

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

Curtis Lamond Oats, Sr.,)	
)	No. 22-cv-50113
Plaintiff,)	
)	
vs.)	Judge Johnston
)	
McHenry County, Illinois)	
and Jason Enos,)	Magistrate Judge Schneider
)	
Defendants.)	

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION
TO DISMISS**

NOW COMES the Defendants McHenry County, Illinois and McHenry County Animal Control Officer Jason Enos, by and through Patrick Kenneally, McHenry County State's Attorney, and his duly authorized Assistant State's Attorneys, Andrew Hamilton and Troy Owens, and for its Reply to Plaintiff's Response to Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) states as follows:

I. Argument

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 124 S. Ct. 1284 (2004)). "Indeed, we have made clear that the 'driving force' behind creation of the qualified immunity doctrine was a desire to ensure that 'insubstantial claims' against government officials [will] be resolved prior to discovery." *Id* at 231-232 (citing *Anderson v. Creighton*, 483 U.S. 635, 640, n.2, 107 S. Ct. 3034 (1987)). "Accordingly, 'we repeatedly have stressed the importance of resolving immunity

questions at the earliest possible stage in litigation.”” *Id* at 232 (citing *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S. Ct. 534 (1991) (*per curiam*)).

a. Plaintiff fails to identify a clearly established Fourth Amendment Constitutional right to defeat Defendants’ Qualified Immunity.

Plaintiff alleges that Defendant, Enos, violated Plaintiff’s Fourth Amendment rights by accessing “plaintiff’s private mailbox that is not located on the curb, or otherwise easily accessible by the public.” (Third Amended Complaint, ¶7). However, in Plaintiff’s Response to Defendants’ Motion to Dismiss, Plaintiff concedes that Plaintiff “does not allege that Enos violated the Fourth Amendment by walking to plaintiff’s front door and attempting to speak to plaintiff.” (Response to Motion to Dismiss, Footnote 1). As such, Defendant, Enos, did not engage in any alleged illegal conduct until Defendant, Enos, accessed Plaintiff’s mailbox and observed a piece of mail. (See Plaintiff’s Response to Motion to Dismiss pp. 2 and Third Amended Complaint ¶¶7, 8).

““A search within the meaning of the Fourth Amendment occurs only when a reasonable expectation of privacy is infringed.”” *United States v. Ruth*, 65 F.3d 599, 604 (7th Cir. 1995) (citing *United States v. Myers*, 46 F.3d 668, 669 (7th Cir. 1995)). “The Amendment does not protect the merely subjective expectation of privacy, but those ‘[expectations] that society is prepared to recognize as ‘reasonable.’”” *Oliver v. United States*, 466 U.S. 170, 177 (1984) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967)). Most relevant to this case, however, is that an individual’s reasonable expectation of privacy in a mailbox is not a clearly established constitutional right consistent with Fourth Amendment jurisprudence. To the contrary, several jurisdictions have held that an individual has minimal to no reasonable expectation of privacy in an unlocked mailbox. See *United States v. Green*, 2019 U.S. Dist. LEXIS 64953 (D. Mont. April

16, 2019) (no reasonable expectation of privacy in a residential mailbox under circumstances); *United States v. Stokes*, 829 F.3d 47 (1st Cir. 2016) (no expectation of privacy in a P.O Box); *United States v. Osunegbu*, 822 F.2d 472 (5th Cir. 1987) (minimal expectation of privacy in P.O. Box); *United States v. Lewis*, 738 F.2d 916 (8th Cir. 1984) (no legitimate expectation of privacy in unlocked mailbox). Therefore, Plaintiff has failed to identify a clearly established constitutional right of which a reasonable person would have known.

Plaintiff cites to 18 U.S.C §1708 to argue that Plaintiff has an expectation of privacy in the contents of a mailbox; however, Plaintiff fails to cite to any authority where 18 U.S.C. §1708 imparts such protections. Furthermore, Plaintiff cites to *Florida v. Jardines*, 569 U.S. 1 (2013), and *Collins v. Virginia*, 138 S. Ct. 1663 (2018), in Plaintiff's Response to Motion to Dismiss to support the position that an individual's Fourth Amendment rights extend to the curtilage of the home; however, these cases are inapposite. Plaintiff does not challenge that Defendant, Enos, lawfully entered the curtilage of Plaintiff's residence so, therefore, Defendant, Enos, did not enter Plaintiff's property to gather evidence. (Response to Motion to Dismiss, footnote 1).

b. Plaintiff's First Amendment and Illinois Malicious Prosecution "allegations" make conclusory statements insufficient to survive a 12(b)(6) Motion to Dismiss.

To plead a *prima facie* case of First Amendment retaliation, Plaintiffs must allege that (1) they engaged in constitutionally protected activity; (2) but for the protected speech, Defendant would not have taken the alleged retaliatory action against Plaintiffs; and (3) Plaintiffs suffered a deprivation likely to deter future First Amendment activity. *Baker v. City of Chicago*, 483 F.Supp.3d 543, 557 (N.D. Ill. 2020) (referencing *Kodish v. Oakbrook Terrance Fire Prot. Dis.*, 604 F.3d 490, 501 (7th Cir. 2010)). “It is not enough to show that an official acted with a

retaliatory motive and that plaintiff was injured—the motive must *cause* the injury. Specifically, it must be a “but-for” cause, meaning that the adverse action against the plaintiff would not have taken absent the retaliatory motive.” *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

Juxtaposed to Plaintiff’s First Amendment allegation is Plaintiff’s Illinois Malicious Prosecution claim. (See Third Amended Complaint ¶ 20). Under Illinois law, to succeed on a malicious prosecution claim, a plaintiff must prove: “(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff.” *Swick v. Liautaud*, 169 Ill. 2d 504, 662 N.E.2d 1238, 1242, 215 Ill. Dec. 98 (1996). Plaintiff cites to *Lund v. City of Rockford*, 956 F.3d 938 (7th Cir. 2020) in their Response to Motion to Dismiss, but *Lund* states, “A bare *nolle prosequi* which does not state the reasons behind it, is insufficient to establish that the proceedings were terminated in the plaintiff’s favor.” (“emphasis added”) *Lund*, 956 F.3d 938, 949 (7th Cir. 2020) (quoting *People v. Woolsey*, 139 Ill.2d 157, 564 N.E.2d 764, 766, 151 Ill. Dec. 309 (Ill. 1990)).

Plaintiff indicates that an ordinance violation prosecution was initiated because plaintiff “complained about the unlawful search of his mailbox and had demonstrated to agents of McHenry County that there was no factual basis to accuse him of having violated any animal control ordinance of the County.” (Third Amended Complaint ¶ 17). This statement is conclusory in nature and fails to even allude to whether an ordinance violation would have been filed but for any alleged retaliatory motive. As is evident from the Plaintiff’s Third Amended Complaint and Response to Motion to Dismiss, Plaintiff does nothing more than make “unadorned, the-defendant-

unlawfully-harmed-me" accusations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007)).

WHEREFORE the Defendant respectfully requests that this Honorable Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and on qualified immunity grounds, dismiss the Plaintiff's Third Amended Complaint with prejudice.

By: /s/ Andrew Hamilton

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2023, I electronically filed **Defendants' Reply to Plaintiff's Response to Defendants' Motion to Dismiss** with the Clerk of the U.S. District Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Andrew Hamilton
Andrew Hamilton