IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS GEORGE	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM REHIEL, et al.	:	NO. 10-586

ORDER

Ludwig, J. October 28, 2011

The "United States' and Individual Federal Defendants' Unopposed Motion for Clarification" (doc. no. 41) is ruled on as follows:

1. It is acknowledged that movant's statement of the law of qualified immunity is substantively correct.

The amended complaint contains sufficient factual allegations of specific conduct on the part of each defendant that, if true, constitute violations of plaintiff's First and Fourth Amendment rights.

According to the amended complaint, plaintiff Nicholas George arrived at the Philadelphia International Airport on August 29, 2009, bound for California to resume his studies at Pomona College. He obtained a boarding pass and showed TSA his identification. At the security checkpoint x-ray device, he put his carry-on bags and personal items on the conveyor belt. He emptied his pockets of metal, took off his shoes, and walked through the detector, which made no sound. He was directed to an adjacent area where a TSA screener (Doe 1) asked him to empty his pockets. He did so, removing a set of translation flashcards,

States v. Hartwell, 436 F.3d 174, 177-78 (3d Cir.), cert. denied, 549 U.S. 945 (2006). Such searches are permissible "when a court finds a favorable balance between the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." Id. at 178-79 (citations and internal quotation marks omitted). Our Court of Appeals has declined to "set the outer limits of intrusiveness in the airport context" or "devise any bright-line test" to implement this standard in future cases. Id. at 180 n.10. Hartwell, however, confirms that routine airport screening is still a "search" subject to Fourth Amendment limitations. Id. at 177.

The procedures employed by defendants, as alleged here, do not appear to have been minimally designed to protect plaintiff's personal privacy and individual lv

Orsatti v. N.J. State Police, 71 F.3d 480, 483 (3d Cir. 1995) ("the right to be free from arrest without probable cause" is a "clearly established right"). Here, the amended complaint does not provide a reasonable inference of individualized suspicion or probable cause for the prolonged detention and arrest of plaintiff.

If the facts alleged are true, the TSA's seizure of plaintiff amounted to an investigatory detention, which escalated to an arrest when the PPD handcuffed and locked him in a cell at the direction of the TSA and JTTF. Accordingly, the amended complaint adequately alleges that each individual defendant participated in subjecting plaintiff to an intrusion upon his personal freedom for more than five hours. There were no grounds for reasonable suspicion of any criminality or probable cause. Early on, it was determined that he posed no threat to airline safety.

The amended complaint also plausibly sets forth a First Amendment violation. Except for certain narrow categories, "all speech is protected by the First Amendment." Eichenlaub v. Twp. of Indiana, 385 F.3d 274, 282-83 (3d Cir. 2004). The "right to receive information and ideas" is also well established. Kleindienst v. Mandel, 408 U.S. 753, 762-63 (1972); Monroe v. Beard, 536 F.3d 198, 208-09 (3d Cir. 2008) (prisoners retain a broad First Amendment right to view and possess protected materials). To proceed on the retaliation claim, plaintiff must plead "(1) that he engaged in constitutionally-protected activity; (2) that the government responded with retaliation; and (3) that the protected activity caused the retaliation." Eichenlaub, 385 F.3d at 282.

The factual matter contained in the amended complaint suggests that the entirety of plaintiff's airport experience may fairly be attributable to his possession of materials protected by the First Amendment. Plaintiff was "jailed for several hours . . . solely because he passed through an airport screening checkpoint with a set of Arabic-English flashcards and a book critical of American foreign policy." Am. Compl. ¶ 1. T·Ò

F. Supp. 2d 619, 626 (D.N.J. 2007) (law criminalizing phony bomb threats not overly broad because "[s]uch speech would b

The amended complaint adequately states federal involvement. The factual averments support a plausible inference that the TSA called for and requested the PPD to arrest and take plaintiff into custody. It is alleged that upon officer Rehiel's arrival in the screening area, he ordered plaintiff to place his hands behind his back, without making an independent assessment of the situation. He did not wait for the TSA supervisor to finish speaking before handcuffing plaintiff. Concededly, TSA screeners routinely "g

seize evidence, or make arrests and if so, by whom, and the actions of each on the day of this incident.

Defendant specifically disclaims liability for the tort of false light because the FTCA reserves the Unitedm, and