

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

SOCRATES SHAWN	§	
	§	
<i>Plaintiff,</i>	§	
v.	§	CIVIL ACTION NO. 7:22-cv-116
	§	
CITY OF PROGRESO, TEXAS; CESAR	§	JURY TRIAL DEMANDED
SOLIS, in his individual and official	§	
capacity; and ERNESTO LOZANO, in his	§	
individual and official capacity	§	
	§	
<i>Defendants.</i>	§	

**PLAINTIFF SOCRATES SHAWN’S RESPONSE IN OPPOSITION TO DEFENDANTS,
CITY OF PROGRESO, TEXAS’S AND ERNESTO LOZANO’S
MOTION FOR PARTIAL DISMISSAL**

I. PRELIMINARY STATEMENT

1. Defendants City of Progreso, Texas (“Progreso” or “the City”) and Ernesto Lozano (“Defendant Lozano”) (collectively “Defendants”) move to partially dismiss Plaintiff, Mr. Socrates Shawn’s (“Mr. Shawn”) Complaint, ECF No. 1, under Federal Rule of Civil Procedure 12(b)(6) to the extent that his complaint raises a violation of the Fourteenth Amendment to the federal Constitution. *See* ECF No. 10. Defendants’ motion fails because it mischaracterizes Mr. Shawn’s claims for relief, which sound exclusively in Defendants’ violation of Mr. Shawn’s Fourth Amendment rights. Mr. Shawn does not plead nor purport to raise a substantive Fourteenth Amendment claim outside of its incorporation of Mr. Shawn’s Fourth Amendment rights against state actors. As such, Mr. Shawn respectfully requests that this motion be denied.

2. First, Mr. Shawn’s claims for relief are properly plead by invoking the Fourteenth Amendment’s incorporation of the Fourth Amendment’s protections against the states. Through

the doctrine of “selective incorporation,” provisions of the Bill of Rights, including the Fourth Amendment prohibition against unreasonable searches and seizures, have long been held to apply against state actors as well as the federal government. *See Torres v. Madrid*, 141 S. Ct. 989, 996–97 (2021); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 764–65 (2010); and *Mapp v. Ohio*, 367 U.S. 643, 655–56 (1961). At all relevant times, Defendants were, or acted on behalf of, a political subdivision of the State of Texas, not the federal government, and as such, Mr. Shawn’s reference to the Fourteenth Amendment is an essential part of his Fourth Amendment claims against Defendants.

3. Second, Mr. Shawn has stated a claim under the Fourth Amendment even if the Court finds grounds to grant Defendants’ motion. As noted above, Mr. Shawn states a claim under the Fourth Amendment, and relies only on substantive Fourth Amendment law in furtherance of his claim. Defendants’ motion does not challenge Mr. Shawn’s claim for relief under the Fourth Amendment. As such, if the Court grants Defendants’ motion, Mr. Shawn requests the opportunity to amend his complaint, if it would aid the Court, to clarify that his citation to the Fourteenth Amendment is solely based upon the incorporation of his Fourth Amendment rights against state actors.

II. STANDARD

4. In assessing a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must “accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiff[].” *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009) (citation omitted). Dismissal is appropriate only if a plaintiff has not alleged enough facts to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007). A

“motion to dismiss under 12(b)(6) is viewed with disfavor and is rarely granted.” *Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013) (quoting *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011)).

III. FACTS

5. On April 8, 2020, Defendant Lozano, in carrying out a policy or custom of Defendant City, detained Mr. Shawn without reasonable suspicion and arrested him without probable cause. *See* Pl.’s Compl., ECF No. 1, ¶¶ 27–41. At no point did Defendant Lozano have an articulable basis supporting reasonable suspicion for stopping Mr. Shawn, nor was there a factual basis to believe he had probable cause for arresting Mr. Shawn. *Id.* Instead, this illegal stop and arrest occurred as a direct result of Defendants’ misuse of the then-enacted Hidalgo County COVID-19 Shelter-at-Home order (“the Order”) as a pretext for indiscriminately stopping and arresting anyone traveling through the City. *Id.* ¶¶ 27–47. In carrying out this policy, Progreso police officers routinely conducted stops without individualized suspicion or probable cause for arrest, and despite the Order’s numerous limitations and exceptions. *See, e.g., id.* ¶¶ 42–47.

6. As stated in Mr. Shawn’s complaint, at all times during the alleged conduct, Defendant Lozano was an individual employed by the City of Progreso, Texas through its Police Department, and he acted at all relevant times under color of state law. *Id.* ¶¶ 10. At no time during the facts giving rise to this action is Defendant Lozano alleged to have been acting under the color of federal law. Furthermore, Defendant City is a Texas home rule municipality organized under the laws of the State of Texas and located in Hidalgo County. *Id.* ¶ 13. The City is a political subdivision of the State of Texas, and not the federal government. *See, e.g.,* Tex. Const. art. 11, § 5; 40 Tex. Admin. Code § 821.4(d)(1).

7. On May 24, 2022, Defendants City and Lozano filed a Motion for Partial Dismissal, ECF No. 10, challenging and seeking dismissal of only Mr. Shawn’s “Fourteenth Amendment

claims.” *See* ECF No. 10 at 1 (stating Mr. Shawn’s “Fourteenth Amendment claims should therefore be dismissed”); *id.* at 5 (“Shawn cannot rely on the standards for the Fourth Amendment to establish an alleged violation of the Fourteenth.”). Defendants’ motion includes discussion of Fourth and Fourteenth Amendment standards, but ultimately only asks this Court to dismiss Mr. Shawn’s Fourteenth Amendment claims. *See id.* at Sec. IV (discussing Fourth Amendment’s standards and use of Fourteenth Amendment’s Due Process Clause); *id.* at Sec. V. (Defendants requesting only that “Plaintiff’s Fourteenth Amendment Claims be dismissed”).

IV. ARGUMENT

8. Defendants’ motion fails to allege any claims plead in Mr. Shawn’s complaint do not meet the liberal pleading standard, resulting in sufficient grounds for denial. In his complaint, Mr. Shawn asserts that Defendants’ conduct constitutes a violation of the Fourth Amendment to the federal Constitution. Mr. Shawn agrees with Defendants that it is the Fourth Amendment that protects him against this type of Constitutional violation. However, the Fourth Amendment only applies to state actors, such as Defendants, by incorporation of that right against Defendants via the Fourteenth Amendment. Defendants fail to acknowledge the critical role the Fourteenth Amendment plays in giving rise to Mr. Shawn’s Fourth Amendment claims – and instead move to dismiss a Fourteenth Amendment claim, which is neither plead nor elaborated upon in Mr. Shawn’s complaint.

9. Even if the Court grants Defendants’ motion, Defendants do not allege that Mr. Shawn has failed to state a claim as to the violation of his Fourth Amendment rights. As Defendants seemingly recognize, and Mr. Shawn agrees, the Fourth Amendment provides the substantive Constitutional framework for his claims. To the extent Defendants’ motion to dismiss is granted,

however, Mr. Shawn requests leave to amend his complaint to clarify his citation to the Fourteenth Amendment.

A. Mr. Shawn States a Claim for Relief under the Fourth Amendment by Citing the Fourteenth Amendment via the Incorporation Doctrine

10. Mr. Shawn raises claims under 42 U.S.C. § 1983, which provides a private cause of action against any person who, under color of state law, deprives a person of “any rights, privileges, or immunities *secured by the Constitution*[.]” 42 U.S.C. § 1983 (emphasis added). Whether a right is “secured by the Constitution” turns on whether that Constitutional provision applies to the states through “selective incorporation” – or application of that right against the states, often referred to as the doctrine of incorporation. *See McDonald*, 561 U.S. at 763–66. Once incorporated, “Bill of Rights protections ‘are all to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.’” *Id.* at 765 (quoting *Malloy v. Hogan*, 378 U.S. 1, 10 (1964)).

11. The Fourteenth Amendment’s incorporation doctrine has long held state actors to the standards of the Fourth Amendment. Since *Mapp v. Ohio* held the exclusionary rule applies to the states, 367 U.S. at 655–56, courts have consistently found the Fourteenth Amendment has incorporated the Fourth Amendment’s prohibition on unreasonable search and seizures to the full extent it applies to the federal government, including in civil lawsuits. *See Torres*, 141 S. Ct. at 996–97 (“[T]he Fourteenth Amendment [. . .] incorporated the protections of the Fourth Amendment against the States.”); *Morgan v. Chapman*, 969 F.3d 238, 245 (5th Cir. 2020) (“The Fourteenth Amendment ensures that [the Fourth Amendment] runs against state officials.”); *Adams v. City of Shreveport*, 269 F. Supp. 3d 743, 754 (W.D. La. 2017) (“The Fourth Amendment applies to the States through the Fourteenth Amendment’s Due Process Clause.”).

12. Mr. Shawn respectfully requests the Court deny the motion due to Defendants' failure to acknowledge the fundamental interplay between the Fourth and Fourteenth Amendments. Defendants mischaracterize Mr. Shawn's arguments as rooted in the substantive protections of the Fourteenth Amendment, arguing that Mr. Shawn "cannot repackage a Fourth Amendment claim to establish a Fourteenth Amendment violation." ECF No. 10 at 7; *see also id.* (stating that "the *Fourth* Amendment [] provides the standard for evaluation of a wrongful search, seizure or detention claim, not the Fourteenth."). But Mr. Shawn does no such thing. *Compare* Pl.'s Compl., ECF No. 1, ¶ 49 (observing "[t]he protections of the Fourth Amendment have been incorporated against the states through the Fourteenth Amendment."); *id.* ¶ 54 (same); ¶¶ 50, 56 (alleging claims based on a traffic stop without reasonable suspicion and an arrest without probable cause). At no point does the complaint reference substantive Fourteenth Amendment law or a standalone Fourteenth Amendment claim. On this point, the motion reflects a basic mischaracterization of the complaint and Mr. Shawn's allegations.

13. Mr. Shawn properly states a claim under the Fourth and Fourteenth Amendments because Defendants violated his Fourth Amendment rights, which are secured by the Constitution and applicable to Defendants via the Fourteenth Amendment. Defendants do not allege that Mr. Shawn fails to state his claims – his only claims – under the Fourth Amendment, and as such, the motion should be denied.

B. Mr. Shawn States a Claim for Relief under the Fourth Amendment even without Directly Referencing the Fourteenth Amendment

14. In the alternative, if the Court grants Defendants' motion, Mr. Shawn has properly pled claims under the Fourth Amendment that Defendants do not challenge. Beyond contextualizing his Fourth Amendment claims, Mr. Shawn's references to the Fourteenth

Amendment are ultimately irrelevant to the substantive claims he pleads under the Fourth Amendment. As such, Mr. Shawn's substantive Fourth Amendment claims may proceed before the Court without delay or modification of the complaint.

15. However, should the Court need clarification on the application of the Fourteenth Amendment, Mr. Shawn would seek an opportunity to amend his complaint under Federal Rule of Civil Procedure 15(a)(2). "[J]ustice so requires" leave to amend because Mr. Shawn does not intend to argue substantive provisions of the Fourteenth Amendment. Fed. R. Civ. Proc. 15(a)(2). Leave to amend would allow Mr. Shawn to ensure clarity around his citation to the application of the Fourteenth Amendment incorporation doctrine as applied to Defendants' Fourth Amendment violations as solely context, rather than a standalone claim of substantive violation of law.

V. CONCLUSION AND PRAYER

16. For the foregoing reasons, Plaintiff Socrates Shawn respectfully requests this Court:

- a. Deny Defendants' Motion for Partial Dismissal; or
- b. In the alternative, should the Court grant Defendants' motion, find Mr. Shawn may proceed with the Fourth Amendment claims as currently pled; or
- c. In the alternative, should the Court grant Defendants' motion, allow Mr. Shawn leave to amend his complaint to clarify he does not bring a standalone Fourteenth Amendment claim.

Dated: June 10, 2022

Respectfully submitted,

/s/ Erin D. Thorn

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CERTIFICATE OF SERVICE

I, Erin D. Thorn, hereby certify that, on June 10, 2022, I filed a copy of the foregoing Plaintiff's Response in Opposition to Defendants City of Progreso, Texas's and Ernesto Lozano's Motion for Partial Dismissal via the Court's CM/ECF electronic filing system, which will serve a copy on all counsel of record.

/s/Erin D. Thorn
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