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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TYLER B. QUINN,

Plaintiff,

v.

RICHARD ORTIZ, individually
and in his official capacity;
and CITY OF ALTURAS, *ex rel.*
the ALTURAS CITY POLICE
DEPARTMENT,

Defendants.

No. 2:14-cv-00744 JAM CMK

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY**

This case arises out of an incident between Plaintiff, Tyler Quinn, and Defendant, Richard Ortiz, an officer with the City of Alturas Police Department. Reporter's Transcript of Preliminary Hearing (12/17/2013), Pl.'s Ex. 1, at 5. On October 26, 2013, Plaintiff was a passenger in a car being driven by his friend. Id. at 5. Defendant Ortiz pulled the car over, on suspicion that a "dreamcatcher" hanging from the rearview mirror was obstructing the driver's vision. Id. at 21; Compl. ¶ 10. Upon speaking with the driver, Defendant Ortiz smelled alcohol and ordered the occupants out of the car. Id. at 21. Although the exact

1 sequence of events is disputed, Defendant Ortiz ultimately
2 arrested Plaintiff on a charge of public intoxication, and, in
3 doing so, pushed Plaintiff's head through the rear window of his
4 patrol car. Id. at 30-31. Plaintiff then allegedly threatened
5 Defendant Ortiz and his family. Id. at 18.

6 As a result of this incident, Plaintiff was charged with
7 public intoxication, resisting an executive officer, and making
8 criminal threats. After these charges were dismissed, Plaintiff
9 filed the instant action, pursuant to 42 U.S.C. § 1983, alleging
10 violations of his federal constitutional rights as well as
11 several claims under California state law. Plaintiff's claims
12 include allegations of false arrest, excessive force, and
13 malicious prosecution against Defendant Ortiz. Compl. ¶¶ 47, 59,
14 71.

15 Following the filing of Plaintiff's civil suit, the Office
16 of the Attorney General of California filed a new criminal
17 complaint, containing seven counts relating to the October 26,
18 2013 incident.¹ Following a preliminary hearing, Plaintiff was
19 arraigned on the following three criminal charges: (1) resisting
20 an executive officer, namely Defendant Ortiz; (2) making criminal
21 threats against Defendant Ortiz; and (3) resisting the

22
23 ¹ Defendants maintain (and Plaintiff does not dispute) that the
24 Attorney General's commencement of a second criminal action
25 against Plaintiff was proper, pursuant to the Article 5, Section
26 13 of the California Constitution and California Penal Code §
27 1387. Reply at 3. Based on the Court's review of California
28 Penal Code § 1387, which imposes a "two-dismissal" rule, the
Attorney General's action does not appear to be improper. See
People v. Superior Court (Martinez), 19 Cal. App. 4th 738, 744
(1993).

1 corrections officer who booked him into custody. Tonon
2 Declaration, Ex. C.

3 In light of these pending criminal charges, Defendants ask
4 the Court to abstain from hearing Plaintiff's civil suit under
5 Heck v. Humphrey, 512 U.S. 477 (1994).² Defendants argue that a
6 verdict for Plaintiff in this civil suit would potentially
7 conflict with an eventual conviction in Plaintiff's criminal
8 case, a result which the doctrine of Heck abstention was designed
9 to prevent. Mot. at 3; Reply at 5.

10 Under the Supreme Court's holding in Heck, "a § 1983 action
11 that would call into question the lawfulness of a plaintiff's
12 conviction or confinement is not cognizable[.]" Harvey v.
13 Waldron, 210 F.3d 1008, 1013 (9th Cir. 2000). Thus, when a
14 criminal defendant files a § 1983 action, courts must "determine
15 whether a judgment in favor of the plaintiff would necessarily
16 imply the invalidity of his conviction or sentence; if it would,
17 the complaint must be dismissed[.]" Heck, 512 U.S. at 487.
18 Conversely, "if the plaintiff's action, even if successful, will
19 not demonstrate the invalidity of any outstanding criminal
20 judgment against the plaintiff, the action should be allowed to
21 proceed[.]" Heck, 512 U.S. at 487.

22 Plaintiff objects to the application of the Heck doctrine to
23 this case, on the grounds that the criminal charges are still
24 pending and there is no "conviction" to invalidate. Opp. at 5.
25 The prevailing rule in the Ninth Circuit prior to 2007 was that

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27 ² This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for June 17, 2015.

1 "Heck applies to pending criminal charges, and [therefore] a
2 claim, that if successful would necessarily imply the invalidity
3 of a conviction in a pending criminal prosecution, does not
4 accrue so long as the potential for a conviction in the pending
5 criminal prosecution continues to exist." Harvey, 210 F.3d at
6 1014. However, in 2007, the United States Supreme Court rejected
7 the principle that "an action which would impugn an *anticipated*
8 *future conviction* cannot be brought until that conviction occurs
9 and is set aside," characterizing that approach as a "bizarre
10 extension of Heck." Wallace v. Kato, 549 U.S. 384, 393 (2007)
11 (emphasis in original). Nevertheless, the Court provided the
12 following guidance to district courts:

13 If a plaintiff files a false-arrest claim before he has
14 been convicted (or files any other claim related to
15 rulings that will likely be made in a pending or
16 anticipated criminal trial), it is within the power of
17 the district court, and in accord with common practice,
18 to stay the civil action until the criminal case or the
19 likelihood of a criminal case is ended. If the
20 plaintiff is ultimately convicted, and if the stayed
21 civil suit would impugn that conviction, Heck will
22 require dismissal; otherwise, the civil action will
23 proceed, absent some other bar to suit.

19 Kato, 549 U.S. at 393-94 (internal citations omitted).

20 Thus, if a judgment for Plaintiff on any of his civil claims
21 would "necessarily imply the invalidity of a conviction" on any
22 of the pending criminal charges against him, the Court has
23 discretion to stay Plaintiff's civil action until the resolution
24 of that criminal charge. Heck, 512 U.S. at 487.

25 A pervasive theme in Plaintiff's complaint is that Defendant
26 Ortiz lacked probable cause to arrest him. Compl. ¶¶ 16, 19, 20,
27 62, 64, 65. For Plaintiff to prevail on many of his claims -
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1 such as his state law claim for false arrest/false imprisonment -
2 a fact finder would need to conclude that Defendant Ortiz lacked
3 probable cause to make an arrest. See Pierson v. Ray, 386 U.S.
4 547, 557 (1967) (noting that the "defense of good faith and
5 probable cause" exists for both state law claims for false arrest
6 and imprisonment, as well as actions under § 1983). However,
7 such a finding would conflict with a conviction on the charge of
8 "resisting an executive officer" during his arrest by Defendant
9 Ortiz. As both the Ninth Circuit and California courts have
10 explained, an individual cannot be guilty of resisting arrest if
11 the arrest itself was unlawful. See Arpin v. Santa Clara Valley
12 Transp. Agency, 261 F.3d 912, 920 (9th Cir. 2001) (noting that,
13 "[i]f the officers could not lawfully arrest Arpin for battery,
14 the officers could also not lawfully arrest Arpin for resisting
15 arrest"); People v. Simons, 42 Cal. App. 4th 1100, 1109 (1996)
16 (holding that a "[d]efendant cannot be convicted of an offense
17 against an officer engaged in the performance of official duties
18 unless the officer was acting lawfully at the time").

19 Accordingly, under Heck (and Kato), the Court finds that
20 Plaintiff's civil action includes claims that would necessarily
21 imply the invalidity of a conviction and should be stayed pending
22 the resolution of Count One in the criminal information against
23 Plaintiff, for resisting Defendant Ortiz during his arrest. See
24 Dominguez v. Shaw, 2011 WL 6297971, at *4 (D. Ariz. Dec. 16,
25 2011) (granting summary judgment to defendants on false
26 imprisonment claim, under Heck, because the plaintiff "cannot
27 show that his arrest lacked probable cause without necessarily
28 invalidating his adjudication of delinquency for resisting

1 arrest"). All upcoming dates are vacated and the parties are
2 ordered to file a joint status report within 30 days of the
3 resolution of the criminal resisting an executive officer charge.

4 IT IS SO ORDERED.

5 Dated: June 30, 2015

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7 JOHN A. MENDEZ,
8 UNITED STATES DISTRICT JUDGE
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