

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 MIAMI DIVISION  
4 CASE NO. 16-20001-CIV-MORENO/O'SULLIVAN

5 WARREN REDLICH,  
6  
7 Plaintiff,

8 vs.

9 Miami, Florida  
10 April 20, 2016  
11 Pages 1-80

12 THE CITY OF CORAL GABLES, CRAIG  
13 LEEN, individually and as City Attorney for the  
14 City of Coral Gables, the CORAL GABLES  
15 POLICE DEPARTMENT, EDWARD HUDAK  
16 individually and as Police Chief, OFFICERS  
17 ALEJANDRO ESCOBAR, AUGUSTIN DIAZ,  
18 JOEL RIOS, and JOHN DOE #1-42, THE  
19 REYES LAW FIRM, PA, ISRAEL U. REYES  
20 and MANUEL A. GUARCH, KATHERINE  
21 FERNANDEZ RUNDLE, individually and as  
22 State Attorney of the 11th Judicial Circuit, and  
23 ASSISTANT STATE ATTORNEYS JAMES  
24 ROE #1-4 individually, and OFFICERS  
25 ROBERT MOE #1-4, of the MIAMI-DADE  
GABLES POLICE DEPARTMENT,

Defendants.

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TRANSCRIPT OF DISCOVERY HEARING  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

BY: WARREN REDLICH, ESQ.  
12345 Riverfalls Court  
Boca Raton, Florida 33428

1 **FOR THE DEFENDANTS:**

2 *Akerman, LLP*

3 **BY: ELIZABETH HERNANDEZ, ESQ.**

4 **BY: CHRISTINE WELSTEAD, ESQ.**

5 Three Brickell City Centre

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8 **REPORTED BY:**

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14 P-R-O-C-E-E-D-I-N-G-S

15 COURTROOM DEPUTY: All rise.

16 THE COURT: We're here today in the case of Warren  
17 Redlich versus Craig Leen, the City of Coral Gables and others  
18 on the Defendant's motion for Rule 11 sanctions, as well as the  
19 motion to dismiss.

20 Can I have appearances for the Plaintiff first.

21 MR. REDLICH: Warren Redlich, Your Honor.

22 THE COURT: Thank. For the Defendants.

23 MS. HERNANDEZ: Yes. Good morning, Your Honor.

24 Elizabeth Hernandez and Christine Welstead from Akerman, LLP on  
25 behalf of the City of Coral Gables individual Defendants, and  
Miriam Ramos on behalf of the City of Coral Gables.

With me today is also City Attorney Craig Leen and  
Manuel Guarch the City's legal -- police legal adviser.

THE COURT: Okay. All right. Good. All right.

well, let me hear from -- who is going to argue for the

1 Defendants?

2 MS. WELSTEAD: For the motion to dismiss?

3 THE COURT: Yeah.

4 MS. WELSTEAD: I'm prepared to proceed, Judge.

5 COURTROOM DEPUTY: Already you're not speaking close  
6 enough to the microphone.

7 THE COURT: You can be seated unless you're addressing  
8 the court.

9 MS. WELSTEAD: May it please the court.

10 Judge, the complaint before you --

11 THE COURT: Let me ask you something about this  
12 complaint. I think you make some good points in this thing and  
13 I'm waiting to hear from Mr. Redlich how he contends that he's  
14 ever going to be able to show that the individuals don't have  
15 qualified immunity, because I don't know -- unless he's going to  
16 show me a case today that hasn't been named in the papers that  
17 says you can't have DUI checkpoints, it's going to be hard to  
18 prove that.

19 But what about the City of Coral Gables itself?  
20 Doesn't he have the right, or a citizen have the right to make a  
21 determination of whether or not -- even though the Fourth DCA or  
22 whoever said that it was okay to do checkpoints like this,  
23 whether or not that's actually proper under the federal  
24 Constitution?

25 MS. WELSTEAD: There may, at some level, be a way to

1 allege a cause of action against the City of Coral Gables based  
2 on their policies. However, in this case, there's no 768.28  
3 notice.

4 THE COURT: I don't know what 768.28 notice is.

5 MS. WELSTEAD: It's a state requirement. Before you  
6 bring a state claim against a municipality, you need to provide  
7 them prior notice. That has not been alleged, nor has it  
8 happened.

9 THE COURT: But a Monell claim is not a state claim, is  
10 it?

11 MS. WELSTEAD: Correct. A Monell claim, you don't need  
12 the 768.28 notice, but you would have to allege that the policy  
13 at issue either was an official policy, which I can't really  
14 tell from the allegations whether or not he's alleged that, or  
15 that it was so widespread that it became a official policy of  
16 the municipality. Yes, there is a way for him to allege that;  
17 however, the policy that he's described in the complaint is  
18 consistent with the Fourth Amendment and also with state law.

19 That state case, Rinaldo, was decided under the Fourth  
20 Amendment reasonable analysis. So could he --

21 THE COURT: But the case wouldn't go out -- would the  
22 case go out on a motion to dismiss then against the City? Or  
23 would it go on a motion for summary judgment?

24 MS. WELSTEAD: We have raised --

25 THE COURT: Assuming he's been able to -- assuming he's

1 able to allege sufficient facts to meet Monell.

2 MS. WELSTEAD: Assuming he's alleged to correct the  
3 deficiencies in this complaint, then yes, then we could take a  
4 look at the policy, submit cross-affidavits. I think it would  
5 be probably very limited on that claim.

6 However, the only hesitation I would say in going down  
7 that road is, you know, there is a pending state action where  
8 all of these claims have already been raised. There's an  
9 existing conviction on the violation of the State Statute  
10 322.15, the failure to provide the driver's license, which has  
11 yet to be overturned. So for those reasons, I don't think it's  
12 appropriate for the federal court to allow that kind of a claim  
13 to proceed at this time, because it would give the possibility  
14 of two inconsistent determinations on the exact same set of  
15 facts. That, and also federal abstention. Generally, the  
16 doctrine is the federal court would wait, unless there's some  
17 allegation that there's a bad faith going on in the state court  
18 action. It, in fact, is Mr. Redlich who has appealed and has  
19 taken advantage of the appellate remedy in the state court. So  
20 that's why I wouldn't think that going forward just on the claim  
21 against the City at this point is appropriate.

22 THE COURT: Okay. Now, let's talk about the other  
23 claims. The claims -- for instance, there's a First Amendment  
24 claim which is you just kind of conclusorily say well, he hasn't  
25 shown anything on this.

1 MS. WELSTEAD: Well, it's kind of -- my argument in  
2 response to the First Amendment claim is kind of conclusory  
3 because the allegations are kind of conclusory. We certainly  
4 acknowledge --

5 THE COURT: Let me ask you one thing first of all.  
6 When I read it, and you can remind me because you know this case  
7 a lot better than I do, but when I read the complaint, basically  
8 there was -- what I saw in there was two things that might have  
9 related to the First Amendment. One, I think, was that police  
10 officers were shining flashlights at cameras which I assume --

11 MS. WELSTEAD: Exactly, Judge.

12 THE COURT: -- would create some problem with the  
13 picture.

14 MS. WELSTEAD: That's the allegation.

15 THE COURT: The other is that a camera was knocked out  
16 of someone's hand by a police officer, which might have been a  
17 Metro-Dade police officer, but I can't remember, or an  
18 unidentified police officer I think.

19 So -- well, first of all, does that violate his First  
20 Amendment if you knock the camera out of someone else's hand?  
21 Is it the person who is taking the picture that has the First  
22 Amendment right that's being violated if there is one being  
23 violated? Or is it him whose First Amendment right is being  
24 violated?

25 MS. WELSTEAD: He doesn't have standing to bring an

1 allegation of harm that that press person, he's alleged it is a  
2 person, a member of the press that was attempting to film this  
3 action, was somehow stripped of his camera. But again, the two  
4 points you make I agree with in the complaint, there's not an  
5 allegation that that was a Coral Gables directive to remove that  
6 camera, nor is it him that suffered that harm.

7 In the motion to dismiss, I researched the First  
8 Amendment standing regarding the ability of a person, the right  
9 of a person to film the actions of a police officer. The  
10 Eleventh Circuit has established yes, they have the right to do  
11 that, but you're allowed to put in reasonable restrictions.

12 The only allegation against these Coral Gables  
13 Defendants -- and again, it's not specific as to what person did  
14 what, but that a Coral Gables police officer shined a light in.  
15 So shining a light into a vehicle to see what's going on in the  
16 vehicle, especially when the vehicle's windows are rolled up, is  
17 certainly consistent with an officer's general duties when  
18 they're engaged in a traffic stop. So there's no case law that  
19 would say that the First Amendment trumps the police officer's  
20 ability to act reasonably in doing his own duties.

21 Now, if the allegation was different where there was a  
22 restriction, there's no filming of any police activity in the  
23 City of Coral Gables, then certainly that might be a different  
24 story and rise to the level of a claim violating his First  
25 Amendment right.

1 THE COURT: Right.

2 MS. WELSTEAD: I think the Second Amendment claim can  
3 similarly be disposed of. There is no allegation that the City  
4 had any policy to disarm individuals lawfully carrying firearms.  
5 Rather in this case --

6 THE COURT: well, it could also be the individual. I  
7 mean, assuming overall he's going to have a hard time, and maybe  
8 he's going to convince me otherwise, of the police officers not  
9 having qualified immunity as to the roadblock and his detention.  
10 But then you have all these other kind of little issues like,  
11 you know -- is it because you could still have -- not have  
12 qualified immunity on taking a gun away from somebody, but, I  
13 mean, it seems pretty much common sense under the law that if a  
14 police officer can arrest you, they can take a firearm away from  
15 you. They're not going to put you in the back of a patrol car  
16 with a firearm in your hand.

17 MS. WELSTEAD: Right.

18 THE COURT: And he also complains that they told him  
19 not to reload the gun until, I forget, if it's got away from the  
20 roadblock or traveled a certain distance or something of that  
21 sort.

22 MS. WELSTEAD: Right. Not only is it common sense, but  
23 there is established case law that probable cause is established  
24 on the face of this complaint. His decision not to respond to  
25 the lawful directive of a police officer to roll down the window

1 -- first of all, a nontestimonial act, rolling down your window,  
2 and second, to turn over your driver's license pursuant to  
3 Florida Statute, the officer is authorized to ask for him to  
4 submit or present his driver's license. His failure to do those  
5 two things established -- and they're both described fully in  
6 the complaint on the face of the complaint, established probable  
7 cause for this police officer, this line officer on the DUI  
8 checkpoint, to determine that a crime had been committed. That  
9 crime was obstruction of justice. Failure to respond to the  
10 lawful order of a police officer. So once probable cause is  
11 established, then he's arrested. He's taken out of the mainline  
12 and he's detained.

13 We don't really have to worry about was it an arrest,  
14 an official arrest or was it a detention. I mean, he was placed  
15 in handcuffs and he was taken away from his vehicle, so that  
16 detention qualifies under the Fourth Amendment analysis. At  
17 that point, the search incident to arrest of his person is  
18 established under federal law and that search revealed a loaded  
19 firearm in his front pants pocket. It was removed from his  
20 person for his safety and for the safety of the officers on the  
21 scene. That's not a Second Amendment violation. There's no  
22 case anywhere that describes it such as a violation. In fact,  
23 it's authorized under the Fourth Amendment as a search incident  
24 to arrest.

25 Further, the search of the vehicle, which is also a

1 claim, I think it's Count 10 in his complaint, the search of the  
2 vehicle was an inventory search. He's removed from the vehicle.  
3 At this point, they don't know whether he's going to be taken  
4 into custody or whether the vehicle is going to be impounded,  
5 and so everything that's in the --

6 THE COURT: Can they do an inventory search if there's  
7 another person who is available to drive the car, or according  
8 to him, the owner of the car was present?

9 MS. WELSTEAD: The owner of the car was not in the  
10 vehicle. According to the complaint, the owner of the car was  
11 on the scene, but not in the vehicle. That does not at all  
12 impede the police department's responsibility for logging in  
13 what's in the car to make sure that there's no later claim  
14 afterwards for damage. And for that, we have the Seventh  
15 Circuit Decision in Wos, which basically sets out a very similar  
16 set of circumstances where someone was driving through a DUI  
17 checkpoint, did not have a driver's license, was put into  
18 custody, his vehicle was searched and that search was upheld  
19 under the Fourth Amendment as an inventory search.

20 THE COURT: Was there a person available to drive the  
21 car in that instance?

22 MS. WELSTEAD: There was not in that case.

23 THE COURT: Does that affect the analysis?

24 MS. WELSTEAD: It doesn't affect the responsibility of  
25 the police department in inventorying a vehicle in their

1 custody. Eventually before the owner was identified,  
2 Mr. Redlich was released from custody. So in this case, I think  
3 it's probably a matter of timing more than anything.

4 THE COURT: But is that something that you need to  
5 collect facts on?

6 MS. WELSTEAD: For --

7 THE COURT: In order to determine whether or not the  
8 inventory -- it was a proper inventory search?

9 MS. WELSTEAD: You know, once you bring in all those  
10 facts, Judge, it's not his Fourth Amendment right. Is he  
11 claiming that the inventory search of the vehicle because it was  
12 his vehicle or because he was driving the vehicle?

13 THE COURT: Well, because he was driving the vehicle I  
14 assume.

15 MS. WELSTEAD: Right. Well, once the driver is removed  
16 from the vehicle, then the car is in the custody of the police  
17 department. And that search is allowed under federal precedent  
18 and was conducted in this case as an inventory. Also,  
19 there's no evidence that was taken from that vehicle that was  
20 later used against him in any way. So there's no harm either --

21 THE COURT: Okay. What was taken from the vehicle?

22 MS. WELSTEAD: Nothing was taken from the vehicle. It  
23 was inventoried.

24 THE COURT: Okay. But do you agree he has standing  
25 because he was the driver?

1 MS. WELSTEAD: I do not agree he has standing as it  
2 relates to the vehicle. Because he was the driver of the  
3 vehicle, that was the reason that caused the vehicle to be  
4 searched. Once he was removed from the vehicle and taken into  
5 custody, that's what caused the police then to be in charge of  
6 the vehicle and inventory its contents.

7 THE COURT: Okay. But, I mean, he's bringing a Fourth  
8 Amendment claim. The question is does he have standing under  
9 the Fourth Amendment to attack the search of the vehicle because  
10 he was the driver. Do you agree he does or he doesn't? I mean,  
11 he can't be -- you know, because you have this all the time in  
12 criminal cases, just because you take the guy out of the  
13 vehicle, he's no longer in the vehicle, doesn't mean he loses  
14 his standing to the vehicle. If you are in the vehicle, you  
15 clearly have standing. I forget what the law is if you are the  
16 driver. I think you do have standing if you're the driver.

17 MS. WELSTEAD: I agree, Judge, yes. The search was  
18 caused by the fact that he was the driver. I was just asking  
19 the later question which is does it become a Fourth Amendment  
20 violation because there is an owner somewhere on-site. It does  
21 not. That's not relevant.

22 THE COURT: Okay. Well, let's assume that's true.

23 MS. WELSTEAD: Okay. Yes, his Fourth Amendment claim  
24 to the search of the vehicle, yes, arises from the fact that he  
25 was the driver. And in fact, it is that sole reason that caused

1 the search of the vehicle. So I was just trying to clarify are  
2 we talking about the later fact that there is supposedly  
3 somebody on the scene that is an owner or not. Whether or not  
4 that's true, the search was done under the authority of wos,  
5 which is a Seventh Circuit opinion. And there's also Eleventh  
6 Circuit precedent on this same thing where inventorying a  
7 vehicle in the police custody for their own safety and to guard  
8 against later claims, that something was damaged or destroyed  
9 from the vehicle.

10 THE COURT: Okay. What about the Fifth Amendment  
11 claim?

12 MS. WELSTEAD: Fifth Amendment claim, right to remain  
13 silent is not implicated -- excuse me -- in a noncustodial  
14 interrogation.

15 And so the way we set up the motion to dismiss, we have  
16 the DUI checkpoint encounter, which is the brief initial  
17 encounter that every car that went through the checkpoint had  
18 some communication with a police officer. At that point, it's  
19 noncustodial, it's information like hi, how are you, do you have  
20 a driver's license.

21 THE COURT: Right.

22 MS. WELSTEAD: That information, your name, your date  
23 of birth, your address, is regular booking information and  
24 there's no right to remain silent as to those type of facts.

25 THE COURT: You didn't make that argument in your

1 motion to dismiss, did you?

2 MS. WELSTEAD: It's certainly within the cases that are  
3 cited that I cited on the Fifth Amendment.

4 THE COURT: Okay.

5 MS. WELSTEAD: Brief, I admit, analysis under the Fifth  
6 Amendment that it wasn't implicated in the DUI stop. And  
7 neither is the Sixth Amendment, because that's even farther down  
8 the road, your right to counsel once you're charged with a  
9 crime.

10 So then I did the second analysis later once he is  
11 detained based upon the probable cause. And at that point, he  
12 does have a right to remain silent which, in fact, he used. He  
13 never said anything, there was no testimonial communication.

14 THE COURT: Was he questioned?

15 MS. WELSTEAD: He was questioned as it relates to the  
16 name, address, those kind of facts. Again, nothing is in the  
17 complaint regarding the types of questions he objected to or the  
18 type of questions that he wanted to remain silent and didn't.  
19 In fact, he did remain silent. That's his allegation in the  
20 complaint.

21 Similarly with the right to counsel, he invoked his  
22 right to counsel according to the allegations of the complaint  
23 because it was written on a piece of paper. However, he was not  
24 never charged such that -- or questioned regarding a charge,  
25 such that counsel was called.

1           The case law is that type of preliminary questioning  
2 does not implicate the Fifth or Sixth Amendment rights. It's  
3 just really well outside the bounds of anything that this type  
4 of civil rights case generally shows. His interaction with  
5 these police officers could have been brief, could have been  
6 momentary in time. It was the Plaintiff's own actions in  
7 failing to provide the driver's license, in setting up a federal  
8 case, so that there could be some authority blessing his  
9 commercial endeavor, this fair DUI process, that caused all of  
10 these consequences to ensue because of that. And --

11           THE COURT: what about his claim that -- I forget  
12 whether it's under the Fourth Amendment that he was, you know,  
13 man-handled and hurt his thumb?

14           MS. WELSTEAD: Right. I scoured the complaint, every  
15 word in the complaint. There is no description as to who  
16 touched him or how he was touched. Without question, he was  
17 touched because he was placed in handcuffs.

18           THE COURT: Right.

19           MS. WELSTEAD: And that act of placing a person in  
20 handcuffs is incident to arrest. And under Florida law, that's  
21 cloaked with good faith. It must be an allegation of clearly  
22 excessive force, above and beyond what is necessary to put  
23 someone into custody before you have any claim for a battery or  
24 excessive force.

25           THE COURT: what about his claim that his thumb was

1 hurt during the process? Is that sufficient? That's in the  
2 complaint, right?

3 MS. WELSTEAD: It is in the complaint that he had an  
4 injury. But getting an injury when use of force is reasonable  
5 isn't something that is recoverable in a civil rights claim. So  
6 if he wanted to bring some negligence action, he would have to  
7 first file notice against the City under that state statute I  
8 told you about, 768.28, and then pursue a negligence count.  
9 That's not what he's trying to do here.

10 THE COURT: Okay. What about the malicious  
11 prosecution? He's been found guilty now of --

12 MS. WELSTEAD: In traffic court.

13 THE COURT: -- a noncriminal violation.

14 MS. WELSTEAD: It's a noncriminal violation.

15 THE COURT: You agree that you couldn't be detained for  
16 a noncriminal violation, right? I mean, other than sufficient  
17 time for the officer to write the citation.

18 MS. WELSTEAD: I agree that the Florida Statute 322.15  
19 does not provide that it's an arrestable offense. However, his  
20 conduct was a criminal violation and that was of 843, a separate  
21 statute for obstruction of justice. So he was detained for a  
22 criminal violation. Ultimately, he was written a citation on  
23 another offense. But the fact that he --

24 THE COURT: I understand the law on that. Let's get to  
25 the malicious prosecution.

1           First of all, he contends that these folks, who are  
2 from the Reyes law firm should not be considered prosecutors and  
3 therefore, should not have immunity that a prosecutor normally  
4 would have.

5           MS. WELSTEAD: Yes. In Counts 13 and 14, he has named  
6 only the attorneys. The city attorney himself, and the legal  
7 advisors who have been retained by the City for the specific  
8 purpose of advising the police department and representing the  
9 City in traffic court matters.

10          THE COURT: So well, let me ask you something first.  
11 Do you consider Mr. Leen as coming under prosecutorial immunity?

12          MS. WELSTEAD: Absolutely.

13          THE COURT: When he's doing what?

14          MS. WELSTEAD: Well, first of all, the allegations are  
15 all jumbled together. So anything related to the initiation of  
16 the arrest and the initiation of the prosecution all come under  
17 that absolute immunity shoulder.

18          Taking back the steps, the opinion letter that he  
19 initially writes saying 322.15 provides that you must turn over,  
20 you must show, submit or present, means yes, the officer is  
21 within his rights to ask for the driver's license to be turned  
22 over. In analyzing that, Rinaldo is in fact the case that  
23 guides a police officer's ability to have this interaction with  
24 a person at a DUI checkpoint, all of that is.

25          THE COURT: Is what? Does that make him a prosecutor?

1 Does that make him a counsel to police officers?

2 MS. WELSTEAD: That's counsel. That's the essence of  
3 his job, to make legal opinions and interpret law. So in  
4 addition to being -- that's not absolutely immune, that's  
5 qualified immunity.

6 THE COURT: Okay. A prosecutor would have absolute  
7 immunity.

8 MS. WELSTEAD: Exactly.

9 THE COURT: So you're not contending that he is acting  
10 as a prosecutor.

11 MS. WELSTEAD: Not when he issued the legal opinion.

12 THE COURT: Okay.

13 MS. WELSTEAD: But anything in bringing the charge  
14 against Mr. Redlich and pursuing that litigation, absolutely  
15 that is 100% absolutely immune. Even as a city attorney, even  
16 if he had gone so far as to act outside of his authority based  
17 on the case law which we've cited, the Lerwill opinion, that is  
18 still an absolutely immune function. The qualified immunity  
19 goes to his actions in following clearly established law which  
20 is the Rinaldo opinion. And on top of that, these officers of  
21 the city, these he's a city official, he's not a police officer,  
22 he is a city official, he is statutorily immune under 768.28,  
23 which means they have to establish in the complaint that he  
24 acted outside the bounds of good faith, either willfully or  
25 maliciously in his actions. And while Mr. Redlich has said he

1 has acted --

2 THE COURT: Does Florida statutory immunity, does that  
3 apply to a 1983 action?

4 MS. WELSTEAD: No. Those are under state claims and  
5 the prosecution is a state action.

6 THE COURT: Okay.

7 MS. WELSTEAD: There is no federal claim for malicious  
8 prosecution because he has not alleged any secondary harm,  
9 meaning that he was further detained after the indictment  
10 period. So he has no federal claim for malicious prosecution.  
11 That's only a state action. And same with the punitive damages,  
12 that's only a state action. And in fact, it's not even an  
13 action or cause of action, it's simply a remedy which in this  
14 case, he has not put forth enough facts to be entitled to.

15 THE COURT: So malicious prosecution, if you're  
16 convicted, you don't have a claim for malicious prosecution. Am  
17 I correct?

18 MS. WELSTEAD: That's correct.

19 THE COURT: Okay. So what should happen to that?  
20 Should we hold it until we determine whether it's reversed or  
21 should we dismiss it or what?

22 MS. WELSTEAD: At this point, it should be dismissed.  
23 He has not pled the elements of malicious prosecution. One of  
24 the elements is there must be a determination in his favor  
25 ending the underlying lawsuit and that has not occurred.

1 THE COURT: Okay.

2 MS. WELSTEAD: That claim is just simply not ripe and  
3 it should be dismissed.

4 THE COURT: And the case -- I haven't looked at this  
5 case that you talked about, and I think it's in papers but I  
6 just haven't had an opportunity, the case that says that a  
7 private attorney -- is it a case that says that a private  
8 attorney that's hired by the city to prosecute a noncriminal  
9 traffic violation is considered a prosecutor or --

10 MS. WELSTEAD: It's the Lerwill versus Joslin opinion.  
11 It's a Tenth Circuit Decision, 712 F2d 1235. And no, it is not  
12 a situation where the city engaged outside counsel. This is  
13 talking about a city attorney working for the city. But there's  
14 -- that's a distinction without a different. These outside  
15 counsel were retained to represent the city in the same manner  
16 and under the authority of city ordinance which allows the city  
17 attorney to engage outside counsel to do their job that the job  
18 of one person cannot do. So it's within the authority of the  
19 ordinance to hire this outside counsel to act on behalf of the  
20 City.

21 THE COURT: And did they -- were they only hired for  
22 this specific purpose in this case or were they hired generally?

23 MS. WELSTEAD: No, it's an ongoing assignment and  
24 retainer and it is multi-faceted. There's training and duty --

25 THE COURT: Multi-faceted, they go into traffic court

1 and other instances and prosecute traffic violations for the  
2 city?

3 MS. WELSTEAD: Absolutely, yes. And in fact, will look  
4 over guidelines such as the DUI checkpoint guidelines, which the  
5 Redlich complaint described were in existence. That's something  
6 that the legal advisors would have input into and make sure that  
7 it is on all fours with the Florida state Supreme Court opinions  
8 and the Fourth Amendment opinions as it relates to DUI  
9 checkpoints. That's their job. And the Laurel v Joslin opinion  
10 states even if they have acted outside of their authority in  
11 prosecuting someone that -- in Laurel it was a statute that was  
12 not a city statute, but a statute that they were not able to  
13 prosecute, and still absolute immunity was conveyed and it  
14 should be conveyed in this case. That's why, even if the motion  
15 to dismiss for malicious prosecution is granted because it's not  
16 ripe at this time, leave to amend doesn't need to be given  
17 because there's no further claim as it relates to these  
18 individuals. And that's -- we'll get into the Rule 11 later,  
19 but that's the main point.

20 There's no way that this complaint can be fixed based  
21 upon the record. We know what has happened. And while a claim  
22 against the City may, at some point, become ripe in such a  
23 negligence action or once all of the underlying state claims are  
24 done, these individuals are alleged to have acted consistent  
25 with existing law and because of that, there can be no amendment

1 against these individuals. That's why we're asking for it to be  
2 dismissed with prejudice.

3 THE COURT: Okay. What do you say, Mr. Redlich?

4 MR. REDLICH: Thank you, Your Honor.

5 First of all, as far as the Fourth Amendment search of  
6 the car, my phone was in the car. And my phone was -- and I  
7 mentioned that at Page 17 of my opposition papers. I have  
8 standing regarding the search of the car because my phone was in  
9 the car, my phone was taken.

10 THE COURT: Well, you don't get standing by having  
11 something in a place. I mean, I think you probably have  
12 standing anyway, but you can have things -- in other words, if  
13 you put your phone in my house and the police come and search my  
14 house and find your phone, you don't have standing for that  
15 phone because you don't have standing to the search of my house.

16 MR. REDLICH: I just mean combining the two points that  
17 I was driving the car, I had something in the car that was  
18 incident to my driving my car, my activity. If there's a  
19 question about whether I have standing to something in the car  
20 being taken, something of mine was in the car and was taken. So  
21 I just want to clear that up.

22 As far as the camera being knocked out of the  
23 passenger's hand, that was my camera. So I have standing as far  
24 as the police officer who knocked the camera.

25 THE COURT: How does that give you standing? So if you

1 give your camera to somebody and they go across the street and  
2 start filming somebody and the camera gets knocked out of their  
3 hand, you think that's violated your First Amendment privilege?  
4 Because you own the camera?

5 MR. REDLICH: He's recording me. He's recording an  
6 encounter that I am involved in.

7 THE COURT: And do you have any case law on this stuff?

8 MR. REDLICH: No, I wasn't aware that was going to come  
9 up. I didn't look for that. I just wanted to clear up a couple  
10 of points because -- from the conversation.

11 And the other point I wanted to clear up is I agree  
12 with counsel the state law claims need to be dismissed. I have  
13 not done -- my theory was -- just so the court knows and counsel  
14 knows, my theory was I thought they would rather have everything  
15 in one court proceeding than have me file separately in state  
16 court because it would save them litigation expense of being in  
17 a second court. So I'm perfectly fine with dismissing all the  
18 state law claims.

19 THE COURT: Which are what counts?

20 MR. REDLICH: Sorry Your Honor, just getting there.

21 THE COURT: No problem.

22 MR. REDLICH: Count 2, Count 3, Count 6, and Count 13  
23 which is the malicious prosecution we were talking about.

24 THE COURT: Okay.

25 MR. REDLICH: And if I can get to what I think is

1 important?

2 THE COURT: Yeah, sure. You heard my pronouncement is  
3 how do you keep --

4 MR. REDLICH: I did.

5 THE COURT: I think I understand what you're trying to  
6 do here, which is fine, that's what you want to do, you want a  
7 federal court to say the way they're doing these, the arrest for  
8 failure to hand a police officer a license when requested is not  
9 a crime. That you can do it the way you want to do it, which is  
10 put a sign up and say here's my driver's license, look at it  
11 through the window, I'm not talking to you and I want a lawyer  
12 and whatever the third thing was.

13 MR. REDLICH: Honestly Your Honor, if that's all I got  
14 out of this case, I would be happy. But, but qualified immunity  
15 does not apply because of Campbell v State.

16 The issue is not whether they can conduct a checkpoint.  
17 They can. I don't like it, I would rather the court -- I don't  
18 expect Your Honor to rule the Supreme Court was wrong, we're not  
19 going to allow checkpoints anymore. I think the Supreme Court  
20 was wrong and I would argue right now just briefly so Your Honor  
21 can say no, Mr. Redlich, so nobody can say it wasn't argued  
22 below, the Supreme Court was wrong, we shouldn't have  
23 checkpoints at all. But given that the US Supreme Court and the  
24 Florida Supreme Court have said you can have checkpoints, the  
25 Florida Supreme Court has also said you have to have strict

1 compliance with the guidelines, and this was not a licensed  
2 checkpoint.

3 This was a sobriety checkpoint. It was arguably a  
4 vehicle safety inspection checkpoint. It was not a licensed  
5 checkpoint. There was nothing in the guidelines telling  
6 officers that they were to inspect a driver's license. They  
7 were to ask -- the only thing in the guidelines, and even I  
8 think is not consistent with the purpose of the checkpoint, I  
9 don't think it's consistent with the purpose to ask to see the  
10 driver's license, but I showed the driver's license. They could  
11 see the driver's license.

12 The assertion that the defense is making and that  
13 honestly that led me to come to this checkpoint, because I knew  
14 that Coral Gables had adopted this policy, they had taken the  
15 position that drivers can be forced to roll down or ordered to  
16 roll down their windows, sacrificing their Fourth Amendment  
17 right to what's inside the vehicle, including the odors that  
18 emanate from the vehicle, including a better view of the  
19 driver's eyes, various things that a police officer can observe  
20 when the window is open that they can't observe when the window  
21 is not open.

22 THE COURT: Right.

23 MR. REDLICH: But the key issue here in terms --

24 THE COURT: How about -- where is that clear, that a  
25 police officer -- where is the law that says a police officer

1 can require you to roll down your window at a DUI checkpoint or  
2 a license checkpoint?

3 MR. REDLICH: If they had ordered me to roll down the  
4 window so that they could conduct a sobriety check, that might  
5 have been appropriate. That would be a question we could  
6 discuss and that might bring up qualified immunity under  
7 Rinaldo.

8 That is not the reason they ordered me to roll down the  
9 window. They ordered me to roll down the window to hand over my  
10 driver's license. And according to the testimony in traffic  
11 court, it was so Sergeant Escobar could look at the license and  
12 determine whether there's a hologram or not.

13 THE COURT: Okay. So what case says that they can't do  
14 that? I mean, in order to get around immunity, you have to show  
15 that there's clearly established law that prohibits its conduct.  
16 Not that it's questionable, but that there's a case that's  
17 binding, you know, in federal court that says police officers  
18 can't ask people during either safety or DUI checkpoints. If  
19 you want to take the DUI out of it, driver's license checkpoint  
20 to roll down a window.

21 MR. REDLICH: Okay. So it's not a driver's license  
22 checkpoint, and the fact that they turned it into a driver's  
23 license checkpoint means they failed the Campbell requirement of  
24 strict compliance with the guidelines, and that is clearly  
25 established law. They are required to follow their guidelines.

1 The US Supreme Court acknowledged that there were written  
2 guidelines in Michigan versus Sitz, in Indianapolis versus  
3 Edmond. The Supreme Court said you can't have an overbroad  
4 checkpoint. That's clearly established law.

5 This was an overbroad checkpoint. They were looking  
6 for everything. They're claiming the primary purpose was a  
7 sobriety checkpoint. We haven't had discovery yet. We don't  
8 know -- you can say well, we put the title sobriety checkpoint  
9 on it, then go search for drugs and do all kinds of other  
10 things. They never checked me for sobriety.

11 THE COURT: Here's the problem with the complaint. I  
12 think what your complaint says is this is an overbroad  
13 checkpoint -- see -- then you site the case where they said you  
14 can't have a checkpoint for narcotics.

15 MR. REDLICH: Yes.

16 THE COURT: You need to allege facts. You can't just  
17 say -- you just can't make these conclusory statements; hey,  
18 this is an overbroad checkpoint that -- you know, and I deserve  
19 to maintain my claim.

20 MR. REDLICH: With all due respect --

21 THE COURT: You have to have facts.

22 MR. REDLICH: I alleged a lot of facts and in  
23 particular, I alleged that they required --

24 THE COURT: Tell me where you're reading from.

25 MR. REDLICH: On my complaint. I'm going to have to

1 get to it.

2 But first of all, that they adopted the policy, that's  
3 the Monell claim which is on Page 4 of the complaint. Paragraph  
4 26 is really the key paragraph saying that they're requiring  
5 people to provide their license. And then in the substance of  
6 what happened, at Page 7 --

7 THE COURT: Paragraph 26, that's no good for you  
8 because of the Rinaldo case.

9 MR. REDLICH: Okay. No. Because Rinaldo -- first of  
10 all, Rinaldo does not say that you have to physically provide  
11 your license. Rinaldo says you have to respond to the officer's  
12 requests and respond to their request for documents. I  
13 responded to the request for the document. They may not have  
14 liked my response, they may not have felt my response was  
15 appropriate, but I responded to the request for documents. I  
16 showed my license.

17 THE COURT: So if he says "show me your license" and  
18 you give him the finger, well, I responded that's good enough?

19 MR. REDLICH: Not only did I not give him the finger, I  
20 showed him the license. He said "may I see your license", I  
21 pressed the license up so he could see it.

22 But again, the critical issue, when Your Honor asks  
23 about qualified immunity --

24 THE COURT: We have to remember, it kind of turns stuff  
25 on its head. You have to come forward and show that their

1 conduct was specifically prohibited by some statute or  
2 recognized law.

3 MR. REDLICH: It is Campbell V State that says you have  
4 to have strict compliance with the guidelines, and I allege in  
5 the complaint that they did not comply with the guidelines.

6 THE COURT: Okay. Where is that?

7 MR. REDLICH: May I have a moment, Your Honor?

8 THE COURT: Yeah. While you're at that, let me ask you  
9 something else.

10 Are you now dismissing the Reyes Law Firm and the  
11 lawyers in that firm as well?

12 MR. REDLICH: No, because they were acting as municipal  
13 actors in adopting the policy.

14 THE COURT: And where is that alleged in here?

15 MR. REDLICH: I have to find it.

16 THE COURT: Okay. So you can find me those two things.

17 MR. REDLICH: And that may be something I have to amend  
18 and I may be wrong. I may be wrong. I may have to let them go  
19 on that. You may be right. I hadn't thought of that question.

20 THE COURT: I think you alleged that the City Attorney  
21 Leen was, but I don't remember anything in here alleging that  
22 Reyes Law Firm --

23 MR. REDLICH: Part of the problem is -- no, I know  
24 what's in there. Mr. Guarch, working for the Reyes Law Firm was  
25 present at the checkpoint. And Sergeant Escobar -- hang on. I

1 can find the paragraph where this happened.

2 THE COURT: I see Paragraph 41, Reyes, Guarch were on  
3 the scene and directed --

4 MR. REDLICH: It was Guarch that was on the scene. I  
5 now know, I didn't know when I wrote the complaint, Mr. Guarch  
6 was on the scene and Sergeant Escobar at -- Defendant Escobar,  
7 at Paragraph 61 and particularly 63, said "I have the state  
8 attorneys here and my legal advisors, they have authorized me to  
9 arrest you for your refusal to hand over your driver's license".  
10 In Paragraph 63, presumably Escobar mentions legal advisors is a  
11 reference to Defendants Guarch, Reyes and the Reyes Law Firm.  
12 It is my understanding, based on billing records, that  
13 Mr. Guarch billed the City for eight hours for his time at the  
14 checkpoint that day. So I don't know that it was Reyes, but  
15 Mr. Guarch was working for the Reyes Law Firm and Mr. Reyes is  
16 his boss. So I believe --

17 THE COURT: You think that gets you -- you think you've  
18 stated a plausible claim against Mr. Reyes?

19 MR. REDLICH: They directed my arrest.

20 THE COURT: Mr. Reyes?

21 MR. REDLICH: May be a stretch for Mr. Reyes, I agree.  
22 But Mr. Guarch is working for the Reyes Law Firm. So I again,  
23 I'm not --

24 THE COURT: The problem with all this stuff is that  
25 there's this thing called rule 11 out there and they told you

1 they're planning on asking for Rule 11 sanctions, they've  
2 already asked for it and just, like, throwing people in because  
3 well, I don't know, maybe why not, that doesn't cut it in  
4 federal court because you end up having to pay their fees and  
5 their fees are not cheap. You see all the people that I got  
6 sitting here today? They want you to pay each of them four or  
7 500 bucks an hour for being here today. That's \$2,000 every  
8 hour you're sitting here. And because why? Because when they  
9 put you on notice hey, some of this stuff should be dismissed,  
10 for instance the state law claims, instead of dismissing them or  
11 filing an amended complaint you said no, I'm not a big fan of  
12 sanctions. And I'm not a big fan of sanctions either.

13 MR. REDLICH: I did respond to their letter and I said,  
14 you know, which claims are you arguing I have to dismiss for  
15 Rule 11 sanctions? And they said the whole complaint. And they  
16 did not engage me in a discussion and say hey -- look, the state  
17 attorney -- the office of the state attorney general made a  
18 motion. And I looked at their motion and I recognized they had  
19 me and I dropped it.

20 As far as the state law claims though, I never argued  
21 in my papers, once I saw that they were moved to dismiss, I  
22 didn't argue the state law claims. I didn't fight them in my  
23 opposition papers other than it was a mistake, the malicious  
24 prosecution claim. But my focus is on the federal claims. My  
25 focus is on the 1983 claims.

1 THE COURT: Well then, you need to dismiss the other  
2 claims. It's clear.

3 MR. REDLICH: I agreed to that.

4 THE COURT: First of all, let me tell you why. Because  
5 I spent a lot of time researching those claims to come out here  
6 today to hear from you "I'm dismissing them". So you don't --  
7 I'm not going to sanction you for my time, but it's aggravating  
8 to the court that you have stuff in here that you've decided  
9 you're going to dismiss but did not bother telling anybody.  
10 They spent time defending those claims or moving to dismiss  
11 those claims. Your answer should have been "we're agreeing to  
12 the dismissal of 2, 4, 6 and 13", or whatever the numbers are,  
13 then everybody would be on notice hey we don't have to worry  
14 about that, they wouldn't have had to prepare for that. Don't  
15 you think they spent some hours looking at that? They answered  
16 my questions regarding it. I had questions regarding it. Even  
17 when I asked questions, you didn't say hey judge, don't worry  
18 about that. I'm dismissing all the state law claims.

19 MR. REDLICH: Yes, I thought about the fact that in my  
20 opposition I didn't talk about the state law claims at all.  
21 They raised the 768.28 and I didn't dispute that statement.

22 I hear what you're saying Your Honor, I could have done  
23 better. I appreciate that.

24 THE COURT: Here's what's going to happen. This isn't  
25 all fun and games. You're going to end up getting sanctioned

1 for not doing better, so this is going to cost you money. It's  
2 not a free ride here in federal court. It's not hey, let's  
3 throw stuff up and see what sticks to the wall. You've got to  
4 allege stuff that you can actually support and you've got to  
5 allege sufficient facts for it to be plausible that you can be  
6 successful in your case. And I don't think you've done that in  
7 large part in most of these instances. You've already admitted  
8 that you haven't done it in some.

9 MR. REDLICH: Yes, Your Honor. But I would go back to  
10 this. I mean, I think the core issue with this case, number  
11 one, obviously there's the Monell claim, but the core issue in  
12 this case that's before you right now is this qualified immunity  
13 issue. They did not comply with the guidelines. They had  
14 guidelines, they didn't follow them. Campbell v State says you  
15 have to have strict compliance with the guidelines and they  
16 didn't and that keeps all those federal claims alive.

17 The other thing is, like you have the Second Amendment  
18 claim. You have the Fourth Amendment claim. Those claims all  
19 follow from the arrest being improper. It's not that -- I'm not  
20 claiming that they used unreasonable force if it was a proper  
21 arrest. I'm saying it was an improper arrest and therefore, all  
22 the things that happened as a result were improper and they're  
23 liable for them.

24 THE COURT: And it was an improper arrest because they  
25 didn't follow the guidelines that they had laid out?

1           MR. REDLICH: Well, there's no qualified immunity  
2 because they didn't follow the guidelines.

3           There are other reasons why it's an improper arrest.  
4 It's an improper arrest because 322.15 makes it a noncriminal  
5 infraction. It's an improper arrest because they're trying to  
6 convert that noncriminal infraction into a misdemeanor. There's  
7 a lot of issues there. But the qualified immunity issue, the  
8 issue that I thought was the central issue when I -- look, I  
9 spent time preparing for this too. I spent the last couple of  
10 days reviewing all the documents, getting myself ready for this.  
11 Making sure I understood -- you know, I have -- I made a few  
12 pages of notes of what I wanted to talk about based on what I  
13 had read. And, you know, the central issue that they raise is  
14 this qualified immunity issue and they're wrong because they did  
15 not comply with the guidelines. And frankly, I don't see  
16 anything in their papers that disputes that.

17           What they're trying to say is well, Rinaldo says we can  
18 do whatever we want and Rinaldo doesn't say that. All Rinaldo  
19 says is that people have to comply with an officer's request,  
20 but that doesn't mean they don't have to strictly follow the  
21 guidelines. That wasn't an issue in Rinaldo whether the  
22 guidelines were followed.

23           So that's the problem. That's when we get to this  
24 issue of qualified immunity. That's the issue that matters.

25           THE COURT: Okay.

1 MR. REDLICH: So I appreciate that the state law  
2 claims, I should have withdrawn them, I see that. But this case  
3 is about, number one, the Monell claim and number two, about  
4 this -- before Your Honor right now is this qualified immunity  
5 issue.

6 THE COURT: And the Monell as well. Whether or not  
7 you've alleged sufficient facts to sustain a Monell claim.

8 MR. REDLICH: I allege that the city attorney adopted a  
9 policy.

10 THE COURT: Yeah, but just saying the city attorney  
11 adopted a policy that's unlawful is not sufficient.

12 MR. REDLICH: I'm not sure what I'm missing, Your  
13 Honor. I thought that I alleged sufficient facts on Monell.

14 THE COURT: You alleged conclusions that he adopted a  
15 --

16 MR. REDLICH: No, I'm alleging the fact that he adopted  
17 the policy. I read the memo.

18 THE COURT: Okay. Where's the memo?

19 MR. REDLICH: I didn't attach it to the complaint. I  
20 don't think they're disputing that he alleged that he issued the  
21 memo. Maybe I'm missing something here, but if I can have a  
22 moment, Your Honor?

23 THE COURT: Okay. Go ahead. I'm sorry.

24 MR. REDLICH: I believe I showed -- and I put this on  
25 Page 19 of my opposition papers that my Constitutional rights

1 were violated and that the municipality had a customary policy  
2 that constituted a deliberate indifference to that  
3 Constitutional right. They adopted the policy, I sent Mr. Leen  
4 an e-mail saying hey -- you know, I communicated with Mr. Leen,  
5 alerted him to my view that this was a violation of the  
6 Constitutional rights. They -- and I stated in my complaint  
7 that they ignored the e-mail, and that the policy or custom  
8 caused a violation. And I identified the official who speaks  
9 with making authority Mr. Leen and Mr. {hoo} dad. I believe I  
10 complied with the requirements of Monell.

11 Maybe there's a requirement I'm missing that I'm not  
12 aware of, but that's the requirement I think -- I pulled that  
13 from the case they cited.

14 THE COURT: well, let me ask you a couple of other  
15 things while we're on the Monell claim. Why do you have the  
16 City of Coral Gables Police Department on there?

17 MR. REDLICH: That was a mistake and I didn't serve  
18 them.

19 THE COURT: And like you said, there has to be a  
20 decision-maker or person who adopted this policy. But should  
21 they be named as a defendant?

22 MR. REDLICH: That's Mr. Leen.

23 THE COURT: Should him and {hoo} dad be named as  
24 defendants personally in the case or should it be the City of  
25 Coral Gables.

1 MR. REDLICH: Well, Mr. {hoo} redact was on the scene  
2 directing the activities and that's in the complaint.

3 THE COURT: Okay. But I'm talking about as to the  
4 Monell claim should be against the City itself, right?

5 MR. REDLICH: Yes. No, I agree with that.

6 THE COURT: And --

7 MR. REDLICH: Look, Count 15 says Monell claim against  
8 the City of Coral Springs. Doesn't say Monell claim against --

9 THE COURT: Supposed to say Coral Gables.

10 MR. REDLICH: That's true.

11 THE COURT: Did you sue Coral Springs too or no?

12 MR. REDLICH: No, no. It's Coral Gables, it's a  
13 mistake. I live in Coral Springs, so that's in my head. They  
14 have great Indian restaurants there.

15 But, you know, in the substantive paragraphs, I  
16 repeatedly mention the City of Coral Gables.

17 THE COURT: Yeah, yeah,

18 MR. REDLICH: I didn't say that the Monell claim was  
19 against the individuals.

20 THE COURT: So your Monell claim is only against the  
21 City of Coral Gables?

22 MR. REDLICH: Yes.

23 THE COURT: Are you dismissing the City of Coral Gables  
24 Police Department?

25 MR. REDLICH: Yeah. Well yes, I didn't serve them, for

1 the one thing.

2 THE COURT: Okay.

3 MR. REDLICH: I realized that -- look, it's not my  
4 normal area of law. I don't do a lot of 1983 litigation.  
5 That's probably obvious at this point. I had seen other cases  
6 where people name police departments. I prepared the complaint,  
7 I filed the complaint before I served it, I realized I can't sue  
8 the City of Coral Gables, so I didn't sue them.

9 THE COURT: The City of Coral Gables Police Department.

10 MR. REDLICH: The Coral Gables Police Department. I  
11 realized I couldn't sue the police department, I didn't serve  
12 them. So I -- you know, yes, I dismissed the claims against the  
13 Coral Gables Police Department, but they were never served.

14 THE COURT: Okay. You never served Metro-Dade either,  
15 Miami-Dade County Police Department?

16 MR. REDLICH: Correct.

17 THE COURT: You planning on doing that or not?

18 MR. REDLICH: I think that's one of those things where  
19 again, I was trying not to bring -- I know people think I'm  
20 trying to throw everything at everybody. I was trying not to do  
21 too much. And yes, there was a Miami-Dade or Metro-Dade police  
22 officer who slapped a camera out of my passenger's hand. And at  
23 the time, I served the people I thought were necessary to just  
24 get the claim going and I haven't made a decision yet.

25 Look, if Your Honor dismisses all the claims, I'm not going

1 to bother serving Miami-Dade Police Department.

2 THE COURT: Right.

3 MR. REDLICH: So I got to the point where I saw the  
4 motion to dismiss, I realized the motion is probably -- knew the  
5 motion to dismiss would be coming, and I said I'm not going to  
6 bother serving -- you know, I realized -- for example, we talked  
7 about this before, I made a mistake and named the defendant  
8 Augustin Diaz and I didn't realize it was Hector Diaz. So I  
9 didn't -- you know, once I realized that it wasn't Augustin, I  
10 had the wrong Diaz, I didn't decide I'm going to go jump through  
11 a bunch of hoops and redo everything. Look, I don't think you  
12 should dismiss the case, but if you do dismiss the case, I don't  
13 want to waste everybody's time filing a new complaint and  
14 serving Mr. Diaz again. I did serve Hector Diaz in person. I  
15 just didn't know he wasn't Augustin Diaz when I served him.  
16 Says Diaz on his -- I didn't notice, maybe there's an initial A  
17 on the front or not.

18 But again, I just -- there's two issues here that I  
19 think the court has to deny the motion to dismiss. I think you  
20 have to deny the motion to dismiss the Monell claim, I  
21 absolutely think I've met my burden on Monell. And I think you  
22 have to deny the qualified immunity on the 1983 claims because  
23 they did not -- and I pled it and it's clear and they have the  
24 guidelines, they know what their guidelines say, they did not  
25 comply with their guidelines. They weren't close to complying

1 with their guidelines.

2 THE COURT: Okay.

3 MR. REDLICH: Thank you, Your Honor.

4 THE COURT: So just so I understand, because I want to  
5 make sure that I get this right because I'm going to put this in  
6 -- you know I have to do a report and recommendation to Judge  
7 Moreno who then -- you guys can file objections and he'll be the  
8 one who will decide what gets dismissed or doesn't get  
9 dismissed.

10 But I want to make sure that I'm clear so that --  
11 because I'm not going to address Counts 2, 3, 6 and 13, the ones  
12 you announced you're not --

13 MR. REDLICH: The state law claims, yes, Your Honor.

14 THE COURT: And the City of Coral Gables Police  
15 Department, you're not proceeding against.

16 MR. REDLICH: Correct, they're not a proper party.  
17 That was my mistake.

18 THE COURT: Okay. And are you -- I asked you about  
19 Israel Reyes. Are you dismissing him or are you continuing,  
20 since he's particularly named only in --

21 MR. REDLICH: I think I have to dismiss against him.

22 THE COURT: Only in the malicious prosecutions.

23 MR. REDLICH: I think I have to dismiss him, Your  
24 Honor.

25 THE COURT: Okay. But you're keeping in Manuel Guarch

1 and --

2 MR. REDLICH: And the Reyes Law Firm. Mr. Guarch was  
3 on the scene. We can leave the Reyes Law Firm out, take the  
4 Reyes Law Firm out. Mr. Guarch was on the scene and  
5 participated in directing the arrest.

6 THE COURT: Okay.

7 MR. REDLICH: So he's part of all the 1983 claims.

8 THE COURT: All right. So I'm going to indicate that  
9 in my recommendation that you've dismissed against those people,  
10 and I assume you're going to somehow, somewhere, file some kind  
11 of motion to call Augustin Diaz Hector Diaz.

12 MR. REDLICH: Ms. Welstead and I were talking about  
13 that before you came in, Your Honor.

14 MS. WELSTEAD: That won't be a problem. We can amend  
15 by interlineation or whatever.

16 THE COURT: Yeah, I suspect the best you're going to do  
17 is you're going to have to re-file this complaint, I think,  
18 alleging more particular facts in regards to -- I'm not sure  
19 what I'm going to hear from the City now, but I suspect this  
20 thing is going to be amended at least once. It's going to be  
21 required by the court to be amended at least.

22 MR. REDLICH: That's fine.

23 THE COURT: Yeah. And then you can -- you know, you  
24 can name Hector instead of Augustin or if not, if Moreno finds  
25 that the complaint is all right, then you can do it by

1 interlineation.

2 what does the City say?

3 MS. WELSTEAD: Brief rebuttal if I may?

4 THE COURT: Yeah. There's two issues he raises here.  
5 One is that all of these Fourth and Fifth and -- actually, I  
6 never asked but the Sixth Amendment claim. I don't think you  
7 ever get a Sixth Amendment claim, do you?

8 MR. REDLICH: They're probably right on the Sixth  
9 Amendment claim.

10 THE COURT: Okay. Do you want to dismiss that?

11 MR. REDLICH: Sure. I'll dismiss that.

12 THE COURT: Why don't you just dismiss everything but  
13 the Monell claim, and then maybe you can get where you're going.  
14 I mean, I would think, but I don't know. Maybe these other  
15 things will --

16 MR. REDLICH: I think the qualified immunity isn't  
17 there. That's the problem.

18 Look, I've been clear from the beginning, I don't like  
19 checkpoints. There shouldn't have checkpoints at all. The  
20 courts have been clear.

21 THE COURT: I don't like them too much either when I  
22 come across them. I've only had them one time.

23 MR. REDLICH: But the courts have been clear if you're  
24 going to have checkpoints, you have to have written guidelines  
25 and you have to follow them. They did have written guidelines

1 and they didn't follow them. It's pled and it's directly  
2 applicable to me because the guidelines said nothing about  
3 demanding that they hand over their license.

4 we would have a different case if Sergeant Escobar's  
5 approach had been "sir, you have to roll down your window and  
6 talk to me", right? And you have to answer my questions. If  
7 that had been the approach, if Sergeant Escobar had ever shown  
8 any sign that he was interested in my sobriety or impairment, we  
9 would be in front of you with a different case. That's not the  
10 case we're in front of you with because they took a sobriety  
11 checkpoint and violated the guidelines and turned it into a  
12 license checkpoint. And along the way, they turned it into  
13 various other things and for other drivers.

14 But with regards to me, they turned it -- and I left  
15 out -- well, I think I mentioned -- Your Honor mentioned it with  
16 Ms. Welstead, they searched the vehicle. They knew that  
17 Mr. Miller, the owner of the vehicle, was present. It's on  
18 video. They seen -- before we started this case, when we  
19 started this case, I provided them with two full length videos  
20 of this encounter. They've watched the videos, they scoured the  
21 internet for my interviews about Fair DUI. They've come up with  
22 this idea that it's a commercial endeavor when it's not a  
23 commercial endeavor. They've made all sorts of other petty  
24 remarks that I'm a self-proclaimed author. I'm not a  
25 self-proclaimed author. The books on Amazon, it's been reviewed

1 51 times. I'm an author. I may not be a great author, I'm not a  
2 best selling author, but I'm an author. So to call me a  
3 self-proclaimed author is a petty remark. To say this is a  
4 commercial endeavor is a petty remark.

5 I think Your Honor can probably tell I'm here because  
6 I'm fighting for the Fourth Amendment. I'm not here for a  
7 commercial endeavor. And I want to be very clear about that  
8 because I find those remarks insulting.

9 (Cross-talk between the Court and counsel)

10 THE COURT: ...more questions that I want to ask you  
11 before we get to the City. Your violation of the First  
12 Amendment, that's based on what?

13 MR. REDLICH: The First Amendment is shining lights  
14 into the cameras, not to see inside the vehicle. Sergeant  
15 Escobar said in his trial testimony that he was able to see  
16 inside the vehicle with no problem. They were deliberately  
17 shining cameras, flashlights at the cameras to interfere with  
18 the recording.

19 THE COURT: And that's in your complaint?

20 MR. REDLICH: Yes.

21 THE COURT: Okay.

22 MR. REDLICH: And they slapped the camera, my camera  
23 out of the passenger's hand while he was recording an event that  
24 I was involved in. So I believe that both of those fit the  
25 First Amendment claim.

1 THE COURT: Okay. And the Second Amendment claim, that  
2 just emanates out of the --

3 MR. REDLICH: The arrest.

4 THE COURT: And false arrest?

5 MR. REDLICH: Yes. That emanates out of the violations  
6 that led to -- look, if you find the arrest is proper, then yes,  
7 absolutely, they can take my pistol away and yes, absolutely,  
8 everything that they did, their putting me in handcuffs, they  
9 didn't use excessive force in putting me in handcuffs once it's  
10 a valid arrest. It was not improper for them to take the pistol  
11 away once it's a valid arrest.

12 THE COURT: Okay. What about the search of the  
13 vehicle?

14 MR. REDLICH: The search of the vehicle is not proper  
15 because the passenger was there. There's nothing in their  
16 guidelines about doing an inventory search. The passenger is  
17 there, he's available to drive away. They know that the owner  
18 is there.

19 THE COURT: Let me just interrupt, because I don't  
20 think -- in other words, if they do an arrest, then you look at  
21 what a police officer can do. Assuming that the arrest is okay,  
22 you look at what a police officer can do when they conduct an  
23 arrest for a criminal violation. I don't think it has to be in  
24 the guidelines because then they go into, you know, now we're  
25 arresting the person. We arrest the person, we -- generally

1 they secure the car and do an inventory search, at least that's  
2 what the City says.

3 MR. REDLICH: I don't believe that's their policy. I  
4 don't think that's correct. I think if you have a driver who is  
5 available to drive the car away, in this case there were two,  
6 that you don't do an inventory search. There's no need to do an  
7 inventory search. You know you're not going to hold the car.  
8 Why would you do an inventory search when you know the owner is  
9 there ready to drive the car away? Why would you do an  
10 inventory search when there is a passenger who is there ready to  
11 drive the car away? Why did they detain -- I mean, this is not  
12 my claim, but they detained the passenger for 15 minutes? Why  
13 did they do that? Again, that's not my claim, I'm not raising  
14 that claim here. But again, this all goes down to when you're  
15 going to -- look checkpoints are wrong, courts have allowed it,  
16 but they made a rule. You got to have guidelines you got to  
17 follow. They didn't follow the guidelines. And that search of  
18 the vehicle is an inventory search, there's no reason to do  
19 that. And that violated my Fourth Amendment rights by taking --  
20 by searching a vehicle that I was driving and that had my phone  
21 in it that they took and then held.

22 THE COURT: Okay.

23 MR. REDLICH: I'm not claiming that it created a  
24 problem for me in the later proceeding, or that I'm somehow  
25 harmed or that I had a prison sentence or some other things that

1 resulted from it, and I don't think these claims have a lot of  
2 value. I've said that all along. They've scoured my radio  
3 interviews. I'm sure they've heard it. I don't think these  
4 claims are worth a lot of money, that's not the point.

5 The point is, my goal is, to get a ruling from a federal  
6 judge saying you can't do that.

7 THE COURT: Okay.

8 MR. REDLICH: That's my goal, that's what I'm here  
9 about.

10 THE COURT: And your Fifth Amendment claim, that  
11 relates to?

12 MR. REDLICH: That's the right to remain silent, I  
13 think.

14 THE COURT: well, yeah. That's what the Fifth  
15 Amendment is. But what does that relate to? You agree that  
16 police officers can ask you what your name is?

17 MR. REDLICH: I don't agree that -- no, the issue --  
18 the Fifth Amendment issue is do you have the right to remain  
19 silent at a checkpoint. That's the issue. Rinaldo -- if you  
20 interpret Rinaldo the way most -- the way the sheriffs are  
21 interpreting it, you don't have the right to remain silent at a  
22 checkpoint. well, that's a pretty big statement to say that you  
23 don't have the right to remain silent at a checkpoint. I think  
24 the Fifth Amendment means I have the right to remain silent at a  
25 checkpoint.

1 THE COURT: When was that violated?

2 MR. REDLICH: When they were asking me questions during  
3 the checkpoint and they're trying to speak to me.

4 THE COURT: Where in your complaint --

5 MR. REDLICH: I never spoke. But --

6 THE COURT: Well, I mean, where in the complaint does  
7 it say -- where is the violation? You agree that's not a  
8 violation of the Fifth Amendment to ask you for your driver's  
9 license, is it?

10 MR. REDLICH: I have to think about that one. No, they  
11 continued to ask me questions without obtaining a waiver of my  
12 right to remain silent. The fact I didn't answer the questions  
13 doesn't mean that they didn't infringe my right to remain silent  
14 by speaking to me and trying to get me to talk.

15 THE COURT: Well, I'm not sure if that's correct or  
16 incorrect, but it depends on what the questions are that they  
17 asked you.

18 In other words, once they determine that they're  
19 arresting you, they can ask you your name, they can ask you your  
20 address, they can ask you your date of birth, they can ask you  
21 all sorts of questions that relate to your identification.

22 MR. REDLICH: I'll go with this, I'll drop that claim  
23 just because it's not very important for what I'm here for.  
24 I'll drop the -- it's Count 11.

25 THE COURT: All right. And --

1 MR. REDLICH: And Count 12.

2 THE COURT: You're dropping -- okay. So 2, 3, 6 --

3 MR. REDLICH: To be clear, I do believe that you have  
4 -- and I understand the case law may not be in my favor on this,  
5 I do believe that when you're in a checkpoint and the police  
6 block in your car on both sides and you're surrounded by 40  
7 police officers with guns and they're trying to question you, I  
8 do believe that you have the right to counsel at that point. I  
9 believe the right to counsel does attach. I'm not saying I have  
10 a case right here for you, I'm dropping the claim.

11 THE COURT: There is no case for that?

12 MR. REDLICH: I'm dropping the claim, but I believe  
13 when you're surrounded by 40 police officers and they're trying  
14 to get you to do stuff, I believe you should have the right to  
15 counsel at that point. But again, I'm going to drop that claim  
16 because I don't think it's important. I want to go with what's  
17 important.

18 THE COURT: All right.

19 MR. REDLICH: What's important is the Monell claims and  
20 really the Fourth Amendment issues and really, fundamentally, it  
21 was an overbroad checkpoint. They didn't follow their  
22 guidelines and they adopted an illegal policy.

23 THE COURT: Okay. Just so I understand, you believe  
24 that even if the arrest -- if I was to find that there was  
25 qualified immunity on the arrest because I disagree with you,

1 you believe that the First Amendment claim and the Fourth  
2 Amendment search of the vehicle would still remain.

3 MR. REDLICH: Yes.

4 THE COURT: I mean, the Fourth Amendment search of your  
5 body, you would agree --

6 MR. REDLICH: The search of my body is consistent,  
7 would be out. Under those circumstances. But the Fourth  
8 Amendment search of the car would still be a problem.

9 THE COURT: And the First Amendment?

10 MR. REDLICH: And the First Amendment, shining the  
11 flashlights into the cameras and slapping the camera out of the  
12 hand, are still viable claims.

13 THE COURT: Now, do you have any case law that says --  
14 that supports your First Amendment claim? Is there any law that  
15 says that?

16 MR. REDLICH: The right to record is Glik versus  
17 Cuniffe, which was a Massachusetts case that was affirmed that  
18 cert was denied at the US Supreme Court, but I don't have the  
19 cite off the top of my head.

20 THE COURT: well, I think the state agrees, or the City  
21 agrees that under the law, you generally can't prohibit someone  
22 from photographing or recording what a police officer is doing  
23 except for any special circumstances.

24 MR. REDLICH: Right.

25 THE COURT: But the issue -- I mean, the more intricate

1 issue here is that you're not -- do you have standing to bring  
2 that First Amendment claim because it's not you that is doing  
3 the recording, it's someone else.

4 MR. REDLICH: It's my camera, I asked him to hold it  
5 for me. He's recording.

6 THE COURT: I don't know that's in the complaint.

7 MR. REDLICH: It's in the complaint.

8 THE COURT: I don't think it's in the complaint. I  
9 could be wrong. You could show me maybe. I don't think it's in  
10 the complaint that it's your camera.

11 MR. REDLICH: I think it is.

12 THE COURT: Maybe it is. It's possible I wasn't  
13 focused on that. Where is that?

14 MR. REDLICH: Paragraph 75. Mr. Stern was holding the  
15 Plaintiff's camera in his hand.

16 THE COURT: Okay. You're right. I'm sorry. I  
17 apologize.

18 And where is the thing about the flashlight?

19 MR. REDLICH: It might be in the count itself.

20 THE COURT: Well, I mean, this claim though goes to --

21 MR. REDLICH: Yes. It's Paragraph 157, Page 19.

22 THE COURT: 75 goes to -- wouldn't be addressed today  
23 because it's against an unserved defendant in the Miami-Dade  
24 Police Department.

25 MR. REDLICH: Okay. I agree with that.

1 THE COURT: I'm sorry. Tell me the other paragraph you  
2 said?

3 MR. REDLICH: Paragraph 157, Page 19. Such  
4 interference, included shining flashlights on cameras operated  
5 and/or owned by Plaintiff and depriving Plaintiff of the ability  
6 to use a camera while he was in custody. The while I was in  
7 custody using the camera, that part goes out of if Your Honor  
8 finds if the arrest is proper. But the shining the flashlights  
9 while we're in the car trying to record what's going on --

10 THE COURT: Right. Okay. I understand.

11 Another problem with this complaint, should you have to  
12 re-file it, is that you re-allege every prior paragraph in each  
13 of these counts. That's called a shotgun pleading which is  
14 prohibited in the Eleventh Circuit. You can't re-allege  
15 everything in the count. I don't know if the City addressed  
16 that. I know --

17 MR. REDLICH: They raised it.

18 THE COURT: Rundle raised it.

19 MR. REDLICH: Yeah, I don't think the City did raise  
20 it, but Rundle did raise it.

21 THE COURT: But it's prohibited anyway. I mean, judges  
22 can bring it up sua sponte. First of all, it's confusing  
23 because for instance, mostly when you re-allege, you don't  
24 re-allege everything previous because that would re-allege -- in  
25 other words, to win your Count 5, you have to win Counts 1, 2, 3

1 and 4 too because you have to prove all of that which you don't  
2 want to do. But what you need to do is you need to pick the  
3 paragraphs in the beginning that state the claim for the First  
4 Amendment or state the claim for the Fourth Amendment or state  
5 the claim for whatever the Amendment is, rather than alleging  
6 everything that's previously been stated in the complaint.

7 MR. REDLICH: Thank you, Your Honor.

8 THE COURT: Okay? And you also need to make sure when  
9 you say "all defendants" that you really mean all defendants. I  
10 missed it, I mean Israel Reyes I knew was not at the checkpoint.  
11 You were charging him with, you know, making a false arrest  
12 which he couldn't be held liable for.

13 MR. REDLICH: When I filed the complaint, I didn't know  
14 which member of the Reyes Law Firm was present. I found that  
15 out later. I think somebody did a public -- wasn't even me that  
16 did the public records request, somebody did the public records  
17 request and I saw the billing records and I'm saying I may have  
18 found that out a couple weeks ago.

19 THE COURT: Yeah, yeah. But I'm just saying that's the  
20 thing with filing a complaint, you can't just throw everybody in  
21 there. That's a Rule 11 sanction. You got to do a sufficient  
22 investigation.

23 MR. REDLICH: Sergeant Escobar said I have my police  
24 advisors here and they've authorized me to arrest you. And I  
25 know that Mr. Reyes and Mr. Guarch are the two police advisors.

1 So I don't know -- without doing discovery, how do I know who is  
2 there?

3 THE COURT: Because you -- police advisor one and  
4 police advisor two, whatever you want to call it, but you can't  
5 bring a claim against a person when you don't have sufficient  
6 facts. You have to conduct an investigation ahead of time.  
7 Ahead of time you go to the City and say who was the, you know,  
8 the police advisor who was there, and then you name that person  
9 in a complaint, not just, you know, we're naming them. I mean,  
10 you did it on these other things. You named John Doe police  
11 officers from City of Coral Gables, which I presume if you get  
12 discovery in this case, you're going to find out who those  
13 people were and then you're going to move to substitute whatever  
14 their names are.

15 But you can't -- just because you know that someone  
16 from the Reyes Law Firm was there, all you know is there was a  
17 police advisor there, that doesn't give you the ability to  
18 allege in a complaint particular people without having proper  
19 support for that.

20 All right. Anything else you want to tell me?

21 MR. REDLICH: No, Your Honor.

22 THE COURT: Okay. The City?

23 MS. WELSTEAD: Starting with the claims that remain  
24 against the individuals. It is counsel's argument before this  
25 court that violating written guidelines establishes that they're

1 not qualified immune from suit. Written guidelines are not  
2 federal law. He needs to point this court to an established law  
3 that the individuals themselves violated.

4 THE COURT: The federal law says the Supreme Court  
5 cases all say you have to have established guidelines, right?

6 MS. WELSTEAD: Yeah, and so does his complaint. His  
7 complaint alleges that the Defendants had written guidelines for  
8 the checkpoint prepared by Escobar and reviewed by {hoo} redact.  
9 He describes what's in those written guidelines which were  
10 present and available pursuant to Campbell. That the line  
11 officers were to determine if the drivers had driver's licenses  
12 and to observe for any cases of impairment.

13 THE COURT: Where are you reading from?

14 MS. WELSTEAD: I'm reading from his complaint,  
15 Paragraph 37. Contact line officers were further instructed by  
16 the guidelines to ask drivers "may I see your driver's license".  
17 So what we have are written guidelines in place. That's the law  
18 he's pointed to this court that the individuals, the City  
19 Attorney violated, and somehow deprived him of a Constitutional  
20 right.

21 Further, the validity and the implementation of these  
22 guidelines was raised at his traffic court hearing. The judge  
23 determined that the guidelines were Constitutionally  
24 appropriate. That the checkpoint was not overbroad. That's  
25 already been determined by another court. What he needs to

1 point out is a federal law that the individuals violated. He  
2 has not done that.

3 Further, the guidelines are not required to provide for  
4 every possible eventuality. The individual line officer is  
5 allowed to have some discretion and at the point where  
6 Mr. Redlich refuses to comply with the written guideline  
7 directive "may I see your driver's license", then at that point  
8 we go into the probable cause determination.

9 Now, he thinks he has a Fifth Amendment right not to  
10 show his driver's license. There's a state statute on point  
11 that provides that a driver must present or submit to the police  
12 officer a driver license upon request. In his complaint, the  
13 request was made. That request is pursuant to a written  
14 guideline. That written guideline complied with the  
15 Constitutional requirements for DUI checkpoints.

16 THE COURT: Let me see if I understand. He's saying  
17 that the guidelines -- well, I'm not sure. Are you saying that  
18 the guidelines were not followed or the guidelines were  
19 deficient?

20 MR. REDLICH: Both.

21 THE COURT: Okay. So he's saying the guidelines were  
22 not followed and the guidelines were deficient.

23 MR. REDLICH: But primarily that they did not follow  
24 them. Look, she said it. May I see your license. I showed the  
25 license. They could see it.

1 THE COURT: Okay.

2 MS. WELSTEAD: It is within the discretion of the  
3 police officer who asked for the driver's license whether  
4 present or submit. Not seeing it, present or submit. That's  
5 the state statute. In his complaint he describes --

6 THE COURT: well, let me get to my question. So he's  
7 saying that the guidelines were deficient and that they were not  
8 properly followed. And he says -- his main argument is that  
9 they were not properly followed. So the guideline says that the  
10 police officer is to ask "may I see your driver's license".  
11 "May I see" means "may I" and the answer is "no, you may not see  
12 my driver's license". So he contends then that when the police  
13 officer continued to require him to provide the driver's  
14 license, that that is in violation of the guidelines that were  
15 produced by the City of Coral Gables.

16 MS. WELSTEAD: Not following a written city guideline  
17 does not equate to a Fourth Amendment violation. In fact, the  
18 Eleventh Circuit has spoken on what you can and cannot do at a  
19 DUI checkpoint. That case is United States V Regan. It's a  
20 criminal case where the defendant was trying to suppress  
21 evidence.

22 THE COURT: Yeah, I read that case.

23 MS. WELSTEAD: So the Eleventh Circuit went through the  
24 analysis. It does not have to be the sole purpose of a  
25 checkpoint to be

1 (Cross talk between the court and counsel)

2 MS. WELSTEAD: For sobriety, it has to be a primary  
3 purpose. All that's alleged in his complaint is that it  
4 complies with the Fourth Amendment requirement as set forth by  
5 the Eleventh Circuit. So there's still that hurdle, the clearly  
6 established law that the individual defendants that remain, by  
7 my count it's the three police officers, not clear what the  
8 other two did, but we have Escobar participating and asking him  
9 questions. We have City Attorney Craig Leen still in the case.  
10 Did he write the guidelines? Did he violate the guidelines?  
11 None of those allegations are in the complaint. Nor is the  
12 clearly established law that City Attorney Leen violated  
13 anywhere in his complaint. We have attorney Guarch who is  
14 on-scene giving advice, which is within the purview of his role,  
15 and we have the line officer making a discretionary  
16 determination as to whether or not to detain this person based  
17 on probable cause. Again, probable cause that is established on  
18 the face of the complaint.

19 He has still not articulated to the court how he  
20 overcomes the qualified immunity. These government officials  
21 are -- that's the reason for qualified immunity. So that  
22 government officials may act in accordance with law and do their  
23 jobs and not worry about being sued. It's kind of the  
24 prototypical reason why we have qualified immunity. If you  
25 wanted to pursue the claim against the city in the Monell, I

1 mean, I think you two have had a candid conversation about what  
2 needs to happen. But he's done nothing to improve his claim  
3 against the individuals. There's just nothing there.

4 THE COURT: What do you think about the Monell claim?  
5 He says that it's sufficient what he's alleged.

6 MS. WELSTEAD: He has broadly alleged an overbroad  
7 checkpoint. What he needs to establish is that the City policy,  
8 meaning requiring a driver's license to be turned over at a  
9 checkpoint, violates federal law. He can't do that under Rule  
10 11 clearly because there is no law. He told you himself that I  
11 don't have a case, but I feel like this is the way. And it's  
12 just not the standard. If he wanted to bring a negligence  
13 action for his hurt thumb, that's a different cause of action.  
14 But for a Fourth Amendment violation, there is no case law that  
15 establishes that the written City guidelines for DUI checkpoints  
16 that allow a line officer to say "may I see your driver's  
17 license" violates any Fourth Amendment requirement. In fact,  
18 it's consistent with Regan. Without that, he doesn't have a  
19 Monell claim either. So that's why we've asked for dismissal  
20 with prejudice because amendment would be futile.

21 I wanted to correct --

22 THE COURT: So you don't think he could amend to make a  
23 Monell claim. Is that what you're saying?

24 MS. WELSTEAD: Based on what we have here are written  
25 guidelines which he -- as he's described them, comports with

1 known Fourth Amendment law and Regan and the Eleventh Circuit  
2 and Sitz from the US Supreme Court. If he wants to amend, add  
3 the --

4 THE COURT: But no wait, there's no -- in Regan it  
5 doesn't say you can require the person to open their window and  
6 provide a driver's license.

7 MS. WELSTEAD: No. But opening the window is a  
8 nontestimonial act. That does not implicate the Fifth or the  
9 Sixth Amendment. It is in fact a natural outcome of the Supreme  
10 Court decision in Sitz, all the way through which allows for the  
11 indicia of impairment. One of them is clearly the smell. So I  
12 cited to the court the Eleventh Circuit case and the other cases  
13 that have said the slurred speech, even taking blood from a  
14 person, none of that has violated the Fifth Amendment because  
15 it's not testimonial.

16 In this case, rolling down the window and the two cases  
17 he cited in the response are Fifth Amendment cases saying I was  
18 compelled to give testimony against myself. He's trying to  
19 establish -- get a ruling from a federal court that rolling down  
20 a window somehow would violate his right not to give testimony  
21 against himself. That's not what the law is. There's no smell  
22 or an odor emanating from a vehicle is not protected, it's not  
23 testimony, it's not communication.

24 THE COURT: It could be Fourth Amendment though.

25 MS. WELSTEAD: Under the checkpoint analysis, if it's a

1 suspicionless stop, meaning all of the cars that come down the  
2 street are stopped for a brief interchange with a police  
3 officer, then there's no the implication, then the Fourth  
4 Amendment reasonable test wouldn't allow him --

5 THE COURT: Fourth Amendment, it's just that it's not  
6 reasonable.

7 MS. WELSTEAD: It's reasonable, it's a reasonable --  
8 it's rationally related to the City's goal of getting drunk  
9 drivers off the street.

10 I wanted to correct one thing though with the record  
11 because this is an unusual case. It is within the retainer  
12 agreement of the Reyes Law Firm to prosecute cases. However,  
13 they don't normally have to do it. In this case, there was a  
14 letter submitted to the court for the Reyes Law Firm to appear  
15 and prosecute this action. So if I gave the impression that it  
16 happens all the time, they're in traffic court every day, no  
17 they're not in traffic court every day. This is an unusual  
18 occurrence, they were in traffic court because it was the kind  
19 of case that was going to become a federal action. Nonetheless,  
20 it is within the retainer agreement.

21 THE COURT: Okay. All right. Anything else?

22 MR. REDLICH: Yes, Your Honor. Just briefly.

23 First of all, yes, it's the Fourth Amendment forcing  
24 the window down so you can smell inside the car and Sitz only  
25 addresses the seizure, the stopping of the car. Sitz does not

1 address -- I'm doing something new here, okay, in terms of  
2 saying I'm not going to roll my window. I'm not the first  
3 person not to roll my window down, I'm the first person not to  
4 roll my window down holding up something that says I'm not  
5 rolling my window down and, you know, asserting my -- expressly  
6 invoking those rights. As far as I know, I'm the first person  
7 to do that by that approach.

8 And I'm trying to get at this problem that exists in  
9 checkpoint case law that yes, they can stop your car, but what  
10 if somebody refuses to roll their window down. If it was a  
11 traffic stop and I refused to roll my window down, would they  
12 have the right to force the window down in that case and what  
13 would the basis for that be? My point is --

14 THE COURT: It's a traffic stop, I presume they would,  
15 yes.

16 MR. REDLICH: why?

17 THE COURT: Because they're entitled to get your  
18 driver's license in order to write a citation.

19 MR. REDLICH: Again, we get to this question -- that  
20 goes to that 322.15 question. First of all, there's a Fourth  
21 Amendment issue and there's a statutory issue whether you're  
22 required to physically hand over the license versus showing it  
23 through the window is acceptable. And I respectfully submit --  
24 look, Sergeant Escobar testified in court that he couldn't see  
25 the hologram. And you can go put your license behind a piece of

1 glass and you can see for yourself. You can see the hologram  
2 behind the piece of glass. That is nonsense. That is --  
3 frankly, it's a big fat lie when he says you can't see a  
4 hologram through a window.

5 But the other thing that counsel said that particularly  
6 disturbed me was this idea that officers have discretion on a  
7 checkpoint. No, they don't. They have to strictly comply with  
8 the guidelines. They don't have discretion. That's the whole  
9 point. If you're going to let them do checkpoints, then you  
10 have to make sure they strictly follow the guidelines, and they  
11 didn't and they don't get to adopt this "hey, we have discretion  
12 to do whatever we think we want to do as long as it's loosely  
13 related to what the guidelines say". The guidelines say to ask  
14 may I see your license. The guidelines do not say to insist on  
15 seeing the license. I did show the license so they could see  
16 it. The guidelines do not say to require the driver to hand it  
17 over. The guidelines do not say to inspect the license. The  
18 guidelines do not say to do anything with the license other than  
19 to ask if you can see it. So to say we now have the discretion  
20 to do whatever we want related to the license because it says  
21 may I see your license, is exactly the point. You don't have  
22 that discretion. You have to -- and this is clearly established  
23 law.

24 I think counsel is saying that Campbell v state, that  
25 Florida Supreme Court case from 1996, is not clearly established

1 law, that there has to be some federal case that says it.  
2 They're relying on Rinaldo claiming that Rinaldo says that  
3 something is clearly established. Rinaldo is not even a Florida  
4 Supreme Court case, it's a DCA case. Campbell v State says you  
5 have to strictly comply with the guidelines and they didn't.  
6 And I don't think that they're seriously arguing that they did.  
7 I don't think they're making any credible argument that they  
8 complied with the guidelines. They're saying we have the  
9 discretion not to follow the guidelines and that's wrong.

10 Thank you, Your Honor.

11 MS. WELSTEAD: May I respond briefly?

12 THE COURT: Yeah.

13 MS. WELSTEAD: It is in the allegations of the  
14 complaint that the guidelines allow for the line officer to ask  
15 for the driver's license. Mr. Redlich refused. At that point,  
16 as we've set out the analysis in the complaint, you go from the  
17 DUI suspicionless stop analysis into the probable cause to  
18 arrest analysis, because you have all of the elements set forth  
19 of obstruction of justice. A lawful order of a police officer  
20 that he refused to comply with. So then you don't have to deal  
21 with the suspicionless search requirements anymore, and he was  
22 moved over to a side, out of the DUI checkpoint line and it's a  
23 different standard. It is closer to the traffic stop. It is  
24 closer to where you have a suspicion, an individualized  
25 suspicion that there has been a criminal violation; in this

1 case, a violation of law in the presence of a police officer  
2 that is continuing to investigate that crime. And in fact --

3 THE COURT: Yeah, but the question "may I see the  
4 driver's license" and he showed the driver's license, right?

5 MS. WELSTEAD: He didn't comply with Florida law which  
6 is to present or submit. Further --

7 THE COURT: Okay. But did he comply with the  
8 guideline.

9 MS. WELSTEAD: The police officer complied with the  
10 guideline. The guideline allowed for the police officer to ask  
11 for the driver's license. Further --

12 THE COURT: You keep saying that, but the guideline, at  
13 least as it's alleged here, says "may I see your driver's  
14 license".

15 MS. WELSTEAD: Yes.

16 THE COURT: Okay. So presumably, the police officer  
17 said that and he then put his driver's license up to the window.

18 MS. WELSTEAD: Right.

19 THE COURT: So what he's saying is the police officer  
20 had to follow the guideline. The guideline was "may I see your  
21 driver's license", and he complied with that request and then  
22 how does that then move into the normal criminal procedure that  
23 would be followed if there was probable cause or reasonable  
24 suspicion?

25 MS. WELSTEAD: Under Rinaldo, that is not a sufficient

1 response to that question. The police officer indicated "that's  
2 not going to work, sir. Roll down your window. Give me your  
3 driver's license". The police officer was advising the  
4 Plaintiff that is not going to work. He did not comply with  
5 that request. It is not in the case law, not in Campbell, that  
6 the guidelines have to allow for every single eventuality.

7 In this case, the line police officer complied with the  
8 written guidelines. Mr. Redlich's behavior is what caused any  
9 change in this routine DUI traffic stop to be escalated into  
10 something different. And that's because at that point, when he  
11 did not obey the request of the police officer to roll down the  
12 window, because that wasn't going to work, holding it up to a  
13 closed window, at that point you have probable cause. And  
14 because there was probable cause and arguable probable cause,  
15 all that follows from that detention is valid and  
16 Constitutional.

17 In Regan, the important state interest was not only  
18 sobriety, but to check state's driver's licenses and vehicle  
19 registration laws. So that's allowable in a checkpoint. It is  
20 allowable to request written documentation. And that's what was  
21 provided for in this guideline and that's what the police  
22 officer did.

23 The State Statute 322.15, Mr. Redlich alleged that it  
24 was unconstitutional or void for vagueness in the state court  
25 proceeding. We have a standing order already by the state court

1 judge saying no, there's nothing about this present or submit  
2 that is void for vagueness. It means hand it over when the  
3 police officer says hand it over. Present or submit. It  
4 doesn't say display, doesn't say hold up against the window.  
5 The state statute that the police officer was operating under  
6 provides it should be presented or submitted. There's no claim  
7 in this case that this state statute is unConstitutional or void  
8 for vagueness.

9 THE COURT: Okay. Anything else?

10 MR. REDLICH: Just briefly, Your Honor?

11 THE COURT: No, no, no. I'm asking her. We can't keep  
12 going back and forth.

13 MS. WELSTEAD: Nothing else from me, Judge. Thank you.

14 THE COURT: They get to go last unless it's something  
15 really important that you missed. No? Okay. All right.

16 I'll hear the Rule 11 sanction very, very briefly. I  
17 think we've covered a lot of it here already.

18 MS. HERNANDEZ: Good morning, Your Honor. Again,  
19 Elizabeth Hernandez for the Coral Gables Defendants.

20 Your Honor, as you know, under Rule 11(c)(2), a motion  
21 for sanctions can be filed, but it must not be filed or  
22 presented to the court if the challenge paper claim, defense,  
23 contention or denial is withdrawn or appropriately corrected  
24 within 21 days after service on the party.

25 In addition, Rule 11 provides that the person who

1 certifies a document to the court is claiming that upon an  
2 inquiry reasonable under the circumstances, it is not being  
3 presented for any improper purpose such as to harass, cause  
4 unnecessary delay or needlessly increase the cost of litigation.  
5 And two, that the claim is warranted by existing law.

6 we sent a thorough letter to the Plaintiff. In that  
7 letter, we pointed out many things, including one of the most  
8 critical things which is you don't sue a city official for  
9 punitive damages, especially when that individual is entitled to  
10 absolute immunity. And we would state to the court that under  
11 Chapter 316, the city attorney and the police legal advisors  
12 have the lawful right to prosecute municipal violations or  
13 violations of the statute which occur within the municipality.  
14 And that raises them to the equal rights of State Attorneys for  
15 prosecutorial immunity, which is absolute. And that should have  
16 been dismissed outright and that is critical because --

17 THE COURT: Okay. Now they're dismissing it.

18 MS. HERNANDEZ: He hasn't said he's dismissing the  
19 punitive claims. Has he said that --

20 THE COURT: The malicious prosecution. That's the  
21 malicious prosecution.

22 MS. HERNANDEZ: That's a part of it.

23 MS. WELSTEAD: Malicious prosecution is Count 13.  
24 Count 14 was punitive. So that is technically a separate count,  
25 although --

1 MS. HERNANDEZ: Although it's not a count.

2 THE COURT: well, let me ask you, 14, are you asking  
3 that on the malicious prosecution or what are you asking that  
4 on?

5 MR. REDLICH: I'll just waive it. I don't care about  
6 that.

7 THE COURT: So he's now dismissing 14 as well.

8 MS. HERNANDEZ: Okay. Thank you, Your Honor. That  
9 really shortened my presentation then.

10 THE COURT: So, I mean, are you still pursuing your  
11 sanctions? He's dismissed 2, 3, 6, 11, 12, 13 and 14.

12 MS. HERNANDEZ: Yes, Your Honor.

13 THE COURT: The City of Coral Gables Police Department,  
14 Israel Reyes, and the Reyes Law Firm.

15 MS. HERNANDEZ: Right. We still have poor Mr. Guarch  
16 in there and we have the City Attorney in there. We have our  
17 police officers that we, you know, believe he is still pursuing  
18 and has issues on qualified immunity on. I just wanted to --

19 THE COURT: So the real issue now becomes whether or  
20 not these folks have qualified immunity.

21 MR. REDLICH: Leen is out. I think Leen is out also.  
22 I don't think I have any claims left against Leen based on what  
23 we've done.

24 MS. HERNANDEZ: Okay. So the City Attorney is also out.  
25 All right.

1 THE COURT: So that leaves --

2 MS. HERNANDEZ: And is Police Chief Hudak.

3 MR. REDLICH: Police Chief Hudak was on the scene and  
4 participated in the orders. Mr. Guarch was on the scene and  
5 participated in what happened. They're not out. But Mr. Leen,  
6 I don't believe Mr. Leen was on the scene, so he's out.

7 MS. HERNANDEZ: Okay. So really quickly. Okay.

8 THE COURT: So basically you're left with the police  
9 officers.

10 MS. HERNANDEZ: My Chief.

11 THE COURT: But he's not named.

12 MS. HERNANDEZ: He was following guidelines and legal  
13 advice.

14 THE COURT: Yeah, yeah, I understand that. But the  
15 reason he's naming him is because he was there and participated  
16 in the conduct that night. I think that's all that's left in  
17 this case; is that right, Mr. Redlich?

18 MR. REDLICH: Yes, Your Honor.

19 THE COURT: Other than the City itself.

20 MS. HERNANDEZ: He was the supervisory official who was  
21 on the scene. I apologize if I was interrupting. And he was  
22 following the legal advice that had been provided to the  
23 department.

24 This particular case is unique because there's certain  
25 things that the court is either aware of or should be aware of.

1 The Plaintiff is an attorney here and in New York. He is not  
2 your typical pro se Plaintiff. The Plaintiff has been involved  
3 in these issues for quite a while. There has been a  
4 long-standing state court proceeding, and most recently Judge  
5 Leifman found the guidelines were followed, they were correct,  
6 they were correctly adopted and adhered to. Plaintiff is on  
7 appeal of those cases.

8 THE COURT: Wait. Is that this case or a different  
9 cases?

10 MS. HERNANDEZ: This is this traffic court case.

11 THE COURT: Okay. This one or separate one?

12 MS. HERNANDEZ: This one.

13 THE COURT: Okay.

14 MS. HERNANDEZ: This one. In this particular case,  
15 Judge Leifman had a traffic court case on it and we filed the  
16 transcript where Judge Leifman found that the guidelines were  
17 proper, they were properly followed, they -- you know, and he  
18 found the Plaintiff guilty. The Plaintiff has all the necessary  
19 documents through either the sworn testimony in the traffic  
20 court cases or through public records requests. This is not a  
21 case where discovery hasn't happened. He has everything of the  
22 City. Plaintiff has admitted under sworn testimony that he  
23 would lose his case in state court and so that's why he's here  
24 in federal court. And he admits that he is trying to establish  
25 federal case law which you've already heard plenty of.

1           So why does he sue the Defendants individually? When  
2 his own sworn testimony is there is no clearly established  
3 federal law. In his sworn testimony in traffic court he says I  
4 know in the state I lose, but there's nothing in federal court.

5           THE COURT: Is that in the record? The testimony from  
6 the --

7           MS. HERNANDEZ: Yes, we filed the transcript of the  
8 state traffic court and it is -- we noticed the court.

9           THE COURT: Oh, is that right?

10          MS. HERNANDEZ: Yes. Which they could have violated.  
11 So by his own sworn testimony, these officers are entitled to  
12 qualified immunity and qualified immunity should apply and any  
13 claims should be dismissed. You can never sue a government  
14 official individually if there is no clearly established federal  
15 law which they could have violated, and definitely there is none  
16 based on his own testimony.

17          The City legal advisors, and we have Mr. Guarch here  
18 still, are in privity with the commissioners and the government  
19 officials they advise. To allow a third party to come in -- am  
20 I talking too loud? Spitting into it? Okay. To allow a third  
21 party to come in and say, you know, based on the advice that you  
22 have given, even though I'm not in privity with you I'm going to  
23 sue you, would cause a chilling effect to those officials. The  
24 City Attorney and the legal advisors are paid by and are charged  
25 with advising City elected officials and those department heads

1 and those departments that they are retained by the government  
2 to advise. They're not there to visor represent Mr. Redlich.  
3 The legal advisors acted under presumptively valid statutes and  
4 the traffic court rules adopted by the Florida Supreme Court.

5 Despite these issues being brought to Plaintiff's  
6 attention, not only did he not amend the complaint at all and  
7 dismiss the individuals but -- or drop the punitive damages, he  
8 persisted with the same complaint which is flawed in its  
9 entirety because it doesn't have facts as to each of the counts.  
10 As you know, the court has already discussed, but there are  
11 egregious points within the complaint which he now dismisses the  
12 punitive damages aspect of it, but he was claiming that these  
13 government officials were acting with evil intent.

14 We seek sanctions by way of dismissal of the complaint  
15 and we do seek attorneys fees for the cost of having to prepare  
16 the motions and also for having to prepare to defend our  
17 position here in court today, and we do respectfully ask this  
18 court to abstain from proceeding on this case until the state  
19 court claims are resolved or in some way finalized so that the  
20 City is not defending and spending money at both -- you know, in  
21 both courts.

22 THE COURT: Right. Okay.

23 MS. HERNANDEZ: Thank you, Your Honor.

24 THE COURT: Thanks. What do you say about that,  
25 Mr. Redlich.

1           MR. REDLICH: I appreciate -- I learned a lot today and  
2 I appreciate that I filed some -- first of all, the state law  
3 claims, you know, I thought I was saving the City money by  
4 bringing them here rather than bringing them to the state. But  
5 I appreciate that was a mistake and I shouldn't have done that  
6 and I now appreciate, I did communicate with counsel and I tried  
7 to see what -- can we agree, you know, which claims are you  
8 claiming I should drop for your Rule 11 sanctions motion and  
9 there was no discussion. Maybe that's my fault and I should  
10 have made a bigger effort to say what about this and I should  
11 have done more. I understand that, I appreciate that. I think  
12 I demonstrated that with the State Attorney that I recognized it  
13 and I withdrew the claims and I attempted to have that kind of  
14 communications with defense counsel and I failed.

15           THE COURT: With who?

16           MR. REDLICH: No, I e-mailed them when they sent me the  
17 letter about the Rule, the preliminary letter about the Rule 11  
18 sanctions. Said well, which claims are you claiming are subject  
19 to Rule 11 sanctions? And they said all of them. And then my  
20 mistake was not following up and saying at that point okay, well  
21 listen, how about if we -- if I drop these claims.

22           THE COURT: I see.

23           MR. REDLICH: And I see that. And I see that was my  
24 mistake and I apologize for that. I apologize to the court and  
25 I apologize to counsel. There's nothing malicious.

1           And I want to be clear of something, I do believe --  
2 I'm not making the claims anymore, I do believe that the City  
3 Attorney and the legal advisors were motivated by evil intent  
4 and reckless indifference to the Constitutional rights of  
5 others, but I'm not making those claims anymore. Those claims  
6 weren't made frivolously, I genuinely believed that, I still  
7 believe that. But the reality is I'm not pursuing those claims  
8 anymore so we don't need to go there.

9           I just want to be clear, this is not done to harass or  
10 annoy, this is done to try to address a Constitutional violation  
11 and lock down this is how checkpoints are supposed to happen and  
12 this is how they're not supposed to happen. That was my purpose  
13 here. My purpose here is not to harass, annoy or anything like  
14 that.

15           THE COURT: why do you have such an interest in this?

16           MR. REDLICH: I've been a criminal defense lawyer since  
17 -- I've been an attorney since 1995, but I've been a criminal  
18 defense lawyer since roughly 2003. I've handled a lot of drunk  
19 driving cases. And my initial motivation, I wrote a book first  
20 then the flier came later. This is the flier. The flier is not  
21 -- there's no commercial endeavor here, I don't make any money  
22 on this, it's given away for free. The notion was that first I  
23 wrote the book because I saw all the mistakes that my clients  
24 made that got them -- lawyers talking to police. They get  
25 pulled over and they say, yeah, I had three beers. I don't know

1 why a lawyer would think that. And then even in the book I talk  
2 about -- I recommend not driving after a single drink. I talk  
3 about policy issues, how can we make our roads safer, what are  
4 better ways of approaching our problems than using these  
5 checkpoints.

6 Really wasn't about checkpoints actually, because  
7 checkpoints are actually fairly rare. The reason that the  
8 checkpoint thing comes up -- I'm sorry, I'm going out on a  
9 tangent on this. This was designed for a traffic stop. But you  
10 can't predict when you're going to be pulled over and have all  
11 your cameras ready. When they announce a checkpoint, you know  
12 where they're going to be. So you can go and you can try this  
13 out and see how it works and pursue that.

14 So, you know, number one, I'm motivated because I don't  
15 like checkpoints, I think checkpoints are wrong and I would love  
16 to get to the point -- look, I think {Carole versus United  
17 States in 1925 was wrong, and you should have a warrant before  
18 you stop a car. That's how far I go. I don't expect Your Honor  
19 to go there, but I believe in the Fourth Amendment and the plain  
20 language of the Fourth Amendment you can't stop a car without a  
21 warrant. The Supreme Court is against me, I don't expect that  
22 to be overturned, but I am very passionate, I believe, I think  
23 -- no, to get to your question though, there are a lot of  
24 innocent people that I have seen arrested on drunk driving  
25 charges. I have seen innocent people arrested, I have seen

1 innocent people prosecuted in the face of obvious proof that  
2 they're innocent, and in some cases I've seen innocent people  
3 who didn't have that fantastic proof, but I've seen innocent  
4 people convicted of drunk driving and I don't think it's the  
5 right way of addressing the problem of traffic safety. I think  
6 it's the wrong way, I think it's a distraction from things that  
7 really matter.

8 Just as an example, mass transit saves a lot more  
9 lives. The traffic fatality rate in Japan is like 1/10th of  
10 ours. why? Because drunks have an alternative to driving.  
11 They're going to drink. We can fantasize --

12 THE COURT: Thank God for Uber. I think Uber is going  
13 to cut way back.

14 MR. REDLICH: Broward County banned Uber for a while.  
15 My home county of Albany New York has Uber banned. If the  
16 government cares so much about saving lives, why are they  
17 banning Uber?

18 THE COURT: why? Because the taxi drivers don't want  
19 to get squeezed out.

20 MS. HERNANDEZ: I'm a criminal defense lawyer, I'm very  
21 passionate about innocent people not being prosecuted, innocent  
22 people not being convicted. I make less money if that happens.  
23 This is not a commercial endeavor. This is an endeavor for  
24 defense lawyers to make less money, not more.

25 THE COURT: Okay. Just not that it has much to do with

1 anything, but it's just interesting to know where you're coming  
2 from.

3 Anything else?

4 MS. HERNANDEZ: Yes, Your Honor, briefly.

5 The transcript is document 10-6 in the pleadings. Your  
6 Honor, if, as he states, he is not attempting to harass, then at  
7 a minimum he should dismiss the individuals with prejudice. If  
8 what he's trying to do is not do anything other than promoting,  
9 you know, traffic safety without DUIs, that's the minimum that  
10 he should do. And more importantly, it's not that he just  
11 strongly believes, it is -- the rule is if you believe after a  
12 reasonable inquiry, we believe and we strongly believe after a  
13 reasonable inquiry that all the individuals should be dismissed  
14 with prejudice.

15 THE COURT: why do you -- is there some strategic  
16 reason why you want the individuals instead of just the City of  
17 Coral Gables?

18 MR. REDLICH: Yes, because they're two different types  
19 of claims. A Monell claim is different from these other claims.

20 THE COURT: I see. Okay.

21 MR. REDLICH: But they're different claims. I'm not  
22 sure -- first, I hadn't thought about that until about five  
23 minutes ago, but I don't believe I can get at some of the claims  
24 I'm trying to make in the Monell claim. I'm the first person to  
25 tell you, I was in cuffs for three hours. I'm not claiming this

1 is a million dollar case. I never said this case is worth a lot  
2 of money. Like I said, when I was in traffic court, they  
3 cross-examined me, Mr. Guarch cross-examined me about some radio  
4 interview or podcast interview that I gave that I don't remember  
5 giving. They know that I've never said, I've never said this  
6 case is worth a lot of money, I don't claim this case is worth a  
7 lot of money, this is worth very little money. Okay. I was in  
8 cuffs for three hours, I had a boo-boo on my thumb that healed  
9 in two weeks. It wasn't a visible boo-boo, but my thumb was  
10 numb for a couple weeks and that's it.

11 And look, I don't think a federal jury is going to say  
12 hey, this guy is a victim. Right? This poor bastard got -- you  
13 know, I went to the checkpoint deliberately hoping I would have  
14 an encounter like this. Nobody is going to award me a lot of  
15 money in a case like this. It's not about money. But I need  
16 those claims in so I can raise those issues.

17 MS. HERNANDEZ: Your Honor, just one last point because  
18 he keeps going back to this "I'm not intending to harass or  
19 not". He's even posted parts of the videotape in the City's  
20 Facebook page trying to make the officers look ridiculous. It  
21 is absolutely a case where a Plaintiff is attempting to harass.  
22 This is definitely grounds for Rule 11 sanctions because he is  
23 doing that and we firmly believe that at a minimum, at a  
24 minimum, the court should dismiss the individuals with prejudice  
25 as sanctions in this case. If not, just because the case law

1 supports it.

2 MR. REDLICH: I've never posted anything on the City's  
3 Facebook page. I have no idea what she's talking about. I  
4 posted You Tube videos about what happened, but I never posted  
5 -- I didn't even know the City had a Facebook page. I'm sure  
6 they do, but I never thought about it.

7 THE COURT: Okay. Well, now you know.  
8 Anything else I can help anybody with?

9 MS. WELSTEAD: No, Judge.

10 THE COURT: No?

11 MR. REDLICH: Thank you, Your Honor.

12 THE COURT: Thanks. Mr. Leen, you can go home and  
13 breathe now. He's not going to be held liable for those  
14 damages.

15 (PROCEEDINGS CONCLUDED)

16 \* \* \* \* \*

17 C E R T I F I C A T E

18 I certify that the foregoing is a correct transcript from the  
19 record of proceedings in the above-entitled matter.

20 5-2-2016  
21 Date

/s/ Dawn M. Savino  
22 DAWN M. SAVINO, RPR

23  
24  
25