT,
STATE OF NEVADA,
BRANDEN BOURQUE,
JASON TORREY,
C. DINGLE,
B. SORENSON,
JESSE SANDOVAL,
C. DOOLITTLE,
and DOES 1 to 50,
Defendants.

Case No. 2:23-cv-00580-APG-EJY

Honorable Judge Andrew Patrick Gordon
Presiding

JURY TRIAL DEMANDED BY RIGHT AND PRIVILEGE

JENSEN'S SUGGESTIONS IN OPPOSITION TO DEFENDANTS LVMPD, OFC. BOURQUE, OFC. DINGLE; OFC. SORENSON, OFC. SANDOVAL (ECF. 15) AND OFC. DOOLITTLE'S MOTION FOR PARTIAL DISMISSAL; AND DEFENDANT TORREY'S JOINDER TO MOTION FOR PARTIAL DISMISSAL (ECF. 17)

COMESNOW, Intervenor Plaintiff, Jason A Jensen ("JENSEN"), with the following Suggestions in Opposition to the Defendant's Motion to Dismiss:

1. Qualified Immunity, an Affirmative Defense, originally referred to as "good-faith immunity", is an element of Sovereignty.

2. "That Harlow 'completely reformulated qualified immunity along principles not at all embodied in the common law,' Anderson v. Creighton, 483 U.S. 635, 645, 107 S.Ct. 3034, 3042, 97 L.Ed.2d 523 (1987), was reinforced by our decision in Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). Mitchell held that Harlow established an "immunity from suit rather than a mere defense to liability," which, like an absolute immunity, "is effectively lost if a case is erroneously permitted to go to trial." 472 U.S., at 526, 105 S.Ct., at 2815 (emphasis supplied). Thus, we held in Mitchell that the denial of qualified immunity should be immediately appealable. Id., at 530, 105 S.Ct., at 2817." Wyatt v. Cole, 504 U.S. 158, 166, 112 S. Ct. 1827, 1832, 118 L. Ed. 2D 504 (1992)

3. "First, as THE CHIEF JUSTICE acknowledges, modern qualified immunity does not turn upon the subjective belief of the defendant. Post, at 1839, n. 2. Second, the immunity diverges from the common-law model by requiring the defendant, not the plaintiff, to bear the burden of proof on the probable-cause issue." Wyatt v. Cole, 504 U.S. 158, 172, 112 S. Ct. 1827, 1836, 118 L. Ed. 2D 504 (1992)

4. "The Court notes that we have recognized an immunity in the § 1983 context in two circumstances. The first is when a similarly situated defendant would have enjoyed an immunity at common law at the time § 1983 was adopted. Ante, at 1831. The second is when important public policy concerns suggest *176 the need for an immunity." Wyatt v. Cole, 504 U.S. 158, 175–76, 112 S. Ct. 1827, 1837, 118 L. Ed. 2D 504 (1992) (Chief Justice REHNQUIST, with whom Justice SOUTER and Justice THOMAS join, dissenting.)

5. “Cole and Robbins had acted under color of state law within the meaning of § 1983, it affirmed the District Court's grant of qualified immunity to respondents. In so doing, the Court of Appeals followed one of its prior cases, Folsom Investment Co. v. Moore, 681 F.2d 1032 (CA5 1982), in which it held that “a § 1983 defendant who has invoked an attachment statute is entitled to an immunity from **1831 monetary liability so long as he neither knew nor reasonably should have known that the statute was unconstitutional.” Id., at 1037. The court in Folsom based its holding on two grounds. First, it viewed the existence of a common law-probable cause defense to the torts of malicious prosecution and wrongful attachment as evidence that “Congress in enacting § 1983 could not have intended to subject to liability those who in good faith resorted to legal process.” Id., at 1038. **Although it acknowledged that a defense is not the same as an immunity, the court maintained that it could “transfor[m] a common law defense extant at the time of § 1983's passage into an immunity.”** Ibid. Second, the court held that while immunity for private parties is not derived from official immunity, it is based on “the important public interest in permitting ordinary citizens to rely on presumptively valid state laws, in shielding citizens from monetary damages when they reasonably resort to a legal process later held to be unconstitutional, and in protecting a private citizen from liability when his role in any unconstitutional action is marginal.” Id., at 1037. In defending the decision below, respondents advance both arguments put forward by the Court of Appeals in Folsom. Neither is availing.” Wyatt v. Cole, 504 U.S. 158, 163, 112 S. Ct. 1827, 1830–31, 118 L. Ed. 2D 504 (1992)

6. “**Section 1983 ‘creates a species of tort liability that on its face admits of no immunities.**’ Imbler v. Pachtman, 424 U.S. 409, 417, 96 S.Ct. 984, 988, 47 L.Ed.2d 128 (1976). Nonetheless, we have accorded certain government officials either absolute or qualified immunity *164 from suit if the ‘tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that ‘Congress would have specifically so provided had it wished to abolish the doctrine.’ ‘ Owen v. City of Independence, 445 U.S. 622, 637, 100 S.Ct. 1398, 1408,

63 L.Ed.2d 673 (1980) (quoting Pierson v. Ray, 386 U.S. 547, 555, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1967)). **If parties seeking immunity were shielded from tort liability when Congress enacted the Civil Rights Act of 1871—§ 1 of which is codified at 42 U.S.C. § 1983—we infer from legislative silence that Congress did not intend to abrogate such immunities when it imposed liability for actions taken under color of state law.** See Tower v. Glover, 467 U.S. 914, 920, 104 S.Ct. 2820, 2824, 81 L.Ed.2d 758 (1984); Imbler, supra, 424 U.S., at 421, 96 S.Ct., at 990; Pulliam v. Allen, 466 U.S. 522, 529, 104 S.Ct. 1970, 1974, 80 L.Ed.2d 565 (1984). **Additionally, irrespective of the common law support, we will not recognize an immunity available at common law if § 1983's history or purpose counsel against applying it in § 1983 actions.** Tower, supra, 467 U.S., at 920, 104 S.Ct., at 2824. See also Imbler, supra, 424 U.S., at 424–429, 96 S.Ct., at 992–994." Wyatt v. Cole, 504 U.S. 158, 163–64, 112 S. Ct. 1827, 1831, 118 L. Ed. 2d 504 (1992)

7. "'The sovereignty of each State ... implie[s] a limitation on the sovereignty of all its sister States.' World–Wide Volkswagen, 444 U.S., at 293, 100 S.Ct. 559." Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty., 582 U.S. 255, 263, 137 S. Ct. 1773, 1780, 198 L. Ed. 2D 395 (2017)

8. So does the Nature of Sovereignty itself- imply limitation. "In the Constitution the term State most frequently expresses the combined idea just noticed, of people, territory, and government. A State, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and **limited by a written constitution**, and established by the **consent of the governed**." Texas v. White, 74 U.S. 700, 19 L. Ed. 227 (1868), overruled on other matters by Morgan v. United States, 113 U.S. 476, 5 S. Ct. 588, 28 L. Ed. 1044 (1885) (emphasis added)

9. Tantamount to this "Consent of the Governed" and concept of a union of persons, must be an implication that the Government or Sovereign, cannot hold a "compelling interest" in that which

erodes the union itself and/or the consent of those governed. Put simply, no sovereign can lawfully maintain war with itself.

10. If the Magna Carta, and similar effects of the time, was the cross-roads from Natural Law into formation of Common Law, then the Constitution is the cross-roads of Common Law in the Creation of a Civil Law Jurisdiction. Put another way, the Constitution is a Common Law Document which is the Foundation of a Civil Law Jurisdiction or Sovereign.

11. This is what "Sovereign Citizens" fail to grasp. That basically the sovereign comes from the people in a geographical area **in union** for Common Law. Put simply, no army no sovereignty. Ergo, no person is or will ever be a nation upon themselves with any element of sovereignty.

12. But, on the same coin but perhaps the flip-side, the Sovereign cannot abuse its ultimate authority, or sovereignty, by policies and law that undermine the union of its people. To do so is to shatter the union which is its source of Sovereignty.

13. This is exactly what "Qualified Immunity" has become. This immunity has been exerted from various States in absurd degrees without reference to any "good faith" notions. To date, there are millions of police abuse videos on YouTube and the number grows each day. Common displays of State Sovereignty in pain compliance of failure to obey orders with tasers, irrational exercises of State Sovereignty, such as killing a man who is suicidal for safety, resorting to violence on a "drop of the hat", the list is rather quite endless. But the implication is tantamount to a declaration of war with its own people, or at least large subsections of the population.

14. Worse than that, is that the State, under this Clearly Established Affirmative Defense "Right", notion, has repeatedly exercised discretion to the same goals in overriding the restrictions of the Bill of rights, each time needing the people to expend tremendous resources to restore their standing of rights. The present case, is just another fashion of curtailing the First Amendment Rights of the Public. With seemingly no restriction of the erosion of Rights in the name of

Safety, no union is forever bound, and the public's waning of "consent" to be governed is being diluted. This could never be more apparent that survey of discontent within the minor aged population versus the elder "baby boomers".

15. To be noted, that the Officers in this case allege that, in a parking lot, with Mr. DeCastro at an approximate 10 feet distance of a parking area or lot, was a element of safety, presented by a "clear and present danger" that shall have been applied to the immediate area. Failure of Mr. DeCastro to obey these "safety" orders to back up beyond 10 approximate feet resulted in his arrest, while the traffic stop detainee was almost immediately released, resulted in "obstruction" and "interference" of that officer's traffic stop duties because DeCastro was "recording" and "talking" tot he detainee.

16. However, no actual inference to the hazards of a traffic stop were ever presented. In fact, the public policy and law is that officer safety is nearly unlimited in authority and need to demonstrate a compelling interest.

17. The "Contacts Between Police and the Public, 2020" Special Report to Congress published November 2022 by the Department of Justice can shed light on this "compelling interest" NCJ 304527 ("Special Report").

18. This Special Report indicates that in 2020 there were 53.8 million contacts with U.S. Residents over the age of 15. Of which, 16,709,200 were traffic stops of the driver and 4,918,700 stops for the passenger; additionally there were 2,626,500 "street stops". This totals to 24,254,400 stops where encounters are "Miranda" free.

19. The Special Report states that "About 1% of drivers pulled over in traffic stops had physical force used against them by police."

TABLE 8

Percent of U.S. residents age 16 or older whose most recent police contact was police-initiated or related to a traffic accident, by race or Hispanic origin and police action, 2018 and 2020

	2018					2020				
		Race/Hispanic origin					Race/Hispanic origin			
	Total	White[a*]	Black[a]	Hispanic	Other[a,b]	Total	White[a*]	Black[a]	Hispanic	Other[a,b]
Any police action[c,d]	3.7%	2.7%	6.8% †	5.9% †	2.5%	3.7%	3.0%	7.0% †	4.5% †	2.6%
Shouting	1.7%	1.2%	2.9% †	3.0% †	1.5%	1.6%	1.4%	3.1% †	1.6%	1.4%
Cursing	0.6%	0.5%	1.7% †	0.7%	:	0.6%	0.5%	1.4%	:	:
Threat/nonfatal use of force[e]	2.8%	2.0%	5.3% †	4.8% †	1.9%	2.7%	2.1%	5.5% †	3.4% †	1.8%
Threat of force	0.7	0.5	2.0 †	1.2 ‡	:	0.6	0.3	2.2 †	0.8 ‡	:
Handcuffing[f]	2.3	1.6	4.4 †	3.5 †	1.9	2.1	1.9	2.9	2.8 ‡	1.7
Pushing/grabbing/hitting/kicking	0.7	0.4	1.6 †	1.4 †	0.8	0.7	0.5	1.6 †	0.7	:
Using weapon/other force[g]	0.4	0.2	0.9 †	0.8 ‡	:	0.2	0.1	:	0.0[h]	:

20. Moreover, any person has potential to do harm. Even a wheelchair bound veteran is not someone to be underestimated at a careless degree. But exercising fear on any degree of potential is not reasonable. Police across the nation routinely take the stance that if you are “opposed” to their interests, such as not answering questions, refusing to provide identifying information without probable cause or whatever the exact implement requirements of a Terry stop consists of, specifying that “recording” itself is “suspicious” warranting an “investigation” whereas the subject is “required” to provide a photo ID. In conflict breeding fashion, if a person were to bring action against the officer for giving “unlawful” orders – that case would be less probable for Plaintiff relief than this one and the outlook of this case is dismal if DeCastro is forced to proceed independently.

21. The Constitution of the United States and Bill of Rights is approximately 7,500 words. This document has gendered affinity to the union beyond compare to other nations, governments, and documents of formation.

22. However, from that Document, and the Rights Sought To Protect, approximately 95,000 pages of Federal Civil Statute Code has been enacted with somewhere about the same size body of text for the Code of Federal Regulations.

23. Dwarfing that body of Civil Codes, is the insurmountable legal opinion associated. The courtlistener.com RECAP project takes donations on PACER documents in a community legal access project. Any person can download these databases via the Bulk Data download options. Available is an “opinion[...].csv” (comma separated file) that is compressed to approximately 30 gigabytes or billion bytes. Uncompressed, this data file balloons to around 200 gigabytes or billion bytes. Encoded in the ASCII data-bit format, each byte represents a character of text. At an approximate 200 billion characters of opinion text, this only represents the data donated to the RECAP project which is highly abridged.

24. Essential to the existence of a Right, is the ability to defend the exercise or enforce option that Right. However, the people rights, all of them, require the operation of this body of law, which is beyond human capacity.

25. It should be noted, that while each state has a body of law less in breadth that the Federal Law, the combined 50 states dwarfs the Federal Jurisdiction as well. A person, except a mentally ill person with a broken mind from the very size of the law with Sovereign Citizen notions, must heed and be subject to the entirety of that law. As no man can even comprehends such a thing, they very well cannot follow it. As the ability to act lawfully is so convoluted to obtain surety, the law cannot maintain the respect of the people.

26. The Police may believe Mr. DeCastro to a be a vile man, with words of acid to the soul-- but whatever they regard him, the State must accept he is a product of their creation, discontent in this Union. He is joined by CopWatch, hundreds of auditors, and, worse, is part of a group of unassociated individuals in common goal funded, fueled, and maintained by worldwide viewership on social media, such as YouTube.

WHEREFORE,

JENSEN would request denial of qualified immunity and commencement of the resultant immediate appeal.

Sincerely and Respectfully Submitted,

//s/JasonAJensen

Jason A Jensen

CERTIFICATE OF SERVICE

I, Jason A Jensen, did cause all defendants currently present and in appearance of this Court to be served electronically by the ECF/CM of the Federal Court, on this day the 13th of June 2023, as soon as the Clerk of Court files this paperwork as submitted to lv_public_docketing@nvd.uscourts.gov.

//s/JasonAJensen