

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

EDOSA ADDLEY FESTUS OGBEBOR,

Plaintiff,

v.

KENNETH HARDY ET AL,

a former ulpd officer,

Defendants.

Case No.: 6:24-CV-00313 SEC P

JUDGE TERRY A. DOUGHTY

**MAGISTRATE JUDGE CAROL B.
WHITEHURST**

**OBJECTION TO MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

DATE:

TIME:

DEPT:

Judge:

Dept:

Action Filed: 05/21/2024

Trial Date:

To the Honorable Judges of the Western District 5th Circuit Court:

OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

COMES NOW, Edosa Addley Festus Ogbemor ("Mr. O"), pro se, and respectfully objects to the Magistrate Judge Carol B. Whitehurst's Report and Recommendation dated 5/7/2024, which recommends that the plaintiff's civil rights complaint be dismissed with prejudice for failing to state a claim upon which relief may be granted. Mr. O contends that the Report and Recommendation misapplies legal principles and overlooks critical factual details that substantiate his claims. Mr. O respectfully requests that the District

Judge Terry A. Doughty conduct a de novo review of the facts and the legal conclusions in the Magistrate's Report.

I. Introduction

Mr. O respectfully objects to the Report and Recommendation ("R&R") issued by the magistrate judge, which erroneously recommends the dismissal of his civil rights complaint. This objection rigorously contests the application of the legal standards used in the R&R and seeks thorough reevaluation by the District Judge. Mr. O contends that his complaint not only articulates claims that are factually plausible but also aligns with the stringent standards for motion to dismiss as established by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). The complaint provides sufficient factual matter, assumed to be true, to state a claim for relief that is plausible on its face, thereby warranting further judicial examination rather than dismissal. This objection elucidates the misinterpretations of the law in the R&R and highlights the ongoing violations that continuously affect Mr. O, emphasizing the necessity for a detailed judicial review to ensure justice and uphold his constitutional rights.

II. Error in Factual Findings

The Magistrate's Report incorrectly characterizes the incidents over the fourteen-year period as isolated and unrelated. Contrary to this assessment, Mr. O's complaint articulates a coherent pattern of behavior by Defendants that

collectively supports a systemic violation of constitutional rights, as recognized in cases such as *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

III. Legal Analysis Misapplied

The recommendation to dismiss for failure to state a claim fails to adequately consider the "continuing violation" doctrine, which allows for the tolling of the statute of limitations in cases where a plaintiff experiences an ongoing pattern of discrimination or other illegal conduct. This doctrine is particularly applicable given the recurring interactions with law enforcement detailed in the complaint that cumulatively constitute a continuous violation of Mr. O's rights. As the "continuing violation" doctrine is interpreted, it would extend the duration of violations from a fourteen-year span, as the Magistrate Judge inappropriately applied the law, to nearly sixteen years when the law is correctly applied.

IV. Prescription and Statute of Limitations

The application of the statute of limitations in the Magistrate's recommendation and conclusion that all claims are time-barred fails to account for the continuing violation doctrine, which is critical in Mr. O's case. This doctrine allows for a lawsuit to be filed within a statutory period following any act that is part of an ongoing pattern of violations. Mr. O's situation distinctly exemplifies this, as each instance of misconduct represents a renewal of the original violation,

thereby extending the permissible period for initiating legal action under federal law. Notably, the existence and ongoing enforcement of a Temporary Restraining Order, initially issued based on unauthorized legal advice from a law enforcement officer, underscores a continuous breach of Mr. O's constitutional rights.

Citation: *Wallace v. Kato*, 549 U.S. 384, 389 (2007) elucidates the proper commencement of the statute of limitations for civil rights claims under Section 1983.

Legal Precedent and Continuing Violation: According to *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002), the "continuing violation doctrine" holds that the statute of limitations is reset with each new violation that is part of an ongoing discriminatory practice. The relevance to Mr. O's case is profound, particularly given that the TRO issued was later upgraded to a Permanent Injunction that is still in effect and he is scheduled to appear in court on July 19, 2024, for alleged violations of this order. This upcoming court date is a direct consequence of the initial illegal issuance of the TRO, thus further demonstrating the continuing nature of the violations against him.

By enforcing a TRO initially grounded in illegal actions that amount to police misconduct and continually prosecuting Mr. O under this order, the Defendant

15th Judicial District Court Lafayette Parish perpetuates an ongoing violation of his rights. This continued application of an improperly issued order further extends the timeline for Mr. O to assert his §1983 claims, as each court appearance and related legal action based on the TRO refreshes the violations and the harm inflicted upon him.

This ongoing interaction with the legal system, predicated on flawed foundations, exemplifies the need to reevaluate the timeliness of Mr. O's claims under the continuing violation doctrine, thereby warranting a thorough judicial review rather than dismissal.

V. Misunderstanding of the Factual Context and Claims

The R&R underestimates the complexity and interconnectedness of the alleged misconduct over fourteen years, which cumulatively contribute to a pattern of abuse and violation of Mr. O's rights. Each incident is not isolated but part of an ongoing violation that substantiates Mr. O's claims.

VI. Pattern of Prosecutorial Misconduct and Conflict of Interest

Mr. O raises serious concerns regarding a pattern of prosecutorial misconduct and apparent conflicts of interest that have directly impacted the integrity of the legal proceedings against him. This pattern spans from an initial prosecution on

6/9/2009 to ongoing legal battles up to 2024, which have involved the same legal officials in various capacities.

A. Prosecution in 2009 Without Arresting Officers:

In 6/9/2009, Mr. O was prosecuted by an Assistant District Attorney (ADA) Defendant Landry who later became a Parish District Attorney (DA) in 2021. Notably, the 6/9/2009 prosecution proceeded without the presence or testimony of any arresting officers, a critical procedural irregularity that undermines the legitimacy of the proceedings and Mr. O's conviction. This unusual prosecution method casts doubts on the procedural justice afforded to Mr. O and indicates a disregard for necessary legal standards.

B. Frivolous Prosecutions Initiated by Oversight of Former ADA Turned DA

Defendant Landry:

Since the ADA Defendant Landry's appointment as Parish DA in 2021, Mr. O has experienced an escalation in legal challenges characterized by frivolous prosecutions. These prosecutions have been notably spearheaded by law enforcement officers under the direct oversight of the now DA Defendant Landry, suggesting a potential misuse of prosecutorial power to target Mr. O, possibly as retribution or to cover up previous misconduct.

C. Involvement of Former Public Defender Defendant Richard in Prosecutions:

Compounding the irregularities, Mr. O's former public defender Defendant Richard, who inappropriately urged Mr. O to plead guilty in June 9, 2009 under the threat of incarceration (under duress), has since taken a prosecutorial role, actively involved in one of the subsequent cases against Mr. O (1/9/2022 Arrest Prosecutor) and was slated to prosecute his upcoming case scheduled for July 19, 2024. This transition from defense counsel to an adversarial prosecutor against the same individual raises profound ethical and legal questions, particularly regarding conflict of interest and the fundamental fairness owed to Mr. O under the law.

D. Continuation of Legal Prejudices and Conflicts:

The continuous involvement of these officials, who have transitioned between roles within the judicial system while maintaining a prosecutorial stance against Mr. O, highlights a disturbing pattern of practice that may constitute a systemic violation of Mr. O's constitutional rights. These actions not only breach the principles of impartiality and fairness but also suggest a concerted effort to disadvantage Mr. O, potentially to obscure prior judicial and prosecutorial misjudgments or misconduct.

VII. Legal Sufficiency of the Complaint

The R&R incorrectly determines the insufficiency of the complaint. Mr. O has pleaded facts sufficient to raise a right to relief above the speculative level, detailing specific instances of rights violations that warrant further proceedings.

Citation: *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) establishes the standard for pleading facts in a civil complaint.

VIII. Conflict of Interest in Judicial Oversight

A. Judge's Prior Conduct:

Mr. O's complaint against the Defendant Commissioner Judge Andre' Doguet for failing to comply with the 72-hour rule during his previous arrest, during an arrest he signed the warrant for (3/29/2022 Arrest) highlights significant procedural violations. The judge's involvement in signing the warrant for Mr. O's most recent arrest (4/30/2024), despite the prior complaint and the subsequent dismissal by the judiciary committee, raises questions about the impartiality and fairness of the judicial process.

B. Potential Bias and Retaliation:

The timing of Mr. O being served a subpoena shortly after the judiciary committee dismissed his complaint suggests a potential retaliatory motive. This sequence of events warrants a thorough examination to ensure that Mr. O's rights are not being compromised due to judicial bias or conflicts of interest.

C. Motion for Recusal:

Mr. O respectfully requests that this Honorable Court consider a motion for recusal of the Defendant Commissioner Judge Andre' Doguet who signed both the March 29, 2022 and April 30, 2024 warrant due to the conflict of interest and potential bias arising from the previous complaint. Assigning a different judge to oversee the current proceedings will ensure a fair and impartial hearing.

IX. Leveraging the Most Recent Arrest to Support Civil Rights Claims**A. Context of the Most Recent Arrest**

The most recent arrest of Mr. O, conducted under the warrant signed by the same judge who previously failed to comply with the 72-hour rule, Defendant Commissioner Judge Andre' Doguet, exemplifies the ongoing pattern of judicial and prosecutorial misconduct that Mr. O has been subjected to over the years. This arrest, occurring approximately two months after Mr. O initiated his civil rights complaint, underscores the continuation of the systemic issues and procedural violations that form the basis of Mr. O's civil rights claims.

B. Timing and Nature of the Recent Arrest

The timing and nature of the recent arrest raise significant concerns about potential retaliation and procedural irregularities:

- **Temporal Proximity:** The arrest occurred approximately two months after Mr. O filed his civil rights complaint. This close temporal proximity suggests a potential retaliatory motive, aiming to intimidate or dissuade Mr. O from pursuing his legal claims.

- **Unusual Circumstances:** The manner in which the arrest was conducted was highly unusual. Although the Defendant Lafayette Police Department were behind the arrest, it was executed by the Lafayette Sheriff's Department, creating a confusing and potentially deceptive scenario that further complicates the procedural legitimacy of the arrest.

C. Systemic Issues and Due Process Violations

The circumstances surrounding the most recent arrest are indicative of broader systemic problems within the judicial and law enforcement systems:

- **Judicial Bias and Conflict of Interest:** The involvement of the same judge who was the subject of Mr. O's prior complaint and who failed to provide a timely hearing as required by law suggests a potential bias and conflict of interest. This judicial conduct undermines the impartiality of the legal process and supports Mr. O's claims of systemic judicial misconduct.

- **Ongoing Pattern of Misconduct:** The recent arrest is part of a continuous pattern of actions by the Defendant Lafayette Police Department and judiciary that violate Mr. O's constitutional rights. This arrest, like previous incidents, involved significant procedural irregularities and potential abuses of power.

D. Supporting the Continuing Violation Doctrine

The most recent arrest further substantiates the application of the continuing violation doctrine in Mr. O's case:

- **Extension of Violations:** This arrest serves as a continuation of the ongoing violations against Mr. O, effectively extending the timeline for his civil rights claims. Each new act of misconduct, including the most recent arrest, renews the original violations and supports the applicability of the continuing violation doctrine¹.

- **Tolling of the Statute of Limitations:** Given that the recent arrest is part of a continuous series of violations, the statute of limitations should be tolled, allowing Mr. O's claims to proceed. The recent judicial and prosecutorial actions are intrinsically linked to the historical pattern of misconduct detailed in Mr. O's complaint.

E. Protective Measures for Criminal Liability

To ensure that referencing the most recent arrest does not expose Mr. O to additional criminal liability, this section focuses solely on the procedural and systemic issues, without delving into the specifics of the criminal charges:

¹ See *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002).

- **Procedural Focus:** The arguments presented here are strictly related to the procedural failings and judicial conduct associated with the recent arrest, rather than the underlying criminal allegations.

- **Separation of Civil and Criminal Matters:** This section maintains a clear distinction between the civil rights violations being addressed in this objection and any ongoing criminal proceedings, ensuring that Mr. O's constitutional claims are evaluated on their own merits.

F. Conclusion

The most recent arrest of Mr. O, occurring shortly after he initiated his civil rights complaint, is a critical piece of evidence demonstrating the ongoing pattern of judicial and prosecutorial misconduct that has continually violated his civil rights. The unusual circumstances and timing of this arrest underscore the necessity of applying the continuing violation doctrine and tolling the statute of limitations, allowing Mr. O's claims to proceed. It is imperative that the Court acknowledges these systemic issues and ensures a fair and just resolution to Mr. O's civil rights claims.

X. Retaliation and Dubious Arrest Following Exposure of Misconduct

A. Context of the Video and Subsequent Arrest

Mr. O posted a video on social media showing controversial officer Defendant Latisser, who had previously unlawfully provided legal advice to his neighbor,

behaving properly in a similar situation after being moved to a different precinct. This video highlighted the officer's improved behavior and raised questions about the inconsistency in his conduct. Notably, the officer, who served as a Field Training Officer (FTO) Defendant Latisser, had given Mr. O's neighbor illegal legal advice, which ultimately caused harm to both parties. This incident had been captured on the controversial officer's body camera, as well as on the body cameras of other officers who failed to intervene. The footage was intended to be used against Mr. O before the charges were dismissed. Approximately 7-8 hours after posting this video, Mr. O was arrested under suspicious circumstances. The arrest was orchestrated by the Defendant Lafayette Police Department, where the officer works, but was executed by the Lafayette Sheriff's Department. This sequence of events raises serious concerns about retaliation and the integrity of the arrest process:

B. Exposure of Misconduct

- **Inconsistent Behavior:** The video posted by Mr. O demonstrated the officer's inconsistent behavior, exposing issues of accountability within the Defendant Lafayette Police Department. When Mr. O encountered the officer, he gave unlawful legal advice to his neighbor, which caused harm to both Mr. O and his neighbor. This highlighted the officer's misconduct and the failure of other officers to intervene.

- **Role as FTO:** The fact that the controversial officer Defendant Latisser was a Field Training Officer (FTO) adds another layer of concern, as FTOs are responsible for training new recruits and setting standards within the department. This raises questions about the quality of training and the potential perpetuation of misconduct within the department.
- **Timing of the Arrest:** The arrest occurred roughly 7-8 hours after Mr. O posted the video, suggesting a possible retaliatory motive. The close temporal proximity between the video's posting and the arrest raises questions about the intent behind the arrest.
- **Police Presence:** Compounding the dubious nature of the arrest, a Lafayette Police Department unit was observed hovering around Mr. O's home within hours of his post. This surveillance adds to the perception of a coordinated effort to intimidate and retaliate against Mr. O for exposing the officer's misconduct.

C. Dubious Nature of the Arrest

The circumstances surrounding Mr. O's arrest further support the notion that it was conducted in retaliation for exposing police misconduct:

- **Orchestration by Defendant Lafayette Police Department:** Although the arrest was executed by the Lafayette Sheriff's Department, it was orchestrated by the Defendant Lafayette Police Department. This unusual arrangement suggests an

attempt by the Defendant Lafayette Police Department to distance themselves from the direct execution of the arrest, potentially to avoid scrutiny or accountability.

- **Suspicious Coordination:** The coordination between the Defendant Lafayette Police Department and the Lafayette Sheriff's Department in this manner is highly irregular and raises concerns about the legitimacy of the arrest. It implies a concerted effort by the Defendant Lafayette Police Department to retaliate against Mr. O for exposing misconduct.

- **Intimidation Tactics:** The hovering police unit around Mr. O's home within hours of his post indicates potential intimidation tactics. This behavior is consistent with attempts to create a chilling effect on Mr. O's right to free speech and to retaliate against him for publicly exposing misconduct.

D. Supporting Claims of Retaliation and Misconduct

The timing and manner of Mr. O's arrest, combined with the intimidating police presence, support his claims of retaliation and ongoing misconduct within the Defendant Lafayette Police Department:

- **Pattern of Retaliatory Actions:** The swift retaliation following Mr. O's exposure of the officer's inconsistent behavior fits into a broader pattern of retaliatory actions by the Defendant Lafayette Police Department. This pattern undermines the department's credibility and supports Mr. O's claims of systemic issues.

- **Role of FTO in Misconduct:** The involvement of a Field Training Officer in the past misconduct further highlights systemic issues within the department. FTOs are expected to model exemplary behavior, and their participation in or failure to prevent misconduct indicates deeper institutional problems.

- **Violation of Rights:** The dubious nature of the arrest, combined with the retaliatory motive and intimidation tactics, constitutes a violation of Mr. O's constitutional rights. This adds weight to his civil rights complaint and underscores the need for judicial intervention.

E. Conclusion

The sequence of events—Mr. O posting a video exposing inconsistent behavior that starkly contrasts with the police misconduct Mr. O experienced, followed by his dubious arrest orchestrated by the Defendant Lafayette Police Department and executed by the Lafayette Sheriff's Department, along with the intimidating police presence around his home—strongly suggests a retaliatory motive and further highlights systemic issues within the Defendant Lafayette Police Department. The fact that the controversial officer Defendant Latisser involved is a Field Training Officer exacerbates concerns about the department's culture and training practices. This supports Mr. O's claims of ongoing violations of his constitutional rights and underscores the importance of addressing these issues through a thorough judicial review. It is crucial that the Court considers these

events in evaluating the broader context of Mr. O's allegations and ensures a just resolution to his complaint.

XI. Bond Conditions and Their Implications

A. Impractical Bond Conditions

Mr. O was subjected to bond conditions that were both impractical and impossible to comply with. Specifically, one of the conditions required Mr. O not to communicate with the alleged victim. However, neither the Lafayette Sheriff's Department nor the city police department was able to provide the name of the alleged victim. This lack of information rendered Mr. O unable to comply with the bond condition, placing him in an untenable legal position.

B. Legal and Constitutional Concerns

- **Due Process Violation:** The bond condition imposed on Mr. O violated his due process rights. Without knowing the identity of the alleged victim, Mr. O could not reasonably be expected to adhere to the condition. This situation created a legal paradox, where Mr. O was at risk of violating a bond condition through no fault of his own.

- **Unreasonable Conditions:** The imposition of such an unreasonable condition highlights systemic issues within the judicial process handling Mr. O's case.

Bond conditions are intended to ensure compliance with legal requirements and

to protect the interests of justice, but in this instance, they were impractical and unattainable.

C. Accountability for Bond Conditions

The responsibility for imposing and enforcing bond conditions that are both practical and just falls on the judicial system and the law enforcement agencies involved. In Mr. O's case:

- **Judicial Responsibility:** The court that imposed the bond condition failed to ensure that Mr. O was given clear and actionable terms. This oversight directly contributed to the untenable position Mr. O found himself in.

- **Law Enforcement Accountability:** Both the Lafayette Sheriff's Department and the Lafayette Police Department failed in their duty to provide the necessary information regarding the alleged victim. This failure compounded the injustice faced by Mr. O, as he was left without the means to comply with the bond conditions.

D. Implications for Mr. O's Civil Rights Complaint

The impractical bond conditions imposed on Mr. O further substantiate his claims of systemic failures and retaliation. These conditions:

- **Reinforce Claims of Retaliation:** The unreasonable bond conditions can be seen as another form of retaliation against Mr. O, adding to the pattern of systemic abuse and misconduct he has experienced.

- **Highlight Systemic Issues:** This situation underscores broader systemic issues within the law enforcement and judicial processes that have failed to protect Mr. O's rights as a protected class citizen.

E. Conclusion

The bond conditions imposed on Mr. O, particularly the requirement to avoid communication with an unidentified alleged victim, highlight significant procedural and constitutional issues. These conditions were not only impractical but also impossible to comply with, violating Mr. O's due process rights and further illustrating the systemic failures within the judicial and law enforcement systems. It is crucial that the Court considers these conditions as part of the broader context of Mr. O's allegations and ensures a thorough and just resolution to his complaint.

XII. Police Chief's Resignation and Its Implications

A. Context of the Resignation

The resignation of the Defendant Lafayette Police Department police chief 16 days after Mr. O's most recent arrest and on the same day Mr. O discovered that the Defendant Lafayette Police Department was the actual arresting agency, despite the arrest being executed by the Lafayette Sheriff's Department, raises significant questions about the internal dynamics and potential acknowledgment of issues within the Defendant Lafayette Police Department. Although the resignation was officially reported to be for "personal reasons," the timing and context suggest there may be underlying factors related to Mr. O's allegations²:

- **Timing:** The resignation occurred 16 days after Mr. O's most recent arrest on April 30, 2024 and on the same day he discovered that the Defendant Lafayette Police Department was the arresting agency. This close temporal proximity raises questions about a potential connection between Mr. O's discovery, his arrest, and broader issues within the department.

- **Official Explanation:** While the resignation was reported to be for "personal reasons," it is important to consider the possibility that this explanation might obscure more complex or problematic underlying issues within the Defendant Lafayette Police Department.

B. Supporting Claims of Systemic Issues and Misconduct

² Scott Yoshonis, Jasmine Dean, "Judith Estorge steps down as Lafayette Police Chief, will remain on the force: sources" *KLFY*, May 16, 2024, accessed May 21, 2024, <https://www.klfy.com/local/lafayette-parish/judith-estorge-steps-down-as-lafayette-police-chief-will-remain-on-the-force-sources/>.

The resignation of the Defendant Lafayette Police Department police chief supports Mr. O's claims of ongoing systemic issues and misconduct within the Defendant Lafayette Police Department, despite the official reason given:

- **Potential Acknowledgment of Problems:** The timing of the resignation could indicate an acknowledgment of the issues raised in Mr. O's complaint, including procedural failings, lack of transparency, and possible retaliatory actions. This can strengthen the argument that Mr. O's rights were violated as part of a broader pattern of misconduct.
- **Systemic Failure:** Even if officially for personal reasons, the departure of the chief may still reflect recognition of systemic failures within the Defendant Lafayette Police Department. This supports Mr. O's claims that his constitutional rights were consistently violated by the department's actions.

C. Impact on Credibility and Accountability

The Defendant Lafayette Police Department police chief's resignation can be used to challenge the credibility of the Defendant Lafayette Police Department's actions and highlight the need for accountability:

- **Questioning Credibility:** The resignation, regardless of the stated reason, undermines the credibility of the Defendant Lafayette Police Department's

actions and decisions, suggesting that there may have been underlying issues that necessitated a leadership change.

- **Demand for Accountability:** This development underscores the importance of holding the Defendant Lafayette Police Department accountable for its actions, as the resignation implies that there were significant enough concerns to warrant a change in leadership.

D. Strengthening the Civil Rights Complaint

Incorporating the police chief's resignation into the civil rights complaint can bolster Mr. O's position by highlighting the following:

- **Pattern of Misconduct:** The resignation fits into a broader pattern of misconduct and systemic issues that Mr. O has experienced, reinforcing the validity of his claims.

- **Retaliatory Context:** If the resignation is viewed in the context of potential retaliation or attempts to address internal misconduct, it can further substantiate Mr. O's allegations of unfair treatment and procedural violations.

E. Conclusion

The resignation of the police chief 16 days after Mr. O's most recent arrest and on the same day he discovered that the Lafayette Police Department was the arresting agency, even if officially for "personal reasons," provides additional

support for his civil rights complaint. This development indicates potential acknowledgment of systemic issues and misconduct within the police department, reinforcing Mr. O's claims of ongoing violations of his constitutional rights. It is crucial that the Court considers this significant development in evaluating the broader context of Mr. O's allegations and ensures a thorough and just resolution to his complaint.

XIII. Conclusion

Given the complex web of ongoing violations detailed in Mr. O's complaint, dismissing this case on grounds of the statute of limitations seems akin to calling halftime during the coin toss. Mr. O respectfully requests that this Honorable Court reject the Magistrate Judge Carol B. Whitehurst's recommendation to dismiss the complaint with prejudice. Mr. O believes that the evidence and the law, particularly as they relate to ongoing and recurring violations of his constitutional rights, support the continuation of this action.

Respectfully submitted,

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