

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	William J. Hibbler	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 4486	DATE	January 23, 2002
CASE TITLE	Rodriguez v. City of Highland Park et al.		

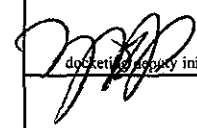
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Defendant Jerry Cameron's Motion to Dismiss (doc. #17);
 Motion to Dismiss of Defendants City of Highland Park, Pierce, Limardi, and Dahlberg (doc. #18)

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing [held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference [held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial [set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs [by/agreement/pursuant to]
 - FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] The motions to dismiss (doc. #s 17 & 18) are **DENIED**, except that to the extent Plaintiff alleges a violation of his Eighth Amendment rights, any such claim is dismissed with prejudice.
- (11) [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court. No notices required. Notices mailed by judge's staff. Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. Mail AO 450 form. Copy to judge/magistrate judge.	courtroom deputy's initials JHC	U.S. DISTRICT COURT CLERK 02 JAN 24 AM 8:27 FILED-ED 10 Date/time received in central Clerk's Office	number of notices	Document Number 25
			date docketed JAN 24 2002	
			docketing deputy initials 	
			date mailed notice	
			mailing deputy initials	

ORDER

Plaintiff filed this 42 U.S.C. § 1983 civil rights action against the City of Highland Park, Pierce, its Mayor, Limardi, the City Manager, Dahlberg, the Highland Park Chief of Police (all hereinafter referred to as the "Official Defendants"), and Cameron, a Highland Park Police Commander ("Officer Cameron"), asserting violations of his constitutional rights under the Fourteenth and Eighth Amendments. Plaintiff, a Mexican citizen, alleges that while he was sitting alone in a jail cell at the Highland Park Police Station, Officer Cameron sprayed pepper spray through a window on the locked cell door directly into Plaintiff's face, causing him extreme pain. Plaintiff contends Officer Cameron intentionally and unjustifiably assaulted him because he is not Caucasian. Plaintiff claims Officer Cameron acted pursuant to a municipal policy condoning racial profiling, i.e., the mistreatment of minorities before and after arrest, and that the Official Defendants not only approved of this policy known as the "NUT ordinance," but also refused to punish officers accused of wrongdoing. The Official Defendants and Officer Cameron each contend the Complaint fails to allege a constitutional violation. However, the Court concludes the Complaint is sufficient.

In deciding a Rule 12(b)(6) motion, the Court accepts all well-pleaded allegations in a complaint as true. *Latuszkin v. City of Chicago*, 250 F.3d 502, 504 (7th Cir. 2001). Although Plaintiff raises a § 1983 municipal liability claim, the Complaint "need not meet any heightened pleading standard, but rather must simply set forth sufficient allegations to place the court and defendants on notice of the gravamen of the complaint." *Id.* See also *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 162, 168 (1993); *Sherwin Manor Nursing Ctr., Inc. v. McAuliffe*, 37 F.3d 1216, 1219 (7th Cir. 1994). In light of the liberal notice pleading requirement of the Federal Rules, dismissal is warranted only if there is no set of facts consistent with the allegations in the complaint upon which relief could be granted. *Latuszkin*, 250 F.3d at 504; *Albiero v. City of Kankakee*, 122 F.3d 417, 419 (7th Cir. 1997).

The Official Defendants argue that the Complaint is deficient because Plaintiff does not allege the City of Highland Park had a policy of using excessive force on minorities. However, the Court agrees with Plaintiff that his claims cannot be construed so narrowly. The Complaint identifies an alleged City policy of treating minorities less favorably after arrest, and claims that Officer Cameron was enforcing that policy when he physically assaulted Plaintiff. Those allegations, if true, as the Court assumes they are for purposes of this motion, undoubtedly state a *Monell* claim against the Official Defendants. See e.g., *McCormick v. City of Chicago*, 230 F.3d 319, 325-26 (7th Cir. 2000). In their reply to the motion, the Official Defendants weakly suggest that the Complaint does not allege Plaintiff is a member of a protected group. But the Court finds Plaintiff's general allegation that he is a citizen of Mexico against whom the NUT Ordinance was enforced is more than sufficient for pleading purposes to suggest that Plaintiff is indeed a minority. The Official Defendants' motion to dismiss is therefore denied.

Officer Cameron's challenges to the Complaint are equally unavailing. First, Officer Cameron contends Plaintiff has alleged no facts suggesting he was pepper sprayed because of his national origin. To state an equal protection claim, Plaintiff must allege that "a state actor purposefully discriminated against him because of his identification with a particular (presumably historically disadvantaged) group." *Sherwin Manor*, 37 F.3d at 1220. The Complaint clearly sets forth an equal protection violation in that Plaintiff alleges he is a minority who was singled out for assault based upon Officer Cameron's anti-minority animus. See *Chavez v. Illinois State Police*, 251 F.3d 612, 635 (7th Cir. 2001); *Sherwin Manor*, 37 F.3d at 1221. Contrary to Officer Cameron's position, at this stage in the litigation, Plaintiff need only *allege* discriminatory intent, not *prove* it. See *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998). Next, Officer Cameron maintains, citing *Parratt v. Taylor*, 451 U.S. 527 (1981), that Plaintiff cannot state a due process deprivation because he has adequate procedural safeguards under Illinois law. However, the Court agrees with Plaintiff that *Parratt*, which involved a *property* deprivation, is inapplicable here because Plaintiff alleges a *liberty* deprivation. Illinois tort law is, therefore, inadequate. Finally, Officer Cameron argues that Plaintiff, as a pretrial detainee, has no rights under the Eighth Amendment. He is correct, see *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), and Plaintiff concedes as much in his response. Nevertheless, Plaintiff also asserts that Officer Cameron's unprovoked attack on him violated his substantive due process rights under the Fourteenth Amendment, and that is a cognizable claim. See *Lock v. Jenkins*, 641 F.2d 488, 494-95 (7th Cir. 1981). Accordingly, Officer Cameron's motion to dismiss is denied, except to the extent Plaintiff claims any Eighth Amendment violation.

Moreover, the Court finds no basis for striking Plaintiff's allegations concerning "racial profiling" or anti-Semitic conduct. The Seventh Circuit broadly defined racial profiling as meaning "the improper use of race as a basis for taking law enforcement action." *Chavez*, 251 F.3d at 620. Thus, while Plaintiff's claim might normally be classified as one of racial discrimination, his use of the term "racial profiling" is also appropriate. As for the allegations of anti-Semitic activity by Officer Cameron, those facts are certainly relevant to Plaintiff's claim of discriminatory treatment because he is a non-Caucasian, and thus are properly included in the Complaint.

IT IS SO ORDERED.

Wm. J. Hubler