No. _____

25-5889 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Angel E. Gaston — PETITIONER
(Your Name)

vs.

City of Leesburg, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Angel E. Gaston
(Your Name)
Sumter Correctional Institution
9544 CR 476 B
(Address)

Bushnell, FL 33513
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) Can government defendants, without pleading against or responding to the complaint, meet the burden of proof that they would have still arrested the plaintiff in good faith regardless of their retaliatory animus for the plaintiff exercising his First Amendment right to express his dissent through a marching demonstration in front of their Police department?

2.) Does the Court have the discretion to void the U.S. Supreme Courts ruling in Crawford-El V. Britton by using the PLRA review to increase the burden of proof for the plaintiff prisoner at the initial stage of stating a claim (above the Plausibility standard in the Twombly Test) by requiring the plaintiff prisoner not just to state a claim of a malicious arrest and selective enforcement in retaliation for the exercise of First Amendment rights in a short and plain statement pursuant to rule 8(a)(2), but also requiring an argument in the initial complaint that is not just plausible but "persuasive" enough to overcome the unclaimed affirmative defense of good faith arguable probable cause?

3.) Does the Court have the discretion to void the U.S. Supreme Courts ruling in Harlow V. Fitzgerald and in Gomez V. Toledo and/or void rule 8(c)(1) by using the PLRA to carry the good faith burden of proof for government defendants by asserting good faith arguable probable cause to qualify the defendants for immunity while also not requiring the shifting burdens of proof in Saucier V. Katz and further dismissing the complaint under the PLRA review for failure to State a claim?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1.) City of Leesburg, Florida
2.) Doe, John 1
3.) Doe, John 2
4.) Doe, John 3
5.) Gaston, Angel E.
6.) Iozzi, Joseph
7.) Lake County, Florida
8.) Mack, S.D.
9.) Paonessa, D.V.
10.) Robinson, D.W.
11.) Romanelli, Nicholas M.
12.) Williams, J.B.

RELATED CASES

Lake County, FL; State of Florida V. Gaston
case# 35-2020-MM-005360 (nolle prosequi)

Palm Beach County, FL; State of Florida V. Gaston
case# 17-CF-010452-A (Judgment entered July 2024)

4th District Court of Appeals; State of Florida V. Gaston
case# 4D24-1751 (pending appeal)

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was January 21, 2025.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 10, 2025, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Jurisdiction Continued

1.) Petition for Panel Rehearing

In my Petition for panel rehearing under p.g. 5-6 of 35, under 1st misapprehention of fact or law, I raised the questions presented here for only needing to state a claim. In p.g. 6-10 of 35, under 2nd misapprehention of fact or law, I raised the question of the courts premature dismissal of my complaint for failure to state a claim under §1915(a) PLRA due to a finding of an affirmative defense for arguable probable cause that was not presented or proven by the defendants. (see Appendix E)

2.) Appeal to the 11th Circuit Court of Appeals

In my appeal to the 11th circuit court, on p.g. 1 of 16 under section III (statement of standard of scope) I raised the questions sought to be reviewed here by stating the District Court errors by declaring that arguable probable cause existed. Further on p.g. 12 of 16 under Section V (B)(21) I state how the court abused its discretion by testifying for the arresting officer. Further on p.g. 14-16 under section V (D) I state how and why the court errors by finding probable cause for an arrest. Further in Exhibit "B" of my appeal to the

11th Circuit, under Memorandum of law p.g. 1-3 of 44, sections "A" and "B" I raised the courts abuse of discretion under 28 U.S.C. §1915(a) PLRA review. (see Appendix F)

3.) Dismissal by the District Court

In the order of dismissal by the Middle District Court of Florida, under p.g. 1 of 18 the court states the legal standard of the PLRA. In p.g. 5-11 of 18 the Court discusses the finding of probable cause for my arrest. (see Appendix B)

4.) Amended Complaint

In my amended complaint I attached a memorandum of law in which I raised the questions presented here. In p.g 1-3 of 44, sections "A" and "B" I raise the Courts abuse of discretion under the §1915(a) PLRA to find arguable probable cause. Further under p.g. 23 of 44 section J(9) I state that Florida defines arguable probable cause as an affirmative defense, which means the defendant bears the burden of proving it. (see Appendix G)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal

1.) First Amendment of the U.S. Constitution
2.) Fourth Amendment of the U.S. Constitution
3.) Federal Rules of Civil Procedure ("FRCP"), rule 7(a)
4.) Federal Rules of Civil Procedure, rule 8(a)(2)
5.) Federal Rules of Civil Procedure, rule 8(c)(1) - Affirmative defense
6.) 28 U.S.C. § 1915 (a) - Prisoner Litigation Reform Act ("PLRA")
7.) 28 U.S.C. § 1915 (b)(1)
8.) 42 U.S.C. § 1983 - Civil Rights Complaint
9.) 42 U.S.C. § 1985(3) - Conspiracy against civil rights

State of Florida

1.) Florida Statute § 790.01 - Carrying a concealed weapon
2.) Florida Statute § 876.13 - Wearing a mask to conceal identity
3.) Florida Statute § 876.155 - Limits on application of 876.12-15
4.) Florida Statute § 901.151 - Investigatory Stop

STATEMENT OF THE CASE

On 10/27/2020 I (Angel E. Gaston) walked to the City of Leesburg Police Station to turn in receipts for wrongly confiscated/stolen property. Upon my arrival I introduced myself as "Angel Gaston" to the police dispatch operator and informed her that I was there to turn in receipts to officer Romanelli. She instructed me to wait outside the station for police officers. While I was there I decided to do a marching Color Guard demonstration in front of news helicopter cameras and in protest of the policing tactics by the City Police officers. For my demonstration (and to protect against covid-19) I put on a mask and a helmet with a transparent faceshield. I placed several other masks that I was carrying over a Rotary statute in front of the police department and I put flags into the ground in the area I was marching. I also removed all the tools I was carrying in my bags and placed them on my belt so that they would be carried legally and be visible for police when they approach my marching demonstration in a completely empty parking lot. My demonstration of dissent consisted of me marching back and forth while blowing a whistle and waiving two flags; an American Flag and an Air Force Flag. Officer Romanelli (arresting officer) saw my demonstration and deemed it "inappropriate

and concerning," appearing as if Mr. Gastón was "ready to engage in confrontation." The arrest affidavit clearly states the officers intolerance and animosity toward my demonstration by stating "This behavior by the defendant has been a common occurrence and he has been warned numerous times to conduct himself accordingly..." (officers trying to "chill" my First Amendment right)"... Due to repetitive contacts and warnings the defendant has received and the fact he is on probation, your affiant is asking for an elevated bond." Therefore, while I was peacefully marching, officers covertly surrounded me and jumped out in a cordinated assault with guns pointing at me and instructing me to "drop everything I had." Officers did not suspect nor allude to any criminal activity because they knew who I was and what I was doing (as the officer noted, "This behavior was a common occurrence"). Their violent assault effectively chilled my demonstration of dissent against their police department; I complied with the officers orders by dropping my flags and removing all of my tools from my belt. Officers then handcuffed me, searched

me, and escorted me inside the Police Station. Latter I learned that I was charged with two misdemeanors: ① Fla. Stat § 876.13 - wearing a mask in public to conceal my identity and ② Fla. Stat. § 790.01 - carrying a concealed weapon. I dispute these false charges and state that I was not breaking any laws while I was peacefully demonstrating/marching; and officers had NO arguable Probable cause to arrest me. Officers knew who I was (because I had told them) and officers did not suspect me of having concealed "weapons," since all of my tools were plainly visible upon their approach and carried legally. UnKnown to me was the Fact that I had just interupted the officers procession of a local Police Chief's Funeral (this, I later learned, was the reason for the news helicopters). Officers maliciously used the two misdemeanor charges as an excuse to violate my bond (for another pending charge by the same officers) and violate my probation out of Palm Beach County; which they clearly point out in the arrest affidavit.

REASONS FOR GRANTING THE PETITION

The 11th Circuit Court has decided a question of constitutional law and incarcerated petitioners right to due process of law contrary to cases determined by the U.S. Supreme Court and other Circuit Courts of Appeals by deciding that under the §1915(a) PLRA review government defendants do not have the burden of proving that (contrary to the complaint) they acted in good faith. The questions presented here implicate the complaints of all prisoners bad faith First Amendment retaliation claims against Police officers selective enforcement of minor laws to "chill" the expression of dissent against the abuse of policing power. The 9th Circuit stated the following in Benigni V. Hemet, 879 F. 2d 473, (9th Cir. 1988):

> The argument here centers on who has the burden of proof on the immunity defense. It

is clear that qualified immunity is an affirmative defense, Harlow V. Fitzgerald, 457 U.S. 800, 815, 73 L. Ed 2d 396, 102 S. Ct. 2727 (1982), and we think it equally clear that the burden of proving the defense lies with the official asserting it, id. at 819. We have expressly held that good faith is an affirmative defense that a police officer must prove. Heller V. Bushey, 759 F. 2d 1371, 1373-74 n. 1 (9th Cir. 1985), vacated on other grounds, 475 U.S. 796, 89 L. Ed 2d 806, 106 S. Ct. 1571 (1986); Harris V. City of Roseburg, 664 F. 2d 1121, 1129 (9th Cir. 1981) (we recognize that good faith is an affirmative defense which must be proved by the officer.) A number of other Circuits have reached the same conclusion regarding Harlow to say that because

qualified immunity is an affirmative defense the burden of proving it lies with the defendant just as the burden of pleading the defense lies on the defendant, Gomez V. Toledo, 446 U.S. 635, 640, 64 L. Ed 2d 572, 100 S. Ct. 1920 (1980). See, e.g. Kompare V. Stein, 801 F. 2d 883, 886 (7th Cir. 1986); Tamer V. Hardy, 764 F. 2d 1024, 1027 (4th Cir. 1985); Arebough V. Dalton, 730 F. 2d 970 (4th Cir. 1984); Bauer V. Norris, 713 F. 2d 408, 411 n. 6 (8th Cir. 1983); Alexander V. Alexander, 706 F. 2d 751 (6th Cir. 1983); but see, Zeigler V. Jackson, 716 F. 2d 847 (11th Cir. 1983) (per curiam) (once a defendant establishes his good faith, the burden shifts to the plaintiff to show lack of good faith); Saldana V. Garza, 684 F. 2d 1159, 1163 (5th Cir.) (same), Cert. denied, 460 U.S. 1012, 75 L. Ed. 2d 481, 103 S. Ct. 1253 (1982)

The Middle District Court's ruling in my case and the affirmation by the 11th Circuit opens the door to deny all prisoners claims without the good faith shifting burdens of proof, but by simply claiming (under the §1915(a) PLRA review) a failure to state a claim due to an assumed good faith qualified immunity defense that never even presents the dispute of material facts and/or the allegations of malicious actions by the defendants. In my case the 11th Circuit stated that I was not "persuasive" enough in my initial complaint, yet an initial complaint is not meant to carry the full burden of the litigation process; including the good faith shifting of burdens of proof. The Court made its ruling by saying the officers had qualified for immunity (apparently under the PLRA good faith has no burden of proof, but is already established or assumed) and did not shift the burden to me to prove beyond the complaint why the officers acted in bad faith and were not entitled to "qualify"

for good faith immunity before making this ruling. The court never even presents my complaint to the defendants. In other words, the Courts have stated that under the PLRA the defendants do not need to "qualify" for their good faith immunity, there is no "burden of proof of good faith because under the §1915(a) PLRA the defendants already have immunity and I (the prisoner plaintiff) must overcome it in my initial complaint in order to even state a claim, rather than the requirement of Fed. R. Civ. P. rule 8(a)(2) of a plain and simple statement that distinguishes this case from other cases upon which relief may be granted.

In my case the Court has chosen to act as defendants de facto counsel, especially when the U.S. Supreme Court has ruled that defendants must bear the burden of first showing that they were acting

within their discretionary authority and in good faith. If defendants make that showing then the burden shifts to me (the plaintiff) "to ① demonstrate that the facts show that the defendants conduct violated a constitutional right and ② the right was clearly established at the time of the defendants conduct." see Pearson V. Callahan, 555 U.S. 223, 232, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009).

In the §1915(a) PLRA review of my case for stating a claim, the Court should not have viewed the facts in the complaint in a light that most favored the state actors and/or defendants in order to protect them from litigation before they are even served with the complaint. The Court should have followed a similar standard of review that was established by the U.S. Supreme Court in Saucier V. Katz, 533 U.S. 194, 200, 121 S. Ct. 2151,

150 L. Ed. 2d 272 (2001). and is used for summary judgment; to view the facts presented in a light most favorable to the plaintiff/non-movant; therefore focusing its PLRA review on establishing that a claim has been stated in plain and simple statements that distinguish this case from other cases so that the Court may reach a definite ruling while ensuring the Complaint is not frivolous and/or intended to harass the defendants and/or is not a complaint against a defendant whom holds absolute immunity from Suit. Understanding that absolute immunity, which has no good faith burden of proof, is not the same as the affirmative defense strategy of qualified immunity because in a civil rights action qualified immunity is asserted and good faith is proven by the defendants.

The defense of qualified immunity "balances two important interests — the need to hold public officials accountable when they exercise power irresponsibly

and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson V. Callahan (2009). To qualify for the immunity, a government official must show that the challenged actions were committed within the scope of his discretionary authority. See Kingsland V. City of Miami, 382 F. 3d 1220, 1232 (11th Cir. 2004). Note that a defendant is not empowered to violate constitutional rights as a part of his official duties. If the defendant can show the scope of his discretionary authority, "the burden shifts to the plaintiff to show that qualified immunity is not appropriate." Lee V. Ferraro, 284 F. 3d 1188, 1194 (11th Cir. 2002)

Dent V. Montgomery County Police Dep't, 745 F. Supp. 2d 648, (4th Cir 2010) states the following:

> The Supreme Court of the United States recently revised the procedure for determining whether a defendant is entitled to qualified immunity. Pearson V. Callahan, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). Courts are no

longer required to consider a rigid two prong analysis "in proper sequence," as directed in Saucier V. Katz, 533 U.S. 194, 200, 121 S.Ct. 2151, 150 L. Ed. 2d 272 (2001). Instead, Courts are "permitted to exercise their discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Id. at 818. The first prong considers whether, "taken in the light most favorable to the party asserting the injury... the facts alleged show [that] the officer's conduct violated a Constitutional right." Saucier, 533 U.S. at 201. If the evidence establishes a violation of a constitutional right, the second prong is to assess whether the right was "clearly established" at the time of the events at issue. Id.

Yet, all I did was state my complaint. I did not respond to the defendants claim of good faith qualified immunity because "they" never made that claim. The shifting of burden to prove "bad faith" never came to me because the Court didn't even recognize that I stated a claim. The Fact is I was exercising my first Amendment right by peacefully doing a

marching demonstration. I broke no laws and officers arrested me in "bad faith". ①Was there a Constitutional violation? YES. ②Objectively, did officers act reasonably? NO. Reasonable officers would have; ①followed the steps to seizure by first investigating, ②not retaliated against my marching demonstration, or ③chilled my expression of dissent through the pretext of an arrest of the minor law of wearing a mask in public. The United States Court of Appeals for the Fourth Circuit set out the proper way to evaluate the Separate Saucier issues:

> The "answer to both saucier questions must be in the affirmative in order for a plaintiff to defeat a... motion for summary judgment on qualified immunity grounds." Batten V. Gomez, 324 F. 3d 288, 293-94 (4th Cir. 2003). The Plaintiff bears the burden of proof on the first question - i.e., whether a Constitutional violation occurred. Bryant V. Muth, 994 F. 2d 1082, 1086 (4th Cir. 1993) ("once the defendant raises a qualified immunity defense, the plaintiff carries the burden of showing that the defendant's alleged conduct violated the law"); ... The defendant bears the burden of proof on the second question -

i.e., entitlement to qualified immunity. Wilson V. Kittoe, 337 F. 3d 392, 397 (4th Cir. 2003) ("The burden of proof and persuasion with respect to a claim of qualified immunity is on the defendant official."); see also Bailey, 349 F. 3d at 739 (same); Tanner V. Hardy, 764 F. 2d 1024, 1027 (4th Cir. 1985) ("It is a well established principle that qualified immunity... is a matter on which the burden of proof is allocated to the defendants."); Logan V. Shealy, 660 F. 2d 1007, 1014 (4th Cir. 1981) ("the good faith immunity of individual police officers is an affirmative defense to be proved by the defendant"); CF. Dennis V. Sparks, 449 U.S. 24, 29, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980) (noting that in a §1983 action "the burden is on the official claiming immunity to demonstrate his entitlement").

Roe V. Fryer, 2024 U.S. Dist. Lexis 194168 (11th Cir. 2024) stated the following:

> To be entitled to qualified immunity, a defendant bears the initial burden of showing that his conduct was within the scope of his discretionary authority. See Webster V. Beary, 228 F. App'x 844, 848 (11th Cir. 2007); Lee V. Ferraro, 284 F. 3d 1194 (5th and 11th Cir. 2002). Here it is undisputed that at all

times material to this case, the deputies were acting in their official capacity and within the scope of their discretionary authority. Accordingly, the burden shifts to Poe to demonstrate that qualified immunity is not appropriate using the test established by the Supreme Court in Saucier V. Katz, 533 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001) In accordance with Saucier, the Court must ask whether the facts viewed in the light most favorable to the plaintiff "show the [deputies] conduct violated a constitutional right." see also Hope V. Pelzer, 536 U.S. 730, 736, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002)

Yet, with the PLRA review of my case the Court did not view my complaint in a light most favorable to me (the plaintiff). In fact the Court did just the opposite, it viewed the Complaint in a light most favorable to the defendants by carrying the good faith burden of proof for the affirmative defense of qualified immunity before accepting a claim had been stated against the defendants for knowingly acting in bad faith. A similar question to the ones I have presented here

was asked in Crawford-El V. Britton, 523 U.S. 574, 592, 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998):

> "In a case against a government official claiming she retaliated against the plaintiff for his exercise of First Amendment rights, does the qualified immunity doctrine require the plaintiff to prove the official's unconstitutional intent by 'clear and convincing' evidence?"

In Crawford-El the U.S. Supreme Court concluded:

> "that our cases applying the affirmative defense of qualified immunity provide no basis for placing "a thumb on the defendant's side of the scales when the merits of a claim that the defendant knowingly violated the law are being resolved."

In Crawford-El V. Britton the defendants claimed and argued to prove that they qualified for immunity. In my case, because of the dismissal under the PLRA review, the defendants were not even served with the complaint. Crawford-El V. Britton further states that one reason implicit in Harlow's holding — fairness to the public

official — provides no justification for special burdens on plaintiffs who allege unlawful motive. Yet the Courts apply this extra burden on me with the excuse that I am a prisoner plaintiff and uses the PLRA to dismiss my complaint for not stating a claim in plain and simple statements while also overcoming an established good faith qualified immunity. In my case the Courts determination under the §§ 1915(a) PLRA review is an abuse of discretion and a violation of due process because there is a burden of good faith proof the defendants must carry. The qualified immunity doctrine is not whether the officer subjectively acted in good faith, but whether a reasonable officer could have believed he had probable cause to arrest for criminal activity, not for "inappropriate and unacceptable behavior." The qualified immunity doctrine embraces the possibility that government officials will make errors of judgment that are not unreasonable. Yet, in my case I stated that the officers did not make an

"error in judgment," they purposefully arrested me to stop my marching demonstration and further maliciously pressed charges to violate my bond and probation. Giving the circumstances and the knowledge of the officers at that time, their actions were unreasonable because they knew who I was before they arrived and they chose to not investigate or ask questions due to their animosity and frustration with my demonstrations. They chose to maliciously arrest me, and that arrest violated my First and Fourth Amendment rights. Yet, under the PLRA the court puts the facts in my complaint in favor of the defendants and dismisses the case for failure to state a claim, not due to an established probable cause of criminal activity, but due to the arguable probable cause of the officers subjective opinion of my marching demonstration of dissent being inappropriate and unacceptable behavior.

The U.S. Supreme Court has ruled that defendants must bear the burden of petitioning for and

proving a good faith affirmative defense. The §1915(a) PLRA requires the court to dismiss a claim "at any time" if the court determines that it is seeking relief against a defendant who is immune from such relief. The Court states I failed to state a claim because the defendants have good faith qualified immunity. Yet the U.S. Supreme Court has a process that the Court must follow to establish the affirmative defense of qualified immunity. Pursuant to Harlow V. Fitzgerald and Gomez V. Toledo the defendants must prove that they would have still arrested me regardless of any retaliatory animus for me exercising my right to express my dissent through a marching demonstration, which they described as "unacceptable behavior." The Court used the §1915(a) PLRA review to skip that process and the 11th circuit confirmed that under the PLRA they do not need to follow that process to qualify the defendants for good faith immunity. Under the present decision on my case, any court may (under the §1915(a) PLRA review) use "established" qualified

immunity to dismiss all prisoners false arrest and/or First Amendment retaliation claims against state actors without the burden of good faith on defendants or the shifting burden of proving bad faith on the plaintiff. The Court may always assume the officers version of events and conclude all state agents mistakenly violated established law in "good faith." This is an abuse of the Courts PLRA review discretion and a violation of the due process of the shifting of burdens of proof in place to establish good faith for qualified immunity. Even more the PLRA ruling in my case removes the possibility of the Nieves V. Barlett, 587 U.S. 391, 400-04 (2019) exemption from the no-probable cause requirement for a retaliatory arrest where I presented objective evidence that I was arrested when otherwise similarly situated individuals "not engaged in the same sort of protected speech had not been." The 7th circuit held in Jones V. Wilhelm,

425 F. 3d 455, 461 (7th Cir. 2005) "requiring actual knowledge of relevant facts to overcome immunity in all cases would allow state actors to trample on the constitutional rights of citizens by maintaining willful ignorance." Ignorance like in my case, where officers claimed the outside cameras in the police parking lot (installed in 2003) did not exist at the time of arrest in 2020; the dispatch audio recordings of the incident were erased; the physical evidence collected was discarted; and the two news helicopters agencies refuse to release their video footage for that day. Even the 11th circuit found that failure to exhaust is an affirmative defense which, like other affirmative defenses, puts the burden of proof squarely on defendants. see Presley V. Scott, 679 F. App'x 910, 912 (11th Cir. 2017) ("it is the defendant's burden to prove a plaintiff has failed to exhaust his administrative remedies, which requires evidence that the administrative remedies are available to the plaintiff.")

"As a general matter, this court has held that the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out." Crawford-EL V. Britton, 523 U.S. 574, 592, 118 S. Ct. 1584, 140 L. Ed 2d 759 (1998). My Complaint clearly states that, ①my demonstration was a protected form of expression by the First Amendment; ②that the defendants maliciously retaliated against my marching demonstration by selectively enforcing an anti mask law (Fla. Stat. §876.13) that could not be applied because there was no one in the parking lot for me to "target" in order for officers to overcome the limits of Fla. Stat. §876.155; plus the anti mask law was not being enforced due to Covid-19 masking mandates; and ③that the officers retaliatory arrest stopped, punished, and effectively chilled my marching demonstration and expression of dissent against their police department. With this Complaint

I have met the requirements of FRCP rule 8(a)(2) and stated a claim in short plain statements. The Court uses the §1915(a) PLRA review (which is meant to curve frivolous complaints by prisoners of their conditions of confinement) to increase the burden of stating a claim and require my complaint to also overcome a good faith arguable probable cause affirmative defense strategy when this U.S. Supreme Court in Hartman V. Moore, 547 U.S. 250, 256, 126 S. Ct. 1695, 164 L. Ed. 2d 441 (2006) explicitly left the door open for First Amendment retaliation claims based on probable cause supported arrests. In my case officers did not have probable cause for criminal activity. The Court is giving them immunity under "arguable" probable cause, except that in my case there was no suspected criminal activity. I was not threatening, intimidating, abusing, or harassing anyone with my marching demonstration because there was no one at my demonstration (except

for the 2 news helicopters hovering in the air). Therefore, the officers could not have "mistakenly" applied the needed conditions in Fla. Stat. §876.155 because there was no one to apply them to (No targeted individual or group). Therefore, officers could not have "mistakenly or reasonably" charged me with the anti masking law (§876.13); they knowingly prosecuted me maliciously to stop and punish my marching demonstration.

The U.S. Supreme Court found in Coates V. City of Cincinnati, 402 U.S. 611, 614, 91 S. Ct. 1686, 1688, 29 L. Ed. 2d 214 (1971) that mere public intolerance or animosity cannot be basis for a bridgment of constitutional freedoms, Yet the Courts violate this ruling by using the PLRA review to dismiss my complaint for failure to state a claim after I have provided objective indisputable evidence that the defendants clearly admitted (in the arresting affidavit)

to arresting me due to a mere public intolerance and animosity toward my marching demonstration by deaming it "inappropriate and Concerning," and even further stating, "This behavior by the [Plaintiff] has been a common occurrence and he has been warned numerous times to conduct himself accordingly... Due to repetitive Contacts and Warnings the [Plaintiff] has received and the fact he is on Probation, your affiant is asking for an elevated bond." An officers Subjective opinion of a protestors marching demostration being "inappropriate and Concerning unacceptable behavior" (yet not criminal actions) does not give that officer "arguable probable Cause" to retaliate against and Stop that marching demonstration through an arrest by inappropriately Selectively enforcing a minor law, the anti mask law.

This Court Stated in U.S. V. National Treasury Employees Union, 513 U.S. 454, 130 L.Ed.

2d 964 (1995) that a "reasonable burden on expression requires justification for stronger than mere speculation about serious harms." Even more this court went on to say, "Fear of serious injury cannot alone justify suppression of free speech and assembly." Even the 11th Circuit has ruled that what is required in the reasonable suspicion inquiry is that courts, "look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrong doing." Miller V. Harget, 458 F. 3d 1251, 1259 (11th Cir. 2006). The 11th Circuit also ruled that, "the officer's reasonable suspicion must be based on specific articulable facts, together with rational inferences from those facts." see United States V. Bautista-Silva, 567 F. 3d 1266, 2009 WL 1270350, *4 (11th Cir. 2009). Further the 11th Circuit has ruled that it is well settled that "the loss of First Amendment Freedoms, for even

minimal periods of time, unquestionably constitutes irreparable injury." KH Outdoor, LLC V. City of Trussville, 458 F. 3d 1261, 1271-72 (11th Cir. 2006)

Even further the 11th Circuit has ruled, "chilled free speech and invasions of privacy, because of their intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole." Ne. Fla. Chapter of Ass'n of Gen Contractors of Am. V. City of Jacksonville, Fla., 896 F. 2d 1283, 1285 (11th Cir. 1990); see also Cate V. Oldham, 707 F. 2d at 1189 (5th and 11th Cir. 1983) ("one reason for such stringent protection of First Amendment rights certainly is the intangible nature of the benefits flowing from the exercise of those rights; and the fear that, if these rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future.")

In conclusion, by using the §1915(a) PLRA review to prematurely dismiss my complaint the Court deprives me and other prisoners of the ability to show beyond the complaint that reasonable officers in the same circumstances and possessing the same knowledge as the defendants would not believe that probable cause existed to arrest, which is part of the plaintiff's burden in the process of the Court establishing qualified immunity for the defendants. In my case the Court uses the PLRA to increase the burden of stating a claim above the requirements of FRCP rule 8(a)(2) by not only requiring a short and plain statement, but also requiring a persuasive argument that overcomes an established good faith affirmative defense. In essence the Court uses the §1915(a) PLRA to remove the shifting burdens of proof created by the U.S. Supreme Court to establish good faith qualified immunity through arguable probable cause.

Was there probable cause to believe my marching demonstration was illegal? NO. Did the defendants prove they would have still arrested me regardless of any retaliatory animus for me exercising my First Amendment right to express my dissent through a marching demonstration? NO. Therefore, under the §1915(a) PLRA review the District Court should not have assumed there was good faith for qualified immunity and further dismissed my complaint.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

E. [illegible]

Date: 9/4/2025

PROVIDED TO
SUMTER CORRECTIONAL INSTITUTION
DATE 9/4/25
OFFICER INITIALS [illegible]