UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JONATHAN CORBETT,

Plaintiff,

vs.

TRANSPORTATION SECURITY ADMINISTRATION, et al.

Defendants.

No. 1:12-cv-20863-JAL

FEDERAL DEFENDANT CHAMIZO'S MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW

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INTRODUCTION

Plaintiff Jonathan Corbett, proceeding *pro se*, filed an Amended Complaint alleging claims against the Transportation and Security Administration (TSA), the United States, and individual-capacity claims against TSA employee Alejandro Chamizo for actions taken while the plaintiff was in the security checkpoint of an airport. This motion will address only the plaintiff's claims against Federal Defendant Chamizo.[1] The plaintiff brings four claims against Defendant Chamizo, pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for violations of the Fourth Amendment: one claim for unreasonable seizure (Count 1), two claims for unreasonable search of his book and credit cards (Counts 2 and 3), and one claim for retaliatory search (Count 4).[2] For the reasons set forth below, Defendant Chamizo respectfully moves this Court to dismiss the plaintiff's Amended Complaint, with prejudice, under Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

[1] The plaintiff's Federal Tort Claims Act claims against the United States and Privacy Act and Freedom of Information Act claims against TSA were separately addressed in a motion to dismiss filed June 25, 2012.

[2] In Count Five, the plaintiff alleges a claim under 42 U.S.C. § 1983 against Defendant Chamizo. But § 1983 does not apply to federal officials who are sued in their individual capacities. To state a viable claim under section 1983, a plaintiff must allege facts showing a deprivation of a constitutional right, privilege, or immunity by a person acting under color of *state* law. *See Daniels v. Williams*, 474 U.S. 327, 330 (1986) (emphasis added). "Because federal officials do not act under color of state law, [the plaintiff] may not properly bring a section 1983 claim [here]." *Bernard v. Calejo*, 17 F. Supp. 2d 1311, 1314 (S. D. Fla. 1998) (citing *Seibert v. Baptist*, 594 F.3d 423, 429 (5th Cir. 1978)). Defendant Chamizo, a TSA employee, is a federal actor. Accordingly, the plaintiff's § 1983 claim fails.

RELEVANT FACTS[3]

On August 27, 2011, Jonathan Corbett arrived at Fort Lauderdale-Hollywood International Airport. Am. Compl. at ¶ 23. As is customary with all who wish to fly, the plaintiff voluntarily presented himself at the airport security checkpoint for pre-boarding security screening. *Id*. at ¶ 26. Once he entered the security checkpoint area and placed his bags on the X-Ray machine, the plaintiff opted out of Advanced Imaging Technology (AIT), or whole-body imaging. *Id*. at ¶¶ 28-31. It is the official policy of TSA to permit travelers to opt out of AIT. Am. Compl. at ¶ 33. Passengers who opt out are instead patted down by a TSA screener. Am. Compl. at ¶ 34. The plaintiff initially consented to the pat down, but withdrew consent when TSA personnel explained that the procedure extended to sensitive areas of the body. *Id*. at ¶¶ 34-35. TSA employees then contacted the Behavior Detection Manager who was on duty at the time, Alejandro Chamizo. *Id*. at ¶¶ 41-43. Defendant Chamizo told the plaintiff that he would not be cleared to proceed past the security checkpoint if he did not consent to screening by AIT or a pat-down. *Id*. at ¶ 44. The plaintiff again declined both procedures. *Id*. at ¶ 38. Defendant Chamizo then told the plaintiff that he could not leave the security checkpoint until TSA cleared him and his accessible property in light of his refusal. *Id.* at ¶¶ 45, 47. TSA employees screened the plaintiff's personal belongings, including a backpack, bag of books, and a stack of credit cards and other identification. *Id* at. ¶¶ 50-52, 56. The agents also made copies of his identification and boarding pass and shared that information with the state-law-enforcement officer on-site. *Id.* at ¶¶ 66, 70. The plaintiff does not

3 For purposes of this motion to dismiss, all facts alleged in the amended complaint are accepted as true. *Garfield v. NDC Health Corp.,* 466 F.3d 1255, 1261 (11th Cir. 2006).

allege that TSA employees touched him at any point during the encounter. After he was cleared, the plaintiff left the security-screening area and he exited the airport. *Id*. at ¶ 73.

LEGAL STANDARD

When a court considers a motion under Fed R. Civ. P. 12(b)(1), "the district court is not obligated to take the allegations in the complaint as true." *Odyssey Marine Exploration Inc.*, 657 F.3d 1159, 1169 (11th Cir. 2011). Additionally, the court is not limited to the allegations in the complaint and "may consider extrinsic evidence." *Id.*

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint requires more than "labels and conclusions . . . a formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks omitted) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). And although the well-pled allegations in the complaint are "viewed in the light most favorable to the plaintiff," *Watts v. Fla. Int'l Univ.,* 495 F.3d 1289, 1295 (11th Cir. 2007), "factual allegations must be enough to raise a right to relief above the speculative level." *Twombly,* 550 U.S. at 555. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 677 (internal quotation marks omitted). Even if the facts are well-pled, the court cannot "infer more than the mere possibility of misconduct" if the complaint merely alleges and does not "show" that the pleader is entitled to relief. *Id.* at 678.

DISCUSSION

I. THIS COURT DOES NOT HAVE JURISDICTION OVER THE PLAINTIFF'S CLAIMS AGAINST DEFENDANT CHAMIZO

This Court does not have jurisdiction over the plaintiff's claims. Pursuant to 49 U.S.C. §

46110(a), all objections and challenges to TSA orders must be filed in the Court of Appeals. Attached to this motion, *see* Exhibit 1, is a declaration stating that during the plaintiff's screening, all of the predicates for the constitutional claims that the plaintiff brings against Defendant Chamizo—his brief detention for his carry-on property to be cleared and the inspection of his book, credit cards and identification—were required by and consistent with TSA's Standard Operating Procedures. Because the plaintiff challenges the constitutionality of Defendant Chamizo's conduct during his screening, and Defendant Chamizo's conduct was dictated by TSA operating procedures, the plaintiff is essentially challenging an order issued by TSA.

The Eleventh Circuit addressed a similar issue *Green v. Brantley*, 981 F.2d 514, 521 (11th Cir. 1993), and concluded that when the merits of a *Bivens* claim are "inescapably intertwined" with review procedures of an administrative order, the *Bivens* complaint constitutes an impermissible collateral challenge to that order. Importantly, "the term 'order'. . . has been given expansive construction." *Id.* at 519. *See also Corbett v. United States*, 458 Fed. App'x 866, 869 (11th Cir. 2012) (concluding that TSA's checkpoint Standard Operating Procedures is an order for purposes of § 46110(a)); *Merritt v. Shuttle, Inc.*, 187 F.3d 263 (2d Cir 1999) (concluding "section 46110 deprives the district court of jurisdiction over . . . *Bivens* claims").[4] Congress has specifically provided that the appropriate venue for a challenge to a TSA order is the federal appellate court of the plaintiff's state of residence—in this case the Eleventh Circuit Court of Appeals—or the D.C. Circuit.

[4] This case is not the plaintiff's first challenge to TSA's screening procedures. In *Corbett v. United States*, 458 Fed. App'x 866 (11th Cir. 2012), the plaintiff argued that TSA's Standard Operating Procedures violated the Fourth Amendment. Without addressing the merits of his challenge, the district court dismissed that case, concluding that it lacked subject-matter jurisdiction over the action; the Eleventh Circuit affirmed. *Id.* at 868. The plaintiff has filed a petition for certiorari before the Supreme Court, to which the United States waived its response.

II. QUALIFIED IMMUNITY BARS THE PLAINTIFF'S FOURTH AMENDMENT CLAIMS AGAINST DEFENDANT CHAMIZO

Even if this Court concludes that it has jurisdiction over the plaintiff's claims, Defendant Chamizo must still be dismissed because he is entitled to the defense of qualified immunity.

A. Framework for qualified immunity

The plaintiff's *Bivens* claims against Defendant Chamizo should be dismissed because Defendant Chamizo is protected by the doctrine of qualified immunity. Government officials are immune from civil liability when their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The scope of qualified immunity is broad and it protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (internal quotation marks and citation omitted). Because qualified immunity provides an "*immunity from suit* rather than a mere defense to liability," *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis in original), the Supreme Court has "repeatedly. . . stressed the importance of resolving immunity . . . at the earliest possible stage in the litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam). Qualified immunity guards against "substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

Once a defendant asserts entitlement to qualified immunity, the burden shifts to the plaintiff to show that the defense should not apply. *Terrell v. Smith, 6*68 F.3d 1244 (11th Cir. 2012). A plaintiff must allege specific acts by which the defendant personally violated a constitutional right. *See Champagne v. Jefferson Parish Sheriff's Office*, 188 F.3d 312, 314 (5th Cir. 1999). Further, government officials are not vicariously liable for the unconstitutional conduct

of their subordinates. *Iqbal*, 556 U.S. at 675. "Because vicarious liability is inapplicable to *Bivens*, . . . a plaintiff must plead that each Government-official defendant, though the officials' *own* individual actions, has violated the Constitution." *Id* (emphasis added).

The qualified-immunity inquiry usually involves two questions: (1) whether the plaintiff has alleged that the defendant personally violated a constitutional right, and (2) whether that right was clearly established. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).[5] A clearly established right has contours "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640. As explained below, the plaintiff's claims against Defendant Chamizo fail as a matter of law. The plaintiff has not alleged facts that establish that Defendant Chamizo engaged in any conduct that violated the plaintiff's Fourth Amendment rights. Even if this Court were to determine that a constitutional violation did occur, the right was not clearly established, as required by *Pearson*, 555 U.S. at 232.

B. <u>The plaintiff fails to plausibly allege a constitutional violation by Defendant Chamizo as required by *Ashcroft v. Iqbal*.</u>

The plaintiff's claims must be dismissed because he fails to plausibly allege a constitutional violation by Defendant Chamizo. As discussed above, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 547. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

[5] Post-*Pearson*, this Court need not address both steps of the qualified-immunity inquiry. It may address only "whether a right [was] clearly established" without determining the constitutionality of the defendant's conduct. 555 U.S. at 236 (concluding that "judges of the district courts and courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed . . . in light of the circumstances of the particular case at hand.").

Iqbal, 556 U.S. at 677. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* The facts necessary to plausibly allege a *Bivens* violation vary with the constitutional provision at issue. *Id*. at 1948. Whether a search or seizure is constitutionally reasonable in the airport screening context is determined by “balancing [the] intrusion on the individual’s Fourth Amendment interest against its promotion of legitimate government interests.” *Denson v. United States*, 574 F.3d 1318, 1338 (11th Cir. 2009) (noting that legitimate government interests are particularly high at airports).

The plaintiff has failed to state a plausible claim for unreasonable search or seizure under the Fourth Amendment. The plaintiff alleges that after declining both AIT and a manual pat down, Defendant Chamizo told the plaintiff that he was “not free to leave the security checkpoint.” Am. Compl. at ¶ 47. The plaintiff also alleges that his belongings were searched by other TSA employees, of whom Defendant Chamizo was “in-charge.” *Id*. at ¶¶ 50, 65. 95, 100. Essentially the plaintiff’s narrative is this: after voluntarily entering the security-screening checkpoint and then refusing to participate in the security-screening process, he was held by TSA until both he and his property were cleared. *Id*. at. ¶¶ 45, 48. 66

It is well-settled that each government actor, “title notwithstanding, is only liable for his . . . own misconduct.” *Iqbal*, 556 U.S. at 677. The Supreme Court has specifically rejected *respondeat superior*, or “supervisory liability” as a basis for liability under *Bivens*. *See id*. Although the plaintiff alleges that Defendant Chamizo was the “officer-in-charge on the scene,” Am Compl. at ¶ 65, the plaintiff does not allege that Defendant Chamizo personally participated in the search of his books or credit cards. *See Dalrymple v. Reno*, 334 F.3d 991, 995-96 (11th Cir. 2001) (noting that “supervisory officials are not liable under *Bivens* for the actions of their

subordinates" and that "the standard by which a supervisor is held liable in [his] individual capacity . . . is extremely rigorous"). The only allegations in the Amended Compliant directed at Defendant Chamizo in regards to the search are that he was a supervisor and that he "approved of" and "oversaw" the searches, *Id*. at ¶¶ 65, 95, 96, 100, 101. Without more, the plaintiff's claim against Defendant Chamizo for unreasonable search cannot meet the personal involvement standard promulgated by *Iqbal* and must be dismissed.

The plaintiff's claim for unreasonable seizure is similarly deficient. Although the plaintiff alleges that Defendant Chamizo informed him that he "was not free to leave the checkpoint," Am. Compl. at ¶ 47, and indeed the plaintiff remained at the checkpoint while his property was cleared, air passengers do not have a unilateral right to terminate screening once they attempt to enter the sterile area of an airport. *United States v. Aukai*, 497 F. 3d 955, 956 (9th Cir. 2007) (*en banc*). This rule ensures that individuals are not given "multiple opportunities to attempt to penetrate airport security by 'electing not to fly' on the cusp of detection," or afforded "a low cost method of detecting systematic vulnerabilities in airport security." *Id*. at 961. Because the plaintiff had already begun the screening process, Defendant Chamizo was permitted to briefly detain him in the security checkpoint until he was cleared. Once the plaintiff was cleared, he returned to the public area of the airport without having been touched by a TSA employee. Even when viewed in the light most favorable to the plaintiff, the facts, as alleged, do not plausibly state a claim for unreasonable seizure.

The plaintiff also alleges that Defendant Chamizo told the plaintiff that he must consent to the manual pat down and that if he did not consent, he would be arrested. Am. Compl. ¶¶ 44, 46. The plaintiff maintains that he never consented to a manual pat down. *Id*. at ¶¶ 35, 38. As a result,

the plaintiff was denied access to the sterile area of the airport and missed his flight. *See id*. at ¶ 73. But the plaintiff does not allege that the Broward County officers arrested him or that TSA employees touched him at any time. At most, the plaintiff alleges is that TSA officers briefly detained him while he and his property were cleared. Am. Comp. at ¶¶ 47-49. Once cleared, the plaintiff was permitted to leave the checkpoint. *Id*. at ¶ 73. TSA is responsible for the "safety of airline and airport personnel and . . . the safety of the general public from risks arising from commercial airplane flights." *Aukai,* 497 F.3d at 956. Considering the numerous risks to airport security, Defendants Chamizo's conduct was more than reasonable. As such, the plaintiff's Amended Complaint does not plausibly allege an unreasonable seizure. Because the plaintiff's claims are lacking in any legal foundation and his allegations do not state a plausible claim for which relief can be granted, the plaintiff's claims must be dismissed.

C. Defendant Chamizo did not violate the plaintiff's Fourth Amendment rights.

Even if this Court concludes that the plaintiff's Amended Complaint satisfies the pleading standards set forth in *Iqbal*, *see* 556 U.S. at 677, the plaintiff cannot prevail because Defendant Chamizo did not violate the Fourth Amendment. The Fourth Amendment requires the government to respect "[t]he right of the people to be secure in their persons and effects against *unreasonable* searches and seizures." U.S. CONST. amend. IV (emphasis added). As discussed more fully below, Defendant Chamizo's conduct did not amount to an unreasonable search or seizure, thus the plaintiff's claim against him must be dismissed.

1. Unreasonable seizure

The plaintiff alleges that Defendant Chamizo violated his right to be free from unreasonable seizure when Defendant Chamizo stated to the plaintiff "that he was not free to leave

the checkpoint" after the plaintiff declined both AIT and a manual pat down while in the security-screening area. Am. Comp. at ¶ 47. The plaintiff further claims that he "understood he was being detained" and a "reasonable person would have understood . . . that he . . . . was being detained." *Id*. at ¶ 48. Because TSA's primary function at airports is to ensure the safety of airline travelers, challenges to its conduct at checkpoints are evaluated not under the usual circumstances of reasonable suspicion or probable cause from the law enforcement context, but rather under an administrative standard which balances the interests of the individual against the government interest in the seizure. *See Denson*, 574 F.3d at 1338. `

TSA is tasked with screening over 700 million commercial aircraft passengers per year and, as previously explained, this includes protecting the safety of the general public from risks associated with commercial airplane flights. *Aukai*, 497 F. 3d at 956. Courts have repeatedly upheld the constitutionality of administrative searches, which includes passenger screening now routine at airports. *Aukai*, 497 F.3d at 956 (reaffirming the reasonableness of administrative searches in airports); *United States v. Hartwell*, 436 F.3d 174, 178-78 (3d Cir. 2005) (finding, in the context of airport security screening, that the "entire experience [i]s a single search under the administrative search doctrine"), *cert denied*, 549 U.S. 945 (2007); *United States v. Cyzewski*, 484 F.2d 509, 513 (5th Cir. 1973) (upholding airport security measures as reasonable under the Fourth Amendment).[6] *See also City of Indianapolis v. Edmond*, 531 U.S. 32, 47-48 (2000) (noting that administrative-search cases allow "suspicionless intrusions"); *Chandler v. Miller*, 520 U.S. 305, 323 (1997) (reiterating the reasonableness of suspicionless searches "now routine at airports").

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[6] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

And the Supreme Court has held that the constitutionality of administrative searches does not depend upon consent. *United States v. Biswell*, 406 U.S. 311 (1972). Where an airport screening search is "otherwise reasonable and conducted pursuant to statutory authority, all that is required is the passenger's election to attempt entry into the secured area." *Aukai,* 497 F.3d at 961; *Hartwell*, 436 F.3d at 180 ("the search began when Hartwell simply passed through a magnetometer and had his bag x-rayed . . . . ")."The reasonableness of such searches does not depend, in whole or in part, upon the consent of the passenger being searched." *Aukai.* 497 F.3d at 957.

Here, Defendant Chamizo's decision to hold the plaintiff in the screening checkpoint until he was cleared to return to the public area of the airport was reasonable and constitutionally sound. As previously explained, air passengers do not have a unilateral right to terminate screening once they attempt to enter the sterile area of an airport. *Id.* at 955. When the legitimate government interest of protecting potential risks arising from commercial airplane flights is balanced against the brief detention that the plaintiff experienced while being cleared to return to the public area of the airport, Defendant Chamizo's conduct was reasonable. And because the plaintiff cannot show that Defendant Chamizo's conduct, as alleged, violated his Fourth Amendment right to be free from unreasonable seizure, the claim must be dismissed.

2. *Unreasonable and retaliatory search*

The plaintiff also alleges that Defendant Chamizo violated the Fourth Amendment because he was "in charge" of the TSA agents who searched the plaintiff's belongings without the plaintiff's consent and that the search was in retaliation to the plaintiff's refusal to participate in the security-screening process. Am. Compl. at ¶ 65. But the plaintiff does not allege that Defendant

Chamizo personally engaged in the search of his belongings. As previously explained, *respondeat superior* is not a cognizable cause of action under *Bivens*, *see supra* I.B.

Even if this Court were to determine that the plaintiff sufficiently alleges Defendant Chamizo's personal involvement in the search of his property, the plaintiff's claim still fails. As discussed above, airport screening searches are constitutionally reasonable administrative searches that are not dependent on the traveler's consent. *Aukai*, 497 F.3d at 960-61 (citing *Biswell*, 406 U.S. at 315 (1972)). "[When] an airport screening search is otherwise reasonable and conducted pursuant to statutory authority," *see* 49 U.S.C. § 44901, "all that is required is the passenger's election to attempt entry into the secured area of an airport." *Aukai*, 497 F.3d at 961. And although "the scope of [administrative] searches is not limitless," an administrative search is constitutionally reasonable "provided that it is no more extensive or intensive than necessary, in light of current technology, to detect the presence of weapons or explosives." *Id.* at 962 (quoting *United States v. Davis*, 482 F.2d 893, 913 (9th Cir. 1973) (internal quotation marks omitted)).

The plaintiff concedes that he voluntarily "presented himself at a TSA security checkpoint" and understood that a security screening is "a condition of flying." Am. Compl. at ¶¶ 27, 28. But the plaintiff alleges that while his property was being screened, he objected to the TSA screener's review of his credit cards and book because the search was "outside the TSA's mission of finding weapons, explosives and incendiary devices." Am Compl. at ¶¶ 56, 61, 94, 99. Not only is this allegation conclusory, but it also ignores that explosive technology has improved to the point that "thin, flat explosives called 'sheet explosives' maybe disguised as a simple piece of paper or cardboard, and may be hidden in just about anything, including . . . [a] book, . . . deck of cards, or packet of photographs." *United States v. McCarty*, 648 F.3d 820, 825 (9th Cir. 2011).

Indeed, TSA protocol for searching accessible property, like the carry-on and book of bags that the plaintiff had in his possession at the time of the search, requires screeners to "thumb through" stacked material to clear the bag. *Id*. at 838. In addition to searching for incendiary devices, the plaintiff also alleges that the TSA agent violated the Fourth Amendment when he checked the plaintiff's credit cards to "make sure the names matched." Am. Comp. at ¶¶ 57, 58. But TSA's requirement that passengers present identification before entering the secured area has been upheld as constitutional and the additional intrusion was already occasioned by the screener's need to clear the items for security risks. *See Gilmore v. Gonzales,* 435 F.3d 1125, 1139 (9th Cir. 2006) (concluding that identification requirement of airline passengers does not violate due process), *cert denied*, 549 U.S. 1110 (2007).

As to the plaintiff's claim for retaliatory search, it too must fail. It appears that the plaintiff's argument is this: Defendant Chamizo retaliated against the plaintiff, in directing that TSA screeners thoroughly search his belongings, because the plaintiff refused to consent to a security screening. But the plaintiff does not allege that Defendant Chamizo instructed that he be searched solely because he was challenging the scope of the manual pat down. And as established above, the plaintiff's consent was not required for the administrative search. *See Rehberg v. Paulk,* 611 F.3d 828, 850 (11th Cir. 2010) (noting that an official is not liable for a Fourth Amendment retaliation if he can show that the defendant would have taken the action complained of anyway); *Keeton v. Anderson*, 664 F.3d 865, 877-78 (11th Cir. 2011) (concluding that to establish a retaliation claim, a plaintiff must first show that his conduct was constitutionally protected). Although TSA's screening of Corbett was extensive, it was not more intensive than necessary considering recent technological advances in explosives. Because his constitutional rights were

not violated, the plaintiff's retaliation claim cannot stand. *See Wood v. Kesler,* 323 F.3d 872, 883 (11th Cir. 2003) (noting that there is no independent claim for retaliation under the Fourth Amendment and granting the defendant official's request for qualified immunity).

D. The plaintiff's rights were not clearly established at the time of Defendant Chamizo's conduct.

Even if this court were to conclude that Defendant Chamizo's conduct violated the plaintiff's Fourth Amendment rights, he is still entitled to qualified immunity because it is not clearly established that TSA officers may not search and temporarily detain air passengers who attempt to revoke their consent to security screening. *See Pearson*, 129 S. Ct. at 818. In fact, research has not revealed any case that can be cited for such a proposition. To the contrary, as the Fourth Amendment currently stands in the context of air travelers, Defendant Chamizo's actions fall well within the boundaries of acceptable constitutional behavior. *See Aukai*, 497 F.3d. at 960 (finding "where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority . . . all that is required is the passenger's election to attempt entry into the [sterile] area of the airport"); *United States v. Hartwell*, 436 F.3d 174, 176 (3d Cir. 2006) (finding search of individual at airport checkpoint was constitutional considering 1) the heightened government interest in protecting the public from terrorist attacks, and 2) all passengers were subjected to search at known, designated checkpoint); *VanBrocklen v. United States*, No. 1:08-cv-312, 2010 WL 1372321, at *2-3 (N.D.N.Y. April 7, 2010) (concluding that primary and secondary screening of air traveler who presented himself at security checkpoint was constitutional). *Cf. Denson*, 574 F.3d at 1338 (discussing the government's heightened interest in protecting its borders, particularly in the context of airports); *Brent v. Ashley*, 247 F.3d 1294, 1300 (11th Cir. 2001) (noting the constitutionality of a "routine border search" of an air traveler's

luggage). And as discussed above, TSA officials have a statutory duty to maintain airport security, which they accomplish in part through screening air travelers' property and creating security-incident reports when a traveler refuses to be screened. *See* 49 U.S.C. § 44901(a) (permitting warrantless security screening of airline passenger and their carry-on baggage prior to boarding commercial airlines). Because Defendant Chamizo's conduct was consistent with established law, he is entitled to qualified immunity and must be dismissed.

CONCLUSION

For the reasons stated above, this Court should dismiss the plaintiff's claims against Defendant Chamizo, with prejudice.

Dated: July 19, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JONATHAN CORBITT,

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION, et al.

Defendants.

No. 1:12-cv-20863-JAL

[PROPOSED] ORDER

Upon consideration of Defendant Chamizo's motion to dismiss, this Court finds that the plaintiff's claims against him should be dismissed, with prejudice. The motion to dismiss is **GRANTED**.

Dated this ___ day of __________, 2012.

____
Joan A. Lenard
United States District Judge