

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410-JAR
)	
County of Saint Louis, Missouri,)	
)	
City of Ferguson, Missouri, and)	
)	
Ronald K. Replogle, in his official capacity)	
as Superintendent of the Missouri Highway)	
Patrol,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

INTRODUCTION

1. This is civil rights action filed by Mustafa Hussein, an individual who has recorded the interactions of the police and demonstrators on public streets and sidewalks within the City of Ferguson and who would like to do so in the future. He brings suit pursuant to 42 U.S.C. § 1983 to challenge Defendants’ policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement.

2. There are a large number of demonstrators who have taken to the public streets and sidewalks of Ferguson, Missouri, to express their opinions about how local law enforcement officials conduct themselves. Defendants have responded by enforcing policies that result in the confrontation of peaceful protesters with a highly militarized police force. There is great public interest in Defendants’ response to demonstrators, and Plaintiff, like many other journalists, has

gone to Ferguson, and will continue to go to Ferguson, to observe and record so that his observations and documentation of the events unfolding can be shared with the world.

3. Plaintiff asks this court to enjoin the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement, declare that the policy or custom on its face and as-applied violates Plaintiff's constitutional rights, and award nominal damages.

JURISDICTION AND VENUE

4. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiff's civil action arising under the Constitution of the United States.

5. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.

6. Venue lies in the United States District Court for the Eastern District of Missouri because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the County of Saint Louis, Missouri. 28 U.S.C. § 1391(b)(2).

7. Divisional venue is in the Eastern Division because the events leading to the claim for relief arose in the County of Saint Louis and Defendants County of St. Louis and City of Ferguson are located in the County of Saint Louis, Missouri. E.D. Mo. L.R. 2.07(A)(1), (B)(2).

PARTIES

8. Plaintiff, Mustafa Hussein, resides in Missouri.

9. Defendant County of Saint Louis, Missouri, is a political subdivision of the State of Missouri that has participated in directing law enforcement officers' confrontation of members of the media, demonstrators, and protesters in Ferguson and will do so in the future.

10. Defendant City of Ferguson, Missouri, is a political subdivision of the State of Missouri that has participated in directing law enforcement officers' confrontation of members of the media, demonstrators, and protesters in Ferguson and will do so in the future.

11. Defendant Ronald K. Replogle is sued in his official capacity as Superintendent of the Missouri State Highway Patrol. The Missouri State Highway Patrol is an agency of the State of Missouri that has participated in directing law enforcement officers' confrontation of members of the media, demonstrators, and protesters in Ferguson and will do so in the future.

12. All actions by Defendants, their officers, employees, or agents, described herein are taken under color of state law.

FACTS

13. On August 9, 2014, a police officer of the City of Ferguson's police department shot and killed Michael Brown, who was unarmed.

14. Many members of the community responded with anger toward the police.

15. As a result, there have been frequent demonstrations on the public streets and sidewalks of Ferguson.

16. At these demonstrations, protesters are voicing their opinions about such issues of public concern as the relationship between police and the community; the frequency with which police officers shoot unarmed black men; and the militarization of local police forces.

17. Defendants' response to the demonstrations has been controversial, including using force, ordering peaceful protesters to disband and evacuate the streets and sidewalks,

ordering members of the media to leave areas where protesters are gathered, and ordering members of the media, protesters, and observers to stop documenting and videotaping the demonstrations.

18. There is widespread interest in Defendants' policies and tactics, which raise questions about, among other things, whether a militarized response to the protests is consistent with the values of the United States.

19. In order to document what is occurring on the public streets and sidewalks of Ferguson, Plaintiff went to Ferguson beginning on August 13, 2014, to document and record what he could see and hear in order to share it with the world.

20. On August 13, 2014, over a speaker, police officials implementing Defendants' policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement ordered everyone on the street to stop recording.

21. Upon hearing the order, Plaintiff was required to choose between surrendering his First Amendment right to record the events unfolding on the street before him or risk arrest or serious bodily injury inflicted by law enforcement officials if he continued recording and exercising his First Amendment rights.

22. Plaintiff chose to continue recording, putting his liberty and physical safety at serious risk.

23. Plaintiff is aware that the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement has been enforced against other journalists and members of the public. Enforcement methods have included arresting and

threatening with arrest individuals who are photographing or recording at public places but who are not engaging in any unlawful activity, firing upon such individuals with teargas, seizing their recording and photography equipment, ordering individuals to keep moving at all times on public sidewalks, and forbidding their presence on public streets and sidewalks.

24. Plaintiff is aware that members of the public and media have been ordered by law enforcement officials to stop recording and have been subjected to threats and use of force by Defendants' officers that either limit or remove completely the ability to document events in Ferguson.

25. Plaintiff would like to continue to peacefully observe and record the protests and the interactions between the community members and law enforcement officials in the future; however, to do so he must risk the infliction of serious physical harm, arrest, and the loss of his property.

COUNT I
Violation of First and Fourteenth Amendments
to the United States Constitution

21. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if set forth here verbatim.

22. Defendants' policies or customs described herein chill reasonable persons from engaging in activity that is protected by the First Amendment to the United States Constitution, which is incorporated through the Fourteenth Amendment.

23. Defendants have deprived, and continue to deprive, Plaintiff of his rights under the First Amendment. Defendants' policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety

of others or physically interfering with law enforcement is the cause-in-fact of the constitutional violations.

24. Upon information and belief, unless restrained by this Court, Defendants will continue to enforce the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement.

COUNT II
Violation of Due Process Clause of
Fourteenth Amendment to the United States Constitution

30. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as if set forth here verbatim.

31. Plaintiff is aware of no law that permits Defendants' policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement.

32. The policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibited and authorizes and encourages arbitrary and discriminatory enforcement.

33. Enforcement of the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement is arbitrary.

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. Upon proper motion, issue a preliminary injunction prohibiting Defendants, their officers, employees, or agents, and those acting on their behalf or in concert with them from continuing the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement;
- B. Enter declaratory judgment, pursuant to 42 U.S.C. § 1983, that Defendants' policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement violates the Constitution;
- C. Enter a permanent injunction prohibiting Defendants, their officers, employees, or agents, and those acting on their behalf or in concert with them from continuing the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement;
- D. Award Plaintiff nominal damages;
- E. Award Plaintiff's costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 or any other applicable law; and
- F. Allow to Plaintiff such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert
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ATTORNEYS FOR PLAINTIFF

Certificate of Service

I certify that a copy of the forgoing was filed electronically with the United States District Court for the Eastern District of Missouri and made available to counsel of record on November 12, 2014.

/s/ Anthony E. Rothert