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ST-2022-CV-00338

TAMARA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

**RUSSELL EDOUARD STILLWATER
ROBINSON,**

Plaintiff,

vs.

**AUGUSTO REYES, V.I. CONSORTIUM
and ERNICE GILBERT, DAILY NEWS
PUBLISHING COMPANY, INC., and
ARCHIE NAHIGIAN**

Defendant.

Case No. ST-2022-CV-00338

Cite as 2026 VI Super 36

MEMORANDUM OPINION

¶1 **THIS MATTER**, is before the Court on Defendant Daily News Publishing Company and Defendant Archie Nahigian's (hereafter collectively "Daily News") Motion for Summary Judgment and Plaintiff Russell Edouard Stillwater Robinson's (hereafter "Plaintiff") [Motion] Seeking Rule 47 Entry of Default Judgment¹ against Defendant Augusto Reyes (hereafter "Reyes"), and Defendants V.I. Consortium and Ernice Gilbert (hereafter collectively "V.I. Consortium").

¶2 For the proceeding reasons, Daily News' Motion for Summary Judgment will be granted, Summary Judgment in favor of Defendants V.I Consortium will be granted, and Plaintiff's Affidavit Seeking Rule 47 Entry of Default Judgment will be denied.

BACKGROUND AND PROCEDURAL HISTORY

¶3 This matter was filed with the Court on October 17, 2022, by Plaintiff Russell Robinson who is seeking damages for defamation in the alleged forms of libel and slander against the above

¹ The Court notes Plaintiff's default judgment affidavit is more accurately characterized and labeled as a motion.

captioned Defendants.² The complaint contained three exhibits.³ Subsequently, this case was removed to the District Court of the Virgin Islands Division of St. Thomas and St. John (hereafter “District Court”) on November 10, 2022, by the United States of America, pursuant to 28 U.S.C. § 2679(d)(2), and in the removed action, the United States Attorney for the District of the Virgin Islands certified, pursuant to 28 C.F.R. § 15.4, that Defendant Reyes was acting within the scope of his employment with the Customs and Border Patrol (“CBP”) at the time of the alleged incident that gave rise to the complaint.⁴ In the removed action, The United States filed a motion seeking to dismiss any and all claims filed against it arguing that the District Court lacked subject matter jurisdiction.⁵ The District Court on April 20, 2023, found that the certification by United States Attorney Delia Smith that Reyes was acting with the scope of employment satisfies the requirements of 28 U.S.C. § 2679 for substitution.⁶ Accordingly, the District Court found that the United States was properly substituted as a defendant in the removed matter and that the case was properly removed to the District Court.⁷ Ultimately, the District Court found that it lacked subject matter jurisdiction over Plaintiff’s claims against the Government because Plaintiff failed to exhaust his administrative remedies under the Federal Tort Claim Act (“FTCA”) and any such claim for libel or slander is explicitly barred under the FTCA pursuant to 28 U.S.C. § 2680(h).⁸ Accordingly, pursuant to 28 U.S.C. § 1447(c), the District Court in an April 20, 2023 Order stated:

² See Pl.’s Compl. ¶¶ 16-20.

³ Pl’s Ex. A, Virgin Islans Consortium Article titled “Federal Agents Seize Aircraft in St. Thomas Suspected to be Used For Smuggling Operations;” Pl’s Ex. B, Emails from Russell Robinson to archie@dailynews.vi; and Pl’s Ex. C, The Virgin Islands Daily News Article titled “Accused cocaine trafficker disputes feds account on seizure of his plane.”

⁴ See *Robinson v. United States et al*, No. 3:22-cv-0069-RAM-Rm, Remand Order at 1-2.

⁵ *Id.* at 1.

⁶ *Id.* at 3.

⁷ *Id.*

⁸ *Id.* at 3-4.

ORDERED that the Government's motion to dismiss for lack of subject matter jurisdiction, ECF No.9, is **GRANTED**; it is further

ORDERED that all claims filed in this matter against the United States are **DISMISSED**; it is further

ORDERED that all remaining claims are **REMANDED** to the Superior Court of the Virgin Islands; it is further

ORDERED that the Clerk of Court **SHALL** mail a certified copy of this Order to the clerk of the Superior Court of the Virgin Islands Division of St. Thomas and St. John, pursuant to 28 U.S.C. § 1447(c); and it is further

ORDERED that all pending motions in this matter **SHALL** be **ADMINISTRATIVELY DISMISSED**; it is further

ORDERED that the Clerk's Office shall **CLOSE** this case.⁹

¶4 Four days after the District Court's Remand Order, Plaintiff filed a Motion Seeking Rule 47 Entry of Default Judgment against Reyes, and the VI Consortium for failing to defend or respond to the original matter filed in this Court. Upon return to the Superior Court of the Virgin Islands, the District Court's Remand Order was forwarded to the Judge's Chambers on May 8, 2023.

¶5 On December 2, 2023, Daily News submitted their Motion for Summary Judgment in which they argued:

the challenged News Article was not defamatory and that, in the context of his personal history and current circumstances, Robinson's reputation was not damaged by The Daily News. Further, if this court makes the determination that the News Article is defamatory and damaging to Robinson, it must also conclude that its publication is protected under the Fair Report Privilege and cannot be the basis for an award of damages. Therefore, this matter must be summarily dismissed.¹⁰

⁹ *Id.* at 4.

¹⁰ Def's Mot. for Summ. J. at 13.

Daily News Attached five exhibits to their Motion for Summary Judgment.¹¹ Plaintiff submitted his Motion Opposing Summary Judgment on December 28, 2023, arguing that:

the Daily News' Summary Judgment motion due to the fact issues of genuine material facts are in dispute and the printed articles are demonstrably false at its very core, and was printed only to be scandalous and infame the public passions against Robinson.¹²

¶6 On April 16, 2024, Daily News filed a Notice to the Court where they informed the Court that Plaintiff's Opposition was neither distributed to the Daily News through the ECF/CM System nor otherwise sent by the Court to the Daily News.¹³ On May 11, 2024, the Daily News submitted their Reply to Plaintiff's Opposition to Motion for Summary Judgment which largely restated the arguments made in their original Motion for Summary Judgment.¹⁴ Although, they also informed the Court that:

Given the passage of time, certain events have intervened that have clarified matters that had not yet been fully resolved on March 10, 2022, when the Press Release was issued. Notable among these is the jury verdict adjudicating Robinson to be a criminal conspirator and a trafficker of hundreds of pounds of cocaine. The second is that on February 5, 2024, a Judgment was issued in the Forfeiture Action see: Dkt. 66, finding that Robinson improperly and unlawfully operated his aircraft and ordering its seizure and sale by the United States.¹⁵

¹¹ Def's Ex. A, The challenged March 15, 2022 News Article from The Daily News bearing the headline "Accused cocaine trafficker disputes feds account on seizure of his plane;" Def's Ex. B, The March 8, 2022 Press Release issued by Department of Homeland Security, U.S. Customs and Border Protection; Def's Ex. C, Robinson's (undated) email to Nahigian; Def's Ex. D, Joseph A. Pittaluga's Affidavit in Support of Criminal Complaint in *USA v. Robinson*; Def's Ex E, . Robinson's March 11, 2022 "Judicial Notice Motion Pointing Out Fabrications Released to Press By DHS CPB, to Create Pre Trial Prejudicial Fabricated Information to Potential Juror Pool Warranting Dismissal of Case as Sanction."

¹² Pl's Opp'n to Def's Mot for Summ. J. at 5.

¹³ Def's Notice to the Ct. at 2.

¹⁴ See generally Def's Reply in Supp. Of Mot. For Summ. J.

¹⁵ *Id.* at 3.

FINDINGS OF FACT

1. It is undisputed that on or about November 29, 2021, Plaintiff was arrested by Federal Agents in St. Thomas, V.I., and charged first by Criminal Complaint, then indictment in Federal Court in St. Thomas, V.I. in the case captioned as *United States v. Robinson, et al.*, Case No. 3:21-cr-00027 (RAM)(RM).¹⁶
2. It is undisputed that on March 8, 2022, Reyes seized Plaintiff's Corporate Registered Aircraft, N37CK while it was parked at Cyril E. King Airport, North Ramp General Aviation Parking Area.¹⁷
3. It is disputed as to whether this seizure occurred without probable cause or valid reasons.¹⁸
4. It is undisputed that shortly after the seizure, the Department of Homeland Security issued the CBP Press release that discussed the seizure.¹⁹
5. It is disputed as to whether or not the CBP Press Release was knowingly manufactured to defame Plaintiff.²⁰
6. It is undisputed that VI Consortium sent out a news alert about the CBP Press Release.²¹
7. It is undisputed that Plaintiff, after becoming aware of the Press Release, emailed Defendant Archie Nahigian to dispute the CBP Press Release.²²
8. It is undisputed that Plaintiff included multiple phone numbers in his email to Defendant Nahigian.²³

¹⁶ Pl's Compl. ¶ 2; Def's Mot. for Summ. J at 6.

¹⁷ Pl's Compl. ¶ 3; Def's Ex. B.

¹⁸ Pl's Compl. ¶ 3; Def's Mot. for Summ. J at 7-8.

¹⁹ Pl's Compl. ¶ 4; Def's Ex. B.

²⁰ Pl's Compl. ¶ 4; Def's Mot. for Summ. J at 8-9

²¹ Pl's Ex A; Under V.I.R. Civ. P 56(e)(2), the court may consider a fact undisputed for purposes of the motion if a party fails to properly support or address the fact.

²² Pl's Ex. B; Def's Ex. C

²³ *Id.*

9. It is undisputed that On November 30, 2021, Joseph A. Pittaluga, a Special Agent of the Drug Enforcement Administration (“DEA”), filed an Affidavit in Support of Criminal Complaint in *USA v. Robinson* (Dkt. 1-1).²⁴
10. It is undisputed that on March 11, 2022, Plaintiff filed a pleading in his criminal proceeding entitled “Judicial Notice Motion Pointing Out Fabrications Released to Press By DHS CPB, to Create Pre-Trial Prejudicial Fabricated Information To Potential Juror Pool Warranting Dismissal of Case as Sanction[.]” (Dkt. 67).²⁵
11. It is undisputed that Plaintiff references the CBP Press Release in his Motion.²⁶
12. It is undisputed that on March 15, 2022, Daily News published an article titled “Accused cocaine trafficker disputes feds accounts on seizure of his plane[.]”²⁷
13. It is undisputed that Plaintiff was not given an opportunity to speak with the Daily News prior to the release of the Daily News Article.²⁸
14. It is disputed as to what date Plaintiff contacted Daily News via email to call into question the CBP Press Release.²⁹
15. It is undisputed that Daily News referenced the CBP Press Release in the Daily News Article.³⁰

²⁴ Def’s Ex. D; Plaintiff did not address this so pursuant to V.I.R. Civ. P 56(e)(2), the Court will consider this fact undisputed.

²⁵ Def’s Ex. E; Plaintiff did not address this so pursuant to V.I.R. Civ. P 56(e)(2), the Court will consider this fact undisputed.

²⁶ Def’s Ex. E; Plaintiff did not address this so pursuant to V.I.R. Civ. P 56(e)(2), the Court will consider this fact undisputed.

²⁷ Pl’s Compl. ¶ 8; Def’s Ex. A.

²⁸ Pl’s Compl. ¶ 7; Def’s Mot. for Summ J. at 3 (Defendants admit that they had Plaintiff’s contact information and do not properly contest Plaintiff’s assertion that he was never spoken to).

²⁹ Pl’s Compl. ¶ 6; Def’s Ex. C (Daily News refer to the emails as “undated” in its title of the Exhibit, so the Court will take this as Defendant denying that the emails necessarily preceded the publishing of the Daily News Article.).

³⁰ Pl’s Ex. C; Def’s Ex. A.

16. It is disputed as to whether the Daily News Article included value judgments that furthered the intent and Purposes of Reyes in obstructing justice in violation of Plaintiff's rights pursuant to the Due Process Clause.³¹
17. It is disputed as to whether inclusion of the CBP Press Release in the Daily News Article amounts to defamation of Plaintiff.³²
18. It is undisputed that the Daily News Article included the title of Plaintiff's Motion in Federal Court and quotes from said Motion.³³
19. It is undisputed that the Daily News Article references Joseph A. Pittaluga's Affidavit in Support of Criminal Complaint in *USA v. Robinson* (Dkt. 1-1)³⁴
20. It is undisputed that the Daily News Article referenced Plaintiff's past criminal history.³⁵
21. The included past criminal history of Plaintiff is undisputed.³⁶

LEGAL STANDARDS

I. Summary Judgment Legal Standard

¶7 Summary Judgment is governed by Rule 56 of the Virgin Islands Rules of Civil Procedure, which states, in pertinent part:

A party may move for summary judgment, identifying each claim or defense or the part of each claim or defense on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

³¹ Pl's Compl. ¶ 3; *See generally* Def's Mot. for Summ. J.

³² *See Generally* P's Compl; *See Generally* Def's Mot. for Summ. J.

³³ Pl's Ex. C; Def's Ex. A & E

³⁴ Pl's Ex. C; Def's Ex. A

³⁵ *Id.*

³⁶ Pl's Mot. for Summ. J. at 8; Plaintiff did not address this so pursuant to V.I.R. Civ. P 56(e)(2), the Court will consider this fact undisputed.

V.I. R. Civ. P. 56(a).

¶8 The Virgin Islands Supreme Court has held that summary judgment is appropriate when after “considering all of the evidence, accepting the nonmoving party’s evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party.” *Antilles School, Inc. v. Lembach*, 64 V.I. 400, 409 (V.I. 2016). The moving party bears the burden of demonstrating that there is no genuine issue of material fact, but this burden may be discharged by showing the court “that there is an absence of evidence to support the nonmoving party’s case.” *Basic Services, Inc. v. Gov’t of the Virgin Islands*, 71 V.I. 652, 658 (V.I. 2019) (internal citations omitted). The burden then shifts to the nonmoving party to show “specific facts showing a genuine issue for trial.” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008) (internal citations omitted). The nonmoving party must present “‘affirmative evidence’ from which a jury might reasonably return a verdict in his favor.” *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013). The nonmoving party cannot rest on mere allegations and must present actual evidence showing a genuine issue for trial. *See Kennedy Funding Inc. v. GB Props., Ltd.*, 73 V.I. 425, 431 (V.I. 2020).

II. Defamation Legal Standard

¶9 In *Kendall v. Daily News Pub. Co.*, the Virgin Islands Supreme Court referenced the Restatement (Second) of Torts and set out the requirements for making out a successful claim of defamation:

“In the Virgin Islands, a claim of defamation requires: “(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” Restatement (Second) of Torts §

558. *See McDowell v. Paiewonsky*, 769 F.2d 942, 945–46 (3d Cir. 1985).

55 V.I. 781 (V.I. 2011), *aff'd*, 716 F.3d 82 (3d Cir. 2013).

¶10 In regard to factor (a), a statement or communication is only defamatory if “it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Joseph v. Daily News Publ'g Co., Inc.*, 57 V.I. 566, 586 (V.I. 2012) (*quoting* Restatement (Second) of Torts § 559). However, under both the First Amendment and Virgin Islands law, only statements that are provable as false are actionable. *Simpson v. Andrew L. Capdeville, P.C.*, 64 V.I. 477, 487 (V.I. 2016) (citation and internal quotation marks omitted).

DISCUSSION

I. The Daily News’ Motion for Summary Judgment is Granted

A. Plaintiff’s Defamation Claim Fails Under the First Amendment and Because No Reasonable Jury Could Find the Daily News Article Defamatory

¶11 In this case, the dispute centers around Plaintiff’s allegation that Daily News published a defamatory article in or around March 15, 2022, titled “Accused cocaine trafficker disputes feds accounts on seizure of his plane.”³⁷ Plaintiff claims that the article included a defamatory press release from DHS CBP CAMB.³⁸ Additionally, Plaintiff complains that the article added “baseless value Judgments[.]”³⁹

¶12 As an initial matter, any “baseless value judgments” without more cannot be grounds for a claim of defamation as opinion and subjective judgment are not grounds for defamation claims.

³⁷ *See* Pl.’s Compl. ¶ 8, 17; Def’s Ex A.

³⁸ *See* Pl.’s Compl. ¶ 8, 17.

³⁹ *Id.* at ¶ 9, 17.

Kendall, 55 V.I. at 796-97 (noting that under the First Amendment there is no such thing as a false idea and as such opinion or hyperbole are constitutionally protected).

¶13 The Daily News Article in question begins by pointing out that a man charged with trafficking 462 pounds of cocaine is accusing the Government of releasing false statements about his seized airplane.⁴⁰ The Daily News Article's mention of the charges against Plaintiff are demonstrably true.⁴¹ Further, the Daily News Article does not imply guilt beyond what Plaintiff has been charged with. Therefore, this portion of the article cannot be construed as defamatory.

¶14 The Daily News Article also references Plaintiff's previous criminal history involving drug trafficking.⁴² However, this criminal history is demonstrably true and even Plaintiff in his pleadings and motions has not contested the veracity of his previous criminal history.

¶15 The Daily News Article also referenced the facts of the underlying case based on the Affidavit In Support of Criminal Complaint from Plaintiff's November 29, 2022, arrest.⁴³ It is true that the affidavit does refer to Plaintiff as a "known cocaine trafficker[.]"⁴⁴ However, as discussed, the veracity of Plaintiff's previous charges cannot be credibly disputed. Therefore, these portions of the Daily News Article cannot be construed as false. Accordingly, these portions cannot be construed as defamatory.

¶16 The Daily News Article cites Plaintiff's filed public document titled "Judicial Notice Motion Pointing out Fabrications Released to the Press by DHS CBP, to Create Pre-Trial Prejudicial Fabricated Information to Potential Juror Pool Warranting Dismissal of Case as a

⁴⁰ Def's Ex. A.

⁴¹ See *USA v. Robinson, et. al.*, Case No 3:21-CR-00027 RAM-RM.

⁴² Def's Ex. A.

⁴³ *Id.*

⁴⁴ Def's Ex. D. ¶ 15.

Sanction.”⁴⁵ This public document was filed by Plaintiff and the veracity of it is not in question.⁴⁶ The Daily News clearly cannot be held liable for defamation for the inclusion of Plaintiff’s own document in its article.

¶17 The crux of the Daily News Article is related to Plaintiff’s dispute with the CBP Press Release. Plaintiff addressed his issues with the CBP Press Release in his publicly filed document.⁴⁷ The Daily News Article, in order to give context to Plaintiff’s dispute, reasonably was required to also cite the CBP Press release as to give readers context to Plaintiff’s dispute. Plaintiff contends that the reposting of the CBP Press release’s language about agents seizing an aircraft that was “suspected of having been used for smuggling events” is defamatory because the underlying CBP Press Release is false and defamatory. It is important to note that the Daily News Article in fairness also pointed out that “[t]he Press release includes a photo of the plane, but does not name any suspects connected with it and makes reference only to “an arrest conducted in the fall of 2021.”⁴⁸ Further, the Daily News Article even went out of its way to poke holes in allegations made in the CBP Press Release. It seems the point of the Daily News Article was to give readers insight into Plaintiff’s dispute with the CBP Press release which requires context. So, the Daily News Article, on its face, does not include defamatory content about Plaintiff. However, Plaintiff’s contention is that merely discussing a potentially false and defamatory article is defamation by the Daily News. The Court is not particularly sympathetic to the reaching that is required to entertain Plaintiff’s argument. As such, when a news organization reports a defamation claim, a false statement will almost surely be reported on as to give context to the claim being discussed. Therefore, news

⁴⁵ Def’s Ex. A.

⁴⁶ Def’s Ex. E.

⁴⁷ *Id.*

⁴⁸ Def’s Ex. A

organizations, if they want to thoroughly discuss the claims and put them in context will have to repeat the alleged falsehood. If Plaintiff's argument were to be accepted, then the news or individuals posting news would never be able to discuss allegations or contentions of others without potentially facing liability. This would result in a chilling effect on protected First Amendment activities. *See The Florida Star v. B.J.F.*, 491 U.S. 524, 538–39 (1989) (finding that imposing civil damages on a news organization for the routine reporting technique of relying on and reproducing a government press release would result in self-censorship; a violation of the First Amendment of the United States Constitution); *see also Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1299 (D.C. Cir. 1988) (a news organization's fair and accurate report on a libel lawsuit which by its very nature involves alleged defamatory material is a matter of public concern which is protected by both common law privileges and the First Amendment).

¶18 Accordingly, Plaintiff's defamation claim is inoperable under the First Amendment of the United States Constitution. Further, in any event, it is the Court's view that no reasonable jury could find the Daily News Article and its mere discussion of the CBP Press Release in the context of discussing Plaintiff's own self-proclaimed dissatisfaction with the CBP Press Release defamatory.

B. The Court Adopts the Fair Report Privilege Which Further Entitles the Daily News to Summary Judgment

¶19 However, assuming *arguendo* that the Court did view Plaintiff's argument favorably, the Daily News would still be protected by the fair report privilege. The Court in the interest of thoroughness will address this issue.

¶20 The fair report privilege is a common law rule, included in the Restatement (Second) of Torts §611 (1977). The fair report privilege is defined as follows:

The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported.

¶21 The fair report privilege has not yet been addressed by Virgin Islands courts posts *Banks*.

A *Banks* Analysis requires that:

in addressing issues of Virgin Islands common law, this Court—and courts addressing issues of Virgin Islands common law that this Court has yet to address—must engage in a three-factor [*Banks*] analysis: first examining which common law rule Virgin Islands courts have applied in the past; next identifying the rule adopted by a majority of courts of other jurisdictions; and then finally—but most importantly—determining which common law rule is soundest for the Virgin Islands.

Better Bldg. Maint. of the Virgin Islands, Inc. v. Lee, 60 V.I. 740, 757 (V.I. 2014) (internal citations omitted).

i. Common Law Rule Applied by Virgin Island Courts in the Past

¶22 The Virgin Islands has very limited case law dealing with the fair report privilege. However, the Superior Court in *Kendall v. Daily News Pub. Co.*, did utilize the privilege as one of the reasons to bar the defamation claim in that matter. 53 V.I. 250, 264 (V.I. Super. 2010).

ii. Majority Rule Adopted By a Majority of Courts of Other Jurisdictions

¶23 In 2010, our sister state within the Third Circuit, New Jersey, when discussing the fair report privilege noted that at least 47 states and the District of Columbia have recognized the fair report privilege. *Salzano v. N. Jersey Media Group Inc.*, 993 A.2d 778, 787 n.2 (N.J. 2010) (listing state statutes and decisions recognizing the fair and accurate reporting privilege). Clearly, adoption of the fair report privilege is the majority rule.

¶24 In this case, the alleged origin of the defamation sits multiple layers down. As the alleged defamation comes from a Daily News Article, that is referencing Plaintiff's own publicly available document filed in a court proceeding that references the CBP Press Release, and to give context to Plaintiff's issues with the CBP Press Release, the Daily News Article also references the CBP Press Release. Clearly, as a matter of reason, and under the fair report privilege the fair and accurate discussion of Plaintiff's publicly filed document in a court proceeding cannot be the source of a defamation claim. Further, as a matter of reason, the Daily News cannot be held liable for fairly and accurately referencing the same CBP Press Release that Plaintiff references in his own publicly filed court document. Therefore, the Court could restrain its analysis to the fair report privilege generally.

¶25 Nonetheless, in the interest of thoroughness and for the *Banks* analysis, the Court will address the sub issue of whether reports or press releases are covered by the fair report privilege.

¶26 Recently, in *Larson v. Gannet Co., Inc.*, the Minnesota Supreme Court, recognized that the fair report privilege includes press releases and press conferences, and noted that they were far from the outlier in recognizing that the fair report privilege includes press releases. 940 N.W.2d 120, 138 (Minn. 2020). The Minnesota Supreme Court is correct as a variety of other jurisdictions have recognized that press releases are included in the fair report privilege. *See Fairbanks Pub. Co. v. Francisco*, 390 P.2d 784, 793 (Alaska 1964) (recognizing that the publishing of a report by a government official is protected as it is in the public interest to know what takes place in public affairs); *Huszar v. Gross*, 468 So. 2d 512, 516 (Fla. Dist. Ct. App. 1985) (applying the privilege to a news article that published the remarks of a government attorney relating to a prosecution and possible further action); *Minton v. Thomson Newspapers, Inc.*, 333 S.E.2d 913, 915-16 (Ga. Ct. App. 1985) (finding that "statements or reports made in good faith taken from and pursuant to

judicial records or reports made by police pursuant to investigation of a crime are made in the performance of a public duty and are privileged.” (internal citations omitted)); *Wright v. Grove Sun Newspaper Co.*, 873 P.2d 983, 985, 988 (Okla. 1994) (concluding that a press conference held by a district attorney to distribute information about a drug investigation was “official because [it] concern[s] the investigative function of the office.”); *Thomas v. Tel. Publ'g Co.*, 929 A.2d 993, 1010 (N.H. 2007) (noting that “[t]he privilege also protects reports that meet the accuracy requirements . . . and are based upon press conferences, interviews with a police chief, or other types of official “conversations.” (internal citations omitted)); *Steer v. Lexleon, Inc.*, 472 A.2d 1021, 1024 (Md. App. 1984) (acknowledging that in Maryland Newspapers are privileged to publish reports of arrests, charges, and other matters involving the violation of the law); *Francois v. Capital City Press*, 166 So. 2d 84, 89 (La. Ct. App. 1964) (noting that newspapers may report on individuals arrested provided that the information does not assume guilt); *Gist v. Macon Cnty. Sheriff's Dept.*, 671 N.E.2d 1154, 1161 (Ill. App. Ct. 1996) (finding that the fair report privilege applies to fair and accurate report of one’s fugitive status); *Yohe v. Nugent*, 321 F.3d 35, 45 (1st Cir. 2003) (applying Massachusetts law to find that the statement of a police chief to a newspaper concerning the arrest of a domestic violence suspect was protected by the fair report privilege); *Lee v. TMZ Prods. Inc.*, 710 Fed. Appx. 551, 558–59 (3d Cir. 2017) (applying New Jersey's version of the privilege to news reports based on a press conference and news release of the New York Attorney General).

¶27 The Court could not locate any cases that outright completely deny press releases as falling within the fair report privilege. The dissent in *Larson*, argued against the inclusion of press release as protected by the fair report privilege because the dissent believed the majority did not properly weigh the right of private citizens to rebut the injuries to their reputational interests. 940 N.W.2d

at 154–55 (Anderson, J., dissenting). The dissent in *Larson* believed the privilege extending that broadly was not in the public interest and would go too far in extinguishing the only protection private individuals could invoke to protect their reputation. *Id.* at 155. Additionally, the dissent in *Wright*, disagreed with the majority’s inclusion of press conferences and releases within the protection of the fair reporting privilege. 873 P.2d at 999 (Summers, J., dissenting). The dissent to support their proposition, cited *Kelley v. Hearst Corp.*, 157 N.Y.S.2d 498, 502 (N.Y App. Div. 1956), for the proposition that “mere investigations and suspicions of police officers are not “official proceedings” so as to be privileged.” *Id.* However, more recently, in *Fine v. ESPN, Inc.*, the United States District Court, Northern District of New York, called *Kelley* into doubt when it found *Kelley* and other “decisions run contrary to substantial recent authority applying the broad “official empowerment” test and deeming a variety of investigations official proceedings.”11 F. Supp. 3d 209, 215 n.4 (N.D.N.Y. 2014).

iii. The Soundest Rule for the Virgin Islands

¶28 As shown by factor one, there is limited case law concerning the fair report privilege in the Virgin Islands. However, *Kendall* does support the proposition that the fair report privilege should apply.

¶29 Factor two, shows that the majority of jurisdictions follow the fair report privilege and that many of the jurisdictions that have had to confront the issue of whether the fair report privilege includes press releases have found that press releases from law enforcement, if related to an official proceeding, do apply.

¶30 These two factors, while not determinative of whether the fair report privilege is the soundest rule for the Virgin Islands, do weigh in favor of the fair report privilege being the soundest rule for Virgin Islands. Virgin Islands precedent confirms that earlier courts found the rule sound.

Further, factor two shows that the rule has sustainability in a variety of different jurisdictions and despite its unique identity, the Virgin Islands should not become a legal outlier without compelling justification.

¶31 But most importantly, are the principles that underlie the fair report privilege and how those will impact the citizens of the Virgin Islands. The Court will take a further look at those principles below.

¶32 As the Superior Court of the Virgin Islands described in *Kendall*, “the “fair report privilege” is provided as a means to protect the public's interest in having information made available to it about what occurs in government proceedings, including judicial proceedings, because access to such information is considered central to the public's ability to hold their government officials accountable.” *Kendall*, 53 V.I. at 264 (citing RESTATEMENT § 611 cmt.a) The “public requires not merely discussion, but information.” *Id.* at 264 (internal citations omitted).

¶33 The fair report privilege provides many benefits to the public. One such function is the supervisory function. This function will allow citizens of the Virgin Islands to exercise their First Amendment rights without self-censorship. This in turn will allow the public to have more information as it relates to matters of public concern. With this information the public may scrutinize matters of public concern. As the Third Circuit recognized “public scrutiny of the proceedings and records of criminal investigatory agencies may often have the equally salutary effect of fostering among those who enforce the laws “the sense of public responsibility.” *Medico v. Time, Inc.*, 643 F.2d 134, 141 (3d Cir. 1981). The press’ republication of government affairs provides the public with a shortcut to understand and scrutinize the conduct of government issues. As the Supreme Court has stated, “in a society in which each individual has but limited time and

resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring him in convenient form the facts of those operations.” *Larson*, 940 N.W.2d at 134 (quoting *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491 (1975)).

¶34 Accordingly, the Court finds that the fair report privilege applies to press releases. The Restatement (Second) of Torts definition of the fair report privilege, in part, includes “[t]he publication of defamatory matters concerning another in a report of an official action or proceeding[.]” The Supreme Court of the United States in *Barr v. Matteo* found that the issuance of press release by government officials can be construed as official actions. 360 U.S. 564, 574-75 (1959); see also *Yohe v. Nugent*, 321 F.3d 35, 43 (1st Cir. 2003); *Larson*, 940 N.W.2d at 120 (“Although not every statement made by a law enforcement officer to the press is an official action, the statements made here during a planned, formal press conference, to convey information about an ongoing criminal investigation, were official actions that were part of an official proceeding and subject to the privilege.” (citing Restatement (Second) of Torts § 611 cmt. d)). Press releases protection under the fair report privilege serves the same public good as previously discussed generally regarding the fair report privilege. “The media’s reports about the conduct of the law enforcement agencies in investigating a matter of public concern promote key values of transparency and accountability.” *Larson*, 940 N.W.2d at 134. The Public’s ability to be privy to the conduct of government officials and to exercise their First Amendment rights clearly outweighs the burden that this rule imposes on a person’s ability to protect their reputational credibility. This is because the fair report privilege still requires that the report be fair and accurate. Further, the privilege will only apply to public proceedings or official actions of the government that have been made public, and they will generally not apply to non-official one on one conversations. See *Burke v. Sparta Newspapers, Inc.*, 592 S.W.3d 116, 123-24 (Tenn. 2019).

¶35 For the foregoing reasons, the Court finds that adoption of the fair report privilege is the soundest rule for the Virgin Islands. This rule states that: "[t]he publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported." This privilege can be overcome if the report is not fair or accurate.

¶36 In this case, the fair report privilege would apply as the Daily News Article discusses the Plaintiff's own publicly filed document in a court proceeding which references the CBP Press Release. A news organization cannot be held liable as a matter of reason, and under the fair report privilege for fairly and accurately discussing Plaintiff's own publicly filed court document that includes alleged defamatory content. Further, the Daily News cannot, as a matter of reason, be held liable for referencing essentially the same defamatory content that Plaintiff mentioned. Moreover, even if the Daily News could be held liable for referencing the same CBP Press Release that Plaintiff mentioned, this too is privileged under the fair report privilege as the press release can be characterized as an official action or a report of an official proceeding.

II. Plaintiff's Motion Seeking Rule 47 Entry of Default Judgment is Denied

A. Plaintiff's Claims Against V.I. Consortium Fail for Substantially Similar Reasons That the Claims Against Daily News Fail

¶37 Plaintiff's claims against V.I. Consortium arise out of the same set of facts and circumstances. V.I. Consortium are alleged to have sent out a News alert related to the CBP Press Release from the V.I. Consortium's mobile application. V.I. Consortium have not responded to this matter. However, Pursuant to Virgin Islands Rules of Civil Procedure 56(f), a court may *sua sponte* grant summary judgment if the opposing party had an opportunity to argue the validity of

its claims. However, “[t]he opportunity to respond may be provided by a single defendant who raises a defense applicable to multiple defendants.” *Hartford Cas. Ins. Co. v. Am. Recycling Sys., Inc.*, 2010 WL 3420046, at *4 n.2 (E.D. Pa. Aug. 25, 2010) (citing *Giles v. Volvo Trucks N. Amer., Inc.*, 2010 WL 3420046, at *4 n.2 (E.D. Pa. Aug. 25, 2010); *Coggins v. Carpenter*, 468 F.Supp. 270, 279 (E.D. Pa.1979)). Here, the defenses raised in Daily News’ Motion for Summary Judgment before the Court are equally applicable to V.I. Consortium. Accordingly, summary judgment in favor of V.I. Consortium is appropriate, and Plaintiff’s Motion Seeking Rule 47 Entry of Default Judgment is denied in relevant part.

B. Plaintiff’s Claims Against Reyes Fail Because Sovereign Immunity Bars Said Claims

¶38 The District Court has already ruled that Reyes is an agent of the United States, that the United States was a properly substituted party, and that any such claim for libel or slander against the United States is explicitly barred under the FTCA pursuant to 28 U.S.C. § 2680(h). Congress, in adding in 2680(h), decided to not waive immunity for intentional torts. *Vanderklok v. United States*, 868 F.3d 189, 202 (2017). Sovereign immunity is a substantive defense that travels with the United States regardless of which court hears the case. *See Alden v. Maine*, 527 U.S. 706, 749 (1999) (“It is unquestioned that the Federal Government retains its own immunity from suit not only in state tribunals but also in its own courts.”). Further, the district courts have exclusive jurisdiction over civil property damage, personal injury, or wrongful death claims against the United States caused by negligent or wrongful acts of federal employees acting within their official scope. *See* 28 U.S.C. § 1346. Accordingly, the claims against Reyes are barred by sovereign immunity, and Plaintiff’s Motion seeking Rule 47 Entry of Default Judgment is denied in relevant part.

CONCLUSION

¶39 In sum, summary judgment is granted in favor of Daily News for three reasons: 1) based on the evidence before the Court, no reasonable jury could find the Daily News Article and its mere discussion of the CBP Press Release in the context of discussing Plaintiff's own self-proclaimed dissatisfaction with the CBP Press Release that was filed in a publicly available court document to be defamatory; 2) Pursuant to the First Amendment and *The Florida Star* the claim is barred by First Amendment; and 3) pursuant to the fair report privilege the republication of Plaintiff's own publicly filed court document and the republication of the CBP Press Release are privileged. Similarly, summary judgment will also be granted in favor of V.I. Consortium. Further, for substantially similar reasons as articulated by the District Court, claims against Reyes as an agent of the United States are barred by the United States' continued sovereign immunity. Accordingly, Plaintiff's Motion Seeking Rule 47 Entry of Default Judgment is denied.

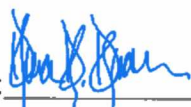
¶40 An appropriate Order will follow.

DATED: August 10, 2026



Hon. PEDRO K. WILLIAMS
Judge of the Superior Court of the Virgin Islands

ATTEST:
TAMARA CHARLES
Clerk of the Court

BY: 

DONNA D. DONOVAN
COURT CLERK SUPERVISOR 08 /12 /2026

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