

Police Order to 'Stay Put' Ruled Enough for Fourth Amendment Suit

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A police officer's command to a suspect to "stay put" while the officer writes out a summons is sufficient to support a constitutional claim for false arrest, a federal judge has ruled.

Editor's Note: This article has been modified to reflect a [Correction](#).

Eastern District Judge John Gleeson concluded in *Vasquez v. Pampena*, 08-cv-4184, that conduct short of a formal arrest can constitute a "seizure" under the Fourth Amendment and be actionable under [42 U.S.C. §1983](#).

The Eastern District decision appears on page 30 of the print edition of today's Law Journal.

The ruling allows Lenin Vasquez to proceed with his claim for false arrest against an officer who issued him a summons for disorderly conduct last February, requiring him to appear in court about three months later to defend the charge.

According to his complaint, Mr. Vasquez was headed toward a subway stop in Queens in the early morning hours of Feb. 8, 2008, when he encountered two officers who were requesting passersby to produce identification.

Mr. Vasquez asked the officers whether there had been an incident in the neighborhood. Officer Angelo Pampena told him to produce identification and then "ordered" him "to stay put" until the officer completed writing up a summons.

When Mr. Vasquez appeared in Queens Criminal Court on April 15, he was told by a court clerk that the summons had been dismissed as legally insufficient.

Last October, Mr. Vasquez sued Officer Pampena, seeking unspecified damages. The officer in turn moved to dismiss the lawsuit, claiming the alleged facts did not rise to the level of a Fourth Amendment "seizure."

Judge Gleeson rejected that argument, concluding that "the brevity of the detention here does not doom Vasquez's claim as a matter of law."

The judge relied on *Broughton v. State*, 37 N.Y. 451, a 1975 ruling from the New York Court of Appeals holding that New York's common law analogue to a Fourth Amendment false arrest claim does not require an arrest, but merely "confinement."

Judge Gleeson rejected the two leading cases offered by city lawyers to support the proposition that a brief detention in connection with the issuance of a summons does not rise to the level of a Fourth Amendment violation.

In *Porat v. Lincoln Towers Community Association*, 2005 WL 646093, Southern District Judge Loretta A. Preska dismissed a false arrest claim brought by a man who had been detained by private security

guards for taking photos of an apartment building from inside its courtyard. The photographer was detained for several minutes until police officers arrived, who then issued him a summons for trespassing.

Under those circumstances, Judge Preska wrote, the photographer's claim must fail because he was "simply never arrested."

First, Judge Gleeson wrote, that a "reasonable interpretation" of *Porat* would be that detention by private security guards would be "sufficient reason to dismiss a false imprisonment claim against the police officers." In any event, the judge found that "to the extent *Porat* suggests that confinement short of a formal arrest is not actionable . . . such a rule is neither explained nor required in that case."

Judge Gleeson also rejected *Nazarian v. Compagnie Nationale Air France*, 989 F. Supp. 504 (1998), in which several Iranian nationals returning to the United States from Greece missed a connecting flight in Paris. Because the next flight did not leave until the next day, the Iranians gave their passports to Air France employees to obtain temporary visas from French immigration officials. French officials denied the visas and arrested the Iranians.

In dismissing the Iranians' false arrest claims against Air France, Southern District Judge Peter K. Leisure wrote that the Air France employees did not "arrest" the Iranians but merely "identif[ied] a potential culprit" to the police.

Judge Gleeson wrote that, while "I certainly do not quibble with the suggestion" that bringing someone's "existence" to the attention of the police is not a "confinement," Nazerian "simply does not address the magnitude of the detention required to state a Fourth Amendment claim."

Mr. Vasquez was represented by Richard J. Cardinale.

Assistant Corporation Counsel Brian G. Maxey represented Mr. Pampena. Connie Pancratz, a spokeswoman for the Corporation Counsel's Office, declined to comment because the case remains pending.