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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JAVIER F. OVANDO,  
Plaintiff,  
v.  
CITY OF LOS ANGELES, et al.  
Defendant.

NO. CV 99-11629-GAF (AJWX)

**ORDER PERMITTING DEFENDANTS  
TO FILE MOTIONS FOR SUMMARY  
ADJUDICATION OF SECTION 1983  
CLAIMS**

The Court previously ordered the Los Angeles City Attorney's Office to identify all "Rampart-related" cases which have been brought by plaintiffs whose convictions have not been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphry, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994). Based on the City Attorney's representations, the Court ordered some plaintiffs to show cause why their section 1983 claims should not be dismissed under Heck and invited defendants to file responsive pleadings on the issue.

The Court has received responses to its order, and has, in a number of cases vacated the order where: (1) the case involved a claim of excessive force; (2) the claim did not call into question the validity of a criminal judgment; and (3) was filed within the statute of limitations period. The remaining cases have raised issues that the Court

1 does not believe should be resolved through the OSC process. Accordingly, the Court  
2 makes the following order.

3 **I. Submission of Motions for Dismissal or Summary Adjudication**

4 The Court's prior Order staying all proceedings is lifted for the limited purpose of  
5 allowing defendants to file motions to dismiss, or in the alternative, to summarily  
6 adjudicate any section 1983 claim based on the rule announced in Heck. These  
7 motions may address only section 1983 claims brought by plaintiffs whose convictions  
8 have not been overturned and may present only the argument that section 1983  
9 actions may not be maintained where the plaintiff's conviction has not been "reversed  
10 on direct appeal, expunged by executive order, declared invalid by a state tribunal  
11 authorized to make such determination, or called into question by a federal court's  
12 issuance of a writ of habeas corpus." Heck, supra.

13 Filing of these motions is the only exception to the stay currently in place. No  
14 other motions may be filed and no other case-related activities may proceed at this  
15 time. The parties should note that this is not an order to file motions — the decision to  
16 file rests with the defendants. This is an order ***permitting*** the filing of such motions on  
17 the schedule established by the Court. The parties are relieved of any obligation to  
18 comply with Local Rule 7.4.1.

19 **II. Briefing Schedule**

20 All motions must be filed by **Friday, February 16, 2001**. Oppositions to such  
21 motions must be filed no later than **Friday, March 2, 2001**. Defendants may file Reply  
22 briefs on or before **Monday, March 12, 2001**. The Court will conduct a hearing on  
23 such motions on **Monday, March 19, 2001** at 9:30 A.M.

24 **III. Evidence Set Forth in Briefs and Declarations**

25 Parties filing or responding to such motions need not file a "Statement of  
26 Uncontroverted Facts and Conclusions of Law" or a "Statement of Genuine Issues of  
27 Material Fact by Opposing Party" as required by Local Rule 7.14. Instead, the  
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1 following procedure applies: Immediately following the case caption, each motion shall  
2 contain a section entitled "Status of Conviction" indicating: (1) the crime the plaintiff  
3 was convicted of; (2) the date of the conviction; (3) the current status of the conviction  
4 (whether in force, reversed, expunged, declared invalid or other); and (4) whether the  
5 plaintiff is currently incarcerated pursuant to the conviction. In addition, all motions  
6 shall be accompanied by a declaration, made on personal knowledge, setting forth the  
7 same information and any additional information necessary to consideration of the  
8 motion. Defendants should attach copies of properly authenticated state court records  
9 evidencing the status of a conviction where available.

10       Oppositions shall include a similarly titled section at the beginning of the brief  
11 listing any disagreements the plaintiff has with the facts surrounding the conviction as  
12 set forth by the defendant. If the plaintiff disputes any of the information set forth in  
13 the "Status of Conviction" section of the motion, he or she shall submit a declaration,  
14 made on the basis of personal knowledge, indicating what information he or she  
15 believes is inaccurate.

#### 16 **IV. Consolidated Motions**

##### 17 **A. Defendants Making Multiple Motions**

18       Any defendant who wishes to move for dismissal or summary adjudication on  
19 Heck grounds in more than one lawsuit may file a single consolidated brief setting forth  
20 the grounds for dismissal of each plaintiff. For example, the City of Los Angeles may  
21 file a single consolidated brief for all of the plaintiffs it wishes to challenge on Heck  
22 grounds.

23       Consolidated briefs must include a caption sheet identifying the case name and  
24 number of each case in which a motion is being made and defendants filing such  
25 briefs must file an original and one copy for each case number. For example, if the  
26 City of Los Angeles files one consolidated brief regarding plaintiffs in five separate  
27 cases, the caption page must identify each case by name and number, and an original  
28 and one copy must be filed with the Court under each case number.

1 Consolidated briefs should begin with a separate "Status of Conviction" section  
2 for each plaintiff followed by a single argument section applicable to all plaintiffs. This  
3 procedure is optional and parties preferring to file separate motions in each case may  
4 do so.

5 **B. Plaintiffs Opposing Multiple Motions**

6 A plaintiff served with multiple motions may file a single consolidated opposition  
7 which includes a single section addressing the status of the plaintiff's conviction and a  
8 single argument section addressing all of the issues raised by all defendants. Plaintiffs  
9 who choose to file a consolidated opposition must file an original and one copy of the  
10 response for each case listed in the caption sheet. This procedure is optional and  
11 plaintiffs may file separate oppositions to each motion.

12 **C. Joinder by Defendants**

13 Prior to submitting any motion, each defendant's counsel shall confer, either in  
14 person or by phone, to determine whether a single motion in which all other  
15 defendants join can be submitted.

16 **V. No Further Relief From Stay**

17 This order partially lifts the stay in place as to all of the Rampart cases only to  
18 the extent described above. No other motions may be filed and no other case-related  
19 activities may proceed at this time.

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21 IT IS SO ORDERED.

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23 DATED: February 5, 2001

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Judge Gary Allen Feess  
United States District Court