IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN STRANGMEIER,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No.: 4:11-CV-3463**
v.	§	**(Jury Trial Demanded)**
	§	
CITY OF HOUSTON, ET AL.	§	
Defendants.	§	

CITY OF HOUSTON'S AND MAYOR ANNISE PARKER'S
RULE 12(b)(6) AND 12(b)(1) MOTION TO DISMISS

John Strangmeier filed this suit alleging that his receipt of a red light citation from the City of Houston violated his Fourth, Fifth and Fourteenth Amendment rights under the United States Constitution. On the face of Strangmeier's Original Complaint, he fails to state a claim on which relief can be granted. The receipt of a civil traffic citation simply does not rise to the level of a Fourth Amendment violation. Further, Strangmeier has entirely failed to articulate any cognizable Fifth or Fourteenth Amendment claims, and even if he had, the claims are not ripe for adjudication because Strangmeier affirmatively pleads that he is currently contesting the citation through the process afforded to him and thus no property has been taken from him. Moreover, the takings claim and related due process claim are not ripe in federal court until Strangmeier has sought a remedy for the alleged violations in state court. Because Strangmeier has failed to state any viable Constitutional claims, his claims against Mayor Annise Parker in her individual capacity must be dismissed as well.

I. Background Facts and Plaintiff's Pleadings

This case concerns a citation issued under the City of Houston's red light camera program, which is the subject of litigation before this Court in *City of Houston v. American Traffic Solutions, Inc.,* Civil Action No. 4:10-CV-4545. The program was instituted by Houston's City Council in 2004, and in November 2010, a citizen-initiated Charter amendment passed which purported to prohibit the City from using red light cameras to issue traffic citations. On June 17, 2011, this Court issued an interlocutory order voiding the charter election and the amendment. *City of Houston v. American Traffic Solutions, Inc.,* 2011 WL 2462670 (S.D.Tex. June 17, 2011) (slip copy).

Plaintiff John Strangmeier alleges that "on July 9, 2011, Mayor Parker unilaterally turned the cameras back on without Houston City Council input and on July 24, 2011, the City began issuing red light camera tickets at the 70 red light camera locations until August 24, 2011." (Complaint, p. 3, ¶ 12). Strangmeier alleges that he received a red light camera citation on September 9, 2011 "that alleged he ran a red light on July 18, 2011, and requesting he pay $75." (Complaint, p. 4, ¶ 14). He states that he has set a hearing date to challenge the ticket and that his counsel in this suit is representing him that proceeding as well. (Complaint, p. 4, ¶ 14). He does not allege that he did not run the red light or that the citation was otherwise issued in error.

II. Argument and Authorities

A. Strangmeier has failed to state a claim.

In reviewing a motion to dismiss under Rule 12(b)(6), the court must accept the well-pleaded facts as true, viewing them in the light most favorable to the plaintiff. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed. 517 (1993). To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Alt. Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Thus, plaintiff must "'raise a right to relief above the speculative level.'" *Nationwide Bi-Weekly Admin., Inc. v. Belo Corp.,* 512 F.3d 137, 140 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. at 570).

1. Strangmeier's receipt of a traffic citation does not implicate the Fourth Amendment.

To state a claim under the Fourth Amendment of the United States Constitution, a person must allege that he was subjected to an illegal search or seizure. Plaintiff's Original Complaint is devoid of any such allegation. Plaintiff's Fourth Amendment claim, as set out in its entirety in his Original Complaint, is as follows:

> Defendants violated John Strangmeier's Fourth Amendment rights, at least, when they sent him notice of a violation causing him to at least have to read the notice, go on-line to see the alleged violation, and then contact the City of Houston to schedule a hearing. These acts John did not want to do and they violated his liberty interests.

(Complaint, p. 4, ¶ 16). Strangmeier does not allege that he was subjected to any illegal search – nor could he – since a motorist has no privacy interest in his license plate number

or other information in the pubic view. *See, e.g., Olabisiomotosho v. City of Houston,* 185 F.3d 521, 529 (5th Cir. 1999)).

It is also well-established that issuance of a citation does not constitute a seizure. "[T]he issuance of a citation, even under threat of jail if not accepted, does not rise to the level of a Fourth Amendment seizure." *Martinez v. Carr,* 479 F.3d 1292, 1299 (10th Cir. 2007); *See, e.g., Karam v. City of Burbank,* 352 F.3d 1188, 1194 (9th Cir. 2003). In cases similar to this one, courts have specifically held that the issuance of a traffic ticket as a result of a photo enforcement system does not implicate the Fourth Amendment:

> Plaintiff claims that his Fourth Amendment rights were violated when he was served with a falsely certified traffic ticket. Plaintiff argues that the was seized without probable cause because defendants did not compare the image of the driver on the ticket to the picture on his driver's license before issuing the ticket, serving process, and haling him into court. . . . [P]laintiff did not suffer a Fourth Amendment violation. A traffic citation is not a seizure under the Fourth Amendment.

Gutenkauf v. City of Tempe, 2011 WL 1672065, *2 (D.Ariz. May 4, 2011) (citing *McNeill v. Town of Paradise Valley,* 44 Fed. Appx. 871, *1 (9th Cir. 2002) (unpublished opinion) ("sending a traffic citation to the registered owner of a vehicle based on the photo radar system does not constitute a seizure under the Fourth Amendment.")).

Strangmeier merely received the civil citation in the mail, and alleges that he had to look at and respond to it. These allegations do not state any Fourth Amendment violation and should be dismissed under Rule 12(b)(6) for failure to state a claim. *See DePiero v. City of Macedonia,* 180 F.3d 770, 789 (6th Cir. 1999), *cert. denied,* 528 U.S. 1105, 120 S.Ct. 844,

145 L.Ed.2d 713 (2000) (issuance of parking ticket does not amount to a seizure).

2. Strangmeier has failed to state any claim under the Fifth or Fourteenth Amendments.

Strangmeier has also entirely failed to articulate any cognizable Fifth or Fourteenth Amendment claims. He alleges only that:

> The red light camera system was nullified by the Houston voters yet John is still required to defend himself against the ticket and this violates due process as does many other elements of Houston's red light camera ordinance and procedure including that the affidavits used to enforce the citations are conclusory.

(Complaint, p. 4, ¶ 17). Although Strangmeier may not agree with this Court's decision invalidating the voters' "nullification" of the red light camera system, his disagreement is not of constitutional dimensions. In order to state a valid taking or due process claim, a plaintiff must allege a denial of a cognizable property or liberty interest. *Wooley v. City of Baton Rouge,* 211 F.3d 913, 919 (5th Cir. 2000). Strangmeier does not allege that he has paid the fine or that he has been denied any other cognizable property or liberty interest, and thus has failed to state a claim under the Fifth and Fourteenth Amendments.

3. Other claims

Strangmeier also cites to the First Amendment in his request for attorney's fees and, curiously, to "her state law malicious prosecution claim" in his prayer for relief (Complaint, p. 5, ¶ 20; p.6, ¶ C) but has otherwise alleged no factual or legal basis for either claim, and so these claims should be dismissed for failure to state a claim.

B. Even if Strangmeier had stated any valid Fifth or Fourteenth Amendment claims they are not ripe and should be dismissed for want of subject matter jurisdiction.

Whether the court has subject matter jurisdiction to hear a case may be raised by a Rule 12(b)(1) motion, and the party asserting jurisdiction carries the burden of proof. *Ramming v. United States,* 281 F.3d 158, 161 (5th Cir. 2001). A facial attack to subject matter jurisdiction simply requires the court to determine whether the allegations of the complaint, which are presumed to be true, provide a basis for jurisdiction. *See, e.g., Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir.), *cert. denied,* 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1981); *Paterson v. Weinberger,* 644 F.2d 521, 523 (5th Cir. 1998). Ripeness is an essential component of subject matter jurisdiction. *Sample v. Morrison,* 406 F.3d 310, 312 (5th Cir. 2001), and a case is not ripe if further factual development is required. *New Orleans Public Service, Inc. v. Council of City of New Orleans,* 833 F.2d 583, 587 (5th Cir. 1987).

Strangmeier alleges in his complaint that he has retained counsel and has set a hearing to contest the citation. Chapter 707 of the Texas Transportation Code sets out the required appeal process which involves both a hearing before an Administrative Adjudication Officer and a subsequent appeal to a municipal court judge. *See* Tex. Transp. Code, § 707.014-707.016. An appeal stays enforcement and collection of the civil penalty. *Id.* at § 707.016(d). Thus, even assuming that Strangmeier could state a valid Fifth or Fourteenth Amendment claim under these facts, the claim is simply not ripe because Strangmeier has affirmatively pled that the process that he is afforded to contest the citation has not yet been concluded.

(Complaint, p. 4, ¶ 14).

In addition, even if Strangmeier had alleged that the process to challenge his ticket had been concluded and that his property had been taken, Fifth Amendment takings claims under the federal Constitution are not ripe for consideration until all state law remedies have been exhausted. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed.2d 126 (1985). To allege a ripe Fifth Amendment takings claim, a plaintiff must allege that he has availed himself of the state's procedures to seek redress or that there are no available state procedures. *John Corp. v. City of Houston,* 214 F.3d 573, 579 (5th Cir. 2000). Because Strangmeier has not pled that he has exhausted his state law remedies for the alleged taking, his Fifth Amendment takings claims is unripe, thus depriving the trial court of subject-matter jurisdiction. *Id*. Similarly, until the Fifth Amendment takings claim is ripe, the Fourteenth Amendment due process claims are not ripe. *See John Corp.,* 214 F.3d at 585-86 ("it will only be when a court may assess the takings claim that it will be able to examine whether [plaintiffs] were afforded less procedure than is constitutionally required.").

C. Strangmeier has failed to state any claims against Mayor Annise Parker in her individual capacity.

Strangmeier's claims against Mayor Parker in her individual capacity are also completely devoid of any merit. Government officials acting within their discretionary authority are entitled to qualified immunity, and are liable in their individual capacities only for conduct that violates clearly established statutory or constitutional rights of which a

reasonable person would have known. *Pearson v. Callahan,* 555 U.S. 223, 129 S.Ct. 808, 815, 172 L.Ed.2d 565 (2009) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Courts undertake a two-step analysis to determine if a defendant is entitled to qualified immunity: (1) did the defendant violate a constitutional right; and (2) was the right clearly established. *Pearson,* 129 S.Ct. at 818.

Strangmeier's claims against Mayor Parker are merely an undisguised attempt to seek punitive damages:

> Mayor Parker is sued individually and is liable for punitive damages as The Mayor was consciously indifferent to the plaintiff's constitutional rights and she did the acts knowingly, such acts being extreme and outrageous and shocking to the conscious.

(Complaint, p. 5, ¶ 19). The **only** factual allegation in the complaint that involves Mayor Parker is that – after this Court invalidated the charter amendment that would have required the red light camera program be discontinued – Mayor Parker "unilaterally turned the cameras back on without Houston City Council input . . . " (Complaint, p. 3, ¶ 12). Strangmeier does not even attempt to articulate how this action – "turning the cameras on" in accordance with the existing state and local laws – could in any way be construed as a constitutional violation. And, because Strangmeier has failed to articulate any valid constitutional claim in his complaint, his claims against Mayor Parker in her individual capacity should be dismissed for failure to state a claim.

III. Conclusion

Plaintiff's Original Complaint against the City of Houston and Mayor Annise Parker should be dismissed in its entirety for failure to state any valid constitutional claim against either defendant and additionally because the Fifth and Fourteenth Amendment claims are not ripe for adjudication.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served in accordance with the Federal Rules of Civil Procedure on this the 13th day of October, 2011.

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Via efiling

/s/ Elizabeth Stevens
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