

DEC 03 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODOLFO E. MADERAZO,

Plaintiff - Appellant,

v.

VALERIE LABORE; RICHARD
COULSON, Sgt.; RICHARD EMERSON;
JANA S. SEEGRIST; CITY OF CHULA
VISTA,

Defendants - Appellees.

No. 99-56285

D.C. No. CV-99-01381-TJW/JFS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted August 17, 2007**

Before: FARRIS, BOOCHEVER, and LEAVY, Circuit Judges.

Rodolfo E. Maderazo appeals pro se the district court's sua sponte dismissal of his action for lack of subject matter jurisdiction. The district court held that

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Maderazo had failed to state a claim under 42 U.S.C. § 1983 based on the towing of his unregistered vehicle. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a sua sponte dismissal, see Omar v. Sea-Land Serv. Inc., 813 F.2d 986, 991 (9th Cir. 1987), and we reverse and remand.

The district court misread the complaint to the effect that Maderazo recovered his vehicle on March 27, 1999. Maderazo simply alleged that he requested a post-tow hearing on that date. According to the allegations of his complaint, Maderazo retrieved his car on April 1, 1999, seven days after it was towed.

Maderazo also alleged that he did not receive a post-towing hearing within 48 hours of his request for a hearing. Defendants' failure to hold a hearing within 48 hours may have violated Maderazo's due process rights. See Scofield v. City of Hillsborough, 862 F. 2d 759, 764 (9th Cir. 1988). We remand for the district court to allow the adversary process to play out to decide whether Maderazo was provided with sufficient process by balancing the factors outlined in Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Maderazo's remaining contentions lack merit.

The parties shall bear their own costs on appeal.

REVERSED AND REMANDED.

