12-56933

United States Court of Appeals, Ninth Circuit

ALEJANDRO VELASQUEZ,
Plaintiff-Appellant

v.

CITY OF LONG BEACH, LONG BEACH POLICE DEPARTMENT, **OFFICER KALID ABUHADAWAN**, in his individual and official capacity, **OFFICER RON MARTIN**, in his individual and official capacity, **DOES 1-10**
Defendants-Appellees

Appeal from the United States District Court
Central District of California
Judge Manuel Real
CV-11-00120-R

APPELLANT'S OPENING BRIEF

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Jurisdictional Statement

Appellant Alejandro Velazquez brought suit before the United States District Court, Central District of California. He now appeals to the United States Court of Appeals, Ninth Circuit. 28 U.S.C. § 1291. The Ninth Circuit is the appropriate circuit for appeals arising out of the Central District of California.

The final judgment was entered on September 21, 2012, and appellant timely filed the notice of appeal on October 19, 2012. Fed. R. App. P. 4(a)(1)(A). This appeal is from a final judgment that dismissed appellant's claims.

Statement of Issues

1. A police officer unlawfully seizes a suspect when he detains the suspect without reasonable suspicion or arrests him without probable cause. A district court may not grant a motion for judgment as a matter of law unless only one possible verdict is reasonable. Would it have been reasonable to find appellant Officer Abuhadawan lacked reasonable suspicion or probable cause in detaining and arresting Velazquez, so that the district court erred in dismissing the claim?

    a. California Penal Code section 647(f) is violated not by mere public intoxication, but only where the suspect is unable to care for himself or a danger to others. Numerous witnesses, including Abuhadawan's partner, denied Velazquez was in that condition. Abuhadawan smelled alcohol on his breath and perceived him to be leaning against a car, but other witnesses testified to the contrary. Could a reasonable jury have found Abuhadawan lacked reasonable suspicion in detaining Velazquez?

    b. An individual violates California Penal Code section 148(a)(1) when he resists an officer in the performance of his duties. Such duties do not include unlawfully detaining suspects, so suspects have no obligation to comply with commands made during an unlawful seizure. Could a jury reasonably have found that the initial detention was unlawful, thus precluding a lawful arrest for resisting arrest?

2. A suspect's uttering a profanity at an officer is not an arrestable offense under California law. The district court asked whether Velazquez's use of profanity could establish probable cause to arrest, disregarded the testimony of numerous witnesses who denied hearing any profanity because their not hearing the statement "doesn't mean anything," and expressed doubt as to whether "f— off" constituted profanity. Did the court err in considering alleged profanity in dismissing Velazquez's unlawful seizure claim?

3. Did the court's dismissal of the unlawful seizure claim inform the jury that Abuhadawan's commands were lawful, and thereby prejudice the jury into rejecting Velazquez's claim that Abuhadawan used excessive and unreasonable force? Did the court apply incorrect standards in admitting and excluding evidence during the jury's consideration of that claim?

4. Local government agencies may be liable when their customs or policies lead to constitutional deprivations. The Long Beach Police Department trained Officer Abuhadawan that he could arrest a suspect for violating section 647(f) if he had a blood alcohol level of .15, and that he did not need to consider the nature of the suspected offense in determining how much force to use in effecting arrest. Could a reasonable jury have found *Monell* liability?

5. The district court dismissed Velazquez's parallel state claims "without prejudice" due to the perceived difficulty of instructing a jury on state and federal excessive force claims, which have differing standards on immunity. Velazquez cannot bring his claims in state court because the statute of limitations has expired, and cannot bring a state claim into federal court without accompanying federal claims. May Velazquez brings his state claims on retrial in federal court?

6. The jury passed a note to the court during deliberations. Counsel was not informed and was never able to read the note, which is currently redacted. Should this Court in its read the note to determine its significance, if any?

Statement of the Case

Plaintiff-appellant Alejandro Velazquez filed a complaint in October 2011 after being detained and arrested by officers from the Long Beach Police Department. (Excerpts of Record (ER) II, Tab H.) The complaint alleged 42 U.S.C. § 1983 violations based on an unlawful seizure and excessive force. The complaint included related state claims on false arrest, assault and battery. The complaint included an allegation under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). The complaint also included other state torts including negligence and intentional infliction of emotional distress.

The case went to trial in September 2012. After the presentation of evidence, the court granted the defense a judgment as a matter of law on the section 1983 unlawful seizure claim and the *Monell* claim. (ER I, Tab E.) The court also dismissed the state claims "without prejudice." (ER I, Tab E.) The jury found for the defense on the federal excessive force claim. (ER I, Tab G.)

Statement of Facts[1]

Plaintiff's Evidence

Appellant Alejandro Velazquez celebrated his 24th birthday with friends, neighbors and family on October 24, 2009. (2p RT 59, 3 RT 63-65.)[2] Velazquez was outside his home in Long Beach in the evening and into the following morning. (3 RT 67-69.) He drank up to four alcoholic beverages during a ten-and-one-half hour period. (3 RT 69.)

At approximately 3:00 a.m, Velazquez was talking outside with his mother, Elvira Hernandez, and nephew, Dennis Torres Magana.

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[1] Velazquez presents the evidence adduced by both sides. The record must be read in the light most favorable to the plaintiff on all the counts dismissed by the court under Federal Rule of Civil Procedure 50. *Gardner v. Buerger*, 82 F.3d 248, 251 (8th Cir. 1996.)

[2] The transcripts are described by their date: 1 RT refers to the proceedings of September 18, 2012; 2 RT refers to the proceedings of September 19, 2p RT refers to the September 19, afternoon session; 3 RT refers to the September 20 proceedings, and 4 RT refers to the September 21 proceedings. To avoid confusion, when cited transcript pages are in the excerpts of record, this brief will refer to the volume and tab of the ER, but continue to use the page number used in the transcript.

(2p RT 60.) Velazquez was standing upright, with a car behind him. (2p RT 61.) He was not stumbling or leaning on a car. (3 RT 10, 74.) He was able to take care of himself and posed no danger to others. (2p RT 72, 3 RT 89.) He did not emit a strong odor of alcohol. (2p RT 72.)

A police vehicle arrived, and Magana told the officer, "Don't worry. We're leaving officer." (2p RT 62.) The officer said "Okay," and was about to leave. (2p RT 62.) Velazquez, who had been talking with his mother, said, "What's up?" (2p RT 62.) The officer put the car in reverse, returned, and asked, "What did you say?" (2p RT 62.) Magana reiterated that they were leaving, and the officer asked, "No, not you; him," and he pointed to Velazquez. (2p RT 62.) Velazquez confirmed, "I said, `what's up.' " (2p RT 62.)

Officer Kalid Abuhadawan exited the vehicle, followed by Officer Martin Ron. (2p RT 63-64.) Abuhadawan "speed walk[ed]" toward Velazquez, and said, "I'm tired of people calling because of you, motherfuckers." (2p RT 64.) Velazquez stepped back slightly and did not say anything. (2p RT 65.) Abuhadawan grabbed

Velazquez and threw him to the ground. (2p RT 64, 3 RT 12, 3 RT 74.) Abuhadawan began hitting Velazquez with his baton. (2p RT 65, 3 RT 75.) Velazquez told Abuhadwan, "I"m not about violence." (2p RT 65.) Abuhadawan did not command Velazquez to put his hands behind his head, did not inform Velazquez that he wanted to investigate and did not put him under arrest. (2p RT 65-66, 3 RT 12.)

Velazquez did not resist when Abuhadawan grabbed and threw him to the ground. (2p RT 66.) Once he began striking Velazquez with the baton, Abuhadawan ordered him to "Roll on your stomach." (2p RT 67.) Abuhadawan "kept on hitting and saying it at the same time." (2p RT 67.) He did not actually give Velazquez an opportunity to roll on to his stomach. (2p RT 67.) Velazquez clenched into a fetal position trying to cover his body and continued to insist, "I'm not about violence." (2p RT 68, 3 RT 76.) Abuhadawan struck Velazquez with the baton approximately ten times. (2p RT 69, 3 RT 13.) Eventually, Velazquez turned onto his stomach, but Abuhadawan continued to strike him, on the back of

the head, on his arms, and on his back. (3 RT 14.)

During this time, Velazquez's mother (Hernandez) told Officer Ron in Spanish, "He can't be hitting him like that." (2p RT 69.) Ron ordered Hernandez to step back, or else he would arrest her. (2p RT 69, 94.) Hernandez appeared more scared than angry. (2p RT 69-70.) The only profanity uttered was one man's comment: "I want his fucking badge number because he's going to lose his job. He can't be doing that." (2p RT 70.)

After the ten baton strikes, the police handcuffed Velazquez and placed him in the patrol car. (3 RT 79.) At the booking station, a nurse stated that he needed to go to the hospital, and the officers took him there. (3 RT 83.) The bone in Velazquez's finger appeared to be poking out of the skin, and doctors performed surgery on it. (3 RT 85.)

Velazquez's injuries limited his physical abilities, and he lost his job with FedEx. (3 RT 96-97.) He estimated his earnings lost as a result of his injuries at approximately $20,000 to $30,000. (3 RT 97.) The court sustained defendants' objection to his

documenting his medical expenses. (3 RT 96.)

Defendants' Evidence

Officer Abuhadawan and Officer Ron arrived at Velazquez's home at approximately 3:30 a.m. on October 25, 2009. (1 RT 4, 6-7.) They saw approximately ten people standing around a vehicle. (1 RT 8, 138.) Some of them were holding beer cans, but Velazquez was not. (1 RT 8-9.) Velazquez had his hands on the vehicle but was not "leaning against" it. (1 RT 10.) He did not appear to be a danger to himself and he wasn't threatening anybody else. (1 RT 10-11.) Some of the people began to disperse, and Abuhadawan told them to pick up beer cans on the ground. (1 RT 12.) He told Velazquez to disperse. (1 RT 13.) Velazquez answered, "yeah, sure" while shaking his head from left to right. (1 RT 13.)

Abuhadawan exited his car and approached Velazquez. (1 RT 14.) Abuhadawan observed an odor of alcohol from Velazquez's person, and decided to investigate whether Velazquez was so intoxicated as to be unable to care for himself or a threat to others.

(1 RT 16, 56.) He did not ask Velazquez how much he had to drink that night, or perform any other tasks to determine intoxication, such as counting or reciting the alphabet. (1 RT 20-22.) Abuhadawan decided to do a patdown search for weapons. (1 RT 18-19.) Abuhadawan told Velazquez "why I was asking him to place his hands behind his head." (1 RT 19.) Velazquez did not comply, so Abuhadawan repeated his command. (1 RT 19.) Velazquez at this point was not free to leave. (1 RT 48.) Abuhadawan heard Velazquez say, "Fuck off, I'm good." (1 RT 29.) Ron was standing between four and ten feet away from Abuhadawan through most of the incident. (1 RT 142.) Ron did not hear this remark, or any other profanity from Velazquez. (1 RT 143, 153.) Ron also did not hear Abuhadawan issue any commands to Velazquez at that point. (1 RT 143.) Abuhadwan repeated his order, and Velazquez answered, "I ain't doing that. We don't got to leave." (1 RT 95-96.) Velazquez's speech was not slurred. (1 RT 48.)

Abuhadawan decided to place Velazquez in a twist lock, which

an officer performs by grabbing the target's arm with his right hand. (1 RT 20, 23.) The officer "C-clamps" the back of the elbow and uses his left hand to grab the target's wrist in a "C-lock" motion. (1 RT 23.) The purpose is to keep the target off balance rather than to inflict pain. If the target does not comply, the officer twists the wrist slightly, which causes a minor sharp pain. (1 RT 23.) At the time, Abuhadawan had not seen or heard enough to arrest Velazquez, but had "observed Mr. Velazquez commit a misdemeanor offense" prior to performing the twist lock. (1 RT 27, 30.) Ron did not perceive that Velazquez was unable to care for himself or was a danger to others. (1 RT 154-155.) Velazquez did not fight back against the twist lock. (1 RT 96.)

Abuhadawan began walking Velazquez to the patrol car in a twist lock. (1 RT 31.) Velazquez pulled away, although Abuhadawan could not tell if he was resisting or just stumbling. (1 RT 32.) Abuhadawan performed an arm bar takedown, whereby the officer either pushes downward to force the target to the ground or applies force to the elbow, which causes pain and makes the

target go in any direction desired by the officer. (1 RT 32.) When Velazquez hit the ground, Abuhadawan ordered him to roll onto his stomach and place his hands to the side. (1 RT 34.)

Within two to ten seconds of Velazquez's hitting the ground, Abuhadawan began striking him with his baton. (1 RT 33, 145.) The baton was 27 inches in length, 1 ½ - 2 inches in length. (1RT 25.) A baton strike "is going to cause injury" and is potentially lethal. (1 RT 33, 35.) Although Abuhadawan was trained to warn a suspect before striking him the baton if feasible, Abuhadawan never warned Velazquez. (1 RT 64-65.) Abuhadawan swung the baton downwards like a baseball bat. (1 RT 47.) He swung as hard as he could on each swing. (1 RT 39-40, 43.)

He struck at Velazquez's shoulder six times, and repeated his command to roll over. (1 RT 38, 109.) Velazquez asked, "What the fuck for? I didn't do anything." (1 RT 109.) Abuhadawan decided his baton strikes to the shoulder were ineffective so he moved to another area where they might be more effective. (1 RT 109.) He then struck three times at Velazquez's hands covering his chest. (1

RT 37, 109.) Eventually, Velazquez began to roll over as commanded, but Abuhadawan continued to strike him in the biceps and lower back. (1 RT 42-43.) Abuahadawan felt he needed to use additional force because Velazquez "obviously showed aggression towards my presence as a police officer." (1 RT 105.) Throughout the incident, Velazquez never hit, kicked, or threatened Abuhadawan. (1 RT 36-37, 40.)

Summary of the Argument

A jury could have reasonably found that there was no reasonable suspicion supporting the initial detention, so it violated the Fourth Amendment, which should give rise to section 1981 liabilty. A suspect can not be guilty of "resisting arrest" for not complying with unlawful orders (e.g. to put one's hands behind one's head or roll over onto one's stomach), so there was no probable cause to arrest Velazquez for resisting arrest. A reasonable jury could have found for Velazquez on his unlawful seizure claim, so the district erred in granting the defense motion for judgment as a matter of law. (Argument I.)

The court appeared to justify the arrest on Velazquez's use of a profanity. The law was clear that the use of the term was not a basis for arrest, and the record reflected a conflict as to whether Velazquez said it at all. Velazquez is entitled to the benefit of all inferences in a motion for judgment as a matter of law, and the district court erred in relying its dismissal on Velazquez's alleged profanity. (Argument II.)

The court's removal of the unlawful seizure claim from the jury's consideration informed the jury that the detention was lawful, as were the commands. This essentially prevented the jury from finding Abuhadawan acted unreasonably in his conduct in obtaining compliance from Velazquez. The court made numerous evidentiary errors that created prejudicial error. (Argument III.)

The Long Beach Police Department trained Abuhadawan that he could arrest a suspect who had a .15 blood alcohol level for public intoxication, and that the seriousness of the offense was not a consideration in determining how much force to use against the suspect. The customs and policies of the LBPD thus led to the deprivation of Velazquez's constituional rights, and should give rise to *Monell* liability. The district court erred in granting the motion for judgment as a matter of law on that claim. (Argument IV.)

The court incorrectly dismissed ("without prejudice") the related state claims based on the perceived difficulty of instructing the jury on both causes of actions. But many courts try both causes if action together. Velazquez can no longer bring his state

claim in state court due to the statute of limitations, and cannot bring his claim in federal court because his federal claims were dismissed. Velazquez should be able to bring his state claims on retrial in federal court. (Argument V.)

The jury passed a note to the court during deliberations. There was no mention of this to counsel, and the court's redacting of it has prevented anyone from reading it since. This Court should review on its own the note and consider its significance if any. (Argument VI.)

Argument

I. The court erred in granting a judgment as matter of law on the federal claim of a seizure in violation of the Fourth Amendment and the state claim of false arrest because there was substantial evidence from which the jury could have found Velazquez was unlawfully detained and arrested.

A court may grant a defense motion for judgment as a matter of law only where the plaintiff fails to present evidence from which a reasonable jury could find in the plaintiff's favor. Fed. R. Civ. P. 50(b). The Court of Appeals reviews de novo the district court's decision to grant a motion under Rule 50 of the Federal Rules of Civil Procedure. *Gardner v. Buerger*, 82 F.3d 248, 251 (8th Cir. 1996.) The Court of Appeal reviews the evidence in the light most favorable to the nonmoving party, gives it the benefit of all reasonable inferences, and does not weigh the witnesses' credibility. (*Id.*) Judgment as a matter of law thus resembles review of a summary judgment; the trial court should withdraw the case from the jury only where there is but one reasonable verdict. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 250-51, 106 S.Ct. 2505, 91 L.Ed.2d 202. If misused, judgment as a matter of law can

invade the rightful province of the jury. *Gardner,* 82 F.3d at 251.

Such an invasion occurred below. There was a factual conflict; Velazquez's evidence established there was no basis for detaining or arresting him, either for a violation of California Penal Code section 647(f) or of section 148(a)(1). There was evidence from which a reasonable jury could have found for Velazquez, and the court thus erred in granting the judgment as a matter of law.

To establish a Fourth Amendment violation in a section 1983 claim, a plaintiff must show there was a seizure and it was unreasonable. *McCoy v. City of Monticello*, 342 F.3d 842, 846 (8th Cir. 2003). Abuhadawan conceded that he seized Velazquez, who was not free to leave once Abuhadawan applied the twist lock. (1 RT 48.) The question was whether this seizure was reasonable. Velazquez presented evidence from which a reasonable jury could find the seizure was not reasonable.

The Fourth Amendment protects citizens against unjustified detentions and arrests. *Terry v. Ohio*, 392 U.S. 1, 17-18, 88 S.Ct. 1868, 20 L.Ed.2d 889. Police may not arrest an individual absent

probable cause to believe that the person committed or is committing a crime, and police may not detain an individual absent a reasonable suspicion based on specific and articulable facts of such criminal involvement. *United States v. Johnson*, 910 F.2d 1506, 1508 (7th Cir. 1990). The police initially detained Velazquez to investigate whether he had violated California Penal Code section 647(f), and then arrested him for violating section 148(a)(1) of that code. (1 RT 17, 90.) Velazquez presented sufficient evidence challenging the validity of these actions to warrant the jury's review.

A. *Velazquez presented sufficient evidence that Officer Abuhadawan detained him without a reasonable suspicion that Velazquez was violating Penal Code section 647(f).*

Penal Code section 647(f) is not directed at mere public intoxication; it applies only where the individual is unable to exercise care for his own safety of that of others. *People v. Rich*, 72 Cal.App.3d 115, 122, 139 Cal.Rptr. 819 (1977). It does not apply to someone who is merely under the influence of alcohol; he must be "incapacitated as a result" of the intoxication. *Id.* Because the

offense is not a felony, an officer may arrest a suspect only if the violation occurs in the officer's presence. Cal. Penal Code § 836(a)(1).

The defense asserted the facts described by Abuhadawan's testimony justified an investigative detention. He found Velazquez with both hands on a vehicle, emitting an odor of alcohol. (1 RT 10, 16.) Some of the people in the area were holding beer cans, although Velazquez was not. (1 RT 8-9.) Although Velazquez was not alone in a dangerous area (e.g. stumbling through a busy intersection after the light had changed), but was surrounded by friends and family on his birthday celebration, at a time where there were no external threats like oncoming vehicles, Abuhadawan believed the combination of an odor of alcohol, Velazquez's holding the car, and the presence of other beer drinkers justified an investigative detention in which Abuhadawan could restrain his liberty. (1 RT 10, 16-17.)

But that conclusion conflicted with the testimony of Abuhadawan's own partner, Martin Ron, not to mention that of the

plaintiff's witnesses. Ron testified that he did not observe Velazquez as unable to care for himself or a danger to others. (1 RT 154-155.) Dennis Magana and Velazquez also testified that he was able to care for himself. (2p RT 72, 3 RT 89.) Further, Velazquez and Christopher Barboza denied that Velazquez's hands were on a vehicle. (3 RT 10, 74.) Magana also denied that Velazquez emitted a strong odor of alcohol, or was stumbling. (2p RT 61, 72.) In fact Magana's testimony indicated that Abuhadawan approached Velazquez not to ensure his safety but to avenge a disrespectful comment. (2p RT 62-64.) Even Abuhadawan admitted that Velazquez was not slurring his words. (1 RT 48.) He also conceded that he initially did not perceive that Velazquez was a danger to himself and or threatening others. (1 RT 10-11.) Although the asserted premise of the detention was to investigate a public intoxication violation, Abuhadawan *never* asked Velazquez any questions about what or how much he had been drinking. (1 RT 20-22.)

Assuming, without conceding, that Abuhadawan's testimony

could establish a reasonable suspicion that Velazquez was violating section 647(f), other witnesses' testimony could establish the opposite — that there was no such reasonable suspicion. According to the plaintiff's account, there was no odor of alcohol, no leaning against a car, and no slurring of words; the only specific and articulable fact that could justify a detention was that some of the individuals in Velazquez's vicinity were holding beer cans, and that was not enough. The evidence presented by Velazquez showed not only absence of reasonable suspicion but an absence of "arguable reasonable suspicion"; no reasonable officer could have entertained a reasonable suspicion based on the evidence presented by Velazquez and assumed as true for purposes of a motion for judgment as a matter of law. *Cortez v. McCauley*, 478 F.3d 1108, 1120-1121, 1123 (10th Cir. 2007) (en banc).

Furthermore, the determination that Velazquez had a blood alcohol count of .15 did not justify removing the case from the jury. First, Velazquez properly objected that there was no foundation laid for this evidence. (1 RT 114.) There was no evidence concerning

the calibration of the testing device, or evidence that it was working properly before and after the test. *United States v. French*, 468 Fed. Appx. 737, 738-39 (9th Cir. 2012); *United States v. Jackson*, 470 F.Supp.2d 654, 657 (S.D. Miss. 2007); *People v. Williams*, 28 Cal.4th 408, 417, 49 P.3d 203 (2002). The evidence was erroneously admitted.

Moreover, although Abuhadawan testified that the level needed "to be drunk in public" is ".16/.15," (1 RT 114), he later acknowledged that section 647(f) does not mention blood alcohol levels at all. (1 RT 126.) In any event, Velazquez's blood alcohol level was not measured until after he was not only detained but also arrested. The police cannot offer the results of a search to retroactively justify the intrusion that produced them. *Johnson v. United States* (1948) 333 U.S. 10, 16, 68 S.Ct. 367, 92 L.Ed. 436.

B. *Velazquez presented sufficient evidence that Officer Abuhadawan arrested him without probable cause to believe that Velazquez was violating Penal Code section 148(a)(1).*

Abuhadawan testified that Velazquez violated Penal Code section 148(a)(1) by obstructing, resisting or delaying him, and that this obstruction was the basis for his arrest. (1 RT 90, 103.) But the existence of substantial evidence showing an unreasonable detention compels a similar finding that there was substantial evidence showing an unlawful arrest.

Defense counsel emphasized Velazquez's "resistance" to Abuhadawan in moving for a judgment as a matter of law.

> The 1983 claim for a Fourth Amendment violation of arrest without probable cause, **we move to dismiss on the grounds that the evidence is that Mr. Velazquez refused to comply with the officers' commands**; in response to the officers' commands not only failed to comply but he resisted by pulling away from the officer. He delayed the officers' investigation, not only of his own possible public intoxication . . . but also delayed those officers advising that crowd to leave, having them disperse, and the officers can go back onto patrol. The probable cause existed because these acts took place in the presence of the officers. So even if it was a misdemeanor, it occurred in their presence.

(ER I, Tab D, 3 RT 178-179, emphasis added.)

Abuhadawan testified that Velazquez failed to comply with his

"lawful" orders and commands. (1 RT 73, 95, 109.) But the lawfulness of these commands was uncertain. (See Argument IA, *ante*.) If the detention was unlawful, **then Velazquez had no obligation to comply**. "The lawfulness of the officer's conduct is an essential element of the offense under § 148(a)(1)." *Hooper v. County of San Diego*, 629 F.3d 1127, 1130 (9th Cir. 2011), citing *People v. Curtis*, 70 Cal.2d 347, 354-356, 450 P.2d 33 (1969). It is not a crime nonviolently to resist an unlawful command. *In re Michael V.*, 10 Cal.3d 676, 681, 517 P.2d 1145 (1974). A fortiori, it is not a crime passively to refuse to comply with one. Because an officer is not lawfully performing his duties when he "*detains an individual without reasonable suspicion* or arrests an individual without probable cause," there can be no section 148(a)(1) violation from the failure to comply with orders imposed during an unlawful seizure. *Garcia v. Superior Court*, 177 Cal.App.4th 803, 819, 99 Cal.Rptr.3d 488 (2009).

The Sixth Circuit explained the perils of bootstrapping an unlawful seizure into an arrest for "resisting arrest." *Adams v.*

Metiva, 31 F.3d 375, 383 (6th Cir. 1994).

> [T]he [district] court was convinced that there was probable cause to arrest plaintiff because plaintiff was resisting arrest. We believe that the district court's reasoning is flawed, for **if there was no reason to arrest defendant, there was no probable cause to arrest him for resisting arrest**.

Id, emphasis added.

Nor was there "arguable probable cause"; no reasonable officer could have perceived probable cause from a refusal to comply with an unlawful command. See *Cortez v. McCauley*, 478 F.3d 1108, 1120-1121.

If the detention was unlawful, Abuhadawan's commands were unlawful. Absent reasonable suspicion of Velazquez's inability to care for himself, Abuhadawan's command to Velazquez to put his hands behind his head was not lawful. Velazquez's answer to this command was poor in its grammar, but correct in its legal analysis: "I ain't doing that. We don't got to leave." (1 RT 95-96.) Abuhadawan answered Velazquez's words with violence, placing him in a twist lock. (1 RT 96.) Someone violated the law that night, and it wasn't Velazquez.

Reviewing the evidence in the light most favorable to the nonmoving Velazquez, and giving him the benefit of all reasonable inferences, this Court must find it was error for the court to find as a matter of law that Abuhadwan's detention of Velazquez rested on reasonable suspicion that Velazquez was committing a crime, or that his arrest rested on probable cause. This Court must therefore reverse the erroneous judgment as a matter of law as to the section 1983 Fourth Amendment violation and the state false arrest claim. See *Blankenship v. Kerr County, Texas,* 878 F.2d 893, 898 (5th Cir. 1989); *Webb v. Ethridge,* 849 F.2d 546, 550-551 (11th Cir. 1988).

II. The court erroneously relied on Velazquez's alleged profanity in dismissing the unlawful seizure claim.

The court apparently based its dismissal of the unlawful seizure claim on Abuhadawan's testimony that Velazquez told him to "fuck off." (ER I, Tab D, 3 RT 187-196.) This was error, because such a profanity was not a lawful basis for arrest, and because there was a factual dispute as to whether Velazquez even said it.

The court was very interested in the profanity. After the

attorneys for Velazquez argued why the court should not grant judgement as a matter of law on the unlawful seizure, the court responded, "Neither of you have made any effective argument as to the `fuck off.' [¶.] [I]f it happened, is that — **is that something that creates probable cause**?" (ER I, Tab D, 3 RT 188-189, emphasis added.) The court appeared to recognize, as Abuhadawan had testified, that he could not arrest Velazquez simply for the utterance. (1 RT 29-30, ER I, Tab D, 3 RT 189.) But the court suggested the profanity could justify arrest because of "the man who was giving that statement, what he intended to do." (ER I, Tab D, 3 RT 189.) Abuhadawan interpreted the profanity as "resisting my lawful order." (1 RT 95.) Such "resistance" could not justify an arrest for the reasons described in Argument IB, *ante*.

The court also incorrectly rejected evidence that tended to refute Abuhadawan's description of Velazquez's profanity. Velazquez's counsel recalled that Abuhadawan was the only witness to describe the profanity. (1 RT 95, ER I, Tab D, 3 RT 189.) The court asserted there was no evidence to the contrary. (ER I,

Tab D, 3 RT 190.) Counsel recalled that Officer Ron was within four feet and did not hear any profanity. (1 RT 141, 153, ER I, Tab D, 3 RT 190.) Counsel recalled that other witnesses, including Christopher Barboza, who was four feet away (3 RT 13, 20) and Dennis Magana (2p RT 68), denied hearing Velazquez use profanity. (3 RT 189.) The court essentially found these denials worthless. "That doesn't defeat the word. That Officer Ron didn't hear it, *doesn't mean anything*." (ER I, Tab D, 3 RT 190, emphasis added.) To be sure, it was theoretically possible that both Velazquez did say it and that the others did not hear it, but if an express denial "doesn't mean anything," it would be impossible ever to prove a negative, and thus create a conflict in testimony. In other words, an affirmative description would become irrefutable and conclusive. The court erred in rejecting the evidence favorable to Velazquez.

Furthermore, the court was wrong in not only its evidentiary analysis but also its factual recollection. It told counsel, "Your client doesn't even say that he didn't say it." (ER I, Tab D, 3 RT 190.) Although counsel disagreed, the court insisted he testified

that he "didn't remember." (ER I, Tab D, 3 RT 190.) In fact, Velazquez was asked if he "yell[ed] any profanities at the officer" and answered, "not at all." (3 RT 74.)

The court made its most incomprehensible ruling in insisting that **"fuck off" is not profanity**. Counsel recalled to the court that Velazquez, as noted in the preceding paragraph, expressly denied using profanity. (3 RT 74.) Counsel thus considered this a denial that Velazquez said the statement in question. "And a profanity would be fuck off. And he specifically said, `no.' " (ER I, Tab D, 3 RT 195.) But the court doubted that "fuck off" was encompassed within the profanity denial. "We don't know that would be a profanity in reference to, or one would think it's a profanity when you're answering a command." (ER I, Tab D, 3 RT 195.)

The court's uncertainty about the scope of profanity was in the end besides the point. Velazquez in fact denied not only using "profanities" generally but the phrase "`fuck off' specifically. (3 RT 74.)

The court's legal reasoning was misguided and its factual

recall was wrong. But court's insistence on the subject reflected its reliance on the comment, even though the statement was not an arrestable offense. The court's incorrect analysis thus formed a significant basis for the decision to grant the Rule 50 motion, and such errors were therefore prejudicial.

III. The trial court errors created reversible error and require retrial of the section 1983 excessive force claim.

The jury returned a verdict on the section 1983 excessive force claim, rejecting relief for Velazquez. However, numerous errors compel combined to create reversible error and warrant a new trial on this claim.

A. *The trial court's dismissal of the unlawful seizure/arrest claim prejudiced the jury's consideration of the excessive force claim.*

A critical issue in the jury's consideration of the excessive force claim was the lawfulness of Officer Abuhadawan's detention of and commands to Velazquez. Abuhadawan noted he could use "reasonable force" to get suspects to obey his "lawful command[s]." (1 RT 73.) He insisted he could strike a suspect one hundred times

if necessary to "effect a lawful arrest." (1 RT 38.) He interpreted Velazquez's behavior as "resisting my lawful order." (1 RT 95.) He even informed the jury that Velazquez was committing a crime by not obeying his orders. (1 RT 90.) By contrast, Velazquez refused to comply with Abuhadawan's command because, he asserted, he did not have to. (1 RT 95-96.) When ordered to roll over, Velazquez asked, "What the fuck for? I didn't do anything." (1 RT 109.) Therefore, as even Abuhadawan himself acknowledged, the reasonableness of his force depended on the lawfulness of his commands. (1 RT 73.)

By dismissing the unlawful seizure/false arrest claim, the court informed the jury there was no false detention or arrest, and Abuhadawan was entitled to detain and command Velazquez. Once that had been established, his placing in Velazquez in painful holds, knocking him to the ground, and striking him eleven times with a baton became an understandable and *reasonable* response to Velazquez's "resistance," necessary to force compliance. But as Argument I, *ante* showed, Abuhadawan's conduct was not

justifiable as a matter of law. The jury therefore should have been allowed to conclude that Velazquez could lawfully decline to put his hands behind his head, and that Abuhadawan could not lawfully order him to roll over like a dog — and strike him repeatedly for not doing so. The dismissal of the unlawful seizure claim essentially precluded relief on the excessive force claim.

B. *The numerous evidentiary errors distorted the evidence available to the jury.*

1. The court erred in admitting character evidence about Velazquez.

Velazquez moved in limine to exclude reference to a "prior" conviction for misdemeanor battery (which postdated the October 2009 incident at issue at trial.) (ER II, Tab K.) Velazquez asserted his "bad act" was prejudicial character evidence. Under Federal Rule of Evidence 403 and 404, it could not be introduced to show a propensity to violence. (ER II, Tab K.) "Evidence of other crimes, wrongs or acts is not admissible to show action in conformity therewith." Fed. R. Evid, 404(b). There was no other purpose to introducing the conviction than to suggest that Velazquez acted in conformity with a disposition to violence.

The evidence also could not be offered to impeach Velazquez's credibility as a witness. The conviction was not for a felony or a crime involving dishonesty. Fed. R. Evid. 609. Assault does not reflect the requisite dishonesty, so the instant conviction was inadmissible. *United States v. Meserve*, 271 F.3d 314, 327-28 (1st

Cir. 2001).

The introduction was especially improper because defense counsel referenced (without foundation) not only a battery conviction, but an initial charge of domestic violence, from which Velazquez "plead it down to battery." (ER I, Tab D, 3 RT 111.) Even if there were any basis for admitting the offense for which Velazquez was actually convicted, there was no basis for admitting evidence of a *charge* of which he was *not convicted*. An arrest is not evidence of guilt, and thus should not be offered as "bad act" evidence. *United States v. Robinson*, 978 F.2d 1554, 1559 (10th Cir. 1992); *Hill v. Rolleri*, 615 F.2d 886, 890 (9th Cir. 1980).

The court also erred in allowing defense counsel to ask Velazquez *17 questions* about his watching an Ultimate Fighting Championship (UFC) match on the afternoon of the incident. (ER I, Tab D, 3 RT 118-21.) Although Velazquez testified that it was the first time he had watched a match, counsel linked this one television program to describe a fictional pugnacity of Velazquez that did not exist even according to Abuhadawan's testimony.

Counsel elicited that UFC matches have "guys that are punching each other? [¶] Kicking each other? [¶] Fighting each other on the ground? [¶] Choking each other?" (ER I, Tab D, 3 RT 119.) Counsel then linked the televised event to Velazquez's own behavior that night.

Q. You never did anything like that; right?
A. No, I did not.
Q. No jui-jitsu, no wrestling?
A. Not at all.
Q. No boxing?
A. Not at all.
Q. No martial arts training?
A. No.
Q. So when you were on your back on the ground, you weren't thinking you were a U.F.C. fighter; right?
A. Not at all.
Q. Even though that's what they do?
(3 RT 121.)

The U.F.C. evidence had no legitimate purpose; it did not tend to show that because Velazquez watched a television program that he "was thinking [as if he was] a U.F.C. fighter." Even Abuhadawan acknowledged that throughout the incident Velazquez never hit, kicked, or threatened Abuhadawan. (1 RT 36-37, 40.) The case thus resembles *McKinney v. Rees*, 993 F.2d 1378 (9th Cir. 1993),

where the prosecution introduced evidence about the murder defendant's knife collection and "fascination" with knives. *Id.* at 1381-82. The Ninth Circuit explained that "There are *no* permissible inferences the jury could have drawn from the character evidence discussed above. *Id.* at 1384.

> The jury was offered the image of a man with a knife collection, who sat in his dormitory room sharpening knives, scratching morbid inscriptions on the wall, and occasionally venturing forth in camouflage with a knife strapped to his body. This evidence . . . was not relevant to the questions before the jury. It served only to prey on the emotions of the jury, to lead them to distrust [defendant], and to believe more easily that he was the type of son who would kill his mother in his sleep without much apparent motive.

Id. at 1385.

The same analysis applies here. Defense counsel used the fact that Velazquez watched this one television program to suggest that he acted like a U.F.C. fighter, who would "punch," "kick," "fight," and "choke," an adversary. (3 RT 119-121.) Although the evidence showed Velazquez did not punch, kick, fight or choke Abuhadawan, the relentless questioning tended to "prey on the emotions of the jury, to lead them to distrust [Velazquez], and to

believe more easily" he was the type of threat whose neutralization required eleven strikes from Abuhadawan's baton to ensure the officer's safety.

2. The court incorrectly excluded Abuahadawan's admission that his shoulder was sore the next day and Ron's police report as hearsay.

The court incorrectly excluded evidence as hearsay. Velazquez tried to elicit from Ron that on the day after the incident, Abuhadawan commented that his shoulders were physically sore from striking Velazquez. (2 RT 66.) The court excluded the statement as hearsay. (2 RT 66.) Because Abuhadawan was both the declarant and a party to the case, the statement was not hearsay under federal law. Fed. R. Evid. 801(d)(2)(A). (Under California law, a party admission is considered as an exception to the hearsay rule. Cal. Evid. Code § 1220.) The court erroneously excluded the statement.

The court also excluded the description of Velazquez's injuries documented by Officer Ron in his police report. (2 RT 36.) This

exclusion was erroneous. In a section 1983 excessive force case, the police report of the arrest is admissible under Federal Rule of Evidence 803(8). *Smith v. Spina*, 477 F.2d 1140, 1146 (3d Cir. 1973).

3. The court erroneously admitted Velazquez's blood alcohol test results even though the defense laid no foundation to support their admission.

As observed in Argument IA, *ante*, Velazquez properly objected to the introduction of his blood alcohol test results. (1 RT 114.) There was no evidence concerning the calibration of the testing device, or evidence that it was working properly before and after the test. *United States v. French*, 468 Fed. Appx. 737, 738-39; *United States v. Jackson*, 470 F.Supp.2d 654, 657; *People v. Williams*, 28 Cal.4th 408, 417. There was no proper foundation and the court thus erred in admitting the results.

4. The court improperly restricted the presentation of the plaintiff's case through improper restrictions and evidentiary double standards.

The court restricted plaintiff's counsel in the presentation of

the case and applied evidentiary double standards and thereby committed reversible error. First, the court appeared to bar counsel from making objections. When Velazquez was cross-examined about his subsequent battery conviction, counsel objected on foundational grounds. The court not only overruled the objection but told counsel, "Please do not interrupt the witness." (ER I, Tab D, 3 RT 111.) But every objection necessarily "interrupts" the witness. How else can an attorney make an objection? Although counsel made further objections, the admonition had a chilling effect on counsel's willingness to raise objections. Although counsel had objected four times on that and the previous page of transcript (ER I, Tab D, 3 RT 110-111), counsel did not raise another objection on the next eight pages. (3 RT 112-119.)

The court likewise expressed its displeasure when plaintiff's counsel asked Dennis Magana, "And did it appear that Mr. Velazquez was stumbling at that time?" (ER I, Tab C, 2p RT 61.) The court warned counsel, "Don't lead the witnesses." (ER I, Tab C,

2p RT 61.) It is hard to imagine how counsel should have rephrased the question to elicit the fact that Velazquez did not appear to be stumbling. Insofar as most descriptions of individuals do not include any reference to the individual's "stumbling" or "not stumbling," it was not unduly suggestive to inquire as to which description applied to Velazquez.

Even more harmful to the plaintiff's case were the court's evidentiary double standards, regarding counsel's argument and a later incident. As plaintiff's counsel was at the very end of his closing argument, the court twice interrupted and thoroughly deflated the climax. "I submit to you, that if an arrest is unlawful, no American citizen should have to comply with it. I dispute . . . ." (ER I, Tab F, 4 RT 34.) The court interrupted: "No, Your disputation of anything is irrelevant." (ER I, Tab F, 4 RT 34.) Counsel rephrased, "I argue to you . . . ." Again the court silenced him: "No arguing it either, counsel." (ER I, Tab F, 4 RT 35.) This suppression of argument echoed one earlier in the argument, where counsel tried to cast doubt on the defense case. "[H]e testified he

was concerned for the safety of his fellow officer and he wanted to get into a position of advantage to protect his fellow officer. [¶.] Now, **I don't know that I believe all of his testimony** —. (ER I, Tab F, 4 RT 15, emphasis added.) The court not only suppressed but also denigrated counsel's attempt to question the defense case. "You opinion — is **totally irrelevant**." (ER I, Tab F, 4RT 15, emphasis added.)

The court did just the opposite when defense counsel likewise attempted to cast doubt upon the plaintiff's case. Defense counsel argued, "Also not quite sure how a baton strike to the neck doesn't break bones in your neck, which didn't happen here." [¶.] **So I'm not really sure that's a baton strike**." (ER I, Tab F, 4 RT 48, emphasis added.) Plaintiff's counsel sought to apply the same standard to defense counsel as had been applied to him. "Well, what he's sure about is **not really relevant**." (ER I, Tab F, 4 RT 48, emphasis added.) But the court found the uncertainty of *defense* counsel to be relevant and admissible. "He's arguing the matter, not his opinion." (ER I, Tab F, 4 RT 48.)

The court could have (and should have) let both comments in as permissible argument. Alternatively, the court could have taken a stricter line and excluded both. But for the court to hold that it was fine for defense counsel to claim that he "was not really sure" about plaintiff's account, but totally irrelevant for plaintiff's counsel to argue that "I don't know that I believe" the defense account, imposed prejudicially contrary standards on the two parties.

The double standards were not confined to argument. Defense counsel asked Officer Ron whether he had gone by the Velazquez home in the month prior to the September 2012 trial. (ER I, Tab B, 2 RT 64-65.) Ron confirmed he spoke to a "male Hispanic gang member . . . that was standing on front of the location that was possibly in violation of our gang injunction." (ER I, Tab B, 2 RT 65.) The court overruled plaintiff's objection. Defense counsel asked no further questions, and did not even attempt to connect this information to the incident that happened three years earlier.

Plaintiff's counsel then attempted to explore the subject of the

visit on redirect. The court not only suppressed such inquiry but disparaged counsel in the process. The court interrupted, "Counsel, that's another case. Let's get to this case. *And don't waste this jury's time*." (ER I, Tab B, 2 RT 76, emphasis added.) The court continued to interrupt. "Counsel, that's another case. Please don't do that." (ER I, Tab B, 2 RT 77.) "Mr. Zola. You don't seem to understand. This case — that case is not being tried here before this jury. And anything that happened there is *totally irrelevant* to this jury's consideration of this case." (ER I, Tab B, 2 RT 77, emphasis added.) Counsel justified his questions: "[Defense counsel] discussed it. I am merely addressing what [counsel] brought up." (ER I, Tab B, 2 RT 78.) The court forbid further inquiry of the subject that defense counsel first raised. (ER I, Tab B, 2 RT 78.) What was "sauce for the [defendant's] goose" should have been "sauce for the [plaintiff's] gander." *Nienhouse v. Superior Court*, 42 Cal.App.4th 83, 92, 49 Cal.Rptr.2d 573 (1996). The court's treating the same subject as admissible or inadmissible depending on which attorney asked the questions led to a

Kafkaesquse compartmentalization of truth. *Id.*

The court committed reversible error as to the excessive force claim by dismissing the unlawful seizure claim, admitting improper character evidence, excluding evidence not rendered inadmissible by the hearsay rule, erroneously admitting the blood alcohol test results, and creating evidentiary double standards that disfavored Velazquez. The cumulative effect of these errors was prejudicial, and the verdict cannot be affirmed, because it was *not* "more probably than not untainted by the error." *Haddad v. Lockheed California Corp.*, 720 F.2d 1454 (9th Cir. 1983). Reversal is required.

IV. The court erred in dismissing the *Monell* claims because Abuhadawan had received training that the amount of force that was reasonable was not related to the nature of the offense, that section 647(f) authorized arrests upon a blood alcohol count of .15, and because the court erroneously excluded Abuhadawan's prior record of excessive force.

Velazquez brought a claim under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 1018, 56 L.Ed.2d 611 (1978), which provides relief where a local government's policy or custom deprives an individual constitutional rights. *Monell*, 436 U.S. at 690-91. Two such policies led to the instant deprivation. The court also erroneously excluded evidence of prior citizen complaints against Officer Abuhadawan that showed the City's knowledge of his misconduct, and thus its acquiescence in it. The court erroneously dismissed the *Monell* claim. (ER I, Tab D, 3 RT 196, Tab E.)

Abuhadawan testified that he learned policies that led to his unlawfully detaining Velazquez and using unreasonable force against him. As noted in Argument IA, *ante*, California Penal Code section 647(f) applies only to individuals who cannot care for

themselves or others; there is no blood alcohol level mentioned anywhere in the statute. Yet Abuhadawan testified that he was "trained" to arrest anyone who had a .15 blood alcohol level for public intoxication. (1 RT 124-126.) It would be (and was, in this case) constitutional error to arrest an individual for violating section 647(f) if he posed no danger to himself or others, even if his blood alcohol level was .15.

Abuhadawan's improper training regarding reasonable force also supported the *Monell* claim. Fourth Amendment standards of reasonableness govern the use of force by police officers during investigatory stops and arrests. *Graham v. Connor,* 490 U.S. 386, 394-95, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); *Lanigan v. Village of East Hazel Crest, Ill.*, 110 F.3d 467, 474-75 (7th Cir. 1997). The factors considered involving reasonableness are *the severity of the crime* at issue, whether the suspect poses a threat to the officers, and any attempts by the suspect to resist or flee. *Graham*, 490 at 396. Notwithstanding the importance of the crime at issue in determining how much force is reasonable, Officer Abuhadawan

was trained that he did not need to try to use a "lesser tool" for a "lesser type of offence." (1 RT 60.) In other words, Abuhadawan was trained that he could disconnect the severity of the crime from the degree of force he would use, and thus disregard the nature of the offense in choosing "whatever tool we deem is necessary to effect a lawful arrest." (1 RT 60.)

Finally, the court granted the defense's motion in limine to exclude any reference to past complaints and discipline against Abuhadawan for excessive force. Such evidence was not hearsay because the complaints would not be offered for their truth but to show the department was aware of Abuhadwan's violent nature. *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 562-564 (1st Cir. 1989); *Harris v. City of Pagedale*, 821 F.2d 499, 506 (8th Cir. 1987). And a department's failure to act upon such awareness supports *Monell* liability. *Harris*, 821 F.2d at 506.

This was not an issue where there was only one reasonable verdict; there was enough evidence for the issue to go to the jury. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 250-51. The court

erred in granting the judgment as a matter of law on the *Monell* claim.

V. The court erred in dismissing the remaining state claims "without prejudice" because the similarity between the related state and federal claims permits their simultaneous consideration by the jury.

The court dismissed Velazquez's remaining state claims, including those for assault and battery, negligence, and the intentional infliction of emotional distress. (ER I, Tab E.) The court explained its decision with regard to the state excessive force (assault and battery) was due to the "problem of instructing differently for State claims of excessive force and 1983 excessive force." (ER I, Tab D, 3 RT 196.) It offered no explanation for its dismissal of the other state claims.

Velazquez correctly argued, "[T]he State claims, I think are very clear, are normally acceptable in Federal Court." (3 RT 196.) (See e.g. *Robinson v. Solano County*, 278 F.3d 1007 (9th Cir. 2002) (en banc). The court found otherwise, observing the different standards of "responsibility." (ER I, Tab D, 3 RT 197.) The broader

reach of federal immunity simply renders it possible that an officer will enjoy immunity as to the federal but not the state claim. *Robinson*, at 1016. It does not render it impossible to try the two claims together. *Id.*

Although the dismissal was purportedly "without prejudice," it was profoundly prejudicial because Velazquez can no longer bring the claims in state court (as the statute of limitations has expired) and cannot bring the state claims in federal court without any accompanying federal claims. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725-727, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). If and when this Court reverses the dismissals of the other federal claims, Velazquez must be given and opportunity to retry his dismissed state claims as well.

VI. This court should review the note sent by the jury which Velazquez's counsel were not given or even notified about.

The docket sheet records that a note was sent by the jury on Friday September 21, 2012, to the court. (ER II, Tab N.) There is no mention in the transcript of this note, and Velazquez's counsel

were not even aware of it until the case was closed. This Court should review the note and, if appropriate, release to both sides on appeal to permit more informed briefing.

Prayer for Relief

Velazquez therefore requests this Court reverse the erroneous dismissal of his claims and remand the matter for a new trial in the district court.

Dated May 31, 2013

Mitchell Keiter

/s/ Mitchell Keiter

Counsel for Appellant,
Alejandro Velazquez

Certification of Word Count

(Fed. R. App. P. 32(a)(7))

I, Mitchell Keiter, counsel for appellant, certify pursuant to the California Rules of Court, that the word count for this document is 8,913 words, excluding tables and this certificate. This document was prepared in WordPerfect word-processing program, and this is the word count generated by the program for this document. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 31, 2013

/s/ Mitchell Keiter
Mitchell Keiter, Attorney for
Appellant Alejandro Velazquez,

Certification of Service

I hereby certify that on Friday May 31, 2013, I electronically filed with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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/s/ Mitchell Keiter

Attorney for Appellant

Alejandro Velazquez

Certification of Related Cases

There are no related cases.

/s/ Mitchell Keiter

Mitchell Keiter

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