

24-7517

ORIGINAL

IN THE UNITED STATES SUPREME COURT

Supreme Court, U.S.  
FILED

JUN 19 2025

OFFICE OF THE CLERK

SAMUEL LEE SMITH, JR.  
Petitioner,

Case Number:

v.

CITY OF MIAMI,  
A Political Subdivision,  
ERIC MARTI,  
An Individual, Respondent,  
\_\_\_\_\_ /

PETITION FOR WRIT OF CERTIORARI  
Appeal from the United States Court of Appeal, 11<sup>th</sup> Circuit March  
27, 2025 Order Dismissing Appeal in Case No. 25-10545

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## QUESTION PRESENTED

Did the US Court of Appeal for the 11<sup>th</sup> Circuit error when it dismissed Petitioner's appeal and denying a rehearing on the appeal challenging US District Court and , for the Southern District of Florida's February 4th, 2025 Order dismissing the Petitioner's second amended complaint against Respondent, City of Miami? Did the US District Court, for the Southern District of Florida violate the Petitioners due process, procedural due process and the equal protection clause? Did the court Abuse their Discretion in dismissing the Respondent City of Miami when Southern District Court of Florida arranged a settlement conference involving the City of Miami and then subjecting the City of Miami later to dismissing the Respondent from the complaint. Did the Courts operate in a truthful manner and uphold the integrity of the FRCP of the court? Are the Courts in violation of 18 U.S.C § 242 depriving the Petitioner of his rights under the color of law, privileges, or immunities secured by the Constitution or laws of the United States?

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## PETITION FOR WRIT OF CERTIORARI

### 1. Decision Below

Petitioner petitions to this Honorable Court to review the United States District Court of Appeal, Eleventh Circuit's March 27, 2025 Final Judgment Dismissing Appeal of the United States District Court, Southern District of Florida's February 4, 2025 Order dismissing the complaint against Respondent, City of Miami.

### 2. Jurisdiction

The Supreme Court's appellate jurisdiction includes the authority to review decisions concerning Federal Law, Federal Rules of Procedure and Constitutional Questions. This petition seeks review of SAMUEL LEE SMITH, JR v. City of Miami, Case No. 25-10545 (USCA March. 27, 2025). The Supreme Court's appellate jurisdiction includes the authority to review decisions of appeals court.

### 3. Federal Rule/Question Involved

The Federal Rule or Federal Question involved concerns the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and the right to due process, procedural due process, the Equal Protection Clause, Rule 8 and Rule 15 of the Federal Rules of Civil Procedure and 42 U.S.C. §1983 and §1988. Was the judge's procedure consistent with federal law? 28 USC App Fed R Civ P Rule 83. Another question involved is did the Court willfully deprive the Petitioner of his rights that are protected by the US Constitution 18 U.S.C. § 242?

#### 4. Statement of the Case

On June 9, 2020, at approximately 6:49 a.m., Petitioner was driving his 2009 Infiniti (Tag NHIQ31) north on Old Cutler Road in Palmetto Bay, Florida heading to work. As Mr. Smith was driving Old Cutler Bay road when he came to a stop and stopped for the traffic light at SW 144th Street. Samuel Lee Smith, Jr was in the left turning lane (to turn westbound). While awaiting the light to change Samuel Lee Smith, Jr had his windows rolled down and radio on. He was alone in his car at the time.

While sitting in the driver's seat adjusting his music, Petitioner heard shouting from right passenger window and when he looked up to the right, Samuel Lee Smith, Jr was being held at gunpoint staring down the center of a loaded firearm (murder attempt) by Hispanic male in plainclothes, later identified as Sgt. Eric Marti (Badge #29290), in a white cut off shirt, and not in a law enforcement uniform, standing at Petitioner's front passenger window with a loaded duty service weapon pointed directly at the Petitioner. Significantly, Marti was off duty and outside his police jurisdiction at the time when attempted to murder and assaulted the Petitioner. 34 U.S.C. § 12601 prohibits unlawful stops, discriminatory negligence by law enforcement, Law Enforcement Misconduct is covered in statute 42 U.S.C. § 14141.

Samuel Lee Smith, Jr was aggressively confronted and assaulted by Marti, preventing him from leaving once the light turned green. At that moment, Petitioner had a near- death experience and sincerely believed he was going to be

murdered. The 4<sup>th</sup> Amendment of the US Constitution that protects individuals and their rights from unreasonable government seizures. Unbeknownst to Petitioner at that moment was that Marti was a law enforcement officer for the City of Miami Police. Being in fear for his life, Petitioner scrambled for his phone and started to record Marti. Video footage is 52 seconds-long of this murder attempt which captured a portion of the interaction between Marti and Petitioner, before Samuel Lee Smith, Jr utilized his phone to call 911. At no time during the unlawful detention, did he pose any threat to Marti, other officers or civilians. Marti's actions were unreasonable and clearly racially motivated. 18 U.S.C § 249 and 18 U.S.C § 245 makes it a federal crime to attempt or cause bodily harm based on a victims race.

18 U.S.C. § 242 prohibits anyone acting under color of law from willfully depriving a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Once Marti saw Petitioner start to video tape the interaction, Marti was caught off guard and slowly stepped back from Petitioner's vicinity. Laughably so, at this time Marti perpetrated concern for the well-being of Samuel Lee Smith, Jr. While continuing to hold his firearm still in a ready to shoot manner with the gun by his waist side and his hand on the trigger of the gun.

Again Samuel Lee Smith, Jr posed no threat to Marti while he continued to demand the Petitioner to respond and react to him the way he wanted. Petitioner responded to Marti and asked what was going on. Petitioner then exited his car while still recording. Marti then commanded him to come closer so that he could



show him something. Marti then told Petitioner to look at this, and directed him to the rear of Petitioner's vehicle. Petitioner refused to go to where Marti was aggressively directing the Petitioner to go because he was still in fear for his life, thought he was going to be murdered and Marti's actions caused a break in the Petitioner's public trust which resulted in a disregard for human life.

Marti then commanded that Petitioner to stay where he was, and told him he could not leave that spot, and walked back to his vehicle which was a police vehicle that was 2 to 3 car lengths back from the Petitioner's vehicle. Still in fear for his life, instinctively called 911 and requested emergency assistance. Petitioner witnessed Marti activate his emergency lights on the police car after he called 911. Palmetto Bay police officer K. White (Badge #4549) arrived to the scene and directly went to Marti's defense. Samuel Lee Smith, Jr witnessed that egregiously unethical official misconduct and notified K. White (Badge #4549) that he made the 911 call. Samuel Lee Smith, Jr requested a sergeant, Angela Berry (Badge #5607) arrived and could care less. As a matter of fact, the officer's unjustifiable actions and failure to intervene properly and effectively to the standards and operational handbook by MDPD. The reporting official K. White (Badge #4549) wrote the report as an information report rather than a criminal report (18 U.S.C §1519) which no investigation was done by Palmetto Bay Police Department or Internal Affairs which is OFFICIAL CORRUPTION. K. White falsified his report to cover up the excessive force actions of Marti (18 U.S.C. § 1001). K. White (Badge #4549) code of conduct of officers, the standard and procedures the intake of a complaint which became a public record arriving to a

criminal matter. The public official is in violation of Florida Statute § 817.569. Samuel Lee Smith, Jr clearly – established constitutional right to be free from excessive force. Universal Declaration of human rights Article 1 states all human beings are born free and equal in dignity and rights. The Petitioner inserts Article 3 that states everyone has the right to life, liberty and security of person. Article 7 of the Universal of Declaration of Rights states all are equal before the law and are entitled without any discrimination to the equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration. The Supreme Court also established that the use of force by law enforcement must be "objectively reasonable" according to the Federal Law Enforcement Training Center (FLETC). Under no circumstances eric marti's actions are reasonable.

Petitioner's civil rights were violated. Marti's actions deprived Samuel Lee Smith, Jr of his rights motivated by an unconstitutional enforced policy, pattern of practice by the City of Miami Police Department who exonerated Marti unreasonable unjustifiable actions to human life. Marti's actions were maliciously reckless, inhumane and indifferent to Samuel Lee Smith, Jr's federally protected rights. The Civil Rights Act of 1866 declares all persons born in the United States to be citizens, regardless of race guarantees them equal rights. Samuel Lee Smith, Jr states this inexcusable action was an racial profiling action of law enforcement entities in Miami-Dade County, the Petitioner asserts Florida Statute § 784.048 which is defined engaging in a course of conduct directed at a specific person causing substantial emotional distress and serving

no legitimate purpose. Petitioner through his then counsel, filed a complaint against Marti with the Civil Investigation Panel (CIP). Specifically, Marti's IMPROPER PROCEDURE to Mr. Smith.

Petitioner also notified the City of Miami Police Internal Affairs Office of the incident involving Marti. However, the City of Miami showed little interest in investigating Officer Marti. Instead, City of Miami interrogated Petitioner as if he had done something wrong and were trying to secure a confession from him.

On the other hand, the CIP thoroughly and reviewed all the information that was provided to them by Petitioner and his counsel. The investigation also included interviewing several police officers including Marti and other fact witnesses. eric marti did not provide truthful in his statements (18 U.S.C. § 1001).The CIP investigation concluded in a recommendation that the allegation of Improper Procedure be Sustained, and the CIP concluded that he falsified his statement (18 U.S.C. § 1512) to the CIP when he stated that Petitioner was engaged in suspicious activity. Florida Statute § 838.022 address official misconduct which prohibits public servants from falsifying official records or documents with corrupt intent.

Despite the recommendation, Marti was never disciplined. As a result of the City's inaction. Petitioner filed a complaint on October 31, 2023 in the United States District Court for the Southern District of Florida (Case # 23-cv-24150-MD). The complaint contained 6 counts, Count I for false imprisonment against the City of Miami; Count II for a violation of 42 U.S.C. §1983 against the City of Miami and Officer Marti; Count III for Negligent supervision and retention against the City of

Miami, Count IV for Negligence against the City of Miami and Officer Marti; Count V for Intentional Infliction of Emotional Distress against Officer Marti and Count VI for Injunctive Relief against Intentional Infliction of Emotional Distress against Defendant Marti. On January 30, 2024, Petitioner filed a First Amended Complaint. Although the facts alleged were the same, Petitioner charged the City of Miami and Officer Marti as follows: Count I: False Imprisonment against City of Miami and Officer Marti under 42 U.S.C. § 1983; Count II: 42 U.S.C. § 1983 -Violation against Defendant City of Miami and Officer Marti for Use of Excessive Force; Count III: Negligent Supervision and Retention against the City of Miami; Count IV: Negligence as to the City of Miami and Officer Marti; Count V: Intentional Infliction of Emotional Distress against Officer Marti; Count VI: Assault against Officer Marti; Count VII: Federal Civil Rights Violations against the City of Miami and Count VIII: Assault against the City of Miami.

On February 13, 2024, the City of Miami and Officer Marti filed a joint motion to dismiss. In response, Petitioner filed a motion to amend the First Amended Complaint on March 1, 2024.

On April 4, 2024, Petitioner filed a Second Amended Complaint. The Second Amended Complaint charged the following: Count I: State Tort of Unlawful Seizure or False Imprisonment under 42 U.S.C. § 1983, Fourth Amendment, and Fourteenth Amendment (Against Marti); Count II: 42 U.S.C. §

1983 Fourth Amendment Violation for Use of Excessive Force (Against Marti); Count III: Intentional Infliction of Emotional Distress (Against Marti); Count IV: Assault (Against Marti); Count V: Federal Civil Rights Violations (Against City of Miami); Count VI: Assault (Against City of Miami); Count VII: - False Imprisonment (Against City of Miami); Count VIII: Negligent Training and/or Supervision (Against City of Miami) ; Count IX: Negligent Supervision and Retention (Against City of Miami) and Count X: Negligence as to all Defendants. The City of Miami and Officer Marti moved to dismiss the Second Amended Complaint on April 22, 2024.

On August 6, 2024, Petitioner filed a response to the motion to dismiss the Second Amended Complaint and request for leave to amend the complaint. In the motion for leave to amend Petitioner asserted that "The undersigned will file a complaint that satisfies the notice requirements as required by Federal Rules of Civil Procedure 8 and 12(b)(6) by asserting the elements for each cause and the complaint will contain enough information regarding the material elements of a cause of action to support recovery under several viable legal theories. Petitioner then filed a Third Amended Complaint and a Fourth Amended Complaint, which were both stricken by the Court on December 11, 2024. Leaving the Second Amended Complaint as the operative complaint.

On February 4, 2025, the Court entered an Order on Defendant's joint motion to dismiss the second amended complaint. The Order dismissed the claims against the City of Miami based upon sovereign immunity and because the allegations do not support that he was acting within the scope of his employment during the

incident at issue. Based upon the sovereign immunity claims, the court found that any amendment would be futile.

Petitioner appealed the dismissal of the Second Amended Complaint to the Court of Appeal for the Eleventh Circuit on February 19, 2025. *See Smith v. City of Miami*, Case Number 25-10545 (11<sup>th</sup> Cir. 2025). The appeal was dismissed on March 27, 2025.

This petition now follows:

#### 5. Reasons for Granting The Writ

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR WHEN IT DISMISSED THE COMPLAINT AGAINST THE CITY OF MIAMI FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED.

Liberally construed, and taking the facts as alleged as being true, it stated a cognizable claim for malicious prosecution and defamation of character and as such, at the very least, the complaint should not have been dismissed.

A dismissal for failure to state a cause of action upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6) is reviewed *de novo*. *Leib v. Hillsborough County Pub. Transp. Comm'n*, 558 F.3d 1301, 1305 (11th Cir.2009); *Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009).

Federal Rule of Civil Procedure 8(a)(2) mandates that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *Cabral v. City of Fort Myers, Fla.*, No. 2:23-CV-757-JLB-KCD, 2024 WL 3673567, at \*1 (M.D. Fla. Aug. 6, 2024).

To state a claim for relief, a pleading must contain “(1) a short and plain

statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought." *Fed.R.Civ.P.*8. To survive a motion to dismiss, a claim "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[T]he pleadings are construed broadly," *Levine v. World Fin. Network Nat'l Bank*, 437 F.3d 1118, 1120 (11th Cir. 2006), and the allegations in the complaint are viewed in the light most favorable to the plaintiff, *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998). Because of the liberal pleading requirements of the Federal Rules, rarely will a motion to dismiss for failure to state a claim be granted. Indeed, such a motion should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 995 (11th Cir. 1983).

Here, the Petitioner has pleaded sufficient facts, and certainly sufficient facts as directed in the approved from by the district court, to State a Claim against the City of Miami.

At the outset, the District Court Judge dismissed the case not for a lack of facts to assert a claim against the City of Miami, but instead asserts that the case was dismissed because (1) sovereign immunity and (2) Officer Marti's conduct occurred outside the scope of his employment.

First, Sovereign Immunity does not preclude the actions against the City of

Miami. The Florida Legislature has addressed sovereign immunity through statutes, most notably Florida Statute 768.28. Under that statute, the sovereign and its agencies have sovereign immunity and cannot be sued unless the Florida legislature has waived that privilege.” *Zainulabeddin v. Univ. of S. Fla. Bd. of Trs.*, 749 F. App'x 776, 786 (11th Cir. 2018) (per curiam) (citing *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5 (Fla. 1984)). That being said, Florida has generally waived immunity for torts. *McLaughlin v. Fla. Int'l Univ. Bd. of Trs.*, 533 F. Supp. 3d 1149, 1172 (S.D. Fla. 2021) aff'd, No. 21-11453, 2022 WL 1203080 (11th Cir. Apr. 22, 2022).

The statute balances governmental protection with accountability, permitting limited lawsuits while safeguarding key governmental functions.

Florida Statute 768.28 is a cornerstone in the state's approach to sovereign immunity, allowing lawsuits against the state under specific conditions. It permits claims for damages caused by the negligent acts of state employees acting within the scope of their employment. The statute applies to state agencies and subdivisions, like the City of Miami as well. Therefore, the Florida Sovereign Immunity Statute is not a bar to a lawsuit against the City for its employee's negligent conduct, instead it limits the liability of the sovereign. As such, the State torts against the City of Miami such as negligence, negligent retention, negligent supervision and negligent hiring are all viable actions that are not barred by sovereign immunity but instead limits the recovery for those actions are limited in the recovery damages.



That being said, Petitioner understands that absent exceptions, sovereign immunity precludes federal courts from entertaining a private person's suit against a State. *See Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 254, 131 S.Ct. 1632, 179 L.Ed.2d 675 (2011); *Maron v. Chief Fin. Officer of Fla.*, 136 F.4th 1322, 1333 (11th Cir. 2025). The exception to the rule is the *ex parte Young* doctrine. Under the exception in *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), sovereign immunity does not bar suits against a State that seek *prospective* equitable relief to end *continuing* violations of federal law. To determine whether *Ex parte Young* applies, the courts are to conduct a “straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective. *Id.*; *Verizon Maryland, Inc. v. Pub. Serv. Comm’n of Maryland*, 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002).

Here, the complaint alleges an ongoing violation of federal law. Specifically, the Second Amended Complaint asserts the following:

89. The actions and inactions of Defendant the City of Miami were done pursuant to following *de facto* policies, practices, and/or customs of the City of Miami that are so pervasive as to carry the force of law.
90. The City of Miami has a *de facto* policy, practice, and/or custom of concealing and/or suppressing officer misconduct (both on-duty and off-duty misconduct), including the use of unlawful force, unlawful seizures, and warrantless searches and detentions. The concealment and suppression of the existence of misconduct includes, but is not limited to: failure to sufficiently investigate allegations of misconduct; failure to accept and

act on citizen complaints against police officers; failure to investigate criminal conduct involving officers; disparate treatment between an officer who is the subject of an investigation and a non-officer suspect; failure to promptly record witness statements or preserve evidence; failure to promptly interview the suspected officer; failure to properly and sufficiently discipline an officer, even when a complaint is sustained; fabrication of exculpatory evidence or destruction of evidence; and failure to initiate prompt disciplinary procedures related to the alleged misconduct, even when the allegation of misconduct is meritorious.

91. Likewise, the City of Miami has a *de facto* policy, practice, and/or custom of deficient and biased procedures for investigating complaints, including excessive force and unlawful and warrantless searches and seizures against on-duty officers.
92. The City of Miami has a *de facto* policy, practice, and/or custom of failing to maintain accurate and complete records of complaints and investigations of misconduct.
93. The City of Miami has a *de facto* policy, practice, and/or custom of failing to turn over and disclose complete records of complaints and investigations of misconduct.
94. The City of Miami has a *de facto* policy, practice, and/or custom of a "code of silence" (also referred to as the "blue line" or "blue shield"). This code is an implicit understanding between and among members of the City Police Department resulting in a refusal or failure to report instances of misconduct of which they are aware, including the use of unlawful force, despite their obligation to do so as sworn police officers. This includes police officers who remain silent or give false or misleading information during official

investigations into allegations against a fellow officer related to misconduct to protect themselves or their fellow officers from discipline, criminal prosecution, or civil liability.

95. The City of Miami acted in a manner consistent with a *de facto* policy, practice, and/or custom of a “code of silence” and “blue shield” when it chose not to immediately discipline Marti for the constitutional violations committed against Smith.
96. Further, the City of Miami acted in a manner consistent with a *de facto* policy, practice, and/or custom of a “code of silence” and “blue shield” when it engaged in conduct such as, but not limited to, the following: (a) The City of Miami Internal Affairs (“IA”), and Police Department supervisors and superiors failed to conduct proper administrative investigations into Marti’s actions; (b) The City of Miami, IA, and Miami Police Department supervisors and superiors failed to lawfully and/or properly adjudicate the administrative investigations into the complaints against Marti both before and after the Smith incident; (c) The City of Miami failed to properly investigate and/or discipline Marti both before and after the Smith incident; (d) The City of Miami failed to dismiss Defendant Marti when he conducted an unlawful seizure and use of excessive force against the Plaintiff; (e) The City of Miami and its Police Department’s policies and practices governing behavioral intervention are deficient in that they are non-disciplinary.
97. The City of Miami took no actions to train or discipline Marti to avoid the constitutional violations discussed in this Complaint.
98. Individually and collectively, the above-described *de facto* policies, practices, and/or customs of the City of Miami proximately result in the culture and pervasive attitude among members of the

Miami Police Department, including Marti that they may engage in misconduct against citizens, residents, and others with impunity, and without fear of official consequence. The City's police officers, including Marti consider themselves "above the law."

99. The aforementioned *de facto* policies, practices, and/or customs of the City of Miami, individually and collectively, have been maintained and/or implemented with utter indifference by the City of Miami and has or have encouraged and/or motivated Marti to engage in the described conduct and wrongful acts against Smith, and therefore acted as the direct and proximate cause of the injuries sustained by the Smith.
100. The aforementioned *de facto* policies, practices, and/or customs of the City of Miami, individually and/or collectively, were the moving force behind Marti's described conduct, depriving Smith of his constitutional rights.
101. The above acts and/or omissions of the City of Miami violated Smith's rights under the Fourth and Fourteenth Amendments to the United States Constitution.
102. As a direct and proximate result of the City's conduct, Smith were subjected to injury, including deprivations of their civil rights.
103. City of Miami has also shown a pattern of misconduct directed at the individual which violates 34 U.S.C § 12601.

These factual allegations (and which must be proven) are the foundation for the *ex parte Young* exception. As such, Petitioner has asserted a viable claim against the City of Miami that survives sovereign immunity and the 11<sup>th</sup> Amendment of the United States Constitution.

Here the Second Amended Complaint states facts and clearly places Respondent on fair notice of the claims against her and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Petitioner is only obligated to provide the grounds of his entitlement to relief which he has done. *Id.* Petitioner has not used mere labels, conclusions, and a formulaic recitation of the elements, and instead explained through factual allegations the alleged conduct that is the basis for the complaint.

Lastly, the Second Amended Complaint asserts enough to suggest that the Officer Marti was acting under color of law. The fact that he may have been in plain clothes, and even if he was off duty is not what controls. What controls is whether he was acting “under color of law”. *Hickman v. Johnson*, No. 6:18-CV-218-ORL-22KRS, 2018 WL 11691318, at \*10 (M.D. Fla. Nov. 16, 2018); *United States v. House*, 684 F.3d 1173, 1200 (11th Cir. 2012). In *United States v. House*, *supra*, the defendant-officer was acting “under color of law,” even though he lacked the proper authority to make the traffic stops, when he pulled over motorists after activating the emergency lights on his marked law enforcement vehicle and while wearing his federal law enforcement uniform). In *Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303 (11th Cir. 2001). The court held that defendant was acting under “color of law” when he intervened with other city employees and invoked his authority as city manager to create the opportunity to be alone with his subordinate city employee to take her home and rape her and continue to make sexual advances at work).

Here, although Marti was wearing a white tee short and did not appear to be an officer, he commanded Petitioner and approached him as if he was vacating under lawful authority. Moreover, he summoned additional police officers to the scene. At some point, he ran his police lights in his vehicle. Ask a police officer and they will tell you that they are always on duty and police officer, even when they are "not on the clock".

The dispositive issue is whether the official was acting pursuant to the power he/she possessed by state authority or acting only as a private individual." *Hickman v. Johnson*, No. 6:18-CV-218-ORL-22KRS, 2018 WL 11691318, at \*5 (M.D. Fla. Nov. 16, 2018). "A person acts under color of state law when he acts with authority possessed by virtue of his employment with the state," or when "the manner of his conduct ... makes clear that he was asserting the authority granted him and not acting in the role of a private person," *Id.* This is exactly what Officer Marti did in this case. Petitioner would prove at trial that Marti never would have acted in the manner that he did if he was not a law enforcement officer. His stop and detention of the Petitioner was based upon his belief that Petitioner had done or was about to commit a criminal act, and he intervened because he was a police officer-in other words, he was acting within his duty as a law enforcement officer.

For the same reason that he was acting under color of law for the purposes of a §1983 action, he as also acting within the scope of his employment, contrary to the legal finding made by the District Court Judge.

The fact is that Petitioner alleged sufficient facts to satisfy the notice requirements of pleading a proper complaint against the City of Miami. As such,

the Order of dismissal should be reversed and the case should be remanded to the District Court with the mandate to reinstate the Second Amended Complaint and order that the City of Miami answer the Second Amended Complaint.

**THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DISMISSED THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION UPON RELIEF CAN BE GRANTED WITHOUT PERMITTING PETITIONER TO AMEND THE COMPLAINT BECAUSE THE DEFICIENCIES COULD HAVE BEEN CURED AND THERE WAS NO SUBSTANTIAL REASON TO DENT LEAVE TO AMEND**

Even if the entire complaint failed to state a cause of action, at the very least, the district court should have permitted the Petitioner to amend the complaint, since the Petitioner could have cured the deficiencies cited in the Order of dismissal and there was no substantial reason to deny leave to amend.

The granting of leave to amend is within the trial court's discretion and denial is reviewed for abuse of discretion. *Smith v. Duff and Phelps, Inc.*, 5 F.3d 488, 493 (11th Cir.1993). Although leave to amend should be liberally granted, a trial court is not required to grant leave to amend prior to making its decision. *See Glenn v. First Nat'l Bank in Grand Junction*, 868 F.2d 368, 370 (10th Cir.1989); *Bankers Ins. Co. v. Florida Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 n. 3 (11th Cir.1998). Notwithstanding the discretion to not permit leave to amend, because of the liberal pleading requirements of the Federal Rules, rarely will a motion to dismiss for failure to state a claim be granted. Indeed, such a motion should not be granted “unless

it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Quality Foods de Centro Am.,*

*S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 995 (11th Cir. 1983).

At no time did the district court reach a conclusion that stated or even insinuated that it was beyond doubt that the undersigned cannot prove a set of facts in support of his claim which would entitle him to relief.

Instead, the district court focused on missing details which surely could have been provided if the Petitioner was provided the opportunity to do so. There was nothing contained in the district court’s opinion that suggested that any amendment would be futile. In *Fuller v. Rich*, 925 F. Supp. 459, 461 (N.D. Tex. 1995) the court held that when considering a motion to dismiss, if the motion appears meritorious and a more carefully drafted complaint might cure any deficiencies, the district court must first “give the plaintiff an opportunity to amend his complaint, rather than dismiss it. In *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir. 1996), the court held that a decision to grant leave is within the discretion of the court, although if the court lacks a substantial reason to deny leave, its discretion is not broad enough to permit denial.

Here, there was no reason provided by the lower court that would give reason to dismissing the City of Miami not even after Melissa Damian order a settlement conference with the City of Miami/Eric Marti and the Petitioner. There was no reason that there was a substantial reason to dismiss the respondent. The case was still brand



new, no discovery had been conducted or requested, no trial date was set, and the only thing missing from the complaint was alleged details, which could have easily been included in an amended complaint that would cause it to survive any future motion to dismiss. Moreover, the Defendants would not be prejudiced if the leave was granted.

Therefore, at the very least, even if the case was dismissed, Petitioner should have been afforded the opportunity to amend. Disregarding the rules and integrity of the court leads to misuse of public position which is addressed in Florida Statute § 112.313 which prohibits public officers, employees, and local government attorneys from using their position to secure special privileges or benefits.

The lower court's dismissal of the Petitioner opportunity was an abuse of discretion and Dismissal of the Respondent requires the lower court's order be reversed, and that the case be remanded with Petitioner being given the opportunity to a fairly truthful outcome, seeking justice for the inexcusable unjustifiable actions of the City of Miami employee. The Petitioner seeks to proceed with a successful complaint.

### **Conclusion**

This Honorable Court should grant the petition and reverse the lower court's order dismissing Respondent (City of Miami). The Petitioner seeks a remedy that demonstrates Justice. The Petitioner respectfully request the Supreme Court of United

States Justices to serve as interpreters of the Constitution and the laws of the United States. Petitioner request the case is heard by the Justices so the case can proceed or find the best alternative resolution and for such other further relief as this Honorable Court deems just and proper. Petitioner believes the Supreme Court's decision will shape this case efficaciously. The Petitioner respectfully request the Supreme Court Justices adhere to 28 U.S.C §455.

Respectfully submitted,

/s/ SAMUEL LEE SMITH, JR.

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