IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11673-JJ

GELU TOPA,

Plaintiff-Appellant,

versus

TEOFILO MELENDEZ,
Correctional Officer,
NICHOLAS SHAFFER,
Deputy,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARCUS, WILSON and GRANT, Circuit Judges.

BY THE COURT:

Teofilo Melendez and Nicholas Shaffer's motion to dismiss this appeal is GRANTED. The district court entered final judgment on Thursday, March 7, 2019, making any notice of appeal due on or before Monday, April 8, 2019. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a)(1)(C). Because the instant notice of appeal was not filed until April 29, 2019, it is untimely to challenge the final judgment, and we therefore lack jurisdiction over this appeal. *See Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 21 (2017); *Green v. Drug Enforcement Admin.*, 606 F.3d 1296, 1300-02 (11th Cir. 2010).

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14861
Non-Argument Calendar

D.C. Docket No. 2:16-cv-00737-JES-CM

GELU TOPA,

Plaintiff-Appellant,

versus

TEOFILO MELENDEZ,
Correctional Officer,
NICHOLAS SHAFFER,
Deputy,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(June 19, 2018)

Before WILLIAM PRYOR, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Gelu Topa, proceeding pro se, appeals the dismissal of his 42 U.S.C. § 1983 action arising from his arrest and imprisonment for violating a restraining order.

I.

On September 28, 2016, Topa filed a complaint alleging claims of wrongful arrest, unreasonable seizure, false imprisonment, and conspiracy against Collier County Sheriff's Deputy Nicholas Shaffer and correctional officer Teofilo Melendez.

Topa's claims were based on his 2012 arrest for violating a temporary restraining order ("TRO") his wife had obtained. According to Topa, he contacted the Sheriff's Office to discuss matters related to the TRO and arranged to meet with Deputy Shaffer. However, when Deputy Shaffer and another officer arrived for the meeting, they told Topa that witnesses reported he had been in the parking lot of his wife's workplace, in violation of the TRO. Topa was then arrested for violating the TRO. Topa pled no contest to violating the TRO and was sentenced to 180 days in jail and 12 months of probation.

Topa alleged Deputy Shaffer and Officer Melendez conspired to plant witness stories so they could arrest him on false charges. He sought to recover legal expenses from his criminal case and $500,000 in damages for being wrongfully imprisoned.

Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that Topa failed to plead viable claims under § 1983. Topa filed a response, arguing that phone records could prove that Deputy Shaffer and Officer Melendez conspired with Topa's wife to arrest him on false charges.

Before the court ruled on the motion to dismiss, defendants filed a motion for summary judgment. In this motion, defendants first raised the argument that Topa's claims were barred by Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994). Heck generally bars § 1983 claims that would necessarily imply the unlawfulness of a conviction or sentence that had not previously been invalidated. Id. at 486–87, 114 S. Ct. at 2371–72. Topa did not file a response to the motion for summary judgment.

The district court entered an order granting the motion to dismiss on the grounds that Topa's claims were barred by Heck. As part of that decision, the court considered a copy of the judgment and sentence from Topa's criminal case that had been submitted with defendant's motion for summary judgment. Topa's complaint was dismissed "without prejudice to refile, should [Topa] subsequently have his conviction vacated." The district court then denied the motion for summary judgment as moot.

Topa filed a "motion to review and reverse the verdict" which asked the court to reconsider its order dismissing the complaint. Topa argued that defense

counsel took advantage of him by assuring him that nothing would be filed in the case while Topa was on a five-week trip to Europe, but then filing for summary judgment during his absence. Topa asked the court to consider the response to summary judgment filed after the court had dismissed his complaint. The district court denied the motion for reconsideration, explaining that Topa's response in opposition to summary judgment was irrelevant because the court had granted the motion to dismiss and denied the summary judgment motion as moot.

Topa appealed.

II.

We review de novo a district court's ruling on a Rule 12(b)(6) motion and "construe the factual allegations in the complaint in the light most favorable to the plaintiff." Allen v. USAA Cas. Ins. Co., 790 F.3d 1274, 1277–78 (11th Cir. 2015).

The district court granted the motion to dismiss because the complaint was barred by Heck. However, defendants never raised Heck in their motion to dismiss. Without explicitly saying so, the district court sua sponte imported the issue of Heck into the motion to dismiss.

Our precedent does allow some sua sponte dismissals under Rule 12(b)(6). See Am. United Life Ins. Co. v. Martinez, 480 F.3d 1043, 1057 (11th Cir. 2007). However, such a dismissal is not allowed if "the district court failed to provide the plaintiff with notice of its intent to dismiss." Id. (citing Jefferson Fourteenth

Assocs. v. Wometco de P.R., Inc., 695 F.2d 524, 527 (11th Cir. 1983)). Here, the district court never alerted Topa that it was considering dismissing his case under Rule 12(b)(6) because of Heck. While defendants raised Heck in the summary judgment motion, our circuit's precedent looks to whether the court, not the parties, gave notice. Id. A review of the record shows the district court failed to alert Topa before dismissing the complaint on this ground.

In any event, "[c]ourts generally lack the ability to raise an affirmative defense sua sponte." Roberts v. Gordy, 877 F.3d 1024, 1028 (11th Cir. 2017) (quotation omitted). While this Court has not decided whether the Heck-bar operates as an affirmative defense, other circuits have treated Heck as an affirmative defense subject to waiver. See Washington v. Los Angeles Cty. Sheriff's Dep't, 833 F.3d 1048, 1056 (9th Cir. 2016) ("[C]ompliance with Heck most closely resembles the mandatory administrative exhaustion of PLRA claims, which constitutes an affirmative defense and not a pleading requirement."); Havens v. Johnson, 783 F.3d 776, 782 (10th Cir. 2015) (discussing district court's treatment of a "Heck defense" raised by defendants in a motion for summary judgment); Carr v. O'Leary, 167 F.3d 1124, 1126 (7th Cir. 1999) ("The failure to plead the Heck defense in timely fashion was a waiver."); Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994) (contrasting absolute immunity, which provides "immunity from suit," with Heck, which is "a mere defense to liability"

(quotation and emphasis omitted)). This application of Heck makes it error for the district court to sua sponte insert its rule into defendants' motion to dismiss.[1]

Whether because of lack of notice, or because the Heck-bar operates as a waivable defense, the district court erred by sua sponte dismissing Topa's complaint. This was the only ground on which the district court dismissed the complaint, so we reverse and remand for consideration of the other bases for the motion to dismiss. We also note that, should the court eventually reach the question of Heck, it is not clear whether Heck would apply to claims brought by a plaintiff who is no longer incarcerated.[2]

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[1] There is a minority view that Heck is a jurisdictional rule. See Dixon v. Hodges, 887 F.3d 1235, 1237 (11th Cir. 2018) (per curiam) (describing Heck as a rule that "strips a district court of jurisdiction in a § 1983 suit"); see also Murphy v. Martin, 343 F. Supp. 2d 603, 609 (E.D. Mich. 2004) (asserting that dismissal for lack of subject matter jurisdiction under Heck is a "better approach" than dismissing the case for failure to state a claim). A court may always raise sua sponte issues of its own jurisdiction. Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999). But in Heck the Supreme Court discussed the traditional breadth of § 1983, not the jurisdiction of federal courts. See Heck, 512 U.S. at 486, 114 S. Ct. at 2372 (basing holding on "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments"). No published appellate court decision has endorsed the view that the Heck-bar is jurisdictional. See, e.g., Dixon, 887 F.3d at 1239–40 (reversing district court's dismissal under Heck, without deciding whether Heck-bar is jurisdictional). In any event, the district court did not assert that it raised Heck sua sponte for jurisdictional reasons.

[2] "A circuit split has developed regarding the application of Heck to situations where a claimant, who may no longer bring a habeas action, asserts a § 1983 complaint attacking a sentence or conviction." Domotor v. Wennet, 630 F. Supp. 2d 1368, 1376–77 (S.D. Fla. 2009) (collecting cases). This circuit has not definitively answered the question. See Abusaid v. Hillsborough Cty. Bd. of Cty. Com'rs, 405 F.3d 1298, 1316 n.9 (11th Cir. 2005) (discussing "the [open] question of whether Heck bars § 1983 suits by plaintiffs who are not in custody," and noting "[o]ur court has not yet weighed in on this issue"). There are cases from this circuit that have suggested that Heck never applies to such a suit, see Harden v. Pataki, 320 F.3d 1289, 1298 (11th Cir. 2005), while others suggest Heck would almost always apply, see Vickers v. Donahue, 137 F. App'x 285, 289–90 (11th Cir. 2005) (per curiam) (unpublished). Still other cases have

REVERSED AND REMANDED.

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suggested a middle ground—that application of Heck turns on whether the plaintiff had a meaningful opportunity to file for habeas relief while incarcerated. See Morrow v. Fed. Bureau of Prisons, 610 F.3d 1271, 1272 (11th Cir. 2010) ("This case is one in which the alleged length of unlawful imprisonment—10 days—is obviously a duration that a petition for habeas relief could not have been filed and granted while Plaintiff was unlawfully in custody."); see also id. at 1273–74 (Anderson, J., concurring). However, we need not, and do not, answer the merits of the Heck question now.

General Docket

United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 17-14861 **Docketed:** 10/31/2017
Nature of Suit: 3899 Adminstrative Review Act **Termed:** 06/19/2018
Gelu Topa v. Teofilo Melendez, et al
Appeal From: Middle District of Florida
Fee Status: Fee Paid

Case Type Information:
1) Private Civil
2) Federal Question
3) -

Originating Court Information:
District: 113A-2 : 2:16-cv-00737-JES-CM
Civil Proceeding: John E. Steele, Senior U.S. District Court Judge
Secondary Judge: Carol Mirando, U.S. Magistrate Judge
Date Filed: 09/28/2016
Date NOA Filed:
10/24/2017

Prior Cases:
None

Current Cases:
None

GELU TOPA Appellant	Plaintiff -	Gelu Topa Direct: 239-601-6265 [NTC Pro Se] PO BOX 111381 NAPLES, FL 34108
versus		
TEOFILO MELENDEZ, Correctional Officer Appellee	Defendant -	Matthew Joseph Wildner **Terminated:** 10/30/2018 [NTC Retained] Purdy Jolly Giuffreda Barranco & Jisa, PA Firm: 954-462-3200 2455 E SUNRISE BLVD STE 1216 FORT LAUDERDALE, FL 33304 Matthew Joseph Wildner Direct: 561-697-8088

		[NTC Retained] Conroy Simberg Ganon Krevans Abel Lurvey Morrow & Schefer, PA Firm: 561-697-8088 1801 CENTREPARK DR E STE 200 WEST PALM BEACH, FL 33401
NICHOLAS SHAFFER, Deputy Appellee	Defendant -	Matthew Joseph Wildner **Terminated:** 10/30/2018 [NTC Retained] (see above) Matthew Joseph Wildner Direct: 561-697-8088 [NTC Retained] (see above)

GELU TOPA,

Plaintiff - Appellant,

versus

TEOFILO MELENDEZ,
Correctional Officer,
NICHOLAS SHAFFER,
Deputy,

Defendants - Appellees.

07/18/2018	☐ 2 pg, 454.31 KB	Mandate issued as to Appellant Gelu Topa. [Entered: 07/18/2018 09:59 AM]
06/19/2018	☐ 1 pg, 9.14 KB	Judgment entered as to Appellant Gelu Topa. [Entered: 06/19/2018 10:09 AM]
06/19/2018	☐ 8 pg, 48.64 KB	Opinion issued by court as to Appellant Gelu Topa. Decision: Reversed and Remanded. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions. [Entered: 06/19/2018 10:07 AM]
01/02/2018	☐	Corrections to appendix received - certificate of service - from Appellant Gelu Topa. 1 COPIES. All deficiencies have been corrected. [Entered: 01/16/2018 03:24 PM]
01/02/2018		Corrections to brief received - - from Appellant Gelu Topa. All

	☐ 1 pg, 65.54 KB	deficiencies have been corrected. [Entered: 01/16/2018 03:22 PM]
12/15/2017	☐ 2 pg, 79.98 KB	Notice of deficient Appellant appendix filed by Party Gelu Topa. Deficiencies: missing certificate of service date. [Entered: 12/15/2017 09:18 AM]
12/14/2017	☐ 1 pg, 14.99 KB	Notice of deficient Appellant brief filed by Party Gelu Topa.Deficiencies: certificate of service date. [Entered: 12/14/2017 11:17 AM]
12/08/2017	☐ 44 pg, 4.04 MB	Appendix filed [1 VOLUMES - 2 copies] by Party Gelu Topa. Deficiencies: missing certificate of service date. Service date: 12/05/2017 US mail - Appellant Topa; Attorney for Appellee: Wildner. [Entered: 12/15/2017 09:17 AM]
12/05/2017	☐	NOTICE OF CIP FILING DEFICIENCY to Matthew Joseph Wildner for Teofilo Melendez and Nicholas Shaffer. You are receiving this notice because you have not completed the Web-Based Stock Ticker Symbol CIP via the court's public web-page and have not filed the CIP via the electronic filing system (CM/ECF). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 12/05/2017 04:48 PM]
12/04/2017	☐ 8 pg, 510.8 KB	Appellant's brief filed by Gelu Topa. Deficiencies: need to correct certificate of service date. Service date: 11/23/2017 [17-14861] Attorney for Appellee: Wildner - US mail.--[Edited 01/16/2018 by MM] [Entered: 12/14/2017 11:16 AM]
11/27/2017	☐ 2 pg, 90.59 KB	Appellant's Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellant Gelu Topa. [Entered: 11/29/2017 10:00 AM]
11/15/2017	☐ 5 pg, 89.56 KB	NOTICE OF CIP FILING DEFICIENCY to Gelu Topa. You are receiving this notice because you have not completed the Certificate of Interested Persons (CIP). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 11/15/2017 05:13 PM]
11/13/2017	☐ 36 pg, 401.71 KB	Public Communication: Letter to Pro Se Appellant with copy of 11th Circuit pro se Handbook, as requested. [Entered: 11/13/2017 12:11 PM]
10/31/2017	☐ 7 pg, 152.79 KB	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Gelu Topa on 10/24/2017. Fee Status: Fee Paid. No hearings to be transcribed. The appellant's brief is due on or before 12/11/2017. The appendix is due no later than 7 days from the filing of the appellant's brief. Awaiting Appellant's Certificate of Interested Persons due on or before 11/14/2017 as to Appellant Gelu Topa. Awaiting Appellee's Certificate of Interested Persons due on or before 11/28/2017 as to Appellee Teofilo Melendez [Entered: 10/31/2017 03:05 PM]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GELU TOPA,

Plaintiff,

v. Case No: 2:16-cv-00737-FTM-29CM

C.O. TEOFILO MELENDEZ and CPL. NICHOLAS A. SHAFFER,

Defendants.

OPINION AND ORDER

This matter comes before the Court on review of Defendants' Motion to Dismiss Plaintiff's Complaint (Doc. #8) filed on November 15, 2016, to which Plaintiff filed a Response in Opposition (Doc. #11) on December 15, 2016. Also before the Court is Defendants' August 25, 2017 Motion for Summary Judgment (Doc. #30). Plaintiff has not filed a Response, and the time to do so has passed. For the reasons set forth below, the Court grants dismissal of Plaintiff's Complaint.

I.

Gelu Topa (Plaintiff) filed a *pro se* Civil Rights Complaint Form (Doc. #1) on November 28, 2016 naming as Defendants Teofilo Melendez (Officer Melendez) and Nicholas Shaffer (Officer Shaffer) (collectively, Defendants) of the Collier County Sherriff's Office. The Complaint purports to allege four causes of action

arising out of Plaintiff's October 24, 2012 arrest and subsequent conviction for violating a Temporary Restraining Order (TRO): (1) a due process claim for wrongful arrest; (2) a Fourth Amendment claim for unreasonable seizure; (3) false imprisonment; and (4) conspiracy.

As best the Court can tell from the stream-of-conscience allegations in the Complaint, the factual predicate for Plaintiff's claims seems to be as follows: Plaintiff was arrested on September 30, 2012 for a domestic disturbance, and his wife obtained a TRO against him on October 5, 2012. On October 24, 2012, Plaintiff called the Collier County Sheriff's Department and requested an appointment with Sheriff Kevin Rambosk to discuss Plaintiff's belief that his then-wife was attempting to "set [him] up with the help of a policeman," a claim for which he had "proof on a laptop." (Id. p. 5.) He also asked for police assistance with a matter relating to documents for his vehicle, which were in his wife's possession, so he would not violate the TRO. (Id.) Plaintiff alleges that the officer he spoke with agreed to send someone to help. (Id.)

About thirty minutes later, a police car pulled up in front of or near Plaintiff's home. (Id.) The occupants were a police officer (potentially Officer Shaffer) and a woman in a "nurse-like" blue outfit. (Id.) The officer was - it appears - permitted to enter Plaintiff's apartment, while the woman stayed in the car.

(Id.) After entering the apartment, the officer began "whispering into his mike (sic) and went to all the rooms." (Id.) Plaintiff assumed the officer was speaking to another officer tasked with collecting the forms for Plaintiff's vehicle from Plaintiff's wife, as Plaintiff had requested. (Id.) However, about thirty minutes later, a "younger officer with a different color uniform" forcefully entered the apartment and began reading Plaintiff his Miranda rights. (Id.) The officer told Plaintiff that Plaintiff had been seen in his wife's parking lot and was being arrested for violating the TRO - an accusation Plaintiff denied. (Id.)

On February 21, 2013, Plaintiff pled no contest to violating the TRO. (Doc. #30-4.) He was adjudicated guilty and sentenced to 180 days in jail, which he served, and 12 months of probation.[1] (Id.; see also Doc. #1, p. 6.)

Plaintiff now contends that Officer Melendez "masterminded" the arrest so he could remove a laptop from Plaintiff's apartment, and then convinced Plaintiff's wife and her coworker to give false statements corroborating the fabricated story that Plaintiff had been in the wife's parking lot.[2] (Doc. #1, p. 6.) Plaintiff claims he can prove to the Court that he did not violate the TRO,

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[1] Plaintiff says he was on probation for two years. (Doc. #1, pp. 6-7.)

[2] The Complaint does not allege that Officer Melendez was at Plaintiff's apartment when Plaintiff was arrested.

and he seeks to recover $500,000 for the out-of-pocket costs and the pain and suffering that his wrongful arrest, imprisonment, and probation have caused.

Defendants have moved to dismiss this case in its entirety under Federal Rule of Civil Procedure 12(b)(6) on the ground that the Complaint fails to state a claim against Defendants - in either their individual or official capacities - for any of the causes of action alleged. Defendants' Motion for Summary Judgment raises the additional argument that Plaintiff's claims are barred under the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994).[3] As the Court will now discuss, the Court agrees that Heck and its progeny require dismissal of Plaintiff's claims.[4]

II.

Heck involved a Section 1983 suit brought by a prisoner seeking compensatory and punitive damages against law enforcement for "engineering" his manslaughter conviction. Heck v. Humphrey, 997 F.2d 355, 357 (7th Cir. 1993). On appeal, the United States Supreme Court held that, before a lawsuit seeking damages for

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[3] The Motion for Summary Judgment also argues that the evidentiary record shows that - as a matter of law - Plaintiff's arrest was supported by "arguable probable cause" (Doc. #30, pp. 8-10), which "constitutes an absolute bar to both state tort and section 1983 claims for false arrest." (Id. p. 7 (citations omitted).)

[4] Because Heck bars Plaintiff's claims, the Court does not herein address whether the allegations in the Complaint are otherwise sufficient to state causes of action for wrongful arrest, false imprisonment, and conspiracy, or whether probable cause to arrest Plaintiff existed as a matter of law.

wrongful conviction or imprisonment may proceed, the plaintiff must prove that the conviction has already been reversed, expunged, invalidated, or called into question by issuance of a writ of habeas corpus. Heck, 512 U.S. at 486-87. Because the plaintiff's manslaughter conviction was still valid, and because his "damages claims challenged the legality of th[at] conviction" the Supreme Court affirmed dismissal of the civil lawsuit. Id. at 490.

Where a plaintiff seeks damages for something other than an alleged wrongful conviction or imprisonment - for example, a false arrest - the court asks whether success with that claim will "*necessarily* impl[y] the invalidity of th[e] conviction" that resulted from the allegedly-false arrest, and which has not yet been invalidated. Hughes v. Lott, 350 F.3d 1157, 1160 & n.2 (11th Cir. 2003). To answer this question, the court "look[s] both to the claims raised under § 1983 and to the specific offenses for which the § 1983 claimant was convicted." Id. at 1160 n.2.

In sum, "[i]f a successful § 1983 suit for damages would necessarily imply the invalidity of a conviction or sentence, and that conviction or sentence has not been invalidated before the commencement of the § 1983 suit, the suit must be dismissed." Towbridge v. Tacker, 488 F. App'x 402, 403 (11th Cir. 2012) (per curiam).

III.

Applying the Heck rule here compels a finding that Plaintiff's lawsuit must be dismissed. As to Plaintiff's Section 1983 claims for false arrest and false imprisonment,[5] the singular basis for both is the assertion that Plaintiff never violated the TRO. (Doc. #1, p. 5.) In other words, Plaintiff "challenge[s] his role in the offense conduct that led to his arrest and convictions, the arrest itself, and his eventual conviction," as opposed to "the constitutionality of the procedure by which his arrest was carried out." Towbridge, 488 F. App'x at 404-05.

Notwithstanding Plaintiff's contention that he is innocent, the reality is that Plaintiff pled no contest to, and was subsequently convicted of and imprisoned for, violating the TRO.[6]

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[5] In light of Plaintiff's *pro se* status, the Court briefly explains why Plaintiff's claims are deemed "Section 1983 claims," despite the absence of these words in the Complaint. Plaintiff alleges that Defendants have violated his due process rights, as well as his Fourth Amendment right to be free from unreasonable seizure. But while constitutional violations are the *source* of Plaintiff's grievance, the Constitution does not itself provide the legal "vehicle" by which to seek redress in court; rather, his right to sue for damages arises, if at all, under 42 U.S.C. § 1983 - often referred to as "Section 1983." Bates v. Harvey, 518 F.3d 1233, 1242 (11th Cir. 2008); Johnson v. City of Arcadia, 450 F. Supp. 1363, 1377 (M.D. Fla. 1978). Accordingly, the Court interprets Plaintiff's constitutional claims as Section 1983 claims. See Johnson v. City of Shelby, 135 S. Ct. 346, 347 (2014) ("[N]o heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim." (citations omitted)).

[6] A plea of no contest "constitutes a conviction under Florida law." Quinlan v. City of Pensacola, 449 F. App'x 867, 870 (11th Cir. 2011) (per curiam) (citing Fla. Stat. § 960.291(3)).

This conviction has not been overturned and remains valid in the eyes of the law. Yet Plaintiff's success on the claims for false arrest and imprisonment would necessarily imply the invalidity of that still-valid conviction. Consequently, those claims are Heck-barred and must be dismissed. Hughes, 350 F.3d at 1161; see Towbridge, 488 F. App'x at 405 (affirming dismissal of wrongful arrest claim under Heck where claim was based on plaintiff's assertion of innocence and his conviction remained valid); Quinlan, 449 Fed. App'x at 870 (agreeing that Heck warranted dismissal of claim that police lacked probable cause to execute traffic stop where plaintiff pled *nolo contendere* to resisting an officer); Hawthorne v. Sheriff of Broward Cty., 212 F. App'x 943, 947 (11th Cir. 2007) (per curiam) (Heck barred claim that police falsely stated that plaintiff committed crime for which plaintiff subsequently pled no contest and was incarcerated).

Dismissal of Plaintiff's conspiracy claim is required for the same reason. The basis for this claim appears to be the allegation that Officer Melendez coerced Plaintiff's wife and the wife's coworker into giving false written statements that they had observed Plaintiff lurking in the wife's parking lot, in violation of the TRO. In other words, the purpose of the alleged conspiracy was to facilitate Plaintiff's arrest and conviction for a crime Plaintiff supposedly did not commit. But because that conviction is still valid, Heck bars this claim too. Abella v. Rubino, 63

F.3d 1063, 1065 (11th Cir. 1995) (affirming district court's dismissal of plaintiff's claim "that the defendants unconstitutionally conspired to convict him of crimes he did not commit" where plaintiff's conviction had not been invalidated); see also Heck, 997 F.2d at 356-37 (claim that law enforcement "engineered the plaintiff's conviction for murder" could not proceed where murder conviction had not been vacated). Plaintiff's claims will be dismissed without prejudice to refile, should Plaintiff subsequently have his conviction vacated.

Accordingly, it is now

ORDERED:

1. Defendants' Motion to Dismiss (Doc. #8) is **GRANTED** and Plaintiff's Complaint (Doc. #1) is **dismissed without prejudice** to refile, should Plaintiff subsequently have his conviction vacated.

2. Defendants' Dispositive Motion for Summary Judgment (Doc. #30) is **denied as moot**.

3. The Clerk shall enter judgment accordingly, terminate all pending deadlines as moot, and close the case.

DONE AND ORDERED at Fort Myers, Florida, this 18th day of September, 2017.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Parties and Counsel of record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GELU TOPA,

Plaintiff,

v. Case No: 2:16-cv-737-FtM-29CM

TEOFILO MELENDEZ, Correctional Officer and NICHOLAS SHAFFER, Deputy,

Defendants.

ORDER

This matter comes before the Court on remand from the Eleventh Circuit reversing the Court's September 18, 2017, Opinion and Order (Doc. #32), which *sua sponte* dismissed the case as barred under Heck v. Humphrey, 512 U.S. 477 (1994)[1], and remanding for the Court to address the other issues raised by the motion to dismiss. (Doc. #39.) The Mandate issued on July 18, 2018. (Doc. #41.) The court will reopen the case to consider the issues raised by the Motion to Dismiss (Doc. #8).

Accordingly, it is hereby

ORDERED:

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[1] The issue was raised in the Motion for Summary Judgment but was not raised in the Motion to Dismiss.

1. The Opinion and Order (Doc. #32) and Judgment (Doc. #33) are **vacated**. The Clerk shall make a notation on the docket and **reopen** the case.
2. The Clerk shall **reactivate** defendants' Motion to Dismiss (Doc. #8) as a pending motion.
3. The deadlines, including the deadline to file dispositive motions, will be reset after the motion is decided.

DONE and ORDERED at Fort Myers, Florida, this 18th day of July, 2018.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Plaintiff
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GELU TOPA,

Plaintiff,

v. Case No: 2:16-cv-737-FtM-29CM

TEOFILO MELENDEZ, Correctional Officer and NICHOLAS SHAFFER, Deputy,

Defendants.

OPINION AND ORDER

This matter comes before the Court on review of defendant's Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. #51) filed on October 9, 2018. Plaintiff sought an extension of time to respond, and the motion was granted through November 5, 2018. (Doc. #55.) This deadline has now passed, and no response was filed. Defendant filed a Notice of Plaintiff's Failure to Comply (Doc. #59) on January 14, 2019. For the reasons stated below, the motion to dismiss is due to be granted.

I. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 8(a)(2), a Complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not

do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted). To survive dismissal, the factual allegations must be "plausible" and "must be enough to raise a right to relief above the speculative level." Id. at 555. See also Edwards v. Prime Inc., 602 F.3d 1276, 1291 (11th Cir. 2010). This requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citations omitted).

In deciding a Rule 12(b)(6) motion to dismiss, the Court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff, Erickson v. Pardus, 551 U.S. 89 (2007), but "[l]egal conclusions without adequate factual support are entitled to no assumption of truth," Mamani v. Berzain, 654 F.3d 1148, 1153 (11th Cir. 2011) (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. "Factual allegations that are merely consistent with a defendant's liability fall short of being facially plausible." Chaparro v. Carnival Corp., 693 F.3d 1333, 1337 (11th Cir. 2012) (citations omitted). Thus, the Court engages in a two-step approach: "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

II. BACKGROUND

Plaintiff initiated this case on September 28, 2016. Defendants moved to dismiss the Complaint (Doc. #1) for failure to state a claim, and also moved for summary judgment arguing that the claims were barred under Heck v. Humphrey, 512 U.S. 477 (1994). On September 18, 2017, the Court found that Heck barred plaintiff's claims and therefore the Court declined to address whether the allegations in the Complaint were otherwise sufficiently pled under Fed. R. Civ. P. 12(b)(6). (Doc. #32, p. 4 n.4.) The Complaint was dismissed without prejudice to plaintiff having his conviction vacated. (Id.) Judgment (Doc. #33) was entered and the case was closed.

Plaintiff filed a Notice of Appeal (Doc. #37), and on June 19, 2018, the Eleventh Circuit reversed and remanded the case to consider the other grounds for dismissal finding a lack of notice to plaintiff of a dismissal based on Heck, which was not argued on the motion to dismiss. On remand, the Court vacated the Opinion and Order (Doc. #32) and Judgment (Doc. #33), reopened the case, and reactivated defendants' motion to dismiss. (Doc. #42.) The Eleventh Circuit noted that plaintiff is no longer incarcerated.

On August 6, 2018, the Court issued an Opinion and Order (Doc. #43) finding a failure to state a claim, and dismissing the Complaint without prejudice to filing an Amended Complaint in compliance with certain guidelines to comply with Fed. R. Civ. P.

10(b). On August 16, 2018, plaintiff filed his Amended Complaint (Doc. #44). On September 14, 2018, the Court entered an Order (Doc. #47) striking the Amended Complaint without prejudice to amending because "[a]s currently pled, the Amended Complaint fails to state any plausible claims for relief. The Amended Complaint is in fact not an improvement from the original Complaint, and blatantly ignores the Court's guidance on how to improve the original pleading." (Doc. #47, p. 3.)

On September 27, 2018, plaintiff filed a Second Amended Complaint (Doc. #48), and defendants have once again moved to dismiss the pleading.

III. SECOND AMENDED COMPLAINT

Plaintiff presents his "Statement of Claim" as a violation of due process rights because he was falsely arrested, as a violation of his Fourth Amendment right to be free from unreasonable seizure for false imprisonment, and a conspiracy between defendant Teofilo Melendez, plaintiff's own lawyer, and his wife's lawyer. The only named defendants are Teofilo Melendez, a Correctional Officer, and Nicholas A. Shaffer, a Deputy.

Plaintiff alleges that his lawyer called him on October 23, 2012, about viewing a video on his laptop for the third time at his office on October 25, 2012. Plaintiff alleges that his lawyer liked to see his wife on video because she is young and beautiful. That same night, Melendez was in plaintiff's parking lot trying to

put something illegal in his minivan so plaintiff could be pulled over two days later while he was on his way to see his attorney with the laptop with incriminating evidence about his wife. The wife had the spare keys so Melendez had the keys.

Plaintiff alleges that defendant Deputy Nicholas Schaffer[1] did not write a police report, rather, Melendez wrote the report but did not put his name on it because he is a correctional officer. Plaintiff alleges that Schaffer is an accomplice to the conspiracy because he went along with it.

On October 24, 2012, plaintiff called the Sheriff's Office for assistance and talked to a Sergeant M. Rodrigues. Rodrigues agreed to send an officer to help. As plaintiff was waiting, looking through the blinds, he saw a police vehicle driving slow on the street and stopping a distance away. Schaffer was with a nurse because Rodrigues thought he was high on illegal drugs. However, he was simply on medication that impedes his speech. The nurse remained in the vehicle. Plaintiff invited Schaffer into his home, and he looked around his apartment without speaking. After some time, a different officer entered forcefully into the apartment, and started reading plaintiff his Miranda rights from the front door. When plaintiff inquired why, the officer said

[1] Schaffer is also later referred to as Corporal.

that plaintiff had been in his wife's parking lot. Plaintiff tried to argue otherwise, but the officer told plaintiff to call his lawyer, and "two people is enough for me." Schaffer transported plaintiff to jail.

Plaintiff asserts that his lawyer Salim Bazaz was the only person who knew of the incriminating evidence on the laptop. Plaintiff asserts that he spent an unnecessary 6 months in jail, two years of probation, 6 months at David Lawrence, and he had to sleep in a shelter. Plaintiff is seeking $500.00 in damages for the wrongful imprisonment, "for the abuse of some bilingual inmates and the bilingual snitch" used to monitor plaintiff because "[h]e used his position in jail because he works in jail." Also, for the pain and suffering of not having his medication for his inguinal hernia surgery because of Melendez, who liked his wife.

IV. MOTION TO DISMISS

Liberally construed, plaintiff alleges false arrest, a seizure of his person in violation of his Fourth Amendment rights, false imprisonment, and conspiracy.

The false arrest and false imprisonment claims fail for the same reasons previously stated in the August 6, 2018, Opinion and Order. (Doc. #42, pp. 7-9.) The claims are related as plaintiff alleges that the imprisonment was a result of the false arrest. Rankin v. Evans, 133 F.3d 1425, 1431 n.5 (11th Cir. 1998) ("[U]nder Florida law 'false arrest and false imprisonment are different

labels for the same cause of action.'" (citation omitted)). As a preliminary matter, plaintiff does not clearly identify actions attributable to the named defendants that lead to the arrest or his imprisonment. Plaintiff alleges that Schaffer was the driver of the vehicle that transported plaintiff to jail, but makes no effort to allege what actions Schaffer took to contribute to his false arrest or false imprisonment. Neither Melendez or Schaffer are alleged to have taken part in the arrest itself.

"To state a claim for conspiracy under § 1983, a plaintiff must allege that (1) the defendants reached an understanding or agreement that they would deny the plaintiff one of his constitutional rights; and (2) the conspiracy resulted in an actual denial of one of his constitutional rights." Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1327 (11th Cir. 2015). To the extent that plaintiff asserts an unlawful seizure of his laptop without a warrant or probable cause as the object of the conspiracy, the allegations remain insufficient. Plaintiff argues that the arrest was orchestrated for the sole purpose of obtaining the laptop, but plaintiff does not allege anything to negate the fact that the arrest was made by an unidentified officer based on the testimony of two individuals. Further, the actual arresting officer is not a named defendant, and plaintiff does not argue that the witnesses were paid or were not real, or that defendants falsified police reports. See Hadley v. Gutierrez, 526 F.3d 1324,

1332 (11th Cir. 2008) (Faced with the allegation of falsified police reports on summary judgment, the Court noted "[i]t is not our job to divine a constitutional violation to support Hadley's conspiracy claim" in finding no violation of his constitutional rights). As no understanding or agreement to deny plaintiff his constitutional rights is adequately alleged, the claim fails.

"Generally, where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001) (citation omitted). Exceptions to freely granting leave to amend include "undue delay, bad faith or dilatory motive", a "repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." Foman v. Davis, 371 U.S. 178, 182 (1962). The Court finds that plaintiff has been provided numerous opportunities to amend and to state a claim. The Court finds that further opportunities would be futile, and that a dismissal with prejudice is appropriate.

Accordingly, it is now

ORDERED:

1. Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. #51) is **GRANTED** and the Second Amended Complaint is **dismissed with prejudice.**

2. The Clerk shall enter judgment accordingly, terminate all pending motions and deadlines as moot, and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 28th day of February, 2019.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Parties of record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GELU TOPA,

Plaintiff,

v. Case No: 2:16-cv-737-FtM-29UAM

TEOFILO MELENDEZ,
Correctional Officer and
NICHOLAS SHAFFER, Deputy,

Defendants.

ORDER

This matter comes before the Court on defendants' Motion to Tax Costs (Doc. #63) filed on March 20, 2019. No response has been filed and the time to respond has expired. Defendants seek an award of $532.60 for plaintiff's deposition, and $525.00 for their half of the mediation cost.

On September 18, 2017, the Court issued an Opinion and Order (Doc. #32) granting defendants' Motion to Dismiss (Doc. #8) based on Heck[1], which was raised in the summary judgment motion, and denying defendants' Dispositive Motion for Summary Judgment (Doc. #30) as moot. The Complaint was dismissed without prejudice and the case was closed. After a successful appeal, the Court vacated this Opinion and Order and reactivated the motion to dismiss to consider whether the Complaint stated a claim. On August 6, 2018, the Court granted the motion without prejudice to filing an Amended

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[1] Heck v. Humphrey, 512 U.S. 477 (1994).

Complaint finding that plaintiff had failed to state a claim for relief. On September 14, 2018, the Court entered an Order (Doc. #47) striking the Amended Complaint for failure to comply with the Court's directives without prejudice to filing a Second Amended Complaint.

On February 28, 2019, the Court issued an Opinion and Order (Doc. #61) dismissing the Second Amended Complaint with prejudice for failure to state a claim for false arrest, false imprisonment, and conspiracy, and finding that any further amendment would be futile. Judgment (Doc. #62) was entered in favor of defendants on March 7, 2019.

Under Rule 54, "costs—other than attorney's fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). The Court finds that defendant is a prevailing party in this case, and therefore is entitled to statutorily authorized costs. Taxable costs include "fees for printed or electronically recorded transcripts necessarily obtained for use in the case". 28 U.S.C. § 1920(2). "The question of whether the costs for a deposition are taxable depends on the factual question of whether the deposition was wholly or partially "'necessarily obtained for use in the case.'" EEOC v. W&O, Inc., 213 F.3d 600, 620-21 (11th Cir. 2000) (citation omitted). For a deposition of a party, the deposition must have been "reasonably necessary." Id. at 622.

In this case, the deposition of plaintiff was submitted in support of defendants' Dispositive Motion for Summary Judgment

(Doc. #30), and depositions submitted in support of a summary judgment motion may be taxed. Id. at 621. Although the Court previously denied the motion for summary judgment as moot, and instead dismissed the case based on the four corners of the Second Amended Complaint, the deposition was necessarily obtained for use in the case with a dispositive motion that was submitted for review. The Court will grant the motion as to this cost.

Under the Court's Case Management and Scheduling Order (Doc. #22, § IV.E), "[u]pon motion of the prevailing party, the party's share may be taxed as costs in this action." Defendants seek to tax only their portion of the mediation cost. The Court will grant the motion as to this cost.

Accordingly, it is hereby

ORDERED:

Defendants' Motion to Tax Costs (Doc. #63) is **GRANTED.** The Clerk shall tax costs pursuant to the proposed Bill of Costs (Doc. #63-1) taxing $1,057.60 against plaintiff and in favor of defendants.

DONE and ORDERED at Fort Myers, Florida, this 17th day of April, 2019.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Parties of Record

General Docket

United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 19-11673 **Docketed:** 04/30/2019
Nature of Suit: 3899 Adminstrative Review Act **Termed:** 07/29/2019
Gelu Topa v. Teofilo Melendez, et al
Appeal From: Middle District of Florida
Fee Status: Fee Paid

Case Type Information:
1) Private Civil
2) Federal Question
3) -

Originating Court Information:
District: 113A-2 : 2:16-cv-00737-JES-UAM
Civil Proceeding: John E. Steele, Senior U.S. District Court Judge
Date Filed: 09/28/2016
Date NOA Filed:
04/29/2019

Prior Cases:
None

Current Cases:
None

GELU TOPA Appellant	Plaintiff -	Gelu Topa Direct: 239-601-6265 [NTC Pro Se] PO BOX 111381 NAPLES, FL 34108
versus		
TEOFILO MELENDEZ, Correctional Officer Appellee	Defendant -	Richard A. Giuffreda Direct: 954-462-3200 [COR LD NTC Retained] Purdy Jolly Giuffreda Barranco & Jisa, PA Firm: 954-462-3200 2455 E SUNRISE BLVD STE 1216 FORT LAUDERDALE, FL 33304 Gregory Jolly Direct: 954-462-3200 [COR NTC Retained]

		Purdy Jolly Giuffreda Barranco & Jisa, PA Firm: 954-462-3200 2455 E SUNRISE BLVD STE 1216 FORT LAUDERDALE, FL 33304 Harrison Adan Joss, Attorney Direct: 954-462-3200 [NTC Retained] Purdy Jolly Giuffreda Barranco & Jisa, PA Firm: 954-462-3200 2455 E SUNRISE BLVD STE 1216 FORT LAUDERDALE, FL 33304 Matthew Joseph Wildner Direct: 561-697-8088 [NTC Retained] Conroy Simberg Ganon Krevans Abel Lurvey Morrow & Schefer, PA Firm: 561-697-8088 1801 CENTREPARK DR E STE 200 WEST PALM BEACH, FL 33401
NICHOLAS SHAFFER, Deputy Appellee	Defendant -	Richard A. Giuffreda Direct: 954-462-3200 [COR LD NTC Retained] (see above) Gregory Jolly Direct: 954-462-3200 [COR NTC Retained] (see above) Harrison Adan Joss, Attorney Direct: 954-462-3200 [NTC Retained] (see above) Matthew Joseph Wildner Direct: 561-697-8088 [NTC Retained] (see above)

GELU TOPA,	
	Plaintiff - Appellant,

versus

TEOFILO MELENDEZ,
Correctional Officer,
NICHOLAS SHAFFER,
Deputy,

Defendants - Appellees.

07/29/2019	3 pg, 54.3 KB	ORDER: Motion to dismiss appeal as untimely filed by Appellees Teofilo Melendez and Nicholas Shaffer is GRANTED. [8803025-2] SM, CRW and BCG [Entered: 07/29/2019 03:11 PM]
07/25/2019		Received paper copies of EBrief filed by Appellees Teofilo Melendez and Nicholas Shaffer. [Entered: 07/25/2019 09:42 AM]
07/23/2019	26 pg, 336.34 KB	Appellee's Brief filed by Appellees Teofilo Melendez and Nicholas Shaffer. [19-11673] (ECF: Gregory Jolly) [Entered: 07/23/2019 02:28 PM]
07/10/2019	1 pg, 14.31 KB	Over the phone extension granted by clerk as to Attorney Gregory Jolly for Appellees Teofilo Melendez and Nicholas Shaffer. Appellee's Brief due on 07/24/2019 as to Appellee Teofilo Melendez.. [Entered: 07/10/2019 09:01 AM]
06/18/2019	6 pg, 45.04 KB	*MOTION to dismiss appeal as untimely filed by Teofilo Melendez and Nicholas Shaffer. Opposition to Motion is Unknown. [8803025-1]* [19-11673] (ECF: Richard Giuffreda) [Entered: 06/18/2019 02:59 PM]
06/12/2019	25 pg, 2.33 MB	Appendix filed [1 VOLUMES - 2 copies] by Party Gelu Topa. Service date: 06/10/2019 email - Attorney for Appellees: Giuffreda, Jolly, Wildner; US mail - Attorney for Appellee: Joss. [Entered: 06/12/2019 04:28 PM]
06/10/2019	8 pg, 460.26 KB	Appellant's brief filed by Gelu Topa. Service date: 06/06/2019 [19-11673] Attorney for Appellee: Giuffreda - US mail; Attorney for Appellee: Jolly - US mail; Attorney for Appellee: Wildner - US mail. [Entered: 06/11/2019 11:55 AM]
05/28/2019	3 pg, 199.64 KB	Appellant's Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellant Gelu Topa. [Entered: 05/29/2019 07:59 AM]
05/28/2019	3 pg, 106.5 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Richard A. Giuffreda for Appellees Teofilo Melendez and Nicholas Shaffer. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here http://www.ca11.uscourts.gov/web-based-cip or on the court's website. See 11th Cir. R. 26.1-2(b). [19-11673] (ECF: Richard Giuffreda) [Entered: 05/28/2019 04:13 PM]
05/17/2019		APPEARANCE of Counsel Form filed by Gregory Jolly for Teofilo

	1 pg, 67.51 KB	Melendez and Nicholas Shaffer. [19-11673] (ECF: Gregory Jolly) [Entered: 05/17/2019 03:00 PM]
05/15/2019	1 pg, 67.51 KB	APPEARANCE of Counsel Form filed by Gregory J. Jolly for Appellees C.O. Teofilo Melendez & Cpl. Nicholas A. Shaffer [19-11673] (ECF: Richard Giuffreda) [Entered: 05/15/2019 04:53 PM]
05/15/2019	1 pg, 64.26 KB	APPEARANCE of Counsel Form filed by Richard A. Giuffreda for Teofilo Melendez and Nicholas Shaffer. [19-11673] (ECF: Richard Giuffreda) [Entered: 05/15/2019 04:52 PM]
05/15/2019	1 pg, 14.66 KB	NOTICE OF CIP FILING DEFICIENCY to Gelu Topa. You are receiving this notice because you have not completed the Certificate of Interested Persons (CIP). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 05/15/2019 08:29 AM]
05/01/2019	1 pg, 37.98 KB	Appellate fee was paid on 04/29/2019 as to Appellant Gelu Topa. [Entered: 05/01/2019 10:50 AM]
04/30/2019	9 pg, 1.09 MB	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Gelu Topa on 04/29/2019. Fee Status: Fee Paid. No hearings to be transcribed. The appellant's brief is due on or before 06/10/2019. The appendix is due no later than 7 days from the filing of the appellant's brief. Awaiting Appellant's Certificate of Interested Persons due on or before 05/14/2019 as to Appellant Gelu Topa. Awaiting Appellee's Certificate of Interested Persons due on or before 05/28/2019 as to Appellee Teofilo Melendez [Entered: 05/01/2019 10:48 AM]

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

GELU TOPA — PETITIONER
(Your Name)

VS.

TEOFILO MELENDEZ, ET AL — RESPONDENT(S)

PROOF OF SERVICE

I, GELU TOPA, do swear or declare that on this date, _____, 20__, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

R. GIUFFREDA - ATT. FOR DEFENDANTS
2455 EAST SUNRISE BLVD. SUITE 1216
FORT LAUDERDALE, FLORIDA 33304

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCT. 16, 2019

Gelu Topa
(Signature)

(18