

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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WISCONSIN CARRY, INC., and  
NAZIR AL-MUJAAHID,

Plaintiffs,

v.

Case No. 12-C-352

CITY OF MILWAUKEE, JOSEPH MENDOLLA,  
JOHN CHISHOLM, in his official capacity as  
District Attorney of Milwaukee County, Wisconsin,  
PATTI KLEIN, in her official capacity as Clerk of  
Courts for the criminal division of the Circuit Court  
of Milwaukee County, and MARK WALTON,

Defendants.

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ANSWER

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Defendant John Chisholm, in his official capacity as District Attorney of Milwaukee County, Wisconsin (“Defendant District Attorney Chisholm”), appears in this matter by his attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Christopher J. Blythe, and responds to the Complaint as follows:

1. Defendant District Attorney Chisholm admits that plaintiffs are bringing this action under 42 U.S.C. § 1983, but denies that their claims have a basis in law or fact.
2. Defendant District Attorney Chisholm denies the allegations of paragraph 2 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.
3. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 with respect to where

the plaintiffs reside, so Defendant District Attorney Chisholm therefore denies the allegations of paragraph 3 regarding venue.

4. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

5. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Defendant District Attorney Chisholm admits the allegations of paragraph 7.

8. Defendant District Attorney Chisholm admits the allegations of paragraph 8.

9. Defendant District Attorney Chisholm admits the allegations of paragraph 9.

10. Defendant District Attorney Chisholm denies that defendant Patti Klein is the Clerk of Courts for the Criminal Division of Milwaukee County Circuit Court, and affirmatively alleges that she is employed as a Clerical Assistant I in the Clerk of Circuit Court, Criminal Division.

11. Defendant District Attorney Chisholm admits the allegations of paragraph 11.

12. Subject to the objection that, as of this date, no one has been convicted of the referenced robbery (and therefore all references should be to the “alleged robber or robbers”), Defendant District Attorney Chisholm admits the allegations of paragraph 12.

13. Defendant District Attorney Chisholm admits the allegations of paragraph 13.

14. Defendant District Attorney Chisholm admits the allegations of paragraph 14.

15. Defendant District Attorney Chisholm admits the allegations of paragraph 15.

16. Defendant District Attorney Chisholm denies the allegations of paragraph 16 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

17. Defendant District Attorney Chisholm admits the allegations of paragraph 17.

18. Defendant District Attorney Chisholm admits the allegations of paragraph 18.

19. Defendant District Attorney Chisholm denies that he “suggested” that plaintiff Nazir Al-Mujaahid (“Mr. Mujaahid”) file a petition for the return of property, and affirmatively alleges that in response to Mr. Mujaahid’s statement that he wanted to file a petition, Defendant District Attorney Chisholm informed Mr. Mujaahid that he had a right to file such a petition, as that would be the proper process.

20. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Defendant District Attorney Chisholm denies the allegations of paragraph 22.

23. Defendant District Attorney Chisholm denies the allegations of paragraph 23 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

24. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Defendant District Attorney Chisholm denies the allegations of paragraph 26 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

26. Defendant District Attorney Chisholm denies the allegations of paragraph 27 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

27. Defendant District Attorney Chisholm denies the allegations of paragraph 28 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

28. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

29. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

30. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

31. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

#### AFFIRMATIVE DEFENSES

1. To the extent that Defendant District Attorney Chisholm is being sued in his personal or individual capacity, he is protected by his official qualified immunity, *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), because at all times material hereto his conduct did not violate any clearly established and sufficiently particularized federal statutory or constitutional rights of which he reasonably would have known.

2. This action is barred against Defendant District Attorney Chisholm by the doctrine stated in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), holding that state employees acting in their official capacity are not “persons” as that term is used in 42 U.S.C. § 1983.

3. To the extent that Defendant District Attorney Chisholm is being sued in his official capacity, this action is further barred by the Eleventh Amendment.

4. Defendant John District Attorney Chisholm has prosecutorial immunity for any conduct alleged in this matter.

5. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

WHEREFORE, Defendant District Attorney Chisholm respectfully asks the Court to DISMISS this cause of action brought pursuant to 42 U.S.C. § 1983 with respect to him, and to DENY all requests for relief with respect to him.

Dated this 10th day of May 2012.

J.B. VAN HOLLEN  
Attorney General

s/Christopher J. Blythe  
CHRISTOPHER J. BLYTHE  
Assistant Attorney General  
State Bar #1026147

Attorneys for Defendant, John Chisholm

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-0180