

APPENDIX	
TABLE OF CONTENTS	
APPENDIX A – Opinion of the U. S. Court of Appeals	
for the Fifth Circuit entered November 17, 2022 ... A-1	
APPENDIX B – Order Granting Motion for Summary	
Judgment by the U. S. District Court for the Western	
District of Louisiana entered August 4, 2021 A-9	
APPENDIX C - 1787 United States-Morocco Treaty	
of Peace and Friendship A-11	

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 21-30489

United States Court of
Appeals Fifth Circuit
FILED
November 17, 2022
Lyle W. Cayce
Clerk

Rene Joseph Foley Bey; Julia Mae Foley Bey,
Plaintiffs—Appellants,
versus
Steve Prator, *Sheriff*; Mark Terry, *Deputy Sheriff*;
L. C. Cope, *Deputy Sheriff*; Glyn Best, *Deputy Sheriff*,
Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana

No. 5:19-CV-1262

Before Smith, Barksdale, and Haynes, Circuit Judges.

Per Curiam:

Rene Foley Bey and Julia Foley Bey (“plaintiffs”) appeal a summary judgment and the denial of recusal. We find no error and affirm.

I.

Plaintiffs, who identify as Moorish Americans, sought to enter the Caddo Parish Courthouse to file documents with the court clerk. Upon arriving at the

security-screening station, plaintiffs informed the officers on duty that they wished to enter without passing through the security screening, which, they asserted, would violate their rights under the Fourth Amendment and their rights as Moorish Americans under the United States-Morocco Treaty of Peace and Friendship. The officers informed plaintiffs that they could not enter without being screened and were required to leave the courthouse if they did not agree. After plaintiffs' repeated refusals to depart, the officers stated they would count to three and, if plaintiffs refused to leave, they would be arrested. They did not depart and were arrested, charged with violating Louisiana Revised Statutes § 14:63.3, "Entry on or remaining in places or on land after being forbidden."

Plaintiffs were taken to the courthouse basement, searched, and taken to the Caddo Correctional Center. They allege that, during that search, the officers removed their religious headwear, namely, a fez worn by Rene Foley Bey and a turban worn by Julia Foley Bey. Plaintiffs also assert that they were "subjected to mistreatment and harsh conditions" while in custody. They were released early the next day after friends posted bail; the district attorney ultimately dismissed the charges.

Proceeding pro se, plaintiffs brought a litany of claims against various officials serving in Caddo Parish and the Louisiana state government based on their actions taken during the arrest. Some of the defendants were

dropped from the amended complaint, while others successfully moved to dismiss⁶. Ultimately, federal claims under 42 U.S.C. § 1983 and state-law claims against the three arresting officers (Mark Terry, L.C. Cope, and Glyn Best), and state-law claims against Sheriff Steve Prator remained. The four remaining defendants moved for summary judgment, asserting that the officers were protected by qualified immunity, which the district court granted on the magistrate judge's recommendation. Plaintiffs also moved for recusal of the magistrate judge, which the district court denied. Plaintiffs, *pro se*, timely appeal.

II.

“Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.”⁷ Consistent with our standard of review for summary judgments, the legal issues underlying the district court’s qualified-immunity ruling is reviewed *de novo*.⁸ When considering whether summary judgment was appropriate, “we ‘view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its

⁶ Plaintiffs do not appeal these dismissals

⁷ *Davidson v. City of Stafford*, 848 F.3d 384, 391 (5th Cir. 2017) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)).

⁸ *Trammell v. Fruge*, 868 F.3d 332, 338 (5th Cir. 2017).

favor.”⁹ “A qualified immunity defense alters the usual summary judgment burden of proof” because the plaintiff, to overcome qualified immunity, “must rebut the defense by establishing a genuine [dispute of material fact] as to whether the official’s allegedly wrongful conduct violated clearly established law.” *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010).

Although the complaint raised claims running the gamut from false arrest to genocide, the district court isolated the claims as being two-fold: The officers (1) perpetrated a false arrest without probable cause in violation of the Fourth Amendment and (2) violated plaintiffs’ religious rights by removing and searching their religious headgear during that arrest. “A search and seizure of a person must be based on probable cause particularized with respect to that person unless a constitutionally adequate substitute for probable cause exists.” *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 208 (5th Cir. 2009). Because of the possibility of qualified immunity, however, a plaintiff seeking to recover damages in an action under § 1983 for a false arrest must prove not only that probable cause did not exist but also that “the officers were objectively unreasonable in believing there was probable cause for the arrest.” *Davidson*, 848 F.3d at 391. Therefore, even those officers “who ‘reasonably but

⁹ *Hanks*, 853 F.3d at 743 (quoting *Griggs v. Brewer*, 841 F.3d 308, 312 (5th Cir. 2016)).

mistakenly conclude that probable cause is present' are entitled to immunity."¹⁰

The plaintiffs have not met that standard. The officers arrested them for violating Louisiana Revised Statutes § 14:63.3, which states,

No person shall without authority go into or upon or remain in or upon . . . any structure . . . which belongs to another, including public buildings and structures . . . after having been forbidden to do so, either orally or in writing, . . . by any owner, lessee, or custodian of the property or by any other authorized person.

The summary judgment evidence, including videos of plaintiffs' encounter with the officers and their own and the officers' affidavits, demonstrate that, at the very least, the officers reasonably thought there was probable cause to arrest under that statute. The plaintiffs attempted to enter the courthouse without passing through security screening. The officers, who are authorized to control entry into the courthouse, refused and told the plaintiffs that if they would not pass through security, they had to leave. They refused (i.e., remained in a structure after having been forbidden to do so). There was at least arguable probable cause to arrest under Section 14:63.3, so the officers were entitled to qualified immunity.

¹⁰ *Club Retro*, 568 F.3d at 206 (quoting *Mendenhall v. Riser*, 213 F.3d 226, 230 (5th Cir. 2000)).

Nor can plaintiffs point to any other clearly established law that rendered the officers' actions objectively unreasonable. They cannot point to Fourth Amendment jurisprudence that clearly establishes that the officers were required to allow plaintiffs into the courthouse without passing through routine security screening. Indeed, the relevant authorities suggest the opposite and certainly do not clearly establish that the screening was unconstitutional.¹¹ Plaintiffs also cannot point to the 1836 United States-Morocco Treaty of Peace and Friendship as clearly establishing a right for Moorish Americans to enter the courthouse as a port of commerce without any screening.¹² It is not clearly established that the officers were required to allow plaintiffs to pass through security screening; nor is it clearly established that the officers were not allowed to ask them to leave once they refused and then arrest them once they would not leave after being told to do so.

Further, it was not clearly established that once plaintiffs had been arrested, the officers were not allowed to search their headgear solely because it had religious significance. "When an arrest is made, it is reasonable for the arresting officer to search the person arrested." *Chimel*

¹¹ See, e.g., *McMorris v. Alioto*, 567 F.2d 897, 899–900 (9th Cir. 1978); *Justice v. Elrod*, 832 F.2d 1048, 1051 (7th Cir. 1987).

¹² Cf. *United States v. James*, 328 F.3d 953, 954 (7th Cir. 2003) (explaining that "an ancient treaty between the United States and Morocco" does not allow those within the United States to ignore its laws because "[l]aws of the United States apply to all persons within its borders").

v. California, 395 U.S. 752, 762–63 (1969). Moreover, plaintiffs have pointed to no precedent that abrogates the general “search incident to arrest” rule when religious headwear is involved. Accordingly, the district court correctly granted summary judgment on the ground of qualified immunity.¹³

There is no error in the district court’s denial of the plaintiffs’ motion for recusal of the magistrate judge. Plaintiffs rely on 28 U.S.C. § 455, which requires recusal “in any proceeding in which [the judge’s] impartiality might reasonably be questioned,” when the judge “has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding,” or when the judge either “served as [a] lawyer in the matter in controversy” or “a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter.” “A motion to disqualify brought under 28 U.S.C. § 455 is ‘committed to the sound discretion

¹³ For the same reasons, the district court was correct to grant summary judgment on the state-law false-arrest claims and to grant summary judgment for Sheriff Prator, who remained in the case only on the ground that he could be vicariously liable should the statelaw claims succeed.

Lastly, plaintiffs are unable to save their case by pointing to any actions taken at the Caddo Criminal Center. The district court was correct that the named defendants associated with the Criminal Center had been dismissed and that the remaining named defendants were not present at the Criminal Center and had no role in the processing of plaintiffs there. Plaintiffs had the opportunity to conduct discovery and amend their complaint to add defendants who plaintiffs believed violated their rights during processing. They have not done so and therefore have no claims they can maintain based on those later events; final judgment was appropriate on all claims asserted.

of the district judge,” and so we review for abuse of discretion.¹⁴

The magistrate judge did not work on this case in private practice nor work with the defendants’ counsel in the practice of law while he was working on this case. Nor is there evidence of any bias or knowledge of the case that would have required the district court, in its discretion, to order recusal. The most that plaintiffs can point to is that the magistrate judge went to law school with defendants’ counsel and then served as a law clerk alongside him over thirty years ago. That is insufficient to require recusal, so the district court did not abuse its discretion. *See In re United States (Franco)*, 158 F.3d 26, 33– 34 (1st Cir. 1998).

AFFIRMED.

¹⁴ *Sensley v. Albritton*, 385 F.3d 591, 598 (5th Cir. 2004) (quoting *Chitimacha Tribe v. Harry L. Laws Co.*, 690 F.2d 1157, 1166 (5th Cir. 1982)).

APPENDIX B
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RENE JOSEPH FOLEY BEY, ET AL.
VERSUS
STEVE PRATOR, ET AL.

CIVIL ACTION NO. 19-1262
CHIEF JUDGE HICKS
MAGISTRATE JUDGE HORNSBY JUDGMENT

For the reasons assigned in the Report and Recommendation of the Magistrate Judge previously filed herein (Record Document 53), and having thoroughly reviewed the record, including the written objections filed (Record Document 54), and concurring with the findings of the Magistrate Judge under the applicable law,

It IS ORDERED that the Motion for Summary Judgment filed by Defendants Glyn Best, LC Cope, Steve Prator, and Mark Terry (Record Document 44) be GRANTED.

IT IS FURTHER ORDERED that all Plaintiffs' claims against all remaining Defendants be DISMISSED WITH PREJUDICE.

The Clerk of Court is directed to close this case.

THUS DONE AND SIGNED in Shreveport, Louisiana,
this the 4th day of August, 2021.

/s
S. MAURICE HICKS, JR. CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX C

1787 UNITED STATES-MOROCCO TREATY OF PEACE AND FRIENDSHIP

To all Persons to whom these Presents shall come or be made known.

Whereas the United States of America in Congress assembled by their Commission bearing date the twelvth day of May One thousand Seven hundred and Eighty four thought proper to constitute John Adams, Benjamin Franklin and Thomas Jefferson their Ministers Plenipotentiary, giving to them or a Majority of them full Powers to confer, treat and negotiate with the Ambassador, Minister or Commissioner of His Majesty, the Emperor of Morocco concerning a Treaty of Amity and Commerce, to make and receive propositions for such Treaty and to conclude and sign the same, transmitting it to the United States in Congress assembled for their final Ratification, And by one other Commission bearing date the Eleventh day of March One thousand Seven hundred and Eighty five did further empower the said Ministers Plenipotentiary or a Majority of them, by writing under their hands and Seals to appoint such Agent in the said Business as they might think proper with Authority under the directions and Instructions of the said Ministers to commence and prosecute the said Negotiations and Conferences for the said Treaty provided that the said Treaty should be signed by the said Ministers: And Whereas, We the said John Adams and Thomas Jefferson two of the said Ministers Plenipotentiary (the said Benjamin Franklin being absent) by writing under the Hand and Seal of the said John

Adams at London October the fifth, One thousand Seven hundred and Eighty five, and of the said Thomas Jefferson at Paris October the Eleventh of the same Year, did appoint Thomas Barclay, Agent in the Business aforesaid, giving him the Powers therein, which by the said second Commission we were authorized to give, and the said Thomas Barclay in pursuance thereof, hath arranged Articles for a Treaty of Amity and Commerce between the United States of America and His Majesty the Emperor of Morocco, which Articles written in the Arabic Language, confirmed by His said Majesty the Emperor of Morocco and seal'd with His Royal Seal, being translated into the Language of the said United States of America, together with the Attestations thereto annexed are in the following Words, To Wit:

In the Name of Almighty God,

This is a Treaty of Peace and Friendship established between us and the United States of America, which is confirmed, and which we have ordered to be written in this Book and sealed with our Royal Seal at our Court of Morocco on the twenty fifth day of the blessed Month of Shaban, in the Year One thousand two hundred, trusting in God it will remain permanent.

.1.

We declare that both Parties have agreed that this Treaty consisting of twenty five Articles shall be inserted in this Book and delivered to the Honorable Thomas Barclay, the Agent of the United States now at our Court, with whose Approbation it has been made and who is duly authorized on their Part to treat with us concerning all the Matters contained therein.

2.

If either of the Parties shall be at War with any Nation whatever, the other Party shall not take a Commission from the Enemy nor fight under their Colors.

3.

If either of the Parties shall be at War with any Nation whatever and take a Prize belonging to that Nation, and there shall be found on board Subjects or Effects belonging to either of the Parties, the Subjects shall be set at Liberty and the Effects returned to the Owners. And if any Goods belonging to any Nation, with whom either of the Parties shall be at War, shall be loaded on Vessels belonging to the other Party, they shall pass free and unmolested without any attempt being made to take or detain them.

4.

A signal or Pass shall be given to all Vessels belonging to both Parties, by which they are to be known when they meet at Sea, and if the Commander of a Ship of War of either Party shall have other Ships under his Convoy, the Declaration of the Commander shall alone be sufficient to exempt any of them from examination.

5.

If either of the Parties shall be at War, and shall meet a Vessel at Sea, belonging to the other, it is agreed that if an examination is to be made, it shall be done by sending a Boat, with two or three Men only, and if any Gun shall be fired and injury done without Reason, the offending Party shall make good all damages.

6.

If any Moor shall bring Citizens of the United States or their Effects to His Majesty, the Citizens shall immediately be set at Liberty and the Effects restored, and in like Manner, if any Moor not a Subject of these Dominions shall make Prize of any of the Citizens of America or their

Effects and bring them into any of the Ports of His Majesty, they shall be immediately released, as they will then be considered as under His Majesty's Protection.

.7.

If any Vessel of either Party shall put into a Port of the other and have occasion for Provisions or other Supplies, they shall be furnished without any interruption or molestation.

.8.

If any Vessel of the United States shall meet with a Disaster at Sea and put into one of our Ports to repair, she shall be at Liberty to land and reload her Cargo, without paying any Duty whatever.

.9.

If any Vessel of the United States shall be cast on Shore on any Part of our Coasts, she shall remain at the disposition of the Owners and no one shall attempt going near her without their Approbation, as she is then considered particularly under our Protection; and if any Vessel of the United States shall be forced to put into our Ports, by Stress of weather or otherwise, she shall not be compelled to land her Cargo, but shall remain in tranquillity untill the Commander shall think proper to proceed on his Voyage.

.10.

If any Vessel of either of the Parties shall have an engagement with a Vessel belonging to any of the Christian Powers within Gunshot of the Forts of the other, the Vessel so engaged shall be defended and protected as much as possible untill she is in safety; And if any American Vessel shall be cast on shore on the Coast of Wadnoon or any Coast thereabout, the People belonging to her shall be

protected, and assisted until by the help of God, they shall be sent to their Country.

.11.

If we shall be at War with any Christian Power and any of our Vessels sail from the Ports of the United States, no Vessel belonging to the Enemy shall follow within twenty four hours after the Departure of our Vessels, and the same Regulation shall be observed towards the American Vessels sailing from our Ports—be their Enemies Moors or Christians.3

.12.

If any Ship of War belonging to the United States shall put into any of our Ports she shall not be examined on any Pretence whatever, even though she should have fugitive Slaves on Board, nor shall the Governor or Commander of the Place compel them to be brought on Shore on any pretext, nor require any payment for them.

.13.

If a Ship of War of either Party shall put into a Port of the other and salute, it shall be returned from the Fort, with an equal Number of Guns, not with more or less.

.14.

The Commerce with the United States shall be on the same footing as is the Commerce with Spain or as that with the most favored Nation for the time being and their Citizens shall be respected and esteemed and have full Liberty to pass and repass our Country and Sea Ports whenever they please without interruption.

.15.

Merchants of both Countries shall employ only such interpreters, and such other Persons to assist them in their Business, as they shall think proper. No Commander of a

Vessel shall transport his Cargo on board another Vessel, he shall not be detained in Port, longer than he may think proper, and all persons employed in loading or unloading Goods or in any other Labor whatever, shall be paid at the Customary rates, not more and not less.

.16.

In case a War between the Parties, the Prisoners are not to be made Slaves, but to be exchanged one for another, Captain for Captain, Officer for Officer and one private Man for another; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican Dollars for each Person wanting; And it is agreed that all Prisoners shall be exchanged in twelve Months from the Time of their being taken, and that this exchange may be effected by a Merchant or any other Person authorized by either of the Parties.

.17.

Merchants shall not be compelled to buy or Sell any kind of Goods but such as they shall think proper; and may buy and sell all sorts of Merchandise but such as are prohibited to the other Christian Nations.

.18.

All goods shall be weighed and examined before they are sent on board, and to avoid all detention of Vessels, no examination shall afterwards be made, unless it shall first be proved that contraband Goods have been sent on board, in which Case the Persons who took the contraband Goods on board shall be punished according to the Usage and Custom of the Country and no other Person whatever shall be injured, nor shall the Ship or Cargo incur any Penalty or damage whatever.

.19.

No Vessel shall be detained in Port on any pretence whatever, nor be obliged to take on board any Article

without the consent of the Commander who shall be at full Liberty to agree for the Freight of any Goods he takes on board.

.20.

If any of the Citizens of the United States, or any Persons under their Protection, shall have any disputes with each other, the Consul shall decide between the Parties and whenever the Consul shall require any Aid or Assistance from our Government to enforce his decisions it shall be immediately granted to him.

.21.

If a Citizen of the United States should kill or wound a Moor, or on the contrary if a Moor shall kill or wound a Citizen of the United States, the Law of the Country shall take place and equal Justice shall be rendered, the Consul assisting at the Tryal, and if any Delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever.

.22d.

If an American Citizen shall die in our Country and no Will shall appear, the Consul shall take possession of his Effects, and if there shall be no Consul, the Effects shall be deposited in the hands of some Person worthy of Trust, untill the Party shall appear who has a Right to demand them, but if the Heir to the Person deceased be present, the Property shall be delivered to him without interruption; and if a Will shall appear, the Property shall descend agreeable to that Will, as soon as the Consul shall declare the Validity thereof.

.23.

The Consuls of the United States of America shall reside in any Sea Port of our Dominions that they shall think proper, And they shall be respected and enjoy all the Privileges which the Consuls of any other Nation enjoy, and

if any of the Citizens of the United States shall contract any Debts or engagements, the Consul shall not be in any Manner accountable for them, unless he shall have given a Promise in writing for the payment or fulfilling thereof, without which promise in Writing no Application to him for any redress shall be made.

.24.

If any differences shall arise by either Party infringing on any of the Articles of this Treaty, Peace and Harmony shall remain notwithstanding in the fullest force, untill a friendly Application shall be made for an Arrangement, and untill that Application shall be rejected, no appeal shall be made to Arms. And if a War shall break out between the Parties, Nine Months shall be granted to all the Subjects of both Parties, to dispose of their Effects and retire with their Property. And it is further declared that whatever indulgences in Trade or otherwise shall be granted to any of the Christian Powers, the Citizens of the United States shall be equally entitled to them.

.25.

This Treaty shall continue in full Force, with the help of God for Fifty Years.

We have delivered this Book into the Hands of the before-mentioned Thomas Barclay on the first day of the blessed Month of Ramadan, in the Year One thousand two hundred.

I Certify that the annex'd is a true Copy of the Translation made by Isaac Cardoza Nuñez, Interpreter at Morocco, of the treaty between the Emperor of Morocco and the United States of America.

/S THOS BARCLAY

Note, The Ramadan of the Year of the Hegira 1200
Commenced on the 28th. June in the Year of our Lord 1786.

Now know Ye that We the said John Adams and Thomas Jefferson Ministers Plenipotentiary aforesaid do approve and conclude the said Treaty and every Article and Clause therein contained, reserving the same nevertheless to the United States in Congress assembled for their final Ratification.

In testimony whereof we have signed the same with our Names and Seals, at the Places of our respective residence and at the dates expressed under our signatures respectively.

JOHN ADAMS
London January 25. 1787.
THOMAS JEFFERSON
Paris January 1. 1787.