No. 21-895

In the Supreme Court of the United States

JOHN RODRIGUES, JR.,

Petitioner,

v.

COUNTY OF HAWAII; and SAMUEL JELSMA, individually,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMENDED PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does LEOSA (18 U.S.C. Sec. 966C) preempt State firearms laws that prohibit the transport, carrying and possession of firearms by a Qualified Retired Law Enforcement Officer ("QRLEO")?

PARTIES TO THE PROCEEDING

The Petitioner is John Rodrigues, Jr.. The Petitioner was the plaintiff in the district court and appellant in the Ninth Circuit.

Respondents are County of Hawaii and Samuel Jelsma. The County of Hawaii, was a defendant in the district court and appellee in the Ninth Circuit. Samuel Jelsma, is a County employee, named in his official capacity, as an individual and was a defendant in the district court and appellee in the Ninth Circuit.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner states as follows:

Respondent County of Hawaii, State of Hawaii, is not a nongovernmental corporation. Petitioner and Respondent Jelsma are individuals.

RELATED PROCEEDINGS

This case arises from the following proceedings:

Rodrigues v. County of Hawaii, et al, No. CV 18-00027 ACK-RLP, 2019 WL 7340497 (D. Haw. December 30, 2019) (order granting Defendants County of Hawaii and Samuel Jelsma's Motion for Summary Judgment).

Rodrigues v. County of Hawaii, et al., No. 20-15097, 2021 WL 4168155 (9th Cir.) (memorandum opinion filed on September 14, 2021).

State of Hawaii v. John Rodrigues, Jr., Criminal No. 3CPC-19-0000157 (indictment filed on February 21, 2019).

There are no other related proceedings in state or federal courts, or in this Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Rodrigues, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals in the Ninth Circuit in this case.

OPINIONS BELOW

The Memorandum Opinion of the court of appeals (App. 1a - 7a) is reported at Rodrigues v. County of Hawaii, et al., No. 20-15097, 2021 WL 4168155 (9th Cir.). The opinion of the district court (App. 8a - 52a) is reported at Rodrigues v. County of Hawaii, et al, No. CV 18-00027 ACK-RLP, 2019 WL 7340497 (D. Haw. Dec. 30, 2019).

JURISDICTION

The judgment of the court appeals was entered on September 14, 2021. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution (Art. VI, cl. 2) provides in part that "the laws of the United States . . . shall be the supreme law of the land."

Petitioner brought the underlying action under 42 U.S.C. Sec. 1983, which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of

> Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Petitioner alleges the Respondents violated his statutory right under LEOSA, as a QRLEO. The relevant provisions of LEOSA, 18 U.S.C. Sec. 966C are reproduced at App. 57a - 62a.

STATEMENT

A. Background Of The Action.

Petitioner is a fifty-five year old male. Excerpt of the Record ("ER"), v.2: 99. On September 1, 2016, the Petitioner retired in good standing from the Hawaii County Police Department ("HCPD") as a Detective/Sergeant (ER, v.2: 87-88) after a career of over twenty-five years (ER v.2: 89). Before retiring he was authorized by law to engage in and supervise the prevention, detection, investigation or prosecution of

criminal violations. ER, v.4: 727-740. Because of his work, before retiring and while having been retired, Petitioner believed he needed to carry concealed firearms to protect himself, his family and his community. ER, v.2: 327, ¶9; 333, ¶39.

On January 26, 2017, the Petitioner was arrested after trying to defend his son from being shot and killed. ER, v.2: 135-136 (Petitioner's Deposition "PD": pages 20-21: lines 20-6). At approximately 10:00 a.m., the Appellant drove up to a worksite in the private subdivision of Hawaiian Paradise Park, at 15th Avenue and Makuu Drive. ER, v.2: 266. The Petitioner approached an individual named Nathan FIGUEROA and had a shotgun slung around his shoulder and a handgun holstered on his belt. ER, v.2: 267. Both firearms were legally registered to the Petitioner. ER, v.2: 96-97.

The Petitioner wanted information about Figueroa's friend, Wesley "Mana" BROOKS, who had been threatening the Petitioner's son with firearms. ER, v.2: 268; 334, ¶41. According to Mr. Figueroa, the Petitioner told him to tell his "friends (Brooks) that they don't know who they are messing with" and that if Mr. Figueroa thought the Petitioner didn't know what he was doing, that he could put a bullet in Figueora's head and that no one would find him. ER, v.2: 267. Figueroa confirmed the Petitioner never unholstered or pointed either of the firearms at him. ER, v.2: 268-269; 271. Figueroa also told police he initially felt threatened, but realized during their conversation that the Petitioner was not mad at him but at Brooks. Id..

Later that morning, at about 10:35 a.m., at another location, the Petitioner called 9-1-1 and

reported he was threatened by Wesley BROOKS, shots had been fired at him and he was a retired law enforcement officer. ER, v.2: 125; 135 (PD: 17-18: 21-9; 147; PD: 68:2-18); 295; 297. The Petitioner did not get out of his truck but Brooks got out of his truck armed with a handgun. ER, v.2: 106, 117, 150 (PD: 79:16-18).

At about 10:55 a.m., Jelsma, the District Commander, arrived at the Petitioner's location in Hawaiian Paradise Park. ER, v.2: 125. The Petitioner consented to a search of his truck and HCPD recovered a holstered handgun under the Petitioner's seat and a shotgun in a zippered, self enclosed case, behind him on the cab floor. ER, v.2: 121-122, 145 (PD: 60:5-11). Jelsma told the Petitioner that Brooks and his companion did not want to make a criminal complaint. ER, v.2: 117, 127, 148 (PD: 71:2-4). But Jelsma

ordered the Petitioner to drive himself to the Pahoa Police Station. ER, v.2: 128, 148 (69:1-21). Petitioner got to the Pahoa Police Station about 11:00 a.m.. ER, v.2: 149 (PD: 74:4-5).

At 11:15 a.m., the Criminal Investigation Division ("CID") took over the investigation. ER, v.2: 98. Randall A. Medeiros, retired CID, Captain, supervised the investigation. ER, v.2: 335. Jelsma kept in contact with former Assistant Chief Tavares and Medeiros. ER, v.2: 339. The Assistant Chief questioned Jelsma why he was present at the scene when CID was already assigned to the investigation. ER, v.2: 339. Jelsma told Tavares that he wanted to arrest the Petitioner but was ordered to let CID handle the investigation. ER, v.2: 339.

After Jelsma arrived at the Pahoa Police Station sometime later, Petitioner repeatedly asked Jelsma if

he was under arrest or free to leave, but Jelsma would not let the Petitioner leave or arrest him. ER, v.2: 148-149 (PD: 71:6: 6-25 - 73:1-1-11).

About 1:14 p.m., Detective Kelii from CID arrived at the Pahoa Police Station and got instructions from Jelsma to arrest the Petitioner for the incident involving Mr. Figueroa. ER, v.2: 265. At about 3:05 p.m., the Petitioner was arrested. ER, v.2: 272.

At 4:33 p.m., HCPD issued a press release that "gunshots" were fired in the Hawaiian Paradise Park Subdivision and they were investigating. ER, v.2: 261.

Before the Petitioner left the Pahoa Police Station, Respondents knew that no shots had been fired by the Petitioner or any other party. ER, v.2: 118.

At 5:00 p.m., the Petitioner was released after a

Deputy Prosecuting Attorney told Det. Kelii that under LEOSA, the Petitioner had a right to carry firearms as a retired police officer. ER, v.2: 273.

On January 27, 2017, HCPD issued a press release identifying the Petitioner as having been arrested in a confrontation involving firearms. ER, v.2: 263.

On August 17, 2017, the Kauai Prosecutor's Office declined to prosecute the Petitioner for any matter arising from the January 26, 2017 incident. ER, v.2: 129. The Kauai Prosecutor's Office cited insufficient evidence of a threat and LEOSA. Id..

Later, Capt. Medeiros was present with the HCPD Chief of Police and the Hawaii County Prosecutor when the Police Chief learned that Jelsma independently contacted the State of Hawaii, Attorney General's office and persuaded them to prosecute the

Petitioner, the Chief remarked that Jelsma should not have done that. ER, v.2: 337.

On January 11, 2018, HCPD returned the Petitioner's shotgun, handgun, 13 rounds of ammunition for the handgun and an extended magazine for the handgun. ER, v.2: 278-284.

On February 21, 2019, the Petitioner was indicted in the Figueora case for the offenses of Terroristic Threatening in the First Degree and firearms violations, including the extended magazine. ER, v.2: 275-277.

At the time of his arrest, the Petitioner was a "Qualified Retired Law Enforcement Officer ("QRLEO") under LEOSA. The Petitioner retired in good standing from the HCPD. ER, v.2: 87-89. Before retirement he was authorized to engage in and supervise the prevention, detection, investigation or

prosecution of criminal violations for over ten years. ER, v.2: 89, v.4: 727-740.

During the most recent 12-month period before January 26, 2017, Petitioner met the standards for qualifications in firearms training for active law enforcement officers. ER, v.2: 90-91, 92-93, 94-95, 330-331; ER, v.4: 727-740.

Petitioner had never been found by a qualified medical professional employed to be unqualified for mental health reasons. ER, v.2: 326-327.

Petitioner had never entered into any agreement in which he acknowledged he was not qualified for mental health reasons. ER, v.2: 326.

On January 26, 2017, the Petitioner was not under the influence of alcohol or drugs. ER, v.2: 327.

On January 26, 2017, the Petitioner was not prohibited by Federal Law from receiving a firearm.

ER, v.2: 327.

On January 26, 2017, the Petitioner had a valid photograph ID from the HCPD. ER, v.2: 90-91.

On January 26, 2017, the Petitioner had a certification issued by the HCPD that not less than one year before January 26, 2017, he could carry concealed firearms. ER, v.2: 90-91, 92-93, 94-95, 330-331; ER, v.4: 727-740.

Before January 26, 2017, the Petitioner was tested by HCPD and qualified under the firearms qualification test for active duty officers. Id..

B. Proceedings below.

1. Complaint.

On January 9, 2018, the Petitioner filed a civil complaint in the Third Circuit Court, State of Hawaii. ER, v.3: 355-380. The Petitioner alleged (a) a claim under 42 U.S.C. Sec. 1983 for violating his

constitutional rights for an arrest without probable cause and his statutory rights under LEOSA (ER, v.3: 363-364); (b) a claim against the County under Monell v. Department of Social Services, 436 U.S. 658 (1978), for the actions of the police officers and failure to train them about LEOSA (ER, v.3: 364-367); and (c) several state-law claims (ER, v.3: 367-377). The Respondents removed the case to the United States District Court of the District of Hawaii [ER, v.3: 349].

2. The District Court's Decision.

The United States District Court for the District of Hawaii, Hon. Alan C. Kay, granted the Respondents' Motion for Summary Judgment on December 30, 2019. 8a - 52a. The district court found that there was probable cause to arrest the Petitioner on state-law claims and therefor, the Petitioner's 42 U.S.C. Sec. 1983 claims against Jelsma and the

County could not survive. App. 34a - 39a. The district court interpreted the language of LEOSA, to limit any QRLEO to a single firearm. App. 26a - 27a. The remaining state-law claims were dismissed based on the Court finding that probable cause existed to arrest the Petitioner on state-law violations. App. 39a - 42a.)

3. The Ninth Circuit's Decision.

On September 14, 2021, the Ninth Circuit Court of Appeals, filed its Memorandum Decision, affirming the District Court's grant of Summary Judgment to the Respondents. App. 1a - 7a. The Court of Appeals affirmed there was probable cause to arrest the Petitioner on state-law violations, which negated his federal (App. 5a) and state-law civil claims (App. 6a).

REASONS FOR GRANTING THE PETITION

The plain and ordinary language of LEOSA and

Congressional intent, preempt the enforcement of state-laws against QRLEOs who carry, possess and use firearms. The decisions of the Ninth Circuit and District Court, negate LEOSA and its protections. The decisions allow police and prosecutors, in every State in the Union, to make different and arbitrary decisions about what circumstances a QRLEO, like the Petitioner, would be protected under LEOSA. The Ninth Circuit Court and District Court's decisions also legislate, by judicial fiat, an exception to LEOSA (18 U.S.C. Sec. 966C), that any violation of state-law, disqualifies a QRLEO from LEOSA protection.

The Petition should be granted.

I. LEOSA's language and Congressional Intent preempts State Law.

Generally, Art. VI, cl.2, requires Courts to regard the Constitution and federal laws as "the

supreme Law of the Land." Mut. Pharm. Co., Inc. v. Bartlett, 570 U.S. 472, 479–80, 133 S.Ct. 2466, 2472–73, 186 L.Ed.2d 607 (2013). This Court has recognized federal preemption of state criminal laws. Abbate v. United States, 359 U.S. 187, 195, 79 S.Ct. 666, 671, 3 L.Ed.2d 729 (1959), "[I]n order to maintain the effectiveness of federal law enforcement, it is desirable completely to displace state power to prosecute crimes based on acts which might also violate federal law." State laws that conflict with federal laws should not be given effect. Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 324, 135 S.Ct. 1378, 1383, 191 L.Ed.2d 471 (2015); Id., 575 U.S. at 326, 135 S.Ct. at 1384, "Thus, a court may not convict a criminal defendant of violations a state law that federal law prohibits. (Citations omitted)"

It is also well established that States have the

primary authority to define and enforce criminal laws. United States v. Lopez, 514 U.S. 549, 561, 115 S.Ct. 1624, 1631, 131 L.Ed.2d 626 (1995). The United States Supreme Court has recognized that regulation of firearms is traditionally a State function. U.S. v. Bass, 404 U.S. 336, 338, 92 S.Ct. 515, 518, 30 L.Ed.2d 488 (1971).

There are two (2) types of preemption, express or implied. Chicanos Por La Causa, Inc. v. Napolitano, 558 F.3d 856, 863 (9th Cir. 2009), aff'd sub nom. Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582, 131 S.Ct. 1968, 179 L.Ed.2d 1031 (2011). In an express preemption case, the Court determines the boundaries of federal preemption. Id.. In addition to the language of the statute, the Court looks at the comprehensiveness of the statute, including whether sanctions or penalties are imposed. Id.; see also, CSX

Transp., Inc., v. Easterwood, 507 U.S. 658, 664, 113 S.Ct. 1732, 1737, 123 L.Ed.2d 387 (1993), "If the statue contains an express pre-emption clause, the task of statutory construction must in the first instance, focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent."

Implied preemption takes two (2) forms. "Field preemption" occurs where " 'the depth and breadth of a congressional scheme ... occupies the legislative field.' " Id.. The second form of implied preemption is "conflict preemption," and occurs where federal and state law make compliance an impossibility or the state law frustrates the "full purposes and objectives of Congress. (Citations omitted)." Chicanos Por La Causa, Inc. v. Napolitano, 558 F.3d 856, 863 (9th Cir. 2009), aff'd sub nom. Chamber of Commerce of U.S. v.

Whiting, 563 U.S. 582, 131 S.Ct. 1968, 179 L.Ed.2d 1031 (2011).

The language of LEOSA clearly preempts the enforcement of state firearms laws, as it applies to QRLEOs. In DuBerry v. D.C., 824 F.3d 1046, 1052 (D.C. Cir. 2016), the Court of Appeals noted:

> We begin with the text of the LEOSA, see Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252–53, 124 S.Ct. 1756, 158 L.Ed.2d 529 (2004), and conclude that it favors appellants' view of the LEOSA right. Congress used categorical language in the "notwithstanding" clause of subsection (a), to preempt state and local law to grant qualified law enforcement officers the right to carry a concealed weapon. As applied to the three-factor Blessing test, the text of the LEOSA creates the type of right remediable under Section 1983. (Emphases added)
>
> DuBerry v. D.C., 824 F.3d 1046, 1052 (D.C. Cir. 2016); see also, D'Arueli v. Harvey, 2018 WL 704733, at *1 (DC, N.D. New York, February 2, 2018), "LEOSA was designed to 'override State laws and

> mandate that retired and active police officers could carry a concealed weapon anywhere within the United States. H.R. Rep. No. 108-560 at 3 (2004).

Congress intended LEOSA to preempt the enforcement of any state firearms laws against QRLEOs. H.R. REP. 108-560, 3, 2004 U.S.C.C.A.N. 805 . . . the "Law Enforcement Officers Safety Act of 2003, would override State laws and mandate that retired and active police officers could carry a concealed weapon anywhere within the United States." In Senate Report No. 108-29, the United States Senate detailed the purpose, need and scope of LEOSA's preemption of state firearms laws.

LEOSA's purpose was clear:

> The purpose of S. 253, the "Law Enforcement Officers Safety Act of 2003," is to amend title 18, United States Code, to <u>authorize</u> qualified off-duty law enforcement officers and <u>qualified retired law enforcement officers carrying</u>

> photographic identification issued by a governmental agency for which the individual is, or was, employed as a law enforcement officer, notwithstanding State or local laws, to carry a concealed firearm that has been shipped or transported in interstate or foreign commerce. This Act, however, does not seek to supersede Federal law or limit the laws of any State that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or prohibits or restricts the possession of firearms on any State or local government property, installation, building, base, or park. (Footnote omitted) (Emphases added)
>
> S. REP. 108-29, 1-2, 2003 WL 1609540 (Leg.Hist.), at 1-2.

Legislative history further demonstrated that the Congress intended LEOSA would preempt State firearms laws:

> Senator Kennedy offered an amendment to clarify that the bill does not supersede State or local laws that prohibit or restrict the possession of concealed firearms in various public places.

> The Committee, on a 14–4 rollcall vote, tabled this amendment. (Emphasis added)
>
> S. REP. 108-29, 2003 WL 1609540 (Leg.Hist.), at 8; see also, 150 Cong. Rec. H4811 (daily ed. June 23, 2004) (statement of Rep. Delahunt), at 1445, "The reality is that this legislation will preempt, if you will, or supersede, the laws of 31 States that currently restrict carrying a concealed weapon to on-duty officers." See also, S. REP. 108-29, 12, 2003 WL 1609540 (Leg.Hist.), at 12; see also, S. REP. 108-29, 14, 2003 WL 1609540 (Leg.Hist.), at 14, Sen. Kennedy's remarks that "Congress has never passed a law giving current and former state and local employees the right to carry weapons in violation of controlling state and local laws." (Emphasis added)

Congress intended to preempt state firearms laws as it relates to QRLEOs. Title 18 U.S.C. Sec. 966C, specifically states that "qualified retired law enforcement officers" are allowed to carry concealed firearms under certain preconditions,

"Notwithstanding any other provision of the law of any State or any political subdivision thereof, . . . " The language is unequivocal. Wyeth v. Levine, 555 U.S. 555, 565, 129 S.Ct. 1187, 1194–95, 173 L.Ed.2d 51, 2009 WL 529172 (2009).

First, "Field preemption" applies in this case because of the "depth and breadth" of 18 U.S.C.A., Chapter 44. QRLEOs, authorized to transport, carry, possess and use firearms are subject to the comprehensive law which includes protection and punishment for violations of LEOSA's provisions. Title 18 U.S.C.A. Chapter 44 shows Congress' broad and comprehensive effort to regulate firearms possession, under limited conditions, including identifying unlawful acts and penalties committed by QRLEOs. See, 18 U.S.C. Sec. 922(a)(1)(A), and potential penalties, 18 U.S.C. 924(c)(1)(A). See,

United States v. Davis, 139 S.Ct. 2319, 2336, 204 L.Ed.2d 757 (2019), holding that Sec. 924(c)(3)(B) was unconstitutionally vague.

Second, "Conflict preemption" also applies because the detention and arrest of QRLEOs, based on state firearms laws, would conflict with and frustrate the purpose and intent of Congress. S. REP. 108-29, 4, 5, 2003 WL 1609540 (Leg.Hist.), at 4 and 5, "The Law Enforcement Officers Safety Act of 2003, S. 253, is designed to protect officers and their families from vindictive criminals, and to allow thousands of equipped, trained and certified law enforcement officers, whether on-duty, off-duty or retired, to carry concealed firearms in situations where they can respond immediately to a crime across state and other jurisdictional lines."

Third, preemption can be inferred because

Congress left no room for the States to supplement LEOSA. Sen. Kennedy offered an amendment to allow States to opt out of LEOSA and that amendment was rejected. S. REP. 108-29, 8, 2003 WL 1609540 (Leg.Hist.), at 8.

The Respondent County was aware that LEOSA applied to the Petitioner's arrest. ER, v.2: 111; 273. A County of Hawaii, Deputy Prosecuting Attorney cautioned the Respondent police officers that LEOSA applied to the Petitioner before he was eventually released from custody. ER, v.2: 273. The Prosecuting Attorney office for the County of Kauai refused to prosecute the Petitioner for any alleged firearms based on LEOSA and the lack of evidence to support the allegation that a "threat" was made. ER, v.2: 111-112, 129.

Petitioner should not have been arrested,

charged and prosecuted for state firearms and terroristic threatening violations because LEOSA preempted state-laws and Respondents were aware LEOSA's protection applied to the Petitioner.

II. The Ninth Circuit's Decision is Wrong.

The cornerstone of the Ninth Circuit's and District Court's decision was that there was probable cause to arrest the Petitioner for the state law crime of Terroristic Threatening in the First Degree, Sec. 707-716(1)(e), Hawaii Revised Statues ("HRS"), because the Petitioner was in possession of firearms (Sec. 707-700, HRS, a "dangerous instrument" is "any firearm"). App. 68a - 69a (Sec. 707-716); App. 5a (9th Cir.); App. 29a - 33a (USDC); ER, v.2: 275-277 (Indictment). The offense is a Class "C" felony, punishable by five (5) years imprisonment. Sec. 706-660(1)(b), HRS, App. 62a - 63a. Petitioner was eligible for an additional five

(5) years imprisonment because of the possession of firearms. Sec. 706-660.1(3)(d), HRS, App., 65a - 66a.

The Ninth Circuit's and District Court's probable cause finding based on the confrontation with an individual earlier in the day (Figueroa) was wrong as a matter of law. The Ninth Circuit and District Court ignored the events that prompted the Petitioner's actions.

LEOSA's purpose was to protect retired officers and their families. S. REP. 108-29, at 4, 2003 WL 1609540. The Petitioner's son had been threatened by Wesley "Mana" BROOKS. Mr. Brooks had threatened the Petitioner's son on three (3) different occasions, and on the last occasion he brandished an AK-47. ER, v.2: 113 (PD: 135: 18-19:7-11; PD: 135-136: 20-26: 20-2). The Petitioner and his son reported the incidents to the Hawaii County Police Department, under the

supervision of the District Commander, Jelsma, the Department did nothing. ER, v.2: 147 (PD: 68: 7-18).

No probable cause existed under state law, because no "threat" was made to Mr. Figueroa. A "threat" must be unequivocal, unconditional and immediate. State v. Valdivia, 95 Hawai'i 465, 476, 24 P.3d 661, 672 (2001). The "threat" has to convey an "imminent prospect of execution." Id.. It also must induce a "reasonable fear of bodily injury." Id.. None of those factors were present in Mr. Figueroa's case.

Mr. Figueroa told police that initially he felt threatened, but realized during the conversation that the Petitioner was not mad at him but at Brooks. ER, v.2: 268-269; 271. The alleged threat conveyed to Mr. Figueroa was the Petitioner saying that Mr. Figueroa should tell his "friends (Brooks) that they don't know who they are messing with" and that if Mr. Figueroa

thought the Petitioner didn't know what he was doing with the firearms he was carrying, that he could put a bullet in Figueora's head and that no one would find him. ER, v.2: 267. That statement was equivocal, conditional and not immediate. State v. Valdivia, 95 Hawai'i 465, 476, 24 P.3d 661, 672 (2001). The alleged "threat" did not convey any immediacy and did not produce in Mr. Figueroa a "reasonable fear of bodily injury." Id.. The Petitioner's confrontation with Mr. Figueroa did not meet the state-law definition of a "threat."

The Ninth Circuit and District Court used probable cause under state-law to avoid an analysis of the comprehensive list of federal law violations in 18 U.S.C., Chapter 44, which LEOSA falls under, because the Petitioner was a QRLEO. See, 18 U.S.C. Sec. 922(a)(1)(A) and potential penalties, 18 U.S.C. Sec.

924(c)(1)(A). See, United States v. Davis, 139 S.Ct. 2319, 2336, 204 L.Ed.2d 757 (2019), holding that Sec. 924(c)(3)(B) was unconstitutionally vague.

Finally, both the Ninth Circuit and District Court improperly linked the Figueroa incident with the Brooks incident, in order to bootstrap probable cause. App. 2a - 4a (9th Cir.); App. 21a - 23a; ER, v.1: 16 (USDC). The incidents were separate even under state law. Hawaii criminal law specifically prohibits, as part of a Terroristic Threatening in the First Degree charge, threats that are made as part of a common scheme against different persons. Sec. 707-716(1)(b), HRS, App. 68a - 69a. The Petitioner was never arrested or charged for that violation. ER, v.2: 272; 275 (Indictment).

There was no probable cause to support a state-law violation. The Petitioner was a QRLEO. Under

LEOSA, he was allowed to transport, carry, possess and use firearms. LEOSA expressly allowed the Petitioner to defend himself, his family, and others. LEOSA permitted the Petitioner to protect his son from being killed, including when he approached Mr. Figueroa for information. As a QRLEO, if the Petitioner's conduct violated LEOSA's prohibitions, he would be accountable for any LEOSA violations, but the Respondent, District Court and Ninth Circuit Court ignored any possible LEOSA violations and its comprehensive statutory scheme. The Ninth Circuit Court erred in affirming the erroneous assumption made by the District Court regarding probable cause.

III. The Petition Presents an Issue of Exceptional Importance.

The Ninth Circuit Court, by Memorandum Opinion, nullified LEOSA, as it applies to QRLEOs.

The Ninth Circuit's opinion, gives police, prosecutors and courts, unlimited discretion to decide whether a QRLEO's actions in any particular instance would be protected under LEOSA. Intervention by this Court is necessary to reassert the LEOSA protections intended by Congress and provide some clarity in its application towards QLREOs.

There is a split among Circuits concerning LEOSA and QRLEOs. The D.C. Circuit's analysis in Duberry v. D.C., 924 F.3d 570 (D.C. Cir. 2019) directly conflicts with the Fourth Circuit analysis in Carey v. Throwe, 957 F.3d 468, 479, 2020 WL 2071060 (4th Cir. 2020), cert. denied, 141 S.Ct. 1054, 208 L.Ed.2d 522, 2021 WL 78108 (2021) and the Eleventh Circuit's analysis in Burban v. City of Neptune Beach, Florida, 920 F.3d 1274 (11th Cir. 2019).

In Duberry, supra, the issue was whether

retired correctional officers met the LEOSA definition of "law enforcement officers." Duberry v. D.C., 924 F.3d at 575. The retired correctional officers had LEOSA compliant identification cards, but the Department did not recognize them as "law enforcement officers" disqualifying them from carrying concealed firearms. Id.. Based on the DC Circuit's analysis of the three factors in Blessing v. Freestone, 520 U.S. 329, 117 S.Ct. 1353, 137 L.Ed.2d 569 (1997), the Court found that the plain meaning of the text of LEOSA and its stated purpose, established an individual right enforceable under 42 U.S.C.A. Sec. 1983. Duberry v. D.C., 924 F.3d at 576.

In Burban v. City of Neptune Beach, Florida, 920 F.3d 1274 (11th Cir. 2019), the plaintiff requested the Department issue her a LEOSA identification card. Id., at 1277-1278. The Department refused and

informed the plaintiff that LEOSA identification cards were only issued to officers who retired in good standing after fifteen (15) years and qualified with a department certified firearms instructor. Id., at 1277-1278. The Court held that LEOSA did not create an individually enforceable right to require States to issue LEOSA-compliant identification cards. Id., at 1279, 1280; see also, Carey v. Throwe, 957 F.3d 468, 479, 2020 WL 2071060 (4th Cir. 2020), cert. denied, 141 S.Ct. 1054, 208 L.Ed.2d 522, 2021 WL 78108 (2021). These cases reflect the beginning of varied and conflicting interpretations of LEOSA.

The Ninth Circuit Court's decision is different because it renders LEOSA meaningless, as applied to QRLEOs. The Ninth Circuit's validation of the District Court's decision, allows for thousands of different interpretations of state, city, county and

village laws by local police, local prosecutors, state and federal courts. The Ninth Circuit's probable cause exception could be used to negate the application of LEOSA entirely, arising from offenses that started as traffic violations. Ramirez v. Port Auth. of New York & New Jersey, 2015 WL 9463185 (S.D.N.Y. Dec. 28, 2015); W. Virginia v. Barker, 2011 WL 1627441 (S.D.W. Va. Apr. 28, 2011). There is a growing body of cases at all levels of the federal judiciary reflecting an uncertainty about the limits of LEOSA. Moore v. Trent, 2010 WL 5232727, at *4 (N.D. Ill. Dec. 16, 2010), LEOSA incorporates "a reservoir of powers set aside for the States." The Ninth Circuit's decision is emblematic of an erosion of LEOSA protections for QRLEOs.

The Ninth Circuit's decision, through judicial fiat, creates an exception to LEOSA that excludes

current law enforcement officers and QRLEOs. The Ninth Circuit's exception is that if there is probable cause, based on any state law violation, LEOSA would not apply. Any preemptive, affirmative or reactionary act by a QRLEO to protect himself, his family or the community, while possessing or using firearms, would be unlawful under state law. The Ninth Circuit Court and District Court's interpretation of LEOSA, is that a QRLEO, does not qualify for protection under LEOSA if he or she transports, carries or is in possession of firearms in violation of state-law and/or violates any other state or local law. The Ninth Circuit's validation of the District Court's opinion, means that no QRLEO could rely on the protections under LEOSA to transport, carry, possess, or use firearms to protect himself, his family or community. The Ninth Circuit's interpretation leads to the absurd result that LEOSA

could never apply to QRLEOs.

The Ninth Circuit Court's Memorandum Opinion and the District Court's decision reflects a disdain for Congress' intent of supplementing dwindling law enforcement resources and personnel through the creation of a reserve corps of qualified, retired, law enforcement officers. Congress' protection for QRLEO's includes stringent requirements in order to qualify under LEOSA, such as current firearms qualification, background checks, and training, among others. See, 18 U.S.C. Sec. 966C(c) and (d). In this case, there were genuine issue of material fact regarding the Petitioner's qualifications that precluded summary judgment, instead of relying on probable cause to dismiss his claims.

This Court's intervention is needed to provide police, prosecutors, state and federal courts some

guidance about the scope and breadth of LEOSA for QRLEOs. Otherwise, thousands of people would decide whether LEOSA should apply to QLREOs in any particular situation. In this case, despite the knowledge that LEOSA applied to the Petitioner, Respondents still arrested and prosecuted him.

CONCLUSION

Petitioner respectfully submits that the petition for writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

United States Court of Appeals, Ninth Circuit.

John RODRIGUES, Jr., Plaintiff-Appellant,

v.

COUNTY OF HAWAII; Samuel Jelsma, Defendants-Appellees.

No. 20-15097

Argued and Submitted February 2, 2021

Honolulu, Hawaii

FILED SEPTEMBER 14, 2021

Appeal from the United States District Court for the District of Hawaii, Alan C. Kay, District Judge, Presiding, D.C. No. 1:18-cv-00027-ACK-WRP

Attorneys and Law Firms

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Before: CLIFTON, R. NELSON, and COLLINS, Circuit Judges.

MEMORANDUM

Plaintiff John Rodrigues, Jr. appeals the district court's grant of summary judgment dismissing his federal and state-law claims, arising from his arrest, against Defendants County of Hawaii and Hawaii County Police Department Major (formerly, Captain) Samuel Jelsma. Reviewing de novo, *Lyons v. England*, 307 F.3d 1092, 1103 (9th Cir. 2002), we affirm.

In his claims under 42 U.S.C. § 1983, Rodrigues alleges that, in causing his arrest for terroristic threats and weapons offenses,1 Jelsma deprived him of (1) "his constitutional right to be free from arrest unsupported by warrant or probable cause under the Fourth Amendment"; and (2) his "federal right to carry and transport concealed weapons" under the Law Enforcement Officers Safety Act, 18 U.S.C. § 926C ("LEOSA"). The district court properly granted summary judgment against Rodrigues on these claims.

a. Where, as here, there was a single arrest for multiple offenses, the Fourth Amendment requirement of probable cause is satisfied if any *one* of the offenses was supported by probable cause. *Barry v. Fowler*, 902 F.2d 770, 773 n.5 (9th Cir. 1990). Rodrigues concedes that one of the offenses for which he was arrested was a

charge of terroristic threatening in the first degree based on an incident involving Nathan Figueroa on January 27, 2016. We conclude that, at the time of Rodrigues's arrest later that same day, the officers had " 'knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe' " Rodrigues had committed that offense. *Fayer v. Vaughn,* 649 F.3d 1061, 1064 (9th Cir. 2011) (citation omitted).

Under Hawaii law, "the offense of terroristic threatening" occurs, *inter alia*, when a person "threatens, by word or conduct, to cause bodily injury to another person ... [w]ith the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person." HAW. REV. STAT. § 707-715. The offense constitutes "terroristic threatening in the first degree" when it is committed "[w]ith the use of a dangerous instrument or a simulated firearm." *Id.* § 707-716(1)(e). At the time of Rodrigues's arrest, the involved officers were aware that two individuals, Nathan Figueroa and Shannon Estocado, had come to the police station to report that Rodrigues had threatened Figueroa at his job site. Figueroa reported that a man whom he had never met before—but who he learned was the father of Keala, one of his coworkers (i.e., Rodrigues)—got out of his truck with a pistol on his belt and a rifle strapped across his chest. According to Figueroa, Rodrigues told him "tell your friends they don't know who they [are] messing with" and that "he was a cop for twenty something years, you think I don't know what I [am]

doing with this [firearm] and something to the effect that he [was] going [to] put one bullet in his head and nobody [was] going [to] find him." Figueroa reported that "at first, he felt threatened by [Rodrigues's] actions," but he ultimately realized Rodrigues "was not mad at him," but rather at one of his son's former coworkers. Estocado, a witness to the incident between Rodrigues and Figueroa, confirmed Figueroa's account. These facts were sufficient to establish probable cause that Rodrigues, while visibly armed, had threatened to harm Figueroa with intent to terrorize him, and he was therefore properly arrested for committing a terroristic threat in the first degree.

Rodrigues argues that the incident involving Figueroa should not have been considered because his § 1983 complaint "only alleged violations of [his] constitutional rights" based on *other* charges arising from a second incident that occurred shortly after the one involving Figueroa. This contention fails because, as we have explained, Rodrigues's arrest was valid under the Fourth Amendment if any one of the charges underlying that arrest was supported by probable cause. *Barry*, 902 F.2d at 773 n.5. The fact that Rodrigues sought to challenge only other charges makes no difference.

Rodrigues also contends that probable cause was lacking because, as he puts it, the "Hawaii County Prosecutor's office felt that any threat to Figueroa was a 'conditional threat' and not a chargeable offense." The

cited preliminary comment from the prosecutor's office, however, was not made until after the arrest had already occurred and, in any event, it did not undermine the existence of probable cause based on the facts that we have already set forth.

Because the officers had probable cause to arrest Rodrigues for terroristic threatening of Figueroa in the first degree, Rodrigues's Fourth Amendment rights were not violated in connection with that arrest.

Rodrigues's claim that his LEOSA-protected rights were violated by his arrest necessarily rests on the premise that his arrest on *firearms* charges was inconsistent with his rights under LEOSA. But as we have explained, Rodrigues's arrest was fully valid based solely on the separate charge of terroristic threatening, and Rodrigues does not contend that his arrest on *that* charge was inconsistent with LEOSA. Rodrigues's single arrest thus did not infringe on his LEOSA rights, regardless of whether or not he could properly have been arrested based only on the weapons charges.

Because there was no underlying violation of Rodrigues's constitutional or statutory rights, his § 1983 claim against the County of Hawaii necessarily failed as well. *See City of Los Angeles v. Heller*, 475 U.S. 796, 798–99, 106 S.Ct. 1571, 89 L.Ed.2d 806 (1986).

The district court did not err in granting summary judgment for Defendants on Rodrigues's state-law defamation and false light claims. Rodrigues argues that two allegedly defamatory media releases contain a "factually wrong" statement "associating [Rodrigues] to an incident where shots were fired." The press releases refer to the second incident involving Rodrigues (i.e., not his confrontation of Figueroa), and both of them say that the incident was "*initially reported* as 'gunshots fired' " but that the investigation indicated that "*no* shots" had been fired (emphasis added). There is no evidence that these statements were untrue. Indeed, Rodrigues himself had called 9-1-1 in connection with the second incident and had reported that he "believe[d] shots had been fired." Because the challenged statements were not false, Rodrigues's defamation and false light claims under Hawaii law failed as a matter of law. *See Nakamoto v. Kawauchi*, 142 Hawai'i 259, 418 P.3d 600, 615 (2018) (noting that "truth is an absolute defense to defamation claims"); id. at 611 n.7 (" '[W]here a false-light claim is based on the same statements as a defamation claim, the false-light claim must be dismissed if the defamation claim is dismissed.' " (citation omitted)).

AFFIRMED.

Footnotes

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1. Although Jelsma was not the arresting officer, Rodrigues alleges that Jelsma "directed all police investigations and resources to focus exclusively on arresting [Rodrigues]."

2. Because Rodrigues's arrest was supported by probable cause, his state-law claims for false arrest and for negligent investigation in connection with his arrest likewise failed as a matter of law.

3. We therefore have no occasion to address whether Rodrigues is correct in contending that an individual's claimed rights under LEOSA are enforceable under § 1983. *See Carey v. Throwe*, 957 F.3d 468, 481 (4th Cir. 2020) (noting a split of authority on that issue).

United States District Court, D. Hawai‘i.

John RODRIGUES, Jr., Plaintiff,

v.

COUNTY OF HAWAII; Samuel Jelsma, individually, Doe Persons 1-10; Doe Partnerships 1-10; Doe Corporations 1-10; Roe "Non-Profit" Corporations 1-10; and Roe Governmental Entities 1-10, Defendants.

Civ. No. 18-00027 ACK-WRP

Signed 12/30/2019

Attorneys and Law Firms

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ORDER GRANTING DEFENDANTS COUNTY OF HAWAII AND SAMUEL JELSMA'S MOTION FOR SUMMARY JUDGMENT

Alan C. Kay, Sr. United States District Judge

This case arises from a 2017 incident involving retired police officer Plaintiff John Rodrigues, Jr. ("Plaintiff") and officers of the Hawai'i County Police Department ("HCPD") that ultimately led to Plaintiff's arrest. Plaintiff brought this lawsuit against the County of Hawai'i (the "County") and Major (formerly, Captain) Samuel Jelsma ("Defendant Jelsma," together with the County, the "County Defendants"), alleging constitutional and civil rights violations related to his treatment and arrest.

The County Defendants have moved for summary judgment, arguing that they are entitled to judgment as a matter of law and no genuine issues of material fact remain. See ECF No. 109 ("Motion"). For the reasons detailed below, the Court GRANTS the County Defendants' Motion for Summary Judgment.

FACTUAL BACKGROUND

The following facts are undisputed and are principally drawn from parties' concise statements of facts ("CSFs") and the evidentiary exhibits attached thereto.

I. Plaintiff and Defendant Jelsma

Plaintiff is a retired police officer who retired in good

standing from the force in August 2016, after serving with the HCPD for twenty-six years. See Pl.'s CSF, ECF No. 120, ¶¶ 21, 23. As a result of his service, Plaintiff is considered a "qualified retired law enforcement officer" as that term is defined under 18 U.S.C. § 926C ("LEOSA"). See Ex. 2 to Pl.'s CSF, ECF No. 120-3 (LEOSA identification card); Ex. F to Defs.' CSF, ECF No. 110-7 (same). Defendant Jelsma is a major in the HCPD. At the time of the events at issue in this case, he was a captain.

Plaintiff and Defendant Jelsma have a long history as colleagues since the 1990s. According to Plaintiff, Captain Jelsma has harbored a personal grudge against Plaintiff stemming from several incidents over the years. See Compl. ¶ 77.

II. The Events of January 26, 2017

On January 26, 2017, at around 7:30 a.m., Plaintiff left his home in Hakalau on the Big Island. Defs.' CSF, ECF No. 110, ¶ 1. He got into his truck and began driving towards Puna, apparently with no destination in mind. Defs.' CSF ¶¶ 2-4. When he set out that morning, Plaintiff had two loaded firearms in his truck: (1) a 9mm handgun in a worn leather holster underneath his driver-side seat and (2) a 12-gauge shotgun in a soft case in the cab of his truck. Defs.' CSF ¶¶ 5-6, 12.

A few hours into his drive, around 10:00 a.m., Plaintiff encountered one of his son's coworkers, Nathan Figueroa at the Hawaiian Paradise Park subdivision. Defs.' CSF ¶ 7. An altercation followed. Initially,

Plaintiff asked Figueroa if his first name was "Nathan"—which is indeed Figueroa's first name—and Figueroa apparently did not recognize Plaintiff. It is alleged that Plaintiff displayed his firearms and said to Figueroa, "I going put one bullet in your fucken head first." Defs.' CSF ¶ 7; see also Ex. C to Defs.' CSF, ECF No. 110-4, at 2 (Plaintiff's HCPD complaint testimony). According to Figueroa, Plaintiff made several statements directed toward Figueroa, including "you don't know who you are fucking with, you fucking with the wrong people and you better have an army because I do." Ex. D to Defs.' CSF, ECF No. 110-5, ¶ 5 (Figueroa declaration). Figueroa also states that Plaintiff said he would put a bullet in Figueroa's head and that, after asking if Figueroa had kids and cared about his parents, Plaintiff said "if anything happens to [Plaintiff's] son, it would fall back on [Figueroa]." Ex. D to Defs.' CSF ¶¶ 4-9. Plaintiff left the scene without police having been notified, but Figueroa later reported the incident to police, which eventually resulted in Plaintiff's arrest later that day. See Defs.' CSF ¶¶ 7-9, 19; Ex. 6 to Pl.'s CSF, ECF No. 120-15, at 19. After he reported the incident, Figueroa told Detective Kelii that "at first, he felt threatened by [Plaintiff]'s actions," but he ultimately realized Plaintiff was not mad at him, but rather at another individual, Wesley "Mana" Brooks.[1] Plaintiff ultimately left the scene without incident or arrest.[2] See Defs.' CSF ¶¶ 7-9.

A short time after the exchange with Figueroa, Plaintiff parked his truck at 3rd Avenue near Maku'u Drive in Hawaiian Paradise Park. Defs.' CSF ¶ 9; Pl.'s CSF § 9. There, he called 9-1-1 and reported that gunshots had

been fired. Pl.'s CSF ¶¶ 32-33; Defs.' CSF ¶¶ 9-10; see also Ex. B to Defs.' CSF, ECF No. 110-3, at 15. Plaintiff's call was apparently made in connection with a different confrontation than the earlier encounter with Figueroa—this later one was with Brooks and another individual (Lopez). Defs.' CSF ¶ 10; Pl.'s CSF ¶ 10; see also Pl.'s Opp. 17-18 (distinguishing the Figueroa dispute from the encounter with Brooks). When police officers arrived on the scene in response to Plaintiff's call, the officers requested and Plaintiff allowed them to search his truck. Defs.' CSF ¶ 11; Pl.'s CSF ¶ 11. In their search, the officers recovered the two firearms. Defs.' CSF ¶ 12; Pl.'s CSF ¶ 12.

A short time after Plaintiff called 9-1-1, Defendant Jelsma arrived at the scene. Pl.'s CSF ¶ 34. According to Plaintiff, he presented to the officers (including Defendant Jelsma) at the time of the search an HCPD identification card, which had his picture identifying him as a retired law enforcement officer on one side and stated the following on the reverse side:

> This card is for identification purposes only, pursuant to 18 United Stated [sic] code & 926C(d), Carrying of Concealed Firearms by Qualified Retired Law Enforcement Officers. This identification DOES NOT perm[i]t the holder to carry a concealed firearm pursuant to 18 United States Code & 926C and in of itself is not inte[n]ded to comply with or be applicable to State

> statutes and administrative rules governing identification for the purpose of carrying a concealed and/or unconcealed firearm.

Ex. F to Defs.' CSF, ECF No. 110-7 (the "ID Card"); Ex. 2 to Pl.'s CSF (same); see also Defs.' CSF ¶¶ 13-14; Pl.'s CSF ¶¶ 13-14. Although Plaintiff now seems to dispute this fact, the evidence shows that he did not present any other certifications or identification, including a "Firearms Qualification Card" qualifying him to carry and use the specified firearms.[3] See Pl.'s CSF ¶ 15.

Regardless of whether Plaintiff presented his Firearms Qualification Card to Captain Jelsma or any other officers that day, Plaintiff had a current certification (issued on February 19, 2016) qualifying him to use and carry a Remington 870 12-gauge shotgun bearing serial number RS01242Y. Defs.' CSF ¶ 17; see also Ex. H to Defs.' CSF and Ex. 4 to Pl.'s CSF. See Defs.' CSF ¶¶ 16-18; see also Exs. G & H to Defs.' CSF, ECF Nos. 110-8 & 110-9, and Exs. 4 & 5 to Pl.'s CSF, ECF Nos. 120-5 & 120-6 (qualifications cards). Plaintiff also had an expired certification issued on December 24, 2015, which qualified Plaintiff to use and carry four firearms.[4] Defs.' CSF ¶ 16; see also Ex. G to Defs.' CSF.

Defendant Jelsma, who had arrived at the scene, instructed Plaintiff to drive himself to the police station to speak with Criminal Investigation Division ("CID") personal and allow them to take Plaintiff's statement. See Pl.'s CSF ¶ 39; Ex. E to Defs.' CSF, ECF No. 110-6,

¶ 10. Sometime after Plaintiff left the scene to drive to the police station, Defendant Jelsma received a call advising him of the earlier incident involving Plaintiff and Figueroa. Id. ¶ 11. When Defendant Jelsma arrived at the police station, he spoke with the responding officer who advised that Plaintiff had threatened to shoot and kill Figueroa during that prior incident. Id.

III. Plaintiff's Arrest

Shortly after Plaintiff had returned to the police station around 11:00 a.m., Plaintiff was told that the CID had taken over the investigation of Plaintiff. Pl.'s CSF ¶ 43. A few hours later, around 3:05 p.m., Plaintiff was arrested and charged with six firearms violations, as well as three counts of terroristic threatening related to the initial confrontation with Figueroa. Defs.' CSF ¶ 19; Pl.'s CSF ¶¶ 49-51; see also Ex. B to Defs.' CSF at 65:1-4; Ex. E to Defs.' CSF § 12.

Plaintiff was ultimately indicted on February 21, 2019, for charges based on firearms violations and terroristic threatening in connection with the incident involving Figueroa. Pl.'s CSF ¶ 61.

IV. Subsequent Media Statements

After Plaintiff's arrest, the County Defendants issued two media releases about Plaintiff's arrest and charges. Ex. L to Defs.' CSF, ECF No. 110-13. The first, issued on same day as the incident, read in relevant part as follows:

HPD Investigating 'Shots Fired' Report in Puna

Hawai'i Island police are investigating a firearms incident initially reported as "gunshots fired" in the Hawaiian Paradise Park subdivision in lower Puna. Responding officers contacted a group of individuals near the area where the shots were reported, although the preliminary investigation has thus far indicated that no shots were fired. Detectives assigned to the Criminal Investigations Section are continuing the investigation.

Ex. L to Defs.' CSF. The second, which the Defendants issued the next day, stated the following:

Hakalau Man Arrested for Firearms, Terroristic Threatening

East Hawai'i detectives arrested a 50-year-old Hakalau man late Thursday afternoon, Jan. 26, as part of their investigation into a firearms incident earlier in the day in Puna.

John Rodrigues Jr. was arrested on suspicion of three counts of first-degree terroristic threatening and six firearms violations. After conferring with prosecutors, police released Rodrigues pending further investigation.

The incident was initially reported as "gunshots fired" in the Hawaiian Paradise Park subdivision in lower Puna at approximately 10 a.m. Responding officers contacted a group of individuals near where the shots were reported and were able to determine that no shots had been fired, although firearms were

> involved in a confrontation.
>
> Detectives assigned to the Criminal Investigations Section are continuing the investigation[.]

Ex. L to Defs.' CSF.

V. HCPD Policy

HCPD has an explicit policy that requires its officers to "strictly observe all laws, policies and procedures prescribed by the ... United States Constitution, Hawai'i Revised Statutes and judicial rulings." Defs.' CSF ¶ 20.

With respect to LEOSA, the evidence does not show any HCPD training policy specifically concerning the statute or its application by state law enforcement officers. Pl.'s CSF ¶ 62. However, the Department of the Attorney General (the "AG") and the County have a memorandum of understanding ("MOU") concerning LEOSA, the purpose of which is to "clarify and agree to the role of the AG regarding implementing the statewide standards for the federal Law Enforcement Officers Safety Act as codified at 18 U.S.C. § 926C (LEOSA), pertaining only to the section which allows retired law enforcement officers to carry a concealed firearm provided certain qualifications are met." Ex. 12 to Pl.'s CSF, ECF No. 120-20. The MOU gives the AG the statutory authority to regulate firearms in Hawai'i and provides that the firearm certification program under LEOSA is under the final authority of the AG. Id.

PROCEDURAL BACKGROUND

One year after the January 26, 2017 events took place, Plaintiff filed an eight-count complaint in state court against the County Defendants and against Doe Persons 1–10, Doe Corporations 1–10, Roe "Non-Profit" Corporations 1–10, and Roe Governmental Entities 1–10. ECF No. 1-2. The County Defendants removed the case, ECF No. 1, to federal court shortly thereafter and then moved to dismiss, ECF No. 5, which the Court granted, ECF No. 14. After Plaintiff filed the First Amended Complaint, ECF No. 16, the County Defendants again moved to dismiss, ECF No. 17, and the Court again dismissed all of Plaintiff's claims without prejudice, ECF No. 27. Plaintiff filed the Second Amended Complaint on December 19, 2018. ECF No. 29.

The parties later sought to stipulate to dismiss two counts from the Second Amended Complaint, which the Court disallowed pursuant to the Federal Rules of Civil Procedure. See ECF No. 60. Following several months of discovery and attempts by Plaintiff to stay the case pending disposition of parallel criminal proceedings against him, Plaintiff filed the now-operative Third Amended Complaint. ECF No. 95. The Third Amended Complaint alleges seven counts: (I) violation of 42 U.S.C. § 1983 ("§ 1983") by Captain Jelsma; (II) violation of § 1983 by the County; (III) false arrest/false imprisonment; (IV) defamation per se; (V) defamation per quod; (VI) false light; and (VII) negligent investigation.

Now before the Court is the County Defendants' Motion for Summary Judgment, ECF No. 109, filed on October 22, 2019. Plaintiff filed his Opposition on November 26 and the County Defendants filed a Reply on December 2. The Court held a hearing on the Motion on Tuesday, December 17, 2019.

STANDARD

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Federal Rule of Civil Procedure ("Rule") 56(a) mandates summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also Broussard v. Univ. of Cal., 192 F.3d 1252, 1258 (9th Cir. 1999).

"A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact." Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007) (citing Celotex, 477 U.S. at 323); see also Jespersen v. Harrah's Operating Co., 392 F.3d 1076, 1079 (9th Cir. 2004). "When the moving party has carried its burden under Rule 56[(a)] its opponent must do more than simply show that there is some metaphysical doubt as to the material facts [and] come forward with specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586–87 (1986) (citation and internal quotation marks omitted); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986) (stating that a party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment).

"An issue is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is 'material' only if it could affect the outcome of the suit under the governing law." In re Barboza, 545 F.3d 702, 707 (9th Cir. 2008) (citing Anderson, 477 U.S. at 248). When considering the evidence on a motion for summary judgment, the court must draw all reasonable inferences on behalf of the nonmoving party. Matsushita Elec. Indus. Co., 475 U.S. at 587; see also Posey v. Lake Pend Oreille Sch. Dist. No. 84, 546 F.3d 1121, 1126 (9th Cir. 2008) (stating that "the evidence of [the nonmovant] is to be believed, and all justifiable inferences are to be drawn in his favor" (internal citation and quotation omitted)).

DISCUSSION

The Court finds that the County Defendants are entitled to summary judgment on all seven counts of the Third Amended Complaint. The undisputed facts show that the HCPD officers had probable cause to arrest Plaintiff in accordance with the events that took place on January 26, 2017. For that reason, Counts I, II, III, and VII must be dismissed. So too with Counts IV, V, and VI: Plaintiff's defamation and false light

claims cannot survive summary judgment because truth is a complete defense to a defamation claim and Plaintiff has presented no dispute of fact as to the truth of the media releases.

For these reasons and those discussed in greater detail below, the County Defendants are entitled to summary judgment and the Third Amended Complaint is hereby dismissed against them.

I. Count I: § 1983 Against Defendant Jelsma

The undisputed facts show that Plaintiff's § 1983 claim against Defendant Jelsma fails for the same overarching reason that compelled this Court to dismiss the earlier complaints: The County Defendants had probable cause to detain and arrest Plaintiff.

"Section 1983 provides a cause of action against state actors who violate an individual's rights under federal law." Filarsky v. Delia, 566 U.S. 377, 380 (2012) (citing 42 U.S.C. § 1983). The County Defendants' argument for summary judgment on Count I is two-fold. They argue first that "the undisputed facts show that Plaintiff was not deprived of any rights," and second that, regardless, qualified immunity protects Defendant Jelsma from liability. Mot. 7. The Court agrees.

a. Deprivation of Rights Under § 1983

Like in his prior complaints, Plaintiff's § 1983 claim in the Third Amended Complaint alleges that Defendant Jelsma deprived Plaintiff of two distinct rights: (1) his Fourth Amendment right to be free from arrest without

a warrant or probable cause, and (2) his federal right under LEOSA as a "qualified retired law enforcement officer" to carry a concealed weapon. As discussed below, Plaintiff has not presented any dispute of fact to establish that he was deprived of either of these rights.

i. Fourth Amendment

Plaintiff first claims that Defendant Jelsma's conduct violated Plaintiff's Fourth Amendment rights. The central questions, then, are (1) whether Defendant Jelsma had probable cause to arrest Plaintiff, and (2) if he did not, whether a reasonable officer in Defendant Jelsma's position would have believed that he had probable cause in light of clearly-established law and the information he possessed. See Hunter v. Bryant, 502 U.S. 224, 227 (1991). Both of these questions must be answered in the affirmative.

The Fourth Amendment confers the right to protection from arrest without probable cause. Beck v. Ohio, 379 U.S. 89, 91 (1964). Thus, "a claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth Amendment, provided the arrest was without probable cause or other justification." Dubner v. City and Cty. of San Francisco, 266 F.3d 959, 964 (9th Cir. 2001). Courts have explained that "[p]robable cause to arrest or detain is an absolute defense to any claim under § 1983 against police officers for wrongful arrest ... as the lack of probable cause is a necessary element" of the claim. Lacy v. Cty. of Maricopa, 631 F. Supp. 2d 1183, 1193 (D. Ariz. 2008); see also Hart v. Parks, 450 F.3d 1059, 1069 (9th Cir. 2006) ("Because police had

probable cause to arrest him, Hart's false arrest claim necessarily fails.").

Probable cause to arrest exists "when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed by the person being arrested." Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (quoting United States v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007)); Michino v. Lewis, No. CIV. 13-00546 ACK, 2015 WL 3752503, at *5 (D. Haw. June 16, 2015) ("A warrantless arrest is lawful under the Fourth Amendment ... if it is accompanied by probable cause to believe that the arrestee has committed, or is committing, an offense." (citation and internal quotation marks omitted)); see also Haw. Rev. Stat. ("HRS") § 803-5 (codifying the probable cause standard).

The U.S. Supreme Court has indicated that probable cause can rest on an objectively reasonable but mistaken understanding of the law. While the explicit holding of Heien v. North Carolina, 135 S. Ct. 530 (2014), is that "reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition," id. at 536, the Supreme Court's reasoning has similar implications in the probable-cause context.[5]

Here, the County Defendants argue that Defendant Jelsma and the other officers had probable cause to arrest Plaintiff for either of two categories of crimes: (1) firearms violations and (2) terroristic threating or harassment of Nathan Figueroa. See Mot. 8-12.

Because Plaintiff was only arrested once, the County Defendants need only show that Defendant Jelsma had probable cause to arrest Plaintiff for one of these crimes. See Barry v. Fowler, 902 F.2d 770, 773 n.5 (9th Cir. 1990) (noting that an arrest is constitutional if officers had probable cause to arrest a plaintiff for one charge, even if probable cause did not exist for other charges).

1. Firearms violations

The undisputed facts make clear that Plaintiff gave officers consent to search his vehicle and that, during that search, the officers recovered two firearms: a Remington 870 shotgun and a Smith & Weston 5906 9mm handgun. The Court has explained in two prior orders that Plaintiff's possession of these firearms appeared to the officers to violate HRS § 134-23 or HRS § 134-25.[6] See November 20, 2018 Order at 21-22; April 20, 2018 Order at 11-13. The undisputed facts fleshed out through discovery support the same conclusion now. At the least, Defendant Jelsma and the other officers did not have information to suggest that the firearms in Plaintiff's vehicle were lawful. The facts show that when officers performed a vehicle search with Plaintiff's consent and recovered the two firearms, it appeared to them that Plaintiff had committed felony violations of Hawai'i law.[7]

Plaintiff's only real argument for why Defendant Jelsma lacked probable cause to arrest Plaintiff on the state-law firearms charges (aside from LEOSA, which is discussed infra) is that the January 26 incident occurred on a privately-owned road rather than a

public highway.[8] See Opp. 15. While Plaintiff asserts that the firearms charges were "predicated on the transport of the firearms on a 'public highway,' " he fails to explain how the public-private distinction is dispositive when Plaintiff was arrested on other firearms charges (the "places to keep" laws) that make no such distinction. Opp. 15 (citing HRS §§ 134-23 through 134-26). Only HRS § 134-26 governs "[c]arrying or possessing a loaded firearm on a public highway." The Court does not see how the location of the January 26 incident—whether on private or public roads—is relevant to Plaintiff's arrest on other violations under HRS § 134-23 and § 134-25 (neither of which specify whether the offense must occur on private versus public roads).[9]

Just as he unsuccessfully argued in opposition to the prior motions to dismiss, Plaintiff also argues that Defendant Jelsma lacked probable cause to arrest him on any firearms violations because Plaintiff was lawfully in possession of firearms pursuant to LEOSA. LEOSA provides that a qualified retired law enforcement officer "carrying the identification required by subsection (d) may carry a concealed firearm...." 18 U.S.C. § 926C(a). Plaintiff's argument that LEOSA applies to abolish probable cause fails once again. The County Defendants cite three shortcomings in Plaintiff's argument: (1) Plaintiff was not "carrying" a firearm within the confines of LEOSA because it was in his truck, not on his person or in his clothing; (2) LEOSA only authorizes qualified law enforcement officers to carry a single firearm, and two were recovered from Plaintiff's car; and (3) Plaintiff

lacked the requisite identification under LEOSA to lawfully carry a firearm. The Court agrees with the County Defendants as to the latter two points.

Beginning with the County Defendant's first point, the Court disagrees that the guns being found in the cab and on the floor of Plaintiff's truck rather than on his person precludes LEOSA from applying. The County Defendants cite United States Supreme Court case District of Columbia v. Heller, 554 U.S. 570, 584 (2008), to support a narrow reading of the term, "carry." See Mot. 13. Of course, Heller analyzed the constitutional right to "bear arms" and considered the general meaning of "to carry" in that context. The majority in the 1998 case Heller cites—Muscarello v. United States, 524 U.S. 125 (1998), superseded by statute as stated in United States v. Louisiana, 196 F. Supp. 3d 612 (M.D. La. 2016)—contains a more on-point discussion of the meaning of "carry." There, the Supreme Court held that to "carry arms or weapons" is not limited to only mean those circumstances of bearing or carrying weapons upon the person or clothing. Id. at 130. Rather, the Court recognized the term as extending to the carrying of weapons in a car as well. See id. at 131 ("Given the ordinary meaning of the word 'carry,' it is not surprising to find that the Federal Courts of Appeals have unanimously concluded that 'carry' is not limited to the carrying of weapons directly on the person but can include their carriage in a car."). Thus, Plaintiff is not precluded from relying on LEOSA merely because the guns were found in his car rather than on his person.

Turning to the County Defendants second point, the Court agrees—and has already held in a prior order—that it is reasonable to interpret LEOSA to authorize qualified officers to carry only "a firearm"—not multiple firearms. The Court's November 20, 2018 Order contains a thorough analysis of LEOSA and this point. The Court will not rehash it here other than to clarify the extent of the holding. In that regard, while the Court previously declined to make a definitive ruling, it held that—at a minimum—Defendant Jelsma was objectively reasonable in interpreting LEOSA to entitle a qualified law enforcement officer to carry only a single weapon, not the two found in Plaintiff's vehicle. November 20, 2018 Order at 30-32.

Plaintiff once again argues that "LEOSA's plain and ordinary meaning permits and anticipates possession of multiple firearms." Opp. 6; see also id. at 6-8. And, once again, the Court finds Plaintiff's proposed interpretation to be "strained and unconvincing." See November 20, 2018 Order at 30. It would defy the plain meaning of the statute to hold that "a concealed firearm" means multiple firearms.[10] See id. Regardless, what matters is that it would be objectively reasonable for an officer to interpret LEOSA to entitle a qualified individual to carry only one concealed weapon. See November 20, 2018 Order at 18-20 (explaining that probable cause may be based on an officer's reasonable mistake of law). Here, the undisputed facts show that Defendant Jelsma would have been entirely reasonable in thinking that LEOSA did not authorize Plaintiff to carry both of the two firearms recovered in the car.

Finally, as to the County Defendant's third argument on LEOSA, the undisputed facts establish that Plaintiff failed to comply with LEOSA's identification requirements. For one, it appears that Plaintiff did not possess the necessary identification at all because his firearms qualification certifications for both firearms were not within the specified time requirements under LEOSA. Even if he had, Plaintiff has not provided factual evidence showing that he was carrying and that he presented the complete identification on the date of the arrest.

First, regarding the timeliness of the LEOSA documents, Plaintiff did not possess the requisite identification for both firearms at the time of the arrest. Subsection (d)(2) of LEOSA § 926C sets forth the relevant forms of identification required to lawfully carry a concealed firearm. Relevant here, Plaintiff was required to possess two items: (1) the specified photographic identification issued by HCPD and (2) a certification that Plaintiff "has, not less than 1 year before the date [Plaintiff] is carrying the concealed firearm," met certain firearms qualification standards.[11] 18 U.S.C. § 926C(d)(2). It is undisputed that Plaintiff possessed the ID Card, satisfying the first requirement. See Ex. 2 to Pl.'s CSF; Ex. F to Defs.' CSF; see also Opp. 5. But the undisputed facts show that Plaintiff did not possess the second requirement for each of the two firearms recovered: a certification of firearms qualification dated "not less than one year before" January 26, 2017.

The record shows two firearm certifications issued to Plaintiff. The first was issued on December 24, 2015, and qualified Plaintiff to use four specified firearms, including a S&W 5906 9mm semiautomatic pistol. See Ex. G to Defs.' CSF; Ex. 3 to Pl.'s CSF, ECF No. 120-4. The second was issued on February 19, 2016, and qualified Plaintiff to use a Remington 870 12-guage pump shotgun, with the serial number RS01242Y. See Ex. H to Defs.' CSF, ECF No. 110-9; Ex. 4 to Pl.'s CSF. The first certification was issued more than one year before the relevant date of carry (January 26, 2017), while the second was issued within one year of that date. As stated above, § 926C(d)(2)(B) requires that Plaintiff be carrying a certificate dated within one year of the date of carry. The December 2015 certification for the 9mm shotgun was issued more than one year before January 26, 2017, and was therefore expired at the time of the incident and untimely under LEOSA. See Reply 4.

In any event, even if Plaintiff had the LEOSA-compliant documentation, Plaintiff has not raised a genuine issue of fact to establish that he was "carrying the identification required by subsection (d)" on the date of the arrest. 18 U.S.C. § 926C(a). While Plaintiff arguably has raised a dispute of fact as to whether he was carrying the ID Card,[12] he has not established that he was carrying any certificate of firearms qualification, let alone one that met the strictures of § 926C(d)(2)(B).[13] See Opp. 5 (arguing that "Plaintiff possessed a certification" but not stating he was carrying such certification); Ex. B to Defs.' CSF at 45-46 (Plaintiff's testimony that he only showed his

LEOSA ID Card and that he didn't "have anything else to show"); id. at 56-57 (Plaintiff's testimony regarding his lack of memory as to whether he presented a qualifications card on January 26). Thus, Plaintiff has not established that he was carrying any certificate of firearms qualification, let alone one that met the strictures of § 926C(d)(2)(B).

Because any mistake of law Defendant Jelsma made in determining that LEOSA did not apply was objectively reasonable, his arrest of Plaintiff for firearms violations was supported by probable cause. See Heien, 135 S. Ct. at 536, 539; United States v. Diaz, 854 F.3d 197, 202–03 (2d Cir. 2017); Olsen v. City of Henderson, 648 F. App'x 628, 631 (9th Cir. 2016) (unpublished). Defendant Jelsma therefore did not violate Plaintiff's Fourth Amendment right to be free from arrest unsupported by a warrant or probable cause.

2. Terroristic Threatening or Harassment

In addition to the firearms violations, Defendant Jelsma had probable cause to arrest Plaintiff for terroristic threatening of Figueroa, or other lesser harassment charges.[14] Terroristic threatening occurs when a person "threatens, by word or conduct, to cause bodily injury to another person ... [w]ith the intent to terrorize, or in reckless disregard of the risk of terrorizing...." HRS § 707-715; see also id. § 707-716.

The encounter with Figueroa apparently took place before Plaintiff encountered Brooks, but Plaintiff left the scene and it was not until later that morning that Figueroa reported the incident to HCPD. Defendant

Jelsma and the other officers were instead informed of the earlier incident involving Figueroa when Plaintiff was already present at the police station in connection with the later encounter with Brooks.

There is very little coherent factual detail related to the incident involving Figueroa. Plaintiff has refused to answer almost all discovery and deposition questions related to the incident with Figueroa by invoking his Fifth Amendment right against self-incrimination, evidently because of the pending criminal trial. On that basis, the County Defendants now seek an adverse inference against Plaintiff that the events concerning Figueroa did in fact occur. See Mot. 3 n.1. They argue that an adverse inference can be drawn from Plaintiff's invocation of his Fifth Amendment right and that independent evidence—Plaintiff's prior testimony about the incident in proceedings before the Hawai'i Police Commission—further supports such an inference. See id. (citing Baxter v. Palmigiano, 425 U.S. 308, 318 (1976); Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1264 (9th Cir. 2000)); see also Ex. C to Defs.' CSF (Plaintiff's prior testimony to HCPD).

In their Motion, the County Defendants also seek to prevent Plaintiff from relying on his own evidence to "support [his] version of a disputed issue where [he] ha[s] asserted [his] Fifth Amendment right not to answer questions concerning that very same issue." Id. (quoting Pedina v. Chun, 906 F. Supp. 1377, 1398 (D. Haw. 1995)). Plaintiff does not offer any meaningful contradictory evidence anyway. His only argument is that his "arrest in the Figueroa case had nothing to do

with the false arrest in the Brooks/Lopez and firearms cases" and that "[t]he Figueroa case is not relevant to the present case." Opp. 17. Plaintiff argues that evidence regarding the Figueroa encounter is therefore irrelevant and inadmissible. Plaintiff also points to the fact that the Hawaii County Prosecutor's office originally declined to prosecute Plaintiff because it apparently considered any threat to Figueroa to be "conditional" and therefore "not a chargeable offense." Opp. 17-18.

On the one hand, the Figueroa encounter does appear to have occurred separately from the Brooks encounter; it happened earlier in the day and at a different location. On the other hand, Plaintiff admits that he was arrested on January 26 "based on the offenses associated with the Figueroa case." Opp. 18. And factual evidence submitted by Plaintiff confirms that one overlapping investigation was conducted in connection with the Figueroa encounter and the Brooks/Lopez encounter. See Ex. 6 to Pl.'s CSF at 40-41.

While the exact progression of events is hard to glean from the varying police reports and inconsistent statements by Plaintiff, Plaintiff cannot dispute—and in fact has admitted—that his January 26 arrest was based, at least in part, on the alleged threats against Figueroa. While Plaintiff may have originally presented to the police station in connection with the Brooks encounter, it is undisputed that he was ultimately arrested only one time. So even if there were two separate incidents here, there was only one arrest.

And an arrest is constitutional so long as officers had probable cause to arrest the subject on one charge, even if probable cause did not exist for other charges.[15] See Barry, 902 F.2d at 773 n.5.

Plaintiff himself admitted under oath that he may have harassed Figueroa, and it is clear from Plaintiff's own testimony that he made threatening statements toward Figueroa.[16] Indeed, as stated earlier, Figueroa told Detective Kelii that he initially felt threatened by Plaintiff but then concluded that Plaintiff was not mad actually at him. See Ex. 17 to Pl.'s CSF at p. 4 of 10. Moreover, the State apparently thought it at least had enough evidence to eventually indict and charge Plaintiff with, inter alia, terroristic threatening of Figueroa.

Despite Plaintiff's statements to the contrary, the facts uncovered in this litigation show that the Figueroa incident and the later Brooks incident are at least somewhat related. The incidents both apparently involve a father (Plaintiff) taking some imprudent actions in seeking to protect his son from alleged threats made by Brooks. While the incidents occurred separately, Plaintiff's earlier confrontation with Figueroa—who also had worked with Plaintiff's son and Brooks—appears to have been a means to the same end: locating and confronting Brooks.

Finally, Plaintiff's arguments that the Federal Rules of Evidence forbid the officers from considering other criminal acts in determining the circumstances to support probable cause, see Opp. 17-18, are meritless.

"Police may rely on hearsay and other evidence that would not be admissible in court to determine probable cause." Hart, 450 F.3d at 1066.

The undisputed facts and the information and evidence available to Defendant Jelsma and the arresting officers on the date of the incident compel the Court to hold that the officers met the minimal standard for probable cause. Accordingly, the firearms charges and the terroristic threatening charges each independently provided the officers with probable cause, meaning Plaintiff has failed to identify a factual dispute that he was deprived of his right under the Fourth Amendment.

ii. LEOSA

In addition to his Fourth Amendment claim, Plaintiff argues that his arrest violated his federal right to carry concealed weapons under LEOSA. In his Opposition, Plaintiff makes the same legal arguments he previously made in response to the motion to dismiss the earlier complaint, arguments that were expressly rejected by this Court. Plaintiff cites the D.C. Circuit case holding that LEOSA creates, for qualified individuals, a federal right to carry concealed weapons that may be vindicated under § 1983. Opp. 5-6 (citing Duberry v. District of Columbia, 824 F.3d 1046 (D.C. Cir. 2016)). Plaintiff has not established, however, that he had such a right on January 26, 2017, because, as discussed supra, (1) he was carrying more than one firearm on the date of arrest, (2) he was not carrying any qualifications card on the date of his arrest and, (3) he did not have the timely qualifications under LEOSA.

In any event, as the Court pondered in the November 20, 2018 Order, it is unlikely that any right created by LEOSA was "clearly established" on January 26, 2017, as would be necessary for Plaintiff to maintain this claim against Defendant Jelsma. See November 20, 2018 Order (collecting qualified immunity cases). Regardless, because LEOSA's protection did not apply to Plaintiff during the at-issue events, his arrest cannot have violated any rights secured to him by LEOSA.

In sum, the undisputed facts show that Defendant Jelsma did not violate Plaintiff's constitutional or statutory rights. In the absence of such a violation, Plaintiff's § 1983 claim cannot stand.

b. Qualified Immunity

Qualified immunity shields government officials who perform discretionary functions from liability for civil damages when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In deciding whether a government official is entitled to qualified immunity in a § 1983 action, courts determine (1) the federal constitutional or statutory right allegedly violated; (2) whether the right was clearly established[17]; and (3) whether a reasonable official would have believed the official's conduct to be lawful. Hamilton v. Endell, 981 F.2d 1062, 1066 (9th Cir. 1992) (citing Romero v. Kitsap Cty., 931 F.2d 624, 627 (9th Cir. 1991)).

Whether an official is protected by qualified immunity often turns on the "objective legal reasonableness" of his action. Anderson v. Creighton, 483 U.S. 635, 639 (1987). If the action at issue is an allegedly unlawful arrest, "the two prongs of the qualified immunity analysis can be summarized as: (1) whether there was probable cause for the arrest; and (2) whether it is reasonably arguable that there was probable cause for arrest—that is, whether reasonable officers could disagree as to the legality of the arrest such that the arresting officer is entitled to qualified immunity." Rosenbaum v. Vashoe Cty., 663 F.3d 1071, 1076 (9th Cir. 2011); see also Hunter, 502 U.S. at 226–27 (qualified immunity will shield the arresting officers if a reasonable police officer would have believed that probable cause existed to arrest the plaintiff).

The Court has already held that Plaintiff's individual rights were not violated and that Defendant Jelsma had probable cause to arrest Plaintiff for any one of several firearms and terroristic threatening violations. Accordingly, Defendant Jelsma would also be entitled to the shield of qualified immunity.

II. Count II: § 1983 Against the County

Because the Court has held that Plaintiff was not deprived of a federal constitutional or statutory right, Plaintiff's § 1983 claim for municipal liability against the County must be dismissed by extension. See Quintanilla v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996).

Even assuming that a deprivation of a right did occur,

municipal liability under § 1983 "can only be imposed for injuries inflicted pursuant to an official government policy or custom." Davis v. City of Ellensburg, 869 F.2d 1230, 1233 (9th Cir. 1989). A "policy" is a "deliberate choice to follow a course of action made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Fogel v. Collins, 531 F.3d 824, 834 (9th Cir. 2008) (quoting Fairley v. Luman, 281 F.3d 913, 918 (9th Cir. 2002) (per curium)). "A 'custom' for purposes of municipal liability is a 'widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force of law.' " Young v. City of Visalia, 687 F. Supp. 2d 1141, 1147 (E.D. Cal. 2009) (quoting St. Louis v. Praprotnik, 485 U.S. 112, 127, 108 S.Ct. 915 (1988)).

In addition to the fact that the HCPD officers had probable cause to arrest Plaintiff, Plaintiff has not provided any evidence showing that HCPD has a policy or custom allowing unconstitutional arrests. "Absent a formal governmental policy, [Plaintiff] must show a 'longstanding practice or custom which constitutes the standard operating procedure of the local government entity.' " Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). The practice or custom "must be so persistent and widespread that it constitutes a permanent and well settled city policy." Id. Liability "may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a

traditional method of carrying out policy." Id.

Here, Plaintiff focuses the support for municipal liability on LEOSA. See Opp. 21. He appears to be attempting to satisfy his burden of showing a policy or custom by relying on a "failure to train" theory. See id.; see also id. at 22 ("Had the County distributed the AG's LEOSA policies and rules and trained its officers, more scrutiny and discernment could have been used so that the Plaintiff would not have been arrested and prosecuted."). This theory fails.

To succeed under a failure-to-train theory in the § 1983 context, Plaintiff's evidence must address the following three factors:

> First, it must be determined whether the existing training program is adequate. The adequacy of a particular training program must be resolved "in relation to the tasks the particular officers must perform." A training program will be deemed adequate if it "enables officers to respond properly to the usual and recurring situations with which they must deal."
>
> Second, if the training program is deemed inadequate, it may justifiably be said to constitute a city policy. Such will be the case, however, "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." This heightened degree of culpability on the party [sic] of a municipality may be established when "the need for more or different training is so obvious, and the inadequacy so likely to

> result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."
>
> Finally, inadequate training that manifests deliberate indifference on the part of a municipality must be shown to have "actually caused" the constitutional deprivation at issue.

Merrit v. Cty. Of Los Angeles, 875 F.2d 765, 770 (9th Cir. 1989) (quoting City of Canton, Ohio v. Harris, 489 U.S. 378, 391-92 (1989)). A municipality's training program can be actionable under § 1983 only if Plaintiff proves all three factors. See id.

Plaintiff argues that the County "does not have any policies or training concerning LEOSA." Opp. 21-22. Plaintiff also argues that the County is estopped from arguing to the contrary because it has refused to provide discovery on its policies in this regard. Id. at 22. Yet Plaintiff has not offered any factual evidence to support a failure to train theory, and he has not demonstrated that any one at HCPD was on notice of any alleged deficiencies in the training of police officers with respect to LEOSA. See Opp. 21.

Plaintiff's § 1983 municipal liability claims must therefore fail. Plaintiff has raised no genuine issue of material fact that the County Defendants had actual or constructive notice that the HCPD's officer training was deficient. See Connick v. Thompson, 131 U.S. 1350, 1360 (2011) ("A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for

purposes of failure to train."). "Only where a failure to train reflects a deliberate or conscious choice by the municipality ... can a city be liable for such a failure under § 1983." Canton, 489 U.S. at 389. Moreover, because the Court has already held that Plaintiff has failed to prove a constitutional deprivation of a right, Plaintiff cannot prove that any lack of training by the County is "closely related to the ultimate injury." Lee v. City of Los Angeles, 250 F.3d 668, 681 (9th Cir. 2001) (requiring plaintiff to prove that the "constitutional 'injury would have been avoided' had the governmental entity properly trained its employees" (quoting Oviatt By and Through Waugh v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992))).

The Court therefore holds that Plaintiff's § 1983 claim against the County must fail.

III. Count III: False Arrest/False Imprisonment Against the County Defendants

Plaintiff's state-law false arrest/false imprisonment claim[18] fails for the reasons explained in the April 20, 2018 and November 20, 2018 Orders. See ECF Nos. 14 & 27. A determination that the arresting officer "had probable cause is a defense to the common law claims of false arrest[ ] [and] false imprisonment[.]" Reed v. City & Cty. of Honolulu, 76 Haw. 219, 230, 873 P.2d 98, 109 (1994) (citing House v. Ane, 56 Haw. 383, 390-91, 538 P.2d 320, 325-26 (1975) and Towse v. State, 64 Haw. 624, 635, 647 P.2d 696, 704 (1982)); see also Freeland v. Cty. of Maui, No. CIV. 11-00617 ACK-KS, 2013 WL 6528831, at *19 (D. Haw. Dec. 11, 2013) ("Probable cause is an affirmative defense to the claim

of false imprisonment." (citation omitted)). Defendant Jelsma made a warrantless arrest of Plaintiff after he "saw and observed what reasonable persons would believe to be an offense being committed in [his] presence." House, 56 Haw. at 391, 538 P.2d at 326. Accordingly, the undisputed facts show that Plaintiff's detention and restraint were lawful, and the County Defendants are entitled to summary judgment on the false arrest/false imprisonment claim, Count III.

IV. Counts IV–VI: Defamation "Per Se," Defamation "Per Quod," and False Light Against the County Defendants

The County Defendants are also entitled to summary judgment on Counts IV through VI, defamation and false light. As the Court explained in the November 20, 2018 Order, the truth of an allegedly defamatory statement is a complete defense to an action for defamation. See November 20, 2018 Order at (citing Basilius v. Honolulu Pub. Co., 711 F. Supp. 548, 551 (D. Haw. 1989), aff'd sub nom. Polycarp Basilius v. Honolulu Pub. Co., 888 F.2d 1394 (9th Cir. 1989) and Kohn v. West Hawaii Today, Inc., 65 Haw. 584, 590, 656 P.2d 79, 83 (1982)).

The Third Amended Complaint focuses on the same two media releases quoted in the prior complaints, which twice this Court has found insufficient to support the defamation and false light claims. The only evidence Plaintiff submits are copies of the media releases and declarations from individuals in Plaintiff's community speaking to resulting damage to his reputation. See Opp. 23 (discussing these declarations);

Ex. 15 to Pl.'s CSF, ECF No. 120-23 (declarations). And the Opposition makes the exact same arguments made previously, which this Court rejected.

The undisputed facts compel the Court to again dismiss the defamation and false light claims because Plaintiff has again failed to establish that the County Defendants made a false statement. As discussed in great detail in the November 20, 2018 Order, the absence of a false statement precludes Plaintiff's claims for defamation and false light. Accordingly, because truth is "a complete defense to an action for defamation," Basilius, 711 F. Supp. at 551, the County Defendants are entitled to summary judgment in their favor on Counts IV, V, and VI of the Third Amended Complaint.

V. Count VII: Negligent Investigation Against the County Defendants

Finally, the County Defendants are entitled to summary judgment on Count VII, negligent investigation. As the County Defendants rightly point out, "[t]here is no 'duty' to not arrest without probable cause." Pourny v. Maui Police Dep't, Cty. of Maui, 127 F. Supp. 2d 1129, 1145-46 (D. Haw. 2000) (citing Reed, 76 Haw. 219, 230, 873 P.2d at 109). There is only the intentional tort of "false arrest," which the Court addressed in connection with Count III. See id.

Plaintiff argues in his Opposition that the negligent investigation claim is based on a duty created by HRS § 803-5, which Plaintiff cites as support for his statement that "Defendants have a legal duty to conduct a

through [sic] investigation." Opp. 24 (citing HRS § 803-5). HRS § 803-5 says nothing about a duty to conduct any investigation, let alone a thorough one. All it does is (1) allow an officer to arrest or detain a person without a warrant when there is probable cause and (2) state the standard for probable cause.

Hawai'i law does not provide for any legal duty not to arrest without probable cause and, even so, the Court has explained that the County Defendants had probable cause anyway. Accordingly, the County Defendants are entitled to summary judgment in their favor on Count VII of the Third Amended Complaint.

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants County of Hawai'i and Samuel Jelsma's Motion for Summary Judgment, ECF No. 109, and dismisses all of Plaintiff's claims.

IT IS SO ORDERED.

Footnotes

1. These facts come from a written incident report filed by Detective Kelii, who interviewed Figueroa at the police station. See Ex. 17 to Pl.'s CSF, ECF No. 120-25, at p. 4 of 10. The Court notes that, at the hearing, it requested that the County Defendants provide the Court with a copy of the audio recording of Detective Kelii's interview with Figueroa, and Plaintiff's counsel

indicated his approval of this request. Counsel for the County Defendants promptly provided the recording. See Amended Declaration of D. Kaena Horowitz, ECF No. 128. In reviewing the recording, it appears to be generally consistent with Detective Kelii's written report and Figueroa's declaration. Thus, what the Court heard on the recording has not impacted its conclusions as set forth in this Order.

That said, the Court does not know whether Plaintiff has had the opportunity to listen to the recording himself. In the event Plaintiff has not heard the recording and now objects to the Court having heard it, it should file any objection in the form of a motion for reconsideration. Again, however, the Court notes that the recording did not impact the Court's decision today.

2. Plaintiff has been indicted on and charged in connection with the incident involving Figueroa. See Ex. 18 to Pl.'s CSF, ECF No. 120-8 (indictment). The criminal trial in Case No. 3CPC-19-0000157 is pending in Hawai'i Circuit Court and the trial is scheduled for February 3, 2020. Apparently for that reason, Plaintiff has invoked the Fifth Amendment and refused to answer "[a]ll the questions" involving the encounter with Figueroa. Ex. B to Defs.' CSF (Plaintiff's deposition) at 101; see also id. at 99-102.

3. Plaintiff appears to frame this as a disputed fact by asserting—without any factual evidence in support—that he did show a qualifications card certifying him to use the firearms. See Pl.'s CSF ¶ 15 (denying County Defendants' assertion that Plaintiff did not show any qualifications card but not pointing to any evidence or making any allegation to show that he in fact did show the card). However, the factual evidence in the record suggests that in fact Plaintiff only showed his ID Card, not any qualifications. See Defs.' CSF ¶ 15. Compare Ex. B. to Defs.' CSF (Plaintiff's deposition) at 46 (Plaintiff confirming that he did not show any other LEOSA documents other than the ID Card to anyone because he didn't "have anything else to show") and Ex. E to Defs.' CSF (Defendants Jelsma's Declaration) ¶ 13 ("At no time – either at the Subject Property or at the Station – did Plaintiff show me any certification of firearms qualification."), with Ex. B to Defs.' CSF at 56 (Plaintiff stating he was "not sure if [he] had this and presented it to anyone" and stating that he showed the ID Card but "[n]ot this [qualification] card") & 62 (Plaintiff stating he was not sure if he had a qualification card on him and that his "main focus" was presenting the ID Card).

4. This includes a Smith & Wesson 906 9mm; a Smith & Wesson CS9 9mm; a Remington 870

12-gauge shotgun; and a Mossberg 500 12-gauge shotgun. Defs.' CSF ¶ 16.

5. For a more detailed discussion of the Supreme Court's holding in Heien, see the Court's November 20, 2018 Order at 18-20.

6. These "places to keep" laws limit the lawful locations of possession and provide for specified permissible destinations when traveling with firearms. They also define the required "enclosed container" for traveling with firearms as "a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm." Id. HRS § 134-23 and HRS § 134-24 are virtually identical in governing firearms other than pistols and revolvers, except that the former applies to loaded firearms and the latter to unloaded firearms. HRS § 134-25 governs the places to keep a pistol or a revolver.

7. In fact, the undisputed facts suggest that Plaintiff was in violation of Hawai'i law because the firearms were recovered from his vehicle, not "confined to [his] place of business, residence, or sojourn," and he was not transporting the firearms to or from any of those enumerated locations. HRS § 134-23(a); see also HRS § 134-25(a). Plaintiff also admits to facts that show that that at least one of the firearms was stored in a leather holster or soft case, not "a rigidly

constructed receptacle" or some case that "completely encloses the firearm." HRS § 134-23(a); see also HRS § 134-25(a).

8. Plaintiff also states in conclusory terms and without any evidence or facts in support that "Plaintiff's shotgun was placed in a closed case, which enclosed the shotgun and was zippered closed around it." Opp. 16. This does not account for the other violations—particularly, the non-complying location and storage of the firearms—that provided a basis for probable cause.

9. Plaintiff's counsel pushed this point at the hearing as well. As the Court stated then—and as Plaintiff admits—Plaintiff was arrested on multiple firearms statutes, at least two of which do not specify whether the violations must occur on a public roadway. Even assuming the officers lacked probable cause on the § 134-26 charge, that would not negate probable cause on the other firearms violations under § 134-23 and § 134-25. Additionally, Plaintiff's own CSF indicates that he necessarily drove over public highways with the subject firearms in his vehicle before he arrived at the scene.

10. Plaintiff himself seems to admit that LEOSA allows him to carry only one firearm. In his testimony in his HCPD proceedings, he stated, "I know in the ... Law Enforcement Officer Safety

Act ... I am able to carry one firearm.... I only need one permit for carry [sic] one gun." Ex. C to Defs.' CSF at 2 (some alterations added). The Court also notes that law enforcement appears to interpret the language to mean one, single firearm. The MOU between the AG and the County, describes LEOSA as allowing "retired law enforcement officers to carry a concealed firearm provided certain qualifications are met." Ex. 12 to Pl.'s CSF (emphasis added).

11. Section 926C(d)(1) also provides for another method of identification, in the form of a single document. It is undisputed that Plaintiff did not posses the single identification that would have satisfied 18 U.S.C. § 926C(d)(1), see Opp. 4-5 & Reply 4, so the Court focuses its analysis only on § 926C(d)(2).

12. Conflicting testimony and declarations raise a dispute of fact as to whether Plaintiff presented his ID Card and whether Defendant Jelsma looked at it. Compare Ex. B to Defs.' CSF at 45 (Plaintiff's deposition testimony stating that he showed the ID Card to Defendant Jelsma and the arresting officer, Detective Kelii), and Ex. E to Defs.' CSF ¶ 13 (Defendant Jelsma's declaration that he was not presented the LEOSA card). As discussed in the November 20, 2018 Order, if Defendant Jelsma refused to look at the card, then he could not know that Plaintiff did not meet LEOSA's identification

requirements and could not avail himself of its protection. See November 20, 2018 Order at 26-27. Even though the ID Card alone would not have satisfied the strictures of LEOSA, for all Defendant Jelsma knew, it might have. See id. While an officer may not ignore exculpatory evidence that would negate probable cause, Yousefian v. City of Glendale, 779 F.3d 1010, 1014 (9th Cir. 2015), the facts in Defendant Jelsma's knowledge would have suggested to him that LEOSA may not have been exculpatory anyway because Plaintiff had two weapons in his vehicle, not just a single firearm. As explained above, even if Defendant Jelsma was mistaken about LEOSA authorizing the carrying of only one firearm, that mistake was an objectively and eminently reasonable one.

13. The Court notes that Plaintiff did—likely in response to the Court's prior orders—amend the earlier complaints to allege that "Plaintiff was carrying on his person, a Hawaii Police Department Firearms Qualification Card" and that he "attempted to show and give the Firearms Qualification Card ... to Defendant Jelsma but Jelsma refused to look at that as well." 3AC ¶¶ 123-24. He also suggests in his CSF (though not his Opposition) that he showed the qualifications card as well. Pl.'s CSF ¶ 15. Despite these assertions, Plaintiff has offered no factual evidence in support. In fact, he testified

in his deposition that he only presented the ID Card and nothing else. Plaintiff cannot baldly assert now that he showed the qualifications card when his previous deposition testimony and other independent evidence shows just the opposite. See Yeager v. Bowlin, 693 F.3d 1076, 1080 (9th Cir. 2012) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." (quoting Van Asdale v. Int'l Game Tech., 577 F.3d 989, 998 (9th Cir. 2009))); see also Anderson, 477 U.S. at 247–48 (stating that a party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment). Moreover, even to the extent that this fact is in dispute, Defendant Jelsma was reasonable in believing that LEOSA did not apply for the other reasons stated in this Order.

14. Plaintiff's Opposition addresses the lack of probable cause to arrest him for terroristic threatening "against Brooks and Lopez," in the later encounter that caused Plaintiff to call 9-1-1. See Opp. 16. Yet the County Defendants do not appear to argue in their Motion that probable cause is grounded in a charge of terroristic threatening against Brooks and Lopez. They only argue that the officers had probable cause to arrest Plaintiff for state-law violations in connection with the threats made

against Figueroa that occurred earlier on the same morning. See Mot. 10-12; Reply 9-10. And, in fact, Plaintiff admits in his Opposition that he was only arrested for terroristic threatening of Figueroa, not for threatening Brooks or Lopez. Opp. 18. At the hearing, Plaintiff seemed to reverse course, pointing to Detective Almeida's police report, which lists nine "Connect-up reports." Ex. 6 to Pl.'s CSF at p. 15 of 22. It is ultimately not clear whether Plaintiff was simply investigated in connection with the Brooks/Lopez encounter or whether he was indeed arrested in connection with that encounter as well. See id.

15. At the hearing, Plaintiff's counsel focused almost exclusively on why probable cause did not exist in connection with the Brooks incident specifically. He pointed out the nine charges on which Plaintiff was apparently arrested included terroristic threatening of Brooks and Lopez (although it appears those were just investigations, not necessarily the charges underlying the ultimate arrest). See Ex. 6 to Pl.'s CSF. Plaintiff's counsel erroneously focused his challenge on only some of those nine charges even though an arrest is constitutional so long as there is probable cause on at least one of the charges forming the basis for the arrest.

16. Plaintiff filed a complaint with the HCPD before he filed this lawsuit. In those proceedings, Plaintiff testified about his encounter with

Figueroa: "So I take my guns with me. These guys going carry guns, I going bring my guns. I find the first boy he's in the bug he's like ho I like talk to you. He comes out and says ... you know what ... the next time I [inaudible] for you ... the next time your friend fuck my boy ... I going put one bullet in your fucken head first ... then I going find him. Okay. He's all scared. I would be scared too...." Ex. C. to Defs.' CSF at 2. He also testified, "But I say the word that I use out of my mouth was the next time you fuck with my son, I will put a bullet in your head. So he hasn't fucked with my son. The threat is not viable. The most you have is a harassment. That is not a threat...." Id. at 4.

17. To analyze whether a right was clearly established, courts attribute to defendants knowledge of constitutional developments at the time of the alleged violations, including all available case law. Fed. Deposit Ins. Corp. v. Henderson, 940 F.2d 465, 477 (9th Cir. 1991). Notably, at the hearing, Plaintiff's counsel declared that the LEOSA issues present an important "case of first impression."

18. Because "a person who is falsely arrested is at the same time falsely imprisoned, false arrest and false imprisonment as tort claims are distinguishable only in terminology." Reed, 76 Haw. at 230, 873 P.2d at 109.

19. Despite this outcome, the Court notes that it remains troubled by Defendant Jelsma's treatment of Plaintiff, which Plaintiff alleges was based on a bad past relationship between the two. See Opp. 16-17, 19-20. With that said, such treatment—without more—does not amount to a violation of Plaintiff's Fourth Amendment rights. See Devenpeck v. Alford, 543 U.S. 146, 153-155 (2004) (rejecting interpretation of the Fourth Amendment that would "depend upon the subjective state of mind of the officer"); see also Reply 8 n.3.

Appendix C

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges of every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. Sec. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

18 U.S.C.A. Sec. 921. Definitions.

(a) As used in this chapter—

* * *

(3)The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; © any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S. Code Sec. 922 - Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

* * *

18. U.S.C. Sec. 924 - Penalties

* * *

(c)

(1)

(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;
(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

* * *

18 U.S.C.A. Sec. 966C. Carrying of concealed firearms by qualified retired law enforcement officers.

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State
that—

(1)permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2)prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law enforcement officer" means an individual who—

(1) separated from service in good standing from service with a public agency as a law enforcement officer;

(2) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State

in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;
(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);
(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
(7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—
(1) a photographic identification issued by the agency from which the individual

separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2)(A) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and

(B) a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to

have met—

(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

(e) As used in this section—

(1) the term "firearm"—

(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(C) does not include—

(i) any machinegun (as defined in section 5845 of the National Firearms Act);

(ii) any firearm silencer (as defined in section 921 of this title); and

(iii) any destructive device (as defined in section 921 of this title); and

(2) the term "service with a public agency as a law enforcement officer" includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

HAWAII REVISED STATUTES

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§706-660 Sentence of imprisonment for class B and C felonies; ordinary terms; discretionary terms. (1) Except as provided in subsection (2), a person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

(a) For a class B felony--ten years; and

(b) For a class C felony--five years.

The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.

(2) A person who has been convicted of a class B or class C felony for any offense under part IV of chapter 712 may be sentenced to an indeterminate term of imprisonment; provided that this subsection shall not apply to sentences imposed under sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 as that section was in effect prior to July 1, 2016, 712-1242, 712-1245, 712-1249.5, 712 1249.6, 712-1249.7, and 712-1257.

When ordering a sentence under this subsection, the court shall impose a term of imprisonment, which shall be as follows:

(a) For a class B felony--ten years or less, but not less than five years; and

(b) For a class C felony--five years or less, but not less than one year.

The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.

§706-660.1 Sentence of imprisonment for use of a firearm, semiautomatic firearm, or automatic firearm in a felony. (1) A person convicted of a felony, where the person had a firearm in the person's possession or threatened its use or used the firearm while engaged in the commission of the

felony, whether the firearm was loaded or not, and whether operable or not, may in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree--up to fifteen years;

(b) For a class A felony--up to ten years;

(c) For a class B felony--up to five years; and

(d) For a class C felony--up to three years.

The sentence of imprisonment for a felony involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining minimum term of imprisonment prescribed under section 706-669; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon the expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(2) A person convicted of a second firearm felony offense as provided in subsection (1) where the person had a firearm in the person's possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the firearm was loaded or not, and whether operable or not, shall in

addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree--twenty years;

(b) For a class A felony--thirteen years, four months;

(c) For a class B felony--six years, eight months; and

(d) For a class C felony--three years, four months.

The sentence of imprisonment for a second felony offense involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(3) A person convicted of a felony, where the person had a semiautomatic firearm or automatic firearm in the person's possession or used or threatened its use while engaged in the commission of the felony, whether the semiautomatic firearm or automatic firearm was loaded or not, and whether operable or not, shall in

addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree--twenty years;

(b) For a class A felony--fifteen years;

(c) For a class B felony--ten years; and

(d) For a class C felony--five years.

The sentence of imprisonment for a felony involving the use of a semiautomatic firearm or automatic firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(4) In this section:

"Automatic firearm" has the same meaning defined in section 134-1.

"Firearm" has the same meaning defined in section

134-1 except that it does not include "semiautomatic firearm" or "automatic firearm".

"Semiautomatic firearm" means any firearm that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

§707-700 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required:

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

* * *

"Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

* * *

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

* * *

§707-716 Terroristic threatening in the first degree. (1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(a) By threatening another person on more than one occasion for the same or a similar purpose;

(b) By threats made in a common scheme against different persons;

* * *

(e) With the use of a dangerous instrument or a simulated firearm. For purposes of this section, "simulated firearm" means any object that:

(i) Substantially resembles a firearm;

(ii) Can reasonably be perceived to be a firearm; or

(iii) Is used or brandished as a firearm; or

(f) By threatening a person who:

(i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or

(ii) Is being protected by a police officer ordering

the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order.

(2) Terroristic threatening in the first degree is a class C felony.