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18 Robert L. Rosebrock

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21 WESTERN DIVISION

22 ROBERT L. ROSEBROCK,  
23 Plaintiff,  
24 v.

25 MICHAEL PEREZ, an individual, JOEL  
26 HENDERSON, an individual, CHRISTIAN  
27 PEREZ, an individual, DOES 1-5,  
28 individuals, DAVID SHULKIN, in his  
official capacity, ANN BROWN, in her  
official capacity, and CHARLES LEAS, in  
his official capacity,  
Defendants.

Case No. 2:17-CV-04354

COMPLAINT  
FOR DAMAGES AND DECLARATORY  
AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

**JURISDICTION AND VENUE**

1. This action seeks damages and declaratory and injunctive relief under the First, Fourth,  
and Fifth Amendments to the Constitution of the United States against officers and officials of the

1 United States Department of Veterans' Affairs ("VA"). This Court has jurisdiction over Plaintiff's  
2 claims under 28 U.S.C. §§ 1331 and 1343(3) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and  
3 2202.

4 2. Venue is proper in the Central District of California under 28 U.S.C. § 1391(b) because a  
5 substantial part of the events or omissions giving rise to the claims herein occurred in this district.  
6

### 7 INTRODUCTION

8 3. Plaintiff has held regular protests on the public walkway at the Great Lawn Gate entrance  
9 to the Los Angeles National Veterans Park every (or nearly every) Sunday since March 9, 2008.

10 Plaintiff protests the VA's failure to make greater use of its West Los Angeles facility, known as the VA  
11 Greater Los Angeles Healthcare System ("VAGLAHS"), to care for and house veterans – particularly  
12 homeless veterans. The 388-acre parcel on which the VAGLAHS is located was donated to the United  
13 States in 1888 to provide a home for needy veterans, but the VA has allowed the parcel to be used for a  
14 variety of non-veteran related purposes, including a baseball stadium for the University of California,  
15 Los Angeles baseball team, athletic fields for a private preparatory school, and a City of Los Angeles  
16 dog park. Plaintiff's weekly protests also seek to honor all veterans and members of the United States  
17 military and promote proper respect for the American Flag. The protests are peaceful, respectful, non-  
18 intrusive, and limited in duration and manner. Plaintiff is often joined in his protests by other  
19 individuals, but their number rarely exceeds three or four.  
20

21 4. Plaintiff records his protests with a camera and uses the images in email updates he sends  
22 to an informal group of like-minded individuals and supporters, which he refers to as the "Old Veterans  
23 Guard." Plaintiff's email updates are an important part of his advocacy for homeless veterans and  
24 respect for the American Flag.  
25

26 5. Plaintiff has written opinion pieces about the VA, homeless veterans, and respect for the  
27 American Flag, and on occasion these opinion pieces have been published by others on the internet.  
28

1 They are also an important part of Plaintiff's advocacy.

2 6. Plaintiff has never been employed by a news media organization. He is not an  
3 independent contractor for any news media organization, has no training as a journalist, and has no  
4 media credentials. He has never been paid for working as a journalist. He does not consider himself to  
5 be a journalist or a member of the news media. Plaintiff's photography does not have a "news" purpose;  
6 it has an "advocacy" purpose.  
7

8 7. On June 12, 2016 and again on June 19, 2016, Plaintiff was arrested at the Great Lawn  
9 Gate for allegedly taking unauthorized photographs of VA police officers citing a fellow protestor for  
10 allegedly posting the American Flag on a VA fence. On both occasions, Plaintiff was alleged to have  
11 violated 38 C.F.R. § 1.218(a)(10), which provides, "Photographs for advertising or commercial purposes  
12 may be taken only with the written consent of the head of the facility or designee. Photographs for news  
13 purposes may be taken at entrances, lobbies, foyers, or in other places designated by the head of the  
14 facility or designee." On both occasions, Plaintiff was issued a citation and his cameras were seized.  
15 Violation of 38 C.F.R. § 1.218(a)(10) is a Class B misdemeanor and is punishable by a fine and up to six  
16 months imprisonment.  
17

18 8. Plaintiff brings this action for damages, a declaratory judgment, and injunctive relief  
19 against Defendants Michael Perez, Joel Henderson, and Christian Perez because these VA police  
20 officers lacked probable cause that Plaintiff had committed a crime and therefore violated Plaintiff's  
21 Fourth Amendment rights. Plaintiff also seeks damages, a declaratory judgment, and injunctive relief  
22 from Defendants Jane and John Doe Nos. 1-5 because, on information and belief, these currently  
23 unknown supervisory VA Police Officers ordered Defendants Michael Perez, Joel Henderson, and  
24 Christian Perez to cite Plaintiff for allegedly unauthorized photography, detain Plaintiff, and seize  
25 Plaintiff's cameras. In the alternative, Defendants Jane and John Doe Nos. 1-5 failed to properly train  
26 and supervise Defendants Michael Perez, Joel Henderson, and Christian Perez in the requirements of 38  
27  
28

1 C.F.R. § 1.218(a)(10), resulting in the violation of Plaintiff's Fourth Amendment rights. Plaintiff also  
2 brings an action for declaratory and injunctive relief against Defendants David Shulkin, Ann Brown, and  
3 Charles Leas, because the regulation on its face and as applied to Plaintiff violates the First and Fifth  
4 Amendments.

5  
6 **PARTIES**

7 9. Plaintiff is a 75-year old Vietnam-era veteran who resides in Los Angeles.

8 10. Defendant Michael Perez is an officer with the VA Police and, at all relevant times, was  
9 assigned to the VAGLAHS. Defendant Michael Perez is sued in his individual capacity, albeit for  
10 acting under color of federal law.

11 11. Defendant Joel Henderson is an officer with the VA Police and, at all relevant times, was  
12 assigned to the VAGLAHS. Defendant Henderson is being sued in his individual capacity, albeit for  
13 acting under color of federal law.

14 12. Defendant Christian Perez is an officer with the VA Police and, at all relevant times, was  
15 assigned to the VAGLAHS. Defendant Christian Perez is sued in his individual capacity, albeit for  
16 acting under color of federal law.

17 13. Defendants Jane and John Doe Nos. 1-5 are, on information and belief, supervisory  
18 and/or training officers with the VA Police and, at all relevant times, were assigned to the VAGLAHS.  
19 Defendants Jane and John Doe Nos. 1-5 are sued in their individual capacities, albeit for acting under  
20 color of federal law.

21 14. Defendant David Shulkin is the Secretary of the VA. In this capacity, Defendant Shulkin  
22 oversees the policies and programs of the VA nationwide and is responsible for promulgation and  
23 enforcement of VA regulations nationwide, including at the VAGLAHS. He is sued in his official  
24 capacity only.

25 15. Defendant Ann Brown is the Director of the VAGLAHS. In this capacity, Defendant  
26  
27  
28

1 Brown oversees the policies and programs of the VAGLAHS and the enforcement of VA regulations at  
2 the VAGLAHS. She is sued in her official capacity only.

3 16. Defendant Charles Leas is the Chief of the VA Police at the VAGLAHS. In this  
4 capacity, Defendant Leas oversees police activity on the VAGLAHS property. He is sued in his official  
5 capacity only.  
6

## 7 STATEMENT OF FACTS

### 8 Fourth Amendment Violations 9 Defendants Michael Perez, Joel Henderson, and Christian Perez

10 17. At approximately 2:00 p.m. on Sunday, June 12, 2016, Plaintiff was protesting on the  
11 public walkway at the Great Lawn Gate entrance to the Los Angeles National Veterans Park. Joining  
12 Plaintiff was fellow activist Ted Hayes (“Hayes”), who was wearing a red, white, and blue “Mr. Patriot”  
13 suit and top hat.

14 18. VA Police Officer Raul Davis approached Hayes and began interrogating him about an  
15 American Flag affixed to the VA fence adjacent to the Great Lawn Gate. Officer Davis ordered Hayes  
16 to remove the flag, and Hayes refused. After Hayes refused to remove the flag, Officer Davis  
17 handcuffed Hayes and issued him a citation for allegedly violating 38 C.F.R. § 1.218(a)(9)  
18 (unauthorized display or posting of placards or materials on VA property). Officer Davis confiscated  
19 the flag.  
20

21 19. Plaintiff, who at all relevant times remained on the public walkway at the Great Lawn  
22 Gate entrance, recorded Officer Davis’ interaction with Hayes using a small, hand-held Sony video  
23 camera.  
24

25 20. As Plaintiff recorded Officer Davis’ interaction with Hayes, Defendant Michael Perez  
26 approached Plaintiff and detained and began to interrogate him. At all relevant times, Officer Davis and  
27 Defendant Michael Perez were armed and in uniform. At no point during his interaction with the  
28 officers was Plaintiff free to leave, nor did Plaintiff feel free to leave.

1           21. Defendant Michael Perez confiscated Plaintiff's camera, handcuffed Plaintiff, and  
2 forcefully pushed Plaintiff towards a patrol car. Defendant Michael Perez then pushed Plaintiff head  
3 first into the back of the patrol car, forcing Plaintiff to lie on his stomach. Defendant Michael Perez  
4 demanded Plaintiff's identification. Plaintiff responded that his driver's license was in his shirt pocket.  
5 Defendant Michael Perez then forcibly pulled Plaintiff to a seated position in the back of the patrol car  
6 and seized Plaintiff's driver's license out of Plaintiff's shirt pocket.  
7

8           22. Plaintiff asked Defendant Michael Perez to straighten his ball cap, which had been  
9 knocked askew when Defendant Michael Perez pushed Plaintiff into the patrol car. Defendant Michael  
10 Perez forcefully pulled Plaintiff's cap down over Plaintiff's forehead, sarcastically saying, "How does  
11 that fit?"  
12

13           23. Plaintiff complained to Defendant Michael Perez that the handcuffs were too tight and  
14 were hurting and injuring his wrists. Defendant Michael Perez responded, "When you break the law,  
15 it's going to hurt." Plaintiff responded, "No, you're the one breaking the law."  
16

17           24. Defendant Michael Perez then advised Plaintiff that he was being cited for allegedly  
18 violating 38 C.F.R. § 1.218(a)(10). Because Plaintiff was plainly at an entrance – the entrance to the  
19 park – Plaintiff was not violating 38 C.R.C. § 1,218(a)(10). He also plainly could not have violated the  
20 regulation because he did not have a "news" purpose.  
21

22           25. Defendant Michael Perez wrote up the citation while Plaintiff remained handcuffed in the  
23 back of the patrol car. Defendant Michael Perez then directed Plaintiff to exit the patrol car, but did not  
24 provide any assistance. Plaintiff, still handcuffed, struggled to exit the patrol car by himself. After  
25 Plaintiff exited the patrol car, Defendant Michael Perez unhandcuffed him and handed him the citation.  
26

27           26. Officer Davis, who was still interacting with Hayes, and Defendant Michael Perez then  
28 told Plaintiff and Hayes to leave. Officer Davis and Defendant Michael Perez then left the Great Lawn  
Gate entrance.

1 27. In total, Plaintiff was detained against his will, handcuffed, in the back of Defendant  
2 Michael Perez's patrol car, for approximately fifteen minutes.

3 28. After Plaintiff was released from the patrol car and unhandcuffed, Plaintiff and Hayes  
4 called paramedics, who arrived on the scene and treated Plaintiff for injuries to his wrists.

5 29. Because Defendant Michael Perez had not returned Plaintiff's driver's license to him,  
6 Plaintiff still was not free to leave. Plaintiff had to call VA Police headquarters to ask that his license be  
7 returned. It was not until approximately 3:00 p.m. that another VA Police Officer, Officer Ali Morales,  
8 appeared at the Great Lawn Gate entrance and returned Plaintiff's driver's license to him.  
9

10 30. The following Sunday, June 19, 2016, Plaintiff and Hayes were again demonstrating on  
11 the public walkway at the Great Lawn Gate entrance.

12 31. Between approximately 1:30 and 2:00 p.m., Defendants Joel Henderson and Christian  
13 Perez approached Plaintiff and Hayes, and Defendant Henderson began interrogating Hayes about a  
14 small American Flag affixed to the VA fence adjacent to the Great Lawn Gate. Both officers were in  
15 uniform and armed. Defendant Joel Henderson confiscated the flag and issued Hayes a citation for  
16 allegedly violating 38 C.F.R. § 1.218(a)(9).  
17

18 32. Plaintiff, who at all relevant times remained on the public walkway at the Great Lawn  
19 Gate entrance, recorded Defendant Joel Henderson's interaction with Hayes using a small, hand-held  
20 Cannon PowerShot camera.  
21

22 33. As Plaintiff was recording, Defendant Joel Henderson and Defendant Christian Perez  
23 turned their attention to Plaintiff. Defendant Joel Henderson and Defendant Christian Perez detained  
24 Plaintiff and began to interrogate him. Defendant Christian Perez advised Plaintiff that he was  
25 confiscating Plaintiff's camera. Defendant Joel Henderson forcibly held Plaintiff by the arm and  
26 Defendant Christian Perez forcibly grabbed the camera out of Plaintiff's hand. Defendant Christian  
27 Perez then issued Plaintiff a citation for allegedly violating 38 C.F.R. § 1.218(a)(10).  
28

1 34. Plaintiff's interaction with Defendant Joel Henderson and Defendant Christian Perez  
2 lasted approximately ten to fifteen minutes. At no point was Plaintiff free to leave, nor did Plaintiff feel  
3 free to leave until Defendant Joel Henderson and Defendant Christian Perez left the Great Lawn Gate  
4 entrance.

5 35. Plaintiff's video cameras were not returned to him until October 5, 2016.

6 36. On December 1, 2016, the U.S. Attorney for the Central District of California dismissed  
7 the June 19, 2016 unauthorized photography charge against Plaintiff.  
8

9 37. On April 18, 2017, the U.S. District Court for the Central District of California dismissed  
10 the June 12, 2016 unauthorized photography charge against Plaintiff.  
11

12 **Fourth Amendment Violations**  
**Defendants Jane and John Doe Nos. 1-5**

13  
14 38. Plaintiff is well known to the leadership of the VAGLAHS and supervisory officers of  
15 the VAGLAHS's VA Police. In addition to his protest over the improper use of VA land at VAGLAHS,  
16 Plaintiff has been involved in a long-standing dispute with the VAGLAHS about displaying the  
17 American Flag on the fence at the Great Lawn Gate entrance, and, in 2010, Plaintiff filed suit against the  
18 VA, VAGLAHS leadership, and the Chief of Police at the VAGLAHS for viewpoint discrimination in  
19 connection with displays of the American Flag during his weekly protests.  
20

21 39. Since the resolution of Plaintiff's earlier lawsuit on mootness grounds in 2014, VA Police  
22 have repeatedly cited Plaintiff for allegedly violating 38 C.F.R. §1.218(a)(9). Except for a May 30,  
23 2016 citation, all such citations were later dismissed. On April 18, 2017, Plaintiff was acquitted of the  
24 May 30, 2016 citation by the U.S. District Court for the Central District of California.

25 40. On information and belief, at all relevant times Defendants Jane and John Doe Nos. 1-5  
26 were aware that Plaintiff was recording his weekly Sunday protests at the Great Lawn Gate entrance.  
27 VA Police officers at VAGLAHS regularly send "heads up" notices to their supervisors about Plaintiff's  
28



1 protests, including a May 30, 2016 “heads up” notice about Plaintiff allegedly engaging in unauthorized  
2 photography on that date at the Great Lawn Gate entrance.

3 41. On information and belief, Defendants Michael Perez, Joel Henderson, and Christian  
4 Perez were following the directions and orders of Defendants Jane and John Doe Nos. 1-5 when, on  
5 June 12, 2016 and June 19, 2016, they detained, handcuffed, and cited Plaintiff for allegedly  
6 unauthorized photography and confiscated Plaintiff’s cameras. On multiple occasions, VA Police  
7 officers have told Plaintiff that they were following their supervisors’ orders in their interactions with  
8 Plaintiff.  
9

10 42. On information and belief, Defendants Jane and John Doe Nos. 1-5 have determined that  
11 Plaintiff and his fellow protesters not be allowed to photograph or video record anywhere on VA  
12 property. On August 7, 2016, two VA Police officers tackled to the ground one of Plaintiff’s fellow  
13 protestors after the individual photographed the officers removing an American Flag displayed on the  
14 fence at the Great Lawn Gate entrance. In an October 4, 2016 email, a VA Police supervisory official  
15 wrote, regarding Plaintiff, “I don’t want Mr. R to be taking pictures like he desires.”  
16

17 43. On information and belief, Defendants Jane and John Doe Nos. 1-5 failed to properly  
18 train and supervise Defendants Michael Perez, Joel Henderson, and Christian Perez in the requirements  
19 of 38 C.F.R. § 1.218(a)(10), which caused Defendant Michael Perez and Defendants Joel Henderson and  
20 Christian Perez to detain and cite Plaintiff and confiscate Plaintiff’s cameras on June 12, 2016 and June  
21 19, 2016, respectively, despite Plaintiff being at all relevant times on the public walkway at the Great  
22 Lawn Gate entrance to the Los Angeles National Veterans Park and the regulation’s express  
23 authorization of photography at “entrances.”  
24

25 44. On information and belief, Defendants Jane and John Doe Nos. 1-5 knew, should have  
26 known, or were deliberately indifferent to the fact that failing to properly train and supervise Defendants  
27 Michael Perez, Joel Henderson, and Christian Perez in the proper application of 38 C.F.R. §  
28

1 1.218(a)(10) would cause these officers to inflict Fourth Amendment injuries on others, including  
2 Plaintiff.

3 **First and Fifth Amendment Violations**  
4 **Defendants Shulkin, Brown, and Leas**

5  
6 45. As the heads of the VA, VAGLAHS, and VA Police at the VAGLAHS respectively,  
7 Defendants Shulkin, Brown, and Charles Leas bear overall responsibility for the promulgation and  
8 enforcement of VA regulations at the VAGLAHS.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF THE FOURTH AMENDMENT – *BIVENS***

11 **(Against Defendants Michael Perez, Joel Henderson, and Christian Perez)**

12 46. Plaintiff realleges paragraphs 1 through 45 as if fully stated herein.

13  
14 47. Plaintiff enjoys the right to be secure in his person and effects against unreasonable  
15 searches and seizures, as protected by the Fourth Amendment to the U.S. Constitution.

16 48. Defendants Michael Perez, Joel Henderson, and Christian Perez, acting within the course  
17 and scope of their authority as federal law enforcement officials and under color of federal law, deprived  
18 Plaintiff of his rights under the Fourth Amendment to the United States Constitution on June 12, 2016  
19 and June 19, 2016 by arresting Plaintiff and seizing his cameras without an arrest warrant or probable  
20 cause that Plaintiff had committed a crime. Specifically, Defendants Michael Perez, Joel Henderson,  
21 and Christian Perez lacked probable cause that Plaintiff violated 38 C.F.R. § 1.218(a)(10) because,  
22 among other reasons, at all relevant times Plaintiff was at an “entrance” – the Great Lawn Gate entrance  
23 to the Los Angeles Veterans National Park – and Plaintiff lacked a “news” purpose.  
24

25 49. The actions of Defendants Michael Perez, Joel Henderson, and Christian Perez also  
26 threaten to deprive Plaintiff of his Fourth Amendment rights in the future, as Plaintiff intends to  
27 continue to engage in his weekly protests and record his protest at the Great Lawn Gate entrance.  
28



1 continue to cause Plaintiff to suffer irreparable harm.

2 59. No remedy available at law will adequately redress the violation of Plaintiff's Fourth  
3 Amendment rights by Defendants Jane and John Doe Nos. 1-5.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF THE FIRST AND FIFTH AMENDMENT**

6 **(Against Defendants David Shulkin, Ann Brown, and Charles Leas)**

7 60. Plaintiff realleges paragraphs 1 through 59 as if fully stated herein.

8 61. Plaintiff enjoys the right to engage in expressive activity, as guaranteed by the First  
9 Amendment to the U.S. Constitution. This includes the right to photograph and record police and other  
10 activity carried out in public on VA property. Plaintiff also enjoys the right to due process, as  
11 guaranteed by the Fifth Amendment to the U.S. Constitution.

12 62. The regulation at issue, 38 C.F.R. § 1.218(a)(10), is unconstitutional on its face and as  
13 applied to Plaintiff. Among other constitutional infirmities, the regulation is overly broad, vague, and  
14 neither content-neutral and narrowly tailored to further a compelling government interest nor even  
15 reasonable in light of its purpose.

16 63. The actions of Defendants Shulkin, Brown, and Leas have chilled and deprived Plaintiff  
17 of his right to engage in constitutionally protected, expressive activity and threaten to deprive Plaintiff of  
18 his right to engage in such activity in the future.

19 64. The actions of Defendants Shulkin, Brown, and Leas have caused and will continue to  
20 cause Plaintiff to suffer irreparable harm.

21 65. The regulation, 38 C.F.R. § 1.218(a)(10), violates the First Amendment and the Due  
22 Process Clause of the Fifth Amendment.

23 66. No remedy available at law will adequately redress the violation of Plaintiff's First and  
24 Fifth Amendment rights by Defendants Shulkin, Brown, and Leas.  
25  
26  
27  
28

**PRAYER FOR RELIEF**

Plaintiff respectfully requests that the Court enter judgment against Defendants:

1. Declaring the conduct of Defendants Michael Perez, Joel Henderson, Christian Perez, and Jane and John Does Nos. 1-5 to be in violation of Plaintiff’s rights under the Fourth Amendment to the U.S. Constitution, permanently enjoining them from violating Plaintiff’s Fourth Amendment rights in the future, and awarding Plaintiff compensatory damages against Defendants Michael Perez, Joel Henderson, Christian Perez, and Jane and John Does Nos. 1-5;
2. Declaring the challenged provision, 38 C.F.R. § 1.218(a)(10), to be unconstitutional on its face and as applied to Plaintiff under the First and Fifth Amendments to the U.S. Constitution;
3. Permanently enjoining Defendants David Shulkin, Ann Brown, and Charles Leas, as well as their officers, agents, employees, attorneys, all other persons in active concert or participation with them, and their successors, from violating Plaintiff’s First and Fifth Amendment rights or otherwise enforcing 8 C.F.R. § 1.218(a)(10);
4. Awarding Plaintiff’s reasonable attorneys’ fees and costs of this action; and
5. Granting such other and further relief as this Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiff Robert L. Rosebrock requests a trial by jury on all issues for which he is entitled to a jury.

Dated: June 12, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.  
LAW OFFICES OF ROBERT PATRICK STICHT

By: /s/ Robert Patrick Sticht.  
ROBERT PATRICK STICHT

Attorneys for Plaintiff  
Robert L. Rosebrock