In the United State District Court Southern District of Florida

Case No.
Warren Redlich,
Plaintiff,
V.
Craig Leen, individually and as City Attorney for the City of Coral Gables, the City of Coral Gables, the Coral Gables Police Department, Edward Hudak individually and as Police Chief, Officers Alejandro Escobar, Augustin Diaz, Joel Rios, and John Doe #1-42, The Reyes Law Firm, PA, Israel U. Reyes and Manuel A. Guarch, Katherine Fernandez Rundle, individually and as State Attorney of the 11th Judicial Circuit, and Assistant State Attorneys James Roe #1-4 individually, and Officers Robert Moe #1-4, of the Miami-Dade County Police Department.
/

COMPLAINT WITH JURY DEMAND

PLAINTIFF WARREN REDLICH, pro se, files this Complaint and sues Craig Leen, individually and as City Attorney for the City of Coral Gables, the City of Coral Gables, the Coral Gables Police Department, and Edward Hudak individually and as Police Chief, Officers Alejandro Escobar, Augustin Diaz, Joel Rios, John Doe #1-42, The Reyes Law Firm, PA, Israel Reyes and Manuel Guarch, Katherine Fernandez Rundle, individually and as State Attorney for the 11th Judicial Circuit, Assistant State Attorneys James Roe #1-4, and Officers Robert Moe #1-4, of the Miami-Dade County Police Department and states:

JURISDICTION

- (1) This is an action for damages arising out of violations of federal law detailed below in an amount greater than \$15,000.
- (2) This action is brought pursuant to 42 U.S.C. § 1983, and the Fourth Amendment to the United States Constitution. Jurisdiction is founded on 24 U.S.C. §§ 1331, 1343, 1367, 42 U.S.C. § 1988 and the Fourth Amendment to the United States Constitution.
- (3) The acts and practices constituting the violations alleged occurred within the jurisdiction of the United States District Court, in and for the Southern District of Florida. In connection with the acts, practices and violations alleged below, all defendants directly or indirectly violated Plaintiff's constitutional rights.
- (4) Plaintiff hereby demands a jury trial.

PARTIES

- (5) At all times material hereto, Coral Gables was a Florida City, with principal office and place of business in Coral Gables, Miami-Dade County, Florida and was *sui juris*.
- (6) Edward Hudak, Alejandro Escobar, Augustin Diaz, Joel Rios, were employees, law enforcement officers and agents of Coral Gables, were acting under the authority of the State of Florida and under color of law as police officers in the employ of Coral Gables and were over 18 years of age and were sui juris.
- (7) John Doe #1-10 and Jane Doe were as yet-unidentified employees, law enforcement officers and agents of Coral Gables, were acting under the authority of the State of Florida and under color of law as police officers in the employ of Coral Gables and were over 18 years of age and were *sui juris*.

- (8) Craig Leen was an employee of Coral Gables, and acted under the authority of the State of Florida and under color of law as City Attorney in the employ of Coral Gables and was over 18 years of age and was *sui juris*.
- (9) Katherine Fernandez Rundle was the State Attorney for the 11th Judicial Circuit (Miami-Dade County).
- (10) James Roe #1-4 were and/or are as-yet unidentified Assistant State Attorneys for the 11th Judicial Circuit.
- (11) Robert Moe #1-4 were and/or are as-yet unidentified officers of the Miami-Dade County Police Department
- (12) At all times material hereto, Plaintiff Warren Redlich was over 18 years of age, lives and works in the Southern District of Florida, and was and is *sui juris*.
- (13) Plaintiff Redlich is an attorney admitted in New York and Florida, and in the Southern District of Florida. He is the author of the book "Fair DUI: Stay Safe and Sane in a World Gone MADD" and creator of the Fair DUI Flyer.
- (14) Plaintiff Redlich is representing himself *pro se*, and is thus ineligible for attorney fees for himself, but is working with at least one other attorney to assist in this litigation. As such Plaintiff does seek fees to cover the work of other attorneys who assist him.
- (15) All defendants live and work in the Southern District of Florida.

FACTUAL ALLEGATIONS

Background

(16) In 2013 Plantiff Redlich developed a new approach to help drivers handle traffic stops and checkpoints that has become popularly known as the "Fair DUI Flyer". The Florida version is attached as Exhibit A.

- (17) Key elements of the approach are that the driver does not roll down the window and does not speak, in order to prevent false claims by police of "the odor of alcoholic beverage" and impaired or slurred speech.
- (18) The flyer overtly asserts the user's rights under the Fourth, Fifth and Sixth Amendment rights by stating in large bold print:

I REMAIN SILENT NO SEARCHES I WANT MY LAWYER

- (19) The Florida version of the flyer specifically directs officers to § 322.15 of the Florida statutes, that drivers are not required to hand over their license.
- (20) Plaintiff Redlich worked with others to test the Fair DUI Flyer in checkpoints around Florida, including Photography is Not a Crime (PINAC).
- (21) After over a year of obscurity, the Fair DUI Flyer gained national attention in January of 2015 because of an activist's YouTube video from Levy County, Florida, and from subsequent media coverage.
- (22) In response to that media attention, prosecutors and police attorneys in Florida began discussing how to address the Fair DUI Flyer.
- (23) On or about February 12, 2015, Plaintiff Redlich appeared on NewsMax TV debating Florida Traffic Safety Resource Prosecutor Garett M. Berman.
- (24) On or about February 18, 2015, Mr. Berman issued a memo discussing various aspects of the Fair DUI Flyer, anticipating that certain issues would "only be resolved through litigation."
- (25) Berman's memo asserted his incorrect opinion that § 322.15, as amended in 2014, requires drivers to physically hand over or surrender their license to police in traffic stops and checkpoints.
- (26) On or about March 5, 2015, Defendant Leen as City Attorney adopted an illegal policy directing the city police officer defendants in this matter to arrest drivers who do not "physically provide the license to the officer" for a misdemeanor, "Resisting without violence," under F.S. 843.02.

- (27) On or about June 29, 2015, Plaintiff Redlich e-mailed Defendant Leen offering "free legal advice" that the state legislature indicated in § 322.15(4) that any violation of the statute was to be treated as "a noncriminal traffic infraction," and that the policy he had adopted would "walk you, your city and your officers into a §1983 claim and potentially cost your taxpayers thousands of dollars. ... I suggest you train your officers to write the driver a ticket and move on."
- (28) Defendant Leen never replied to that message.
- (29) Defendant Leen ignored or disregarded that message, demonstrating deliberate indifference both to the rights of drivers and to the problems this policy would create for police officers working for the city.

The Checkpoint

- (30) On or about August 19, 2015, Defendants conducted a so-called "sobriety checkpoint" on South Dixie Highway at or near Riviera Drive and the address 500 South Dixie Highway, in the city of Coral Gables, in the Southern District of Florida.
- (31) The checkpoint was conducted improperly, in an overbroad manner, beyond the limits allowed by the US Supreme Court.
- (32) Defendants' practice in this checkpoint was to check the license of every stopped driver at the initial stop, which does nothing to address the stated purpose of sobriety or impairment.
- (33) It is noteworthy that some other agencies understand the breadth limitations of checkpoints, such as Florida Highway Patrol, which in its guidelines states:
 - Unless the driver's license check is a designated part of the safety check procedure, members are not to request to see a driver's license.

- (34) Similarly, the Coral Springs Police Department in Broward County conducts checkpoints per its guidelines such that a license is checked only in a license checkpoint, but not in a vehicle inspection checkpoint, nor in a DUI checkpoint.
- (35) Defendants' had written guidelines for the checkpoint, prepared by Defendant Escobar and reviewed and approved by Defendant Hudak, that did not require drivers to hand over their license.
- (36) Contact line officers were instructed by the guidelines to "determine if they have a driver's license and to observe if any indications of impairment are visible."
- (37) Contact line officers were further instructed by the guidelines to ask drivers: "May I see your driver's license."
- (38) Defendants employed a drug-sniffing dog at the checkpoint, which has nothing to do with the stated purpose of sobriety or impairment, and was not included in the guidelines for the checkpoint.
- (39) Defendants otherwise engaged in arbitrary behavior at the checkpoint.
- (40) Defendants Escobar, Hudak, Diaz, Rios, and John Doe #1-42, were on the scene and conducted the checkpoint.
- (41) Defendants Reyes, Guarch and/or Assistant State Attorneys James Roe #1-4 were on scene and directed at least some of the activities conducted by the police defendants.
- (42) Plaintiff, along with journalists from PINAC News, decided to test the checkpoint.
- (43) Plaintiff drove a car belonging to PINAC founder and journalist Carlos Miller, bearing the license plate PINAC, into the checkpoint with PINAC journalist Grant Stern in the passenger seat, and with approximately six cameras inside the car. Mr. Miller was on foot using his camera to record the test from outside.

- (44) Plaintiff approached the checkpoint at approximately 10:00 PM and was directed to enter by unidentified officers.
- (45) An unidentified officer, Defendant John Doe #1, of the Coral Gables Police

 Department approached the vehicle and Plaintiff displayed the Florida version
 of the Fair DUI Flyer without opening the window.
- (46) Additional officers, Defendants John Doe #2, 3 and 4, approached the vehicle, and asked to see Plaintiff's license.
- (47) Plaintiff displayed the license by pressing it up against the window without rolling the window down.
- (48) Defendant John Doe #2 asked Plaintiff to "crack the window" and slide the license out. Plaintiff did not crack the window.
- (49) Nothing in the guidelines give any instruction or requirement for drivers to crack or open their windows, nor to physically hand over their license.
- (50) Plaintiff was directed by Defendants John Doe #1-4 to drive into a secondary area of the checkpoint and Plaintiff complied.
- (51) Plaintiff was directed to stop in the secondary area by Defendant John Doe #5 and Plaintiff complied.
- (52) In the secondary area Defendants John Doe #6 and 7 approached Plaintiff's vehicle and asked to see Plaintiff's drivers license. Plaintiff again displayed and exhibited his license by pressing it up against the closed window.
- (53) Defendant John Doe #7 asked plaintiff: "Sir, can you put the license out the window? That's all we need to do."
- (54) When Plaintiff did not put the license out the window, John Doe #7 stated "That's not going to work sir."
- (55) At roughly this point a larger number of police officers began approaching and circling the vehicle.
- (56) Defendant Escobar approached, knocked on plaintiff's window, and again asked Plaintiff to lower the window and hand Escobar the drivers license, asserting that such is required by state law.

- (57) Plaintiff then pressed a copy of Florida Statute §322.15 to the window and pointed to subsection 4 of the statute. Defendant Escobar ignored and disregarded it.
- (58) Defendant Escobar incorrectly stated that §322.15(1) requires drivers to "hand over" their licenses.
- (59) Defendant Escobar ignored the guidelines that he had prepared by insisting that Plaintiff hand over the license for inspection.
- (60) Defendant Escobar threatened to arrest Plaintiff for "obstruction" if Plaintiff did not hand over the license. He later indicated that Plaintiff would be arrested for "resisting without violence."
- (61) Defendant Escobar stated: "I have the state attorneys here and my legal advisors. They have authorized me to arrest you if you refuse to hand over your drivers license.
- (62) Presumably, Escobar's mention of "state attorneys" was a reference to Defendants Assistant State Attorneys in the office of Defendant Katherine Fernandez Rundle.
- (63) Presumably, Escobar's mention of legal advisors was a reference to Defendants Guarch, Reyes, and the Reyes Law Firm.
- (64) Defendant Escobar repeatedly stated that he was "asking" Plaintiff to hand over the license. These statements, as well as those of the other police defendants, were always framed as requests, rather than orders.
- (65) Defendant Escobar never ordered Plaintiff to hand over the license.
- (66) During the encounter several police officers, John Doe #8-15, shined flashlights into the vehicle specifically aimed at cameras held by Plaintiff Redlich and Mr. Stern, in a comically pathetic attempt to interfere with their First Amendment rights to record the encounter.
- (67) Defendant Escobar ordered other police officers to move police vehicles into position to block the vehicle in.

- (68) Defendants shut down the normal operation of the checkpoint and surrounded the car with an estimated 40 police officers (including Defendants Rios, Diaz, Escobar, Hudak, John Doe #1-42 and Robert Moe #1-4 of Miami-Dade Police).
- (69) Defendant Escobar opened the unlocked door to the vehicle and Defendant Rios opened Plaintiff's seatbelt. Plaintiff stepped out of the car under duress.
- (70) Defendants Escobar, Diaz and Rios placed Plaintiff in handcuffs.
- (71) Plaintiff was held in custody, in handcuffs, against his will by the defendants for approximately three hours.
- (72) Plaintiff was subjected to a pat-down search. Defendant Rios asked if Plaintiff was carrying any weapons and Plaintiff said "right front pocket."
- (73) Defendants removed all items from Plaintiff's pockets including his lawfully owned and carried Glock 26 pistol with two extra magazines.
- (74) The vehicle, containing items belonging to Plaintiff as well as to Miller and Stern, was held by Defendants without consent and against the will of the plaintiff, Mr. Miller and Mr. Stern.
- (75) Mr. Stern was holding the plaintiff's camera in his hand, recording video of the encounter, when he stepped out of the vehicle. One of the Robert Moe Miami-Dade police defendants slapped the camera out of Stern's hand and slammed it onto the hood of the vehicle.
- (76) Other members of the Miami-Dade police department participated in the unlawfully conducted checkpoint.
- (77) Defendants conducted a full search of the vehicle without the consent and against the wishes of Plaintiff, Miller and Stern.
- (78) Defendants held Plaintiff in custody for approximately three hours.
- (79) Plaintiff was kept in handcuffs for the entire time in custody.
- (80) Plaintiff was forced, against his will, into various uncomfortable positions.
- (81) Plaintiff was forced to sit in an uncomfortable chair with his hands, cuffed, behind his back, for a lengthy period of time.

- (82) Plaintiff was forced to sit in the back of an unpleasant "paddy wagon" that lacked adequate safety measures, with his hands in cuffs behind his back, subjecting plaintiff to fear for his safety should the vehicle have actually been driven with him in it (it was not).
- (83) Plaintiff was removed from the paddy wagon before it went anywhere, and then forced to stand for a lengthy period with his hands in cuffs behind his back.
- (84) Plaintiff was then forced to sit in the extremely uncomfortable back seat of a Coral Gables police car, with his hands in cuffs behind his back in a very awkward and uncomfortable position.
- (85) Throughout the encounter Defendants made no effort to assess plaintiff for any signs of impairment and/or sobriety.
- (86) Defendant Officers of Defendant Miami-Dade County participated in the checkpoint and in Plaintiff's arrest and detention.
- (87) The actions of all the defendant police officers were pursuant to policies, practices and procedures directed by the defendant municipalities.
- (88) The actions of all the defendant Assistant State Attorneys were pursuant to policies, practices and procedures directed by Defendant Katherine Fernandez Rundle and policymakers within her office.
- (89) Ultimately Plaintiff was released without being charged with any crime.

 Defendant Escobar stated that he was "unarresting" Plaintiff, not charging him with a crime, and instead issued a traffic ticket for "failure to exhibit" under §322.15.
- (90) Defendants returned Plaintiff's pistol and magazines to him after he was released and was ordered not to load the pistol until he was not in the presence of police. The pistol had been unloaded and all rounds removed from the magazines and were stored in an awkward manner, leaving Plaintiff temporarily disarmed and unable to defend himself in Miami-Dade County,

- the most dangerous county in the state and one of the most dangerous metropolitan areas in the country, after midnight.
- (91) Plaintiff, who is right-handed, experienced numbness on the side of his right thumb as a result of the handcuffs placed on him by Defendants Diaz and Rios and the positions he was placed in by the various defendants.
- (92) Plaintiff Redlich sought treatment for this injury from an orthopedic surgeon in Boca Raton. It was diagnosed as a temporary nerve impingement and it resolved within a couple of weeks, consistent with the prognosis offered by the doctor.

Traffic Court

- (93) On October 7, 2015, Plaintiff appeared in Miami Traffic Court (Gerstein Justice Building) to address the ticket issued by Defendant Escobar.
- (94) The case was captioned "State of Florida vs. Warren Redlich."
- (95) Defendant Guarch appeared, illegally asserting himself and Defendant The Reyes Law Firm PA as prosecutors, purportedly on behalf of Defendant City of Coral Gables, none of whom have standing to appear as prosecutors on behalf of the State of Florida in such a matter.
- (96) The Florida Constitution, Article V, Section 17, provides in pertinent part:
 - Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors.
- (97) The case was based on the ticket issued on an alleged violation of Florida Statute §322.15, which is a state statute and not a municipal ordinance.
- (98) Despite the efforts of these defendants, the Traffic Hearing Officer dismissed the ticket.

- (99) On or about October 12, 2015, Defendants Guarch, Reyes, and The Reyes Law Firm PA, filed a motion in Miami Traffic Court for a new hearing on the ticket, purportedly on behalf of Defendant City of Coral Gables.
- (100) These defendants improperly changed the caption of the case to: "State of Florida, by and through City of Coral Gables v. Warren Redlich".
- (101) The case was reopened by the initial Traffic Hearing Officer, but the decision did not explicitly state that the dismissal was vacated.
- (102) On December 2, 2015 Plaintiff again appeared in Miami Traffic Court, on a notice for trial.
- (103) Defendant Guarch and Defendant Israel Reyes both appeared and continued to illegally assert themselves as prosecutors, despite having no standing to make such an appearance.
- (104) After argument the matter was postponed to a later date. It remains pending.

COUNT 1: INJUNCTIVE RELIEF

- (105) Plaintiff repeats and realleges all previous allegations.
- (106) Plaintiff asserted his Fourth, Fifth, and Sixth Amendment rights immediately and persistently throughout the course of his time in the checkpoint, until he was removed from the vehicle against his will.
- (107) The Fourth Amendment protects people, such as Plaintiff, from searches or seizures without probable cause.
- (108) Plaintiff was stopped, arrested, and searched by Defendants, all without probable cause.
- (109) Defendants insisted that Plaintiff roll down his window and hand over documents, knowing full well that Plaintiff had asserted his Fourth Amendment rights.
- (110) The Fifth Amendment protects the right of people, such as Plaintiff, to remain silent when confronted by government officials such as Defendants.

- (111) The Fifth Amendment right goes further, precluding government officials, such as Defendants, from asking questions of people, such as Plaintiff, who have expressly invoked the right to remain silent while in custody.
- (112) Defendants, after having stopped Plaintiff against his will, detaining him, surrounding him with approximately 40 armed police officers, blocking in his car with two police vehicles, threatening Plaintiff with arrest, persisted in talking to and questioning Plaintiff.
- (113) The Sixth Amendment protects the right of people, such as Plaintiff, to counsel.
- (114) Defendants, after having stopped Plaintiff against his will, detaining him, surrounding him with approximately 40 armed police officers, blocking in his car with two police vehicles, threatening Plaintiff with arrest, persisted in talking to and questioning Plaintiff, all without affording Plaintiff the opportunity to speak with counsel.
- (115) In response to media attention to the Fair DUI Flyer, members of the Florida law enforcement community have made public statements rejecting drivers' rights in checkpoints.

(116) For example:

"They wouldn't be allowed out of that checkpoint until they talk to us," St. Johns County Sheriff David Shoar said. Shoar, president of the Florida Sheriffs Association, added: "We have a legitimate right to do it. If I was out there, I wouldn't wave them through. I want to talk to that person more now."

Peter Holley, "Why Florida drivers are making videos of themselves refusing to talk to police at DUI checkpoints," <u>Washington Post</u>, February 10, 2015 (emphasis added).

(117) Two other sheriffs, from Lee County and Pinellas County, have threatened to arrest drivers on the spot if they use the flyer - for the mere assertion of constitutional rights.

(118) Indeed a Florida appellate court has ruled that drivers do not have such rights in checkpoints:

Every encounter with a stopped vehicle included a request for documentation and some preliminary questioning and observation for signs of alcohol impairment. Although an "ideal" set of guidelines would anticipate that a motorist might refuse to cooperate with police during a roadblock operation, a plan that does not cover such an occurrence is not per se constitutionally invalid. Motorists are neither expected nor privileged to refuse to obey these minimal necessary and legitimate demands at a valid roadblock.

Rinaldo v. State, 787 So.2d 208 (4th DCA 2001) (emphasis added).

- (119) The First Amendment protects the right of people, such as Plaintiff, to record police while they are public, engaged in their work as police.
- (120) Defendants repeatedly and persistently interfered with Plaintiff's right to record them by shining flashlights at Plaintiff's cameras and by depriving him of his camera when they forcibly removed him from the vehicle.
- (121) Plaintiff was treated in this manner because of malice in the hearts and minds of some of the Defendants, including Defendants Leen, Guarch, Reyes, The Reyes Law Firm PA, the State Attorney defendants and some of the police defendants.
- (122) Plaintiff continues to be a resident of the State of Florida and of Palm Beach County, and he drives in Miami-Dade County and the City of Coral Gables often.
- (123) Plaintiff carries the Fair DUI Flyer in both family cars, and will continue using it in any checkpoints and traffic stops he faces.
- (124) Since Defendants continue to maintain policies, practices and procedures that put Plaintiff and others like him at risk for further infringements, injunctive relief is necessary and proper.

- (125) With all that in mind, Plaintiff seeks injunctive relief, including but not limited to:
 - a. An order barring Defendants from conducting any checkpoints; or
 - An order strictly limiting the scope of any checkpoints conducted by Defendants and limiting the manner in which such checkpoints are conducted; and
 - An order mandating that Defendants, while conducting checkpoints, wave through anyone who asserts their constitutional rights without any inquiry or demands; or
 - d. An order mandating that Defendants, while conducting checkpoints, wave through anyone who asserts their constitutional rights without any inquiry or demands unless police have articulable probable cause related to the stated purpose of the checkpoint; and
 - e. An order mandating that Defendants allow, without any interference or hindrance, people to photograph and record checkpoints using photography and both audio and video recording devices.

COUNT 2: FALSE ARREST

- (126) Plaintiff repeats and realleges all previous allegations.
- (127) At all times Defendants knew or should have known that the arrest of Plaintiff was on false charges and that no probable cause existed for the charges or for the arrest.
- (128) Once Plaintiff asserted his Fourth Amendment right in the checkpoint,

 Defendants had no authority to demand to see or hold his license as there was
 no probable cause to believe he was unlicensed nor otherwise in violation of
 any law.
- (129) Defendants further had no authority to demand physical inspection of the license as it was not called for in the checkpoint guidelines; the stated purpose of the checkpoint had nothing to do with determining whether drivers

- possessed a license, valid or otherwise; and/or the checkpoint was over broad in violation of Indianapolis v. Edmond. 531 US 32 (2000).
- (130) Plaintiff nevertheless complied with §322.15 by showing his license, consistent with the title of the statute as well as the use of the word "display" in §322.15(2).
- (131) The statute calls for police to issue a non-criminal non-moving traffic infraction for violation of the statute.
- (132) Instead, Defendant Escobar on orders from Defendant Leen, the State
 Attorney defendants, and from the police advisor defendants Guarch, Reyes
 and the Reyes Law Firm, arrested Plaintiff for "resisting without",
 presumably referring to §843.02 "Resisting Officer Without Violence."
- (133) It was improper for Defendants to insist on display or surrender of the license in a so-called "sobriety checkpoint" as the content, character and quality of the license is irrelevant to the issue of a driver's sobriety or impairment and as noted earlier the demand to physically hold the license for inspection was contrary to the checkpoint guidelines.
- (134) As a direct and proximate result of the false arrest, Plaintiff suffered substantially including deprivation of his liberty and pain and suffering due to the thumb injury.

COUNT 3: FALSE IMPRISONMENT

- (135) Plaintiff repeats and realleges all previous allegations.
- (136) After the unlawful arrest of Plaintiff, Defendants unlawfully and by force imprisoned Plaintiff for approximately three hours.
- (137) There was no law enforcement need for such imprisonment, nor any justifiable reason for it.
- (138) Defendants, in particular the Coral Gables police defendants at the direction of the State Attorney and police advisor defendants, intentionally confined

- Plaintiff in various locations in the area of the checkpoint against his will and not of his choosing.
- (139) Defendants' imprisonment of Plaintiff was without lawful authority and in violation of Florida Statute § 787.02, and constitutes a felony in the third degree, as well as common law.
- (140) As a direct and proximate result of the false arrest, Plaintiff suffered substantially including deprivation of his liberty, discomfort, and pain and suffering due to the thumb injury.

COUNT 4 - 42 USC § 1983 - FOURTH AMENDMENT FALSE ARREST

- (141) Plaintiff repeats and realleges all previous allegations.
- (142) This cause of action is brought by Plaintiff against all Defendants for deprivation of constitutional rights within the meaning of 42 U.S.C. § 1983.
- (143) While Defendants were acting under the authority of the State of Florida and under color of law as police officers in the employ of the municipal defendants or as Assistant State Attorneys in the employ of Ms. Rundle, or as police advisors in the employ of the City of Coral Gables, they subjected Plaintiff to the deprivation of the rights and privileges secured to him by the Constitution of the United States including the constitutional right not to be deprived of liberty and to be free from unlawful arrest under the United States Constitution, including the Fourth Amendment, within the meaning of 42 U.S.C. § 1983.
- (144) With regard to the violations of the constitutional rights of Plaintiff as alleged in this count, the actions of Defendants were done with malicious intent, ill will, spite, intent to injure, evil motive, wickedness, formed design to injure or oppress Plaintiff and were done with a reckless or callous indifference to Plaintiff's federally protected rights.

(145) As a further direct and proximate result of the false arrest of Plaintiff, he has further suffered mental anguish and loss of his freedom and civil rights.

<u>COUNT 5 - 42 U.S.C. § 1983 - FOURTH AMENDMENT</u> <u>EXCESSIVE FORCE</u>

- (146) Plaintiff repeats and realleges all previous allegations.
- (147) This cause of action is brought by Plaintiff against all Defendants for deprivation of constitutional rights within the meaning of 42 U.S.C. § 1983.
- (148) As part of Defendants' illegal arrest, they placed Plaintiff in handcuffs.
- (149) Defendants' use of handcuffs on Plaintiff was unnecessary, illegal, and violated his rights under the US Constitution and the Fourth Amendment.
- (150) Defendants' actions, placing Plaintiff in uncomfortable positions, especially in the back seat of the Coral Gables police car, and in the back of an unsafe paddy wagon, were excessive, unnecessary and illegal, violating Plaintiff's rights under the Constitution and the Fourth Amendment.
- (151) As a result Plaintiff suffered loss of liberty, severe discomfort, emotional distress, and pain and suffering especially in the injured thumb.

COUNT 6 - BATTERY

- (152) Plaintiff repeats and realleges all previous allegations.
- (153) Defendants engaged in a course of conduct that they intended to touch or make contact with Plaintiff's body, and did touch Plaintiff's body, in a manner that was harmful and offensive, all without Plaintiff's consent and against his will.
- (154) As a result of such battery, Plaintiff suffered loss of liberty, discomfort, and pain and suffering.

COUNT 7 - 42 USC 1983 - FIRST AMENDMENT

- (155) Plaintiff repeats and realleges all previous allegations.
- (156) During the checkpoint encounter, Defendant police officers (on information and belief following direction from the other defendants) interfered with Plaintiff's effort to record the events as they transpired.
- (157) Such interference included shining flashlights on cameras operated and/or owned by Plaintiff and depriving Plaintiff of the ability to use a camera while he was in custody.
- (158) One of the defendant Miami-Dade officers interfered with Mr. Stern's effort to record the encounter while he was using Plaintiff's camera.
- (159) Plaintiff had and has a right under the First Amendment to record police while they are engaged in public activity without reasonable expectation of privacy.
- (160) As a result of Defendants' actions, plaintiff was wrongly deprived of his rights under the First Amendment.

COUNT 8 - 42 USC 1983 - SECOND AMENDMENT

- (161) Plaintiff repeats and realleges all previous allegations.
- (162) When Plaintiff was removed from the vehicle, Defendants took his lawfully owned and carried pistol and extra magazines.
- (163) Plaintiff has the right, under the Second Amendment to the US Constitution (as well as Article I, Section 8 of the Florida Constitution and Chapter 790 of the Florida Statutes), to keep and bear arms and to carry a concealed weapon.
- (164) Defendants unlawfully interfered with Plaintiff's rights under the Second Amendment and Florida law when they took his pistol and magazines from him.

COUNT 9 - 42 USC 1983 - FOURTH AMENDMENT - STOP

- (165) Plaintiff repeats and realleges all previous allegations.
- (166) Defendants conducted the checkpoint in an unlawful and overbroad manner, violating the principles set forth in <u>Indianapolis v. Edmond</u>, 531 US 32 (2000).
- (167) Because the checkpoint was conducted improperly, Plaintiff's vehicle was stopped unlawfully and in violation of his Fourth Amendment right to be free from unreasonable seizures.
- (168) Plaintiff was deprived of his constitutionally protected liberty as a result of Defendants' illegal checkpoint policies, practices and procedures.

COUNT 10 - 42 USC 1983 - FOURTH AMENDMENT - SEARCH

- (169) Plaintiff repeats and realleges all previous allegations.
- (170) After Plaintiff's unlawful arrest, Defendant police officers searched plaintiff's person, as well as the car which plaintiff had been driving, all despite Plaintiff's obvious assertion of his Fourth Amendment right to be free from unreasonable searches.
- (171) The searches were unlawful because there was no probable cause to search and the arrest was unlawful.
- (172) The search of the car was further unlawful because there was no connection with Plaintiff's arrest, and because the car could have been driven away by either the passenger or the vehicle's owner.
- (173) At the beginning of the checkpoint encounter, after Plaintiff had asserted his right to be free from searches by displaying the Fair DUI Flyer, Defendant police officers repeatedly requested that Plaintiff roll down his window and threatened him with arrest if he refused to do so.

- (174) It should be noted that Supreme Court case law authorizing checkpoints, such as Michigan v. Sitz, 496 US 444 (1990), addresses stops when a driver has not affirmatively asserted rights under the Fourth Amendment.
- (175) This case is different because, after the initial stop, Plaintiff affirmatively asserted his rights under the Fourth Amendment, and yet Defendants persisted in infringing his rights.
- (176) In other words Plaintiff did not merely not waive his rights, but rather he expressly invoked those rights.
- (177) In the face of that express invocation of rights, while Plaintiff was unlawfully detained in Defendants' custody, Defendants nevertheless violated those rights.
- (178) As a result of Defendants' unlawful conduct, Plaintiff was deprived of his liberty.

COUNT 11 - 42 USC 1983 - FIFTH AMENDMENT - SILENT

- (179) Plaintiff repeats and realleges all previous allegations.
- (180) Plaintiff asserted the right to remain silent by use of the Fair DUI Flyer.
- (181) During the checkpoint Plaintiff was in custody of the Defendants. He was not free to leave. Defendants went so far as to block the car in with other vehicles.
- (182) Despite being in custody and having asserted the right to remain silent, Defendants still attempted to communicate with Plaintiff.
- (183) After Plaintiff was arrested, Defendants spoke to Plaintiff, continuing to ask questions without obtaining any waiver of the right to remain silent, which he had asserted.
- (184) It is important for this Court to state, unequivocally, that drivers retain the right to remain silent in checkpoints.

(185) As a result of Defendants' unlawful conduct, Plaintiff was deprived of his Fifth Amendment right to remain silent, and suffered other deprivations of liberty.

COUNT 12 - 42 USC 1983 - SIXTH AMENDMENT - COUNSEL

- (186) Plaintiff repeats and realleges all previous allegations.
- (187) Plaintiff asserted the right to counsel by use of the Fair DUI flyer.
- (188) Anticipating that the checkpoint might not go well, Plaintiff had arranged for counsel to be available by phone that night.
- (189) Defendants never allowed Plaintiff to contact counsel during the entire three hours of the checkpoint encounter, arrest, detention and questioning, with total disregard for Plaintiff's open, obvious and unequivocal assertion of that right.
- (190) As a result of Defendants' unlawful conduct, Plaintiff was deprived of his Sixth Amendment right to counsel, and suffered other deprivations of liberty.

COUNT 13 - MALICIOUS PROSECUTION

- (191) Plaintiff repeats and realleges all previous allegations.
- (192) Defendant Escobar, on the instruction of Defendant Assistant State

 Attorneys and police advisors, initiated prosecution of Plaintiff by issuing a ticket accusing him of violating §322.15.
- (193) It should be noted that in this cause of action the State Attorney defendants are absolutely immune and Plaintiff does not extend this claim to them.
- (194) Defendant police advisors, Guarch, Reyes, and The Reyes Law Firm, PA, as well as Defendant Leen, do not benefit from the same immunity. They were not acting as prosecutors at the initiation of the prosecution.
- (195) Further, Defendant police advisors and Leen are not proper prosecutors in this matter at all as the Florida State Constitution, Article V, Section 17, states

- unequivocally that the State Attorney is the prosecutor and only allows municipal attorneys to prosecute municipal ordinance violations. §322.15 is not a municipal ordinance.
- (196) The proceeding against Plaintiff was terminated in his favor when it was dismissed by the Traffic Hearing Officer on October 7, 2015.
- (197) Subsequent proceedings have taken place due to the illegal assertion of prosecutorial authority by Defendants Guarch, Reyes, The Reyes Law Firm PA, and Leen. However these proceedings have not yet changed the status of the case. It remains, at this writing, favorably terminated. Although it has been reopened, the dismissal was never vacated.
- (198) Defendants Leen, Guarch, Reyes, The Reyes Law Firm PA, have continued their illegal efforts to prosecute Plaintiff, causing him to have to respond to over 50 pages of documents submitted on a \$129 non-criminal, non-moving violation and to travel to Miami-Dade Traffic Court twice so far, incurring mileage and expenses as well as causing emotional distress, irritation, annoyance, exasperation at the absurdity and rambling incoherent arguments, and sadness on behalf of the taxpayers of Coral Gables spending an estimated \$10,000 or more to fight this trivial infraction.
- (199) There was never reasonable or probable cause to commence or continue the prosecution. Defendant was accused of "failure to exhibit" his license when he plainly and obviously showed his license to police on numerous occasions.
- (200) Defendants' decision to commence and continue prosecution of Plaintiff in this matter was malicious, based on their anger at Plaintiff's challenge to their claimed authority to illegally harass motorists.
- (201) It should be further noted that Plaintiff does not believe that Defendant Escobar was motivated by malice, and thus this claim does not lie against him. Rather the malice comes from Defendants Leen, Guarch, Reyes, and The Reyes Law Firm, PA, as well as the immune State Attorney defendants, and

thus this particular cause of action lies only against Defendants Leen, Guarch, Reyes, and The Reyes Law Firm, PA.

COUNT 14 - PUNITIVE DAMAGES

- (202) Plaintiff repeats and realleges all previous allegations.
- (203) Defendants Leen, Guarch, Reyes, and The Reyes Law Firm PA set upon a course of action beginning with a memo calling for the arrest of drivers who assert and maintain their rights in checkpoints and continuing through their unlawful prosecution of Plaintiff.
- (204) Defendants Leen, Guarch, Reyes, and The Reyes Law Firm PA were motivated by an evil intent, to subvert the constitutional rights of individual drivers (as well as other occupants of vehicles such as the passenger in Plaintiff's car) and to wrongly assert their own power over the bounds they knew were placed on them by the Constitution, and further to punish Plaintiff in particular for forcefully asserting those rights and challenging their improper assertion of authority.
- (205) Defendants Leen, Guarch, Reyes, and The Reyes Law Firm PA demonstrated callous and reckless indifference to the rights of individuals, and in particular to the rights of Plaintiff, and further pursued this abuse in their illegal assertion of prosecutorial authority, contrary to the limits set forth in Article V, Section 17 of the Florida State Constitution.
- (206) Plaintiff seeks punitive damages against Defendants Leen, Guarch, Reyes and The Reyes Law Firm PA.

COUNT 15 - MONELL CLAIM AGAINST CITY OF CORAL SPRINGS

- (207) Plaintiff repeats and realleges all previous allegations.
- (208) Defendant City of Coral Springs, acting through its City Attorney and Police Department, and in other ways, developed, implemented, enforced,

- encouraged, and sanctioned written, oral and de facto policies, practices and/ or customs exhibiting deliberate indifference to the constitutional rights of Plaintiff and others, which caused the violation of rights as discussed herein.
- (209) Defendant police officers' unlawful actions were done willfully and with the specific intent to deprive Plaintiff and others of their constitutional rights under the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the US Constitution.
- (210) The constitutional abuses and violations by the defendants were and are directly and proximately caused by the policies, practices and/or customs developed by Defendant City of Coral Gables, as discussed herein.
- (211) Defendant City of Coral Gables has, acting through its police department and its officers including Defendants in this action, developed, implemented, enforced, encouraged and sanctioned policies, practices and/or customs of conducting unlawful seizures, searches and arrests at checkpoints without reasonable suspicion or probable cause, without adequate guidelines as required by the courts, and without adequate monitoring or supervision of such checkpoints to ensure constitutional compliance.
- (212) Defendants' actions were done willfully, knowingly, and with specific intent to deprive Plaintiff and others of their constitutional rights under the Fourth and Fourteenth Amendments to the US Constitution.
- (213) Defendants acted with a deliberate indifference (at best) to the constitutional rights of Plaintiff and others. As a result, Plaintiff's constitutional rights were violated causing him to suffer physical, mental and emotional injury, pain, mental anguish and suffering.

WHEREFORE, PLAINTIFF prays for the following remedies:

- a) Judgment for compensatory damages;
- b) Costs of suit and reasonable attorney fees;
- c) Trial by jury as to all issues so triable;
- d) Injunctive relief as detailed in the First Cause of Action;

- e) Punitive damages against Defendants Leen, Guarch, Reyes, and The Reyes Law Firm, PA; and
- f) Such other relief as this Honorable Court may deem just and appropriate.

Respectfully Submitted,

Warren Redlich, Florida Bar 96696 Plaintiff *Pro Se* 12345 Riverfalls Court Boca Raton, FL 33428 888-733-5299

Dated: January 1, 2016 Boca Raton, Florida