

1 ROBERT PATRICK STICHT (SBN 138586)
2 Law Offices of Robert Patrick Sticht
3 P.O. Box 49457
4 Los Angeles, CA 90049
5 Telephone: (310) 889-1950
6 Facsimile: (310) 889-1864
7 Email: LORPS@verizon.net

8 STERLING E. NORRIS (SBN 040993)
9 JUDICIAL WATCH, INC.
10 2540 Huntington Drive, Suite 201
11 San Marino, CA 91108
12 Telephone: (626) 287-4540
13 Facsimile: (626) 237-2003
14 Email: jw-West@judicialwatch.org

15 Attorneys for Defendant,
16 Robert L. Rosebrock

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,
20
21 Plaintiff,
22 v.
23 ROBERT L. ROSEBROCK,
24 Defendant.

CVB Nos. 4920201, 4920202,
6593951, 6593729 / CC11

NOTICE OF MOTION AND MOTION TO
DISMISS ALL PHOTOGRAPHY /
RECORDING CHARGES;
MEMORANDUM OF POINTS AND
AUTHORITIES

Hearing Date: March 7, 2017
Hearing Time: 8:30 a.m.
Courtroom 341 (Roybal)
Hon. Steve Kim

25 TO ALL INTERESTED PARTIES:

26 PLEASE TAKE NOTICE that on Tuesday, March 7, 2017, at 8:30 a.m., or as soon thereafter as
27 counsel may be heard, before Honorable Steve Kim, United States Magistrate Judge, in courtroom 341
28 of the Roybal Federal Building and U.S. Courthouse, located at 255 E. Temple St., Los Angeles, CA,
defendant ROBERT L. ROSEBROCK, by his attorneys, Robert Patrick Sticht and Sterling E. Norris,
will move, and does hereby move, under Rule 12(b)(2) of the Federal Rules of Criminal Procedure, and

2017 FEB 24 PM 2:09
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

FILED

1 pursuant to, *inter alia*, the First Amendment of the United States Constitution, for an Order dismissing
2 all photography / recording charges against him.

3 This motion is based upon the accompanying memorandum of points and authorities, the files
4 and records in this case, and any oral argument and evidence that the Court may allow.

5 Dated: February 24, 2017

Respectfully submitted,

6 JUDICIAL WATCH, INC.
7 LAW OFFICES OF ROBERT PATRICK STICHT

8
9 By: 
10 ROBERT PATRICK STICHT

11 Attorneys for Defendant
12 Robert L. Rosebrock

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Rosebrock has been charged with taking photographs on Memorial Day, May 30, 2016, within the Veterans Administration Facility located at 11301 Wilshire Boulevard in Los Angeles, California ("VA Facility") in violation of 38 C.F.R. § 1.218(a)(10), and on the same day "displaying placards or posting materials" by affixing two small (4" x 6") American Flags to the exterior fence of the VA Facility without authorization in violation of 38 C.F.R. § 1.218(a)(9). *See* Exhibit A (United States District Court Violation Notice, Number 4920201 and Number 4920202); *see also* Government Trial Memorandum ("Gov Trial Memo"), filed November 30, 2016 at 2. Mr. Rosebrock has been further charged with recording video on June 12, 2016, with a Sony camcorder within the VA Facility in violation of 38 C.F.R. § 1.218(a)(10). *See* Exhibit B (United States District Court Violation Notice Number 6593951); Government Trial Memo at 3.

II. BACKGROUND

The "Statement of Probable Cause" for the May 30, 2016 citation, issued by Veterans Affairs ("VA") Police Officer Ralph Garcia, states in pertinent part:

While checking the great lawn gate, I observed Robert Rosebrock on the great lawn taking photographs . . . Rosebrock was taking photographs of flags which he later admitted to posting on the fence as well as the grounds of the property . . . Rosebrock was advised that the taking of photographs on VA property without authorization for media use is not authorized. Based on past articles, I know the photos would be used for media purposes (see attached article). Understanding this, I asked Rosebrock what he was going to do with the photographs. Rosebrock states, "Put them on a website and plaster you guys all over the net with news stories on you. It's called freedom of the press!" I advised Rosebrock if he continued to take photographs he would be cited as he did not have authorization. Rosebrock began stating he intends to take photos for his media blog once again and stated its freedom of the press a second time. He further explained that he will continue to take photos and videos to destroy VA Officers and the VA on his media website. I explained to Rosebrock he would be cited if the photographs continue. Rosebrock put his camera away and was told to sit on the wall of the fence while I continued to investigate.

The statement then describes how Officer Garcia issued a citation to Mr. Rosebrock for posting two American Flags on the fence at or near the "Great Lawn Gate." It continues:

Rosebrock took out his camera and stated, "I am taking a picture of this!" I again instructed Rosebrock if he took a photograph he would be cited for the offense. Rosebrock stated, "Go ahead. They will drop it because they don't have time to deal with

1 me!" Rosebrock began taking photographs. I advised Rosebrock he would now be
2 receiving a citation for unauthorized photography and if he continued, his camera would
be confiscated for use as evidence in court.

3 *See Exhibit A.*

4 Mr. Rosebrock was not provided, and there does not appear to be, a "Statement of Probable
5 Cause" for the June 12, 2016 citation, issued by VA Police Sergeant Michael Perez, but the citation
6 itself states: "While in full police uniform on VA property I observed Robert Rosebrock video
7 recording VA property and VA police officers while on VA property without permission or authority."

8 *See Exhibit B.*

9 The Investigative Report prepared by Sgt. Perez for June 12, 2016, states in pertinent part:

10 On June 12, 2016 while on patrol at the West Los Angeles Veteran Affairs I (Sergeant
11 Michael Perez) received a radio call from Officer Davis advising that he was going to
12 make an arrest at Veterans Parkway. I arrived at Veterans Parkway and observed Officer
13 Davis ordering a male black adult to take down a United States flag that was placed on
14 the Veterans Affairs fence line. The male black adult was wearing a red white and blue
15 shirt, pants, and hat (same color and design as the United States flag). I also observed
16 Robert Rosebrock video recording VA property and police officers on VA Federal
17 property without authority or permission.

18 ***

19 I then made contact with a different subject (frequent Sunday protestor), Robert
20 Rosebrock who was recording VA property and Federal Officers on Federal Veterans
21 Affairs property without permission (violation of Code of Federal Regulation (CFR)
22 1.218 a (10)-Taking photographs without permission). I then advised the subject that he
23 is taking video recording on Federal property without permission and confiscated his
24 camera (Black In color Sony, Handycam, HDR-CX220, Serial number 3310433) after
25 advising Rosebrock that he was not allowed to record and he continued to video record
26 (video camera was placed into evidence locker #3). I advised Rosebrock that he was
27 being detained and that I will be issuing him a citation. Rosebrock began to walk away
28 and I again advised him that he is being detained and that he [is] not free to leave because
I will be issuing him a citation.

See Exhibit C.

23 **III. ARGUMENT**

24 The regulation in question, 38 C.F. R. § 1.218(a)(10), states:

25 "Photographs for advertising or commercial purposes may be taken only with the written consent
26 of the head of the facility or designee. Photographs for news purposes may be taken at entrances,
27 lobbies, foyers, or in other places designated by the head of the facility or designee."

28 There is no claim that Mr. Rosebrock took photographs or made video recordings for advertising

1 or commercial purposes and no facts supporting any such claim. Accordingly, our focus is on the
2 second sentence of the regulation.

3 A.

4 The first question is whether section 1.218(a)(10)'s provision on photographs taken for "news
5 purposes" applies to Mr. Rosebrock. There is no doubt that Mr. Rosebrock is a long-standing, vigorous
6 advocate for at least two causes: the protection of veterans, especially homeless veterans, and respect
7 for the American Flag. *See generally* Docket No. 61 (Order on Summary Judgment), Robert Rosebrock
8 v. Donna Beiter et al., Case No. 10-cv-01878-SJO, Central District of California. In this regard, he
9 occasionally writes articles published in Veterans Today, Canada Free Press, and The Front Page
10 Online, where he is a "contributor." However, it is also undeniable that Mr. Rosebrock does not write
11 about "the news," but instead focuses his writing on his advocacy for the veterans' and American Flag
12 issues of particular concern to him. He is not a news reporter or news organization engaged in gathering
13 and reporting on the news; he is an advocate expressing his First Amendment rights. Section
14 1.218(a)(10) does not apply to him. The "news purposes" aspect of the regulation is an essential
15 element of the alleged offense. *See* Gov Trial Memo at 4. It cannot be proven. Therefore, the
16 photography/recording charges should be dismissed.

17 Even if we assume that section 1.218(a)(10)'s provision on photographs taken for "news
18 purposes" applies to Mr. Rosebrock, a violation cannot be proven. Officer Garcia made it clear that he
19 was on bicycle patrol checking the "Great Lawn Gate" when he observed Mr. Rosebrock taking
20 photographs of "flags" posted on the fence. Officer Garcia also made clear that he was detaining and
21 issuing Mr. Rosebrock a citation at or near the "Great Lawn Gate" when he observed Mr. Rosebrock
22 begin taking photographs of his official activities: "Rosebrock . . . was told to sit on the wall of the
23 fence while I continued to investigate." Sgt. Perez likewise clearly indicated he was at "Veterans
24 Parkway," i.e., the same location when he observed Mr. Rosebrock video recording VA police arresting
25 the male black adult and VA property at Veterans Parkway. The "Great Lawn Gate" is adjacent to a
26 public plaza and abuts a public sidewalk. Beyond the "Great Lawn Gate" is a park – Los Angeles
27 National Veteran's Park – that has been open to the public since 2015. The "Great Lawn Gate" serves
28 as an entrance to the park. Section 1.218(a)(10) expressly permits photographs for news purposes at

1 “entrances.” For this reason as well, the photography charge on May 30, 2016 should be dismissed.

2 B.

3 The next question is whether the second sentence of section 1.218(a)(10) even prohibits
4 anything. On its face, the sentence authorizes photography “for news purposes” at “entrances.” The
5 “designated by the head of the facility or designee” language modifies “other places,” not “entrances,”
6 “lobbies,” or “foyers,” as is indicated by the comma after “foyers.” As a result, the regulation should be
7 read as list of the following places where photographs may be taken for news purposes: (1) entrances;
8 (2) lobbies; (3) foyers; or (4) other places designated by the head of the facility or designee. The
9 sentence does not say these are the only locations news photographs may be taken or that taking news
10 photographs anywhere else is prohibited. By contrast, the first sentence plainly says that photographs
11 may be taken for advertising or commercial purposes “only with the written consent of the head of the
12 facility or designee.” The first sentence is a prohibition. The second sentence is not. Because nothing
13 is prohibited by the second sentence, Mr. Rosebrock cannot have violated it as a matter of law.

14 C.

15 “[G]overnment may impose reasonable restrictions on the time, place, or manner of engaging in
16 protected speech provided that they are adequately justified without reference to the content of the
17 regulated speech.” *Cincinnati v. Discovery Network*, 507 U.S. 410, 428 (1993). It cannot be reasonably
18 challenged that photography is expressive speech protected by the First Amendment. Section
19 1.218(a)(10) treats different types of photography differently. These different types of expression are:
20 (1) photography for advertising or commercial purposes; (2) photography for “news purposes;” and (3)
21 all other types of photography, apparently including artistic, educational, informational, and scientific
22 purposes. Section 1.218(a)(10) is not a “content neutral” regulation. In *Cincinnati*, the Court held that
23 the government’s ban on newsracks on city sidewalks that dispense commercial advertisements, but not
24 newspapers, was not a content neutral regulation of speech. The Court noted that it previously had
25 “expressly rejected the argument that ‘discriminatory . . . treatment is suspect under the First
26 Amendment only when the legislature intends to suppress certain ideas.’” *Id.* at 429. “Under the city’s
27 newsrack policy, whether any particular newsrack falls within the ban is determined by the content of
28 the publication resting inside that newsrack. Thus, by any commonsense understanding of the term, the

1 ban is this case is ‘content based.’” *Id.* Likewise here, whether any photograph is subject to the VA’s
2 regulation is dependent on whether it is taken for an advertising or commercial purpose, news purpose,
3 or any other purpose. The regulation is content-based.

4 Determining what standard applies to content-based regulation is not entirely clear, but the
5 government nonetheless must make some type of showing if its regulation is to survive scrutiny. The
6 outcome appears to depend on the type of forum at issue – a public forum, limited public forum, nor
7 non-public forum. *See, e.g., Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788 (1985).
8 Section 1.218(a)(10) purports to cover the entire VA campus, but the campus itself is subject to a wide
9 variety of uses. The forum analysis for the charges against Mr. Rosebrock should be determined by
10 where on the campus he is alleged to have violated the regulation – here, either on the plaza at the Great
11 Lawn Gate or the grounds of the park adjacent to the Great Lawn Gate. It would make no logical sense
12 to apply the same forum analyses to the public plaza and public park, on the one hand, and other
13 locations on the VA campus that have entirely different purposes, such as the inside of the Veterans’
14 home, on the other.

15 Sidewalks and parks have traditionally been considered public fora for First Amendment
16 purposes. *United States v. Grace*, 416 U.S. 171, 177-80 (1983) (treating public sidewalks forming the
17 perimeter of the Supreme Court grounds to be a public forum). For a public forum, “the government’s
18 ability to permissibly restrict expressive conduct is very limited: the government may enforce
19 reasonable time, place, and manner regulations as long as the restrictions are content-neutral, are
20 narrowly tailored to serve a significant government interest, and leave open ample alternative channels
21 of communication.” *Id.* at 177 (internal quotations omitted). “Additional restrictions such as an
22 absolute prohibition on a particular type of expression will be upheld only if narrowly drawn to
23 accomplish a compelling governmental interest.” *Id.*

24 Section 1.218(a)(10) is not content neutral, and, as a result, the government must show that its
25 regulation is more than “narrowly tailored to serve a significant government interest and leave[s] open
26 ample channels of communication.” Plainly, the government is never going to be able to demonstrate
27 that its interest in regulating photographs taken on the plaza or in the adjacent park are all that
28 significant or that Section 1.218(a)(10) is narrowly tailored to serve that interest and leaves open ample

1 channels of expressive speech. Therefore, the regulation cannot be applied constitutionally to Mr.
2 Rosebrock's photography / recording as a matter of law.

3 D.

4 A law or regulation may be unconstitutionally vague if it "fail[s] to provide the kind of notice
5 that will enable ordinary people to understand what conduct it prohibits." *City of Chicago v. Morales*,
6 527 U.S. 41, 56 (1999). Further, a law or regulation may be unconstitutionally vague if it authorizes or
7 encourages "arbitrary and discriminatory enforcement." *Id*; see also *Kolender v. Lawson*, 461 U.S. 352,
8 355 (1983) ("the void-for-vagueness doctrine requires that a penal statute define the criminal offense
9 with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a
10 manner that does not encourage arbitrary and discriminatory enforcement.") (citations omitted).

11 Section 1.218(a)(10) is unconstitutionally vague for both reasons insofar as it does not
12 sufficiently identify what conduct is prohibited with respect to the taking of photographs for "news
13 purposes." It is ambiguous whether the term applies to traditional news media only – newspapers, news
14 magazines, and televisions stations that cover the news generally for distribution to a wide audience – or
15 has a broader application. The regulation dates from at least as early as 1985. Does it apply to bloggers
16 or persons with websites or twitter accounts? If so, how many persons do their blogs and tweets have to
17 reach to qualify as having a "news purpose?" Does it apply to activists who engaged in public advocacy
18 or whistleblowers who make disclosures to the media? Is anyone with a smartphone and a Facebook
19 page potentially subject to prosecution if they take a photograph on VA property? Ordinary people are
20 unlikely to know whether Section 1.218(a)(10) applies to them or only to traditional news media like
21 KTLA or the Los Angeles Times. Because the term "news purposes" is hopelessly vague and has not
22 been defined, Section 1.218(a)(10) also authorizes and encourages arbitrary and discriminatory
23 enforcement, such as occurred here. The regulation is unconstitutionally vague.

24 The regulation also is facially overbroad because its substantial sweep – which encompasses
25 whatever the VA deems a "new purpose" -- penalizes or at least inhibits a substantial amount of
26 protected, expressive activity. See *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). As a result, it is
27 unconstitutional. Section 1.218(10) also is unconstitutionally overbroad as applied to Mr. Rosebrock's
28 constitutionally-protected photographing and recording. See *Bigelow v. Virginia*, 421 U.S. 809, 829

1 (1975) (reversing conviction because statute as applied to defendant was unconstitutional).

2 E.

3 It is now clear that individuals have a First Amendment right to record police activity carried out
4 in public. *See, e.g., Gericke v. Begin*, 753 F.3d 1, 9 (1st Cir. 2014); *Smith v. Cumming*, 212 F.3d 1332,
5 1333 (11th Cir. 2000); *see also Fordyce v. City of Seattle*, 55 F.3d 436, 349 (9th Cir. 1995) (recognizing
6 the “First Amendment right to film matters of public interest”). “Gathering information about
7 government officials in a form that can be readily disseminated serves a cardinal First Amendment
8 interest in protecting and promoting the free discussion of governmental affairs.” *Gericke*, 753 F.3d at 7
9 (internal citations and quotations omitted). The U.S. Department of Justice recognized this right
10 expressly in a May 14, 2012 guidance letter encouraging the Baltimore City Police Department to
11 develop policies that “affirmatively set forth the First Amendment right to record police activity.” *See*
12 *Exhibit D* at 2.

13 Mr. Rosebrock is charged with violating Section 1.218(a)(10) on two occasions: recording his
14 own interaction with Officer Garcia on Memorial Day, May 30, 2016, when Officer Garcia cited Mr.
15 Rosebrock for posting two, 4 by 6 inch American Flags on the fence on each side of the “Great Lawn
16 Gate;” and recording the VA police’s interaction with Ted Hayes on June 12, 2016, when Mr. Hayes
17 was handcuffed after he posted a full-sized American Flag on the same fence. Again, importantly, the
18 “Great Lawn Gate” is adjacent to a public plaza and abuts a public sidewalk. Beyond the “Great Lawn
19 Gate” is a park – Los Angeles National Veteran’s Park – that has been open to the public since 2015.
20 The “Great Lawn Gate” serves as an entrance to the park. No claim is made that Mr. Rosebrock did not
21 have every right to be on the plaza, at the gate, or in the park. On both occasions, the police activity in
22 question was carried out in public at or near the “Great Lawn Gate” entrance. Rosebrock’s recording of
23 police activity was protected by the First Amendment.

24 III. CONCLUSION

25 For the foregoing reasons, the Court should dismiss the photography / recording charges on
26 Memorial Day May 30, 2016, and on June 12, 2016.

1 **CERTIFICATE OF SERVICE**

2 I, Robert Patrick Sticht, declare:

3 I am a citizen of the United States and resident or employed in the County of Los Angeles,
4 California. My business address is Law Offices of Robert Patrick Sticht, P.O. Box 49457, Los Angeles,
5 CA 90049. I am over the age of eighteen years. I am not a party to the above-entitled action.

6 I manually filed (or caused to be manually filed) the foregoing NOTICE OF MOTION AND
7 MOTION TO DISMISS ALL PHOTOGRAPHY / RECORDING CHARGES; MEMORANDUM OF
8 POINTS AND AUTHORITIES with the Clerk of the Court for the United States District Court for the
9 Central District of California. I caused a copy of the same document to be placed in a sealed envelope
10 and served by U.S. Mail, postage prepaid, in the ordinary course of business, and/or hand-delivered,
11 upon the following persons:

12 Robert L. Rosebrock, 575 S. Barrington Ave., #410, Los Angeles, CA 90049;

13 Sharon McCaslin and Adam Schleifer, Assistant United States Attorneys, 1300 U.S. Courthouse,
14 312 North Spring Street, Los Angeles, CA 90012.

15 Executed on February 24, 2017 at Los Angeles, California.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 
18 ROBERT PATRICK STICHT

**United States District Court
Violation Notice**

CVB Location Code

CC 11

Violation Number 4920201	Officer Name (Print) Rubiera	Officer No. 4958
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION		
Date and Type of Offense (mm/dd/yyyy) 05/30/2016	Offense Charged 38 CFR 1.213(a) 10	Offense Code 4920201
Place of Offense WLA-GREAT LANN GATE 11301 WICSHIRE BLVD LOS ANGELES, CA 90073		
Offense Description: Factual Basis for Charge HAZMAT		

TAKING PHOTOGRAPHS WITHOUT PERMISSION

DEFENDANT INFORMATION		Phone: ()
Last Name ROSEBROCK	First Name Robert	M.I. L
Street Address [REDACTED]		
City Los Angeles	State CA	Zip Code 90049
County Los Angeles	CDL <input type="checkbox"/> D.L. State CA	Social Security No. [REDACTED]
Age <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Juvenile	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Height 6-2
Weight 155	Eye Color BRN	Hair Color BRN
Vehicle VIN: [REDACTED]	Year [REDACTED]	Make/Model [REDACTED]
Tag No. [REDACTED]	State [REDACTED]	PASS <input type="checkbox"/> Color <input type="checkbox"/> CMV

A <input type="checkbox"/> IF BOX A IS CHECKED, YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS (on back of yellow copy).	B <input checked="" type="checkbox"/> IF BOX B IS CHECKED, YOU MUST PAY AMOUNT INDICATED BELOW OR APPEAR IN COURT. SEE INSTRUCTIONS (on back of yellow copy).
Forfeiture Amount \$ 50	
Processing Fee + \$25	
Total Collateral Due \$ 75	
YOUR COURT DATE (If no court appearance date is shown, you will be notified of your appearance date by mail.)	
Court Address	Date (mm/dd/yyyy)
	Time (hh:mm)

My signature signifies that I have received a copy of this violation notice. It is not an admission of guilt. I promise to appear for this hearing at the time and place indicated or pay the total collateral due.

X Defendant Signature **REFUSED/1232**

STATEMENT OF PROBABLE CAUSE
(For issuance of an arrest warrant or summons)

I state that on **May 30**, 20**16** while exercising my duties as a law enforcement officer in the **Central** District of **California**

SEE ATTACHED

N/G
Trud
12/01/2016

The foregoing statement is based upon:
 my personal observation my personal investigation
 information supplied to me from my fellow officer's observation
 other (explain above)

I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.

Executed on: **05/30/2016** Date (mm/dd/yyyy)
[Signature] Officer's Signature

Probable cause has been stated for the issuance of a warrant.

Executed on: _____ Date (mm/dd/yyyy) **U.S. Magistrate Judge**

HAZMAT = Hazardous material involved in incident; PASS = 9 or more passenger vehicle;
 CDL = Commercial driver's license; CMV = Commercial vehicle involved in incident

CVB SCAN JUL 18, 2016 13:14

10 of 2

United States District Court Violation Notice # 4920201

Statement of Probable Cause

(For issuance of an arrest warrant or summons)

I state that on May 30, 2016 while exercising my duties as a law enforcement officer in the Central District of California

On May 30, 2016, at approximately 1210 hours, I, Ralph Garcia, was on duty and in full uniform assigned to bicycle patrol checking the Great Lawn gate and speaking with visitors and Veterans in the area. While checking the great lawn gate I observed Robert Rosebrock on the great lawn taking photographs. I pulled up next to Rosebrock who I believe didn't recognize me at the time. Rosebrock was taking photographs of flags which he later admitted to posting on the fence as well as the grounds of the property. It was at this time I verbally identified myself to Rosebrock as VA Police. Rosebrock was advised the taking of photographs on VA property without authorization for media use is not authorized. Based on Rosebrock's past articles, I know the photos would be used for media purposes (see attached article). Understanding this, I asked Rosebrock what he was going to do with the photographs. Rosebrock stated, "Put them on a website and plaster you guys all over the net with news stories on you. It's called freedom of the press!" I advised Rosebrock if he continued to take photographs he would be cited as he did not have authorization. Rosebrock began stating he intends to take photos for his media blog once again and stated his freedom of the press a second time. He further explained that he will continue to take photos and videos to destroy VA Officers and the VA on his media website. I explained to Rosebrock he would be cited if the photographs continue. Rosebrock put his camera away and was told to sit on the wall of the fence while I continued to investigate. Rosebrock stated, "The grass is a mess, there's trash everywhere and you have done nothing to keep it clean! How dare you let it look like this! You need to clean it up right now!" I explained to Rosebrock I was a Federal Law Enforcement Officer for the US Department of Veterans Affairs and as such my duties do not include doing EMS duties or grounds. I advised him I since it was brought to our attention I would call grounds. He became upset stating, "Why cant you do something now like stop harassing me and go pick up trash!" I explained that cleaning trash on the floor is not one of my job duties and again explained I would contact grounds after speaking with him. I explained another suggestion which was if he wanted to volunteer his time to clean it up the VA and the Veterans would be very appreciative of his efforts, but Rosebrock declined! I observed (2) US Flags affixed to the fence using plastic zip ties. I asked Rosebrock the following:

(Garcia) (Q) Are these flags yours?

(Rosebrock) (A) Yes!

(Garcia) (Q) Did you place them on the fence?

(Rosebrock) (A) Yes I did about 20 minutes ago. I am not dealing with you, you have it out for me, you always travel just like thanksgiving your McDonalds protégé! I'm leaving you can't stop me!

I advised Rosebrock he was not free to leave and was currently detained for unauthorized photography as well as displaying items on the fence. Rosebrock stated again he was leaving. I stepped in front of Rosebrock and stated, "Sir, if you attempt to walk away I will take you physically into custody, place you in handcuffs, and charge you with resisting and delaying under California Penal Code 148. You will be booked into Los Angeles County Jail and you will face the local district attorney to answer for the charge. The choice is now yours to make. I have explained the circumstances your facing and the consequence for your actions. Cooperate and stay as told or be arrested." Rosebrock stated, "Fine, I will stay!" Rosebrock sat on the wall while I asked additional questions;

(Garcia) (Q) Why did you put the flags on the fence?

(Rosebrock) (A) Because I can and I am doing this to force you guys to cite me.

(Garcia) (Q) Why are you doing that?

(Rosebrock) (A) Because you guys are jerks, you harassed me yesterday and you're harassing me today! You lost in court. They threw out all your citations because they see this as harassment. So I will keep posting flags on the fence regardless of whatever you guys say because I don't care. So arrest me for it.

(Garcia) (Q) The president ordered flags to be at half-staff, I noticed neither of those are at half-staff first and second you do understand they are not affixed to a proper pole to be flown in that manner? So now you are not flying flags correctly, not at half-staff, and you don't have permission to affix them on the fence in that manner.

(Rosebrock) (A) Well I am not taking them down you can cite me.

I asked Rosebrock to hand me his license. After receiving the license, Sgt. Joel Henderson arrived on scene. Rosebrock took out his camera and stated, "I am taking a picture of this!" I again instructed Rosebrock if he took a photograph he would be cited for the offense. Rosebrock stated, "Go ahead! They will drop it because they don't have time to deal with me!" Rosebrock began taking photographs. I advised Rosebrock he would now be receiving a citation for unauthorized photography and if he continued, his camera would be confiscated for use as evidence in court. Rosebrock began stating he was only planning on taking pictures of trash on VA property and was outraged that there was trash on the ground. I explained to Rosebrock he was going to receive a citation for 38 CFR 1.218(A) (9) Displaying Placards or posting Materials on Property Without Authorization and an additional citation for 38 CFR 1.218(A) (10) taking photographs without permission. Sergeant Henderson removed the flags and I confiscated them. I then issued Rosebrock a United States District Court Violation Notice (#4920202) for a violation of 38 CFR 1.218 (A) (9) displaying placards, materials, on bulletin boards or elsewhere, except as authorized and (#4920201) for violating 38 CFR 1.218(A) (10) taking photographs without permission. Rosebrock refused to sign the citation's but was handed both copies stating his refusal and the time he refused each. Rosebrock was then ordered to depart since he had no official business other than impeding officers by violating the law. I departed the area. I booked the two flags and 3 plastic zip ties into evidence. An evidence form 3524 was completed along with form 3524(a) Tag #1. LL Arreygue and I booked it into temporary evidence locker #17, with no further incident. Case closed.

The foregoing statement is based upon:

- [X] my personal observation [] my personal investigation
[] information supplied to me from my fellow officer's observation
[] other (explain above)

I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.

Executed on: 05/30/2016 Date (mm/dd/yyyy) [Signature] Officer's Signature

Probable Cause has been stated for the issuance of a warrant.

Executed on: _____ Date (mm/dd/yyyy) _____ U.S. Magistrate Judge

United States District Court Violation Notice # 4920201
Statement of Probable Cause
(For issuance of an arrest warrant or summons)

I state that on May 30, 2016 while exercising my duties as a law enforcement officer in the Central District of California

On May 30, 2016, at approximately 1210 hours, I, Ralph Garcia, was on duty and in full uniform assigned to bicycle patrol checking the Great Lawn gate and speaking with visitors and Veterans in the area. While checking the great lawn gate I observed Robert Rosebrock on the great lawn taking photographs. I pulled up next to Rosebrock who I believe didn't recognize me at the time. Rosebrock was taking photographs of flags which he later admitted to posting on fence as well as the grounds of the property. It was at this time I verbally identified myself to Rosebrock as VA Police. Rosebrock was advised the taking of photographs on VA property without authorization for media use is not authorized. Based on Rosebrock's past articles, I know the photos would be used for media purposes (see attached article). Understanding this, I asked Rosebrock what he was going to do with the photographs. Rosebrock stated, "Put them on a website and plaster you guys all over the net with news stories on you. It's called freedom of the press!" I advised Rosebrock if he continued to take photographs he would be cited as he did not have authorization. Rosebrock began stating he intends to take photos for his media blog once again and stated its [sic] freedom of the press a second time. He further explained that he will continue to take photos and videos to destroy VA Officers and the VA on his media website. I explained to Rosebrock he would be cited if the photographs continue. Rosebrock put his camera away and was told to sit on the wall of the fence while I continue to investigate. Rosebrock stated, "The grass is a mess, there's trash everywhere and you have done nothing to keep it clean! How dare you let it look like this! You need to clean it up right now!" I explained to Rosebrock I was a Federal Law Enforcement Officer for the US Department of Veterans Affairs and as such my duties do not include doing EMS duties or grounds. I advised him since it was brought to our attention I would call grounds. He became upset stating, "Why cant [sic] you do something now like stop harassing me and go pick up trash!" I explained that cleaning trash on the floor is not one of my duties and again explained I would contact grounds after speaking with him. I explained another suggestion which was if he wanted to volunteer his time to clean it up the VA and the Veterans would be very appreciative of his efforts, but Rosebrock declined! I observed (2) US flags affixed to the fence using plastic zip ties. I asked Rosebrock the following:

(Garcia) (Q) Are these flags yours?

(Rosebrock) (A) Yes!

(Garcia) (Q) Did you place them on the fence?

(Rosebrock) (A) Yes I did about 20 minutes ago. I am not dealing with you, you have it out for me, you always have! Just like thanksgiving your McDonalds protege. I'm leaving you can't stop me!

I advised Rosebrock he was not free to leave and was currently detained for unauthorized photography as well as displaying items on the fence. Rosebrock stated again he was leaving. I stepped in front of Rosebrock and stated, "Sir, if you attempt to walk away I will take you physically into custody, place you in handcuffs, and charge you with resisting and delaying under California Penal Code 148. You will be booked into Los Angeles County Jail and you will face the local district attorney to answer for the charge. The choice is now yours to make. I have explained the circumstances your [sic] facing and the consequence for your actions. Cooperate and stay as told or be arrested." Rosebrock stated, "Fine, I will stay!" Rosebrock sat on the wall while I asked additional questions;

(Garcia) (Q) Why did you put the flags on the fence?

(Rosebrock) (A) Because I can and I am doing this to force you guys to cite me.

(Garcia) (Q) Why are you doing that?

(Rosebrock) (A) Because you guys are jerks, you harassed me yesterday and you're harassing me today!

You lost in court. They threw out all your citations because they see this as harassment. So I will keep posting flags on the fence regardless of whatever you guys say because I don't care. So arrest me for it. (Garcia) (Q) The president ordered flags to be at half staff, I noticed neither of those are at half-staff first and second you do understand they are not affixed to a proper pole to be flown in that manner? So now you are not flying flags correctly, not at half-staff, and you don't have permission to affix them on the fence in that manner.

(Rosebrock) (A) Well I am not taking them down you can cite me.

I asked Rosebrock to hand me his license. After receiving the license, Sgt. Joel Henderson arrived on scene. Rosebrock took out his camera and stated, "I am taking a picture of this!" I again instructed Rosebrock if he took a photograph he would be cited for the offense. Rosebrock stated, "Go ahead! They will drop it because they don't have time to deal with me!" Rosebrock began taking photographs. I advised Rosebrock he would now be receiving a citation for unauthorized photography and if he continued, his camera would be confiscated and used as evidence in court. Rosebrock began stating he was only planning on taking pictures of trash on VA property and was outraged that there was trash on the ground. I explained to Rosebrock he was going to receive a citation for 38 CFR 1.218(A)(9) Displaying Placards or posting Materials on Property Without Authorization and an additional citation for 38 CFR 1.218(A)(10) taking photographs without permission. Sergeant Henderson removed the flags and I confiscated them. I then issued Rosebrock a United States District Court Violation Notice (#4920202) for a violation of 38 CFR 1.218(A)(9) displaying placards, materials, on bulletin boards or elsewhere, except as authorized and (#4920201) for violating 38 CFR 1.218(A)(10) taking photographs without permission. Rosebrock refused to sign the citation's [sic] but was handed both copies stating his refusal and the time he refused each. Rosebrock was then ordered to depart since he had no official business other than impeding officers by violating the law. I departed the area. I booked the two flags and 3 plastic zip ties into evidence. An evidence form 3524 was completed along with form 3524(a) Tag #1. Lt. Arreygue and I booked it into temporary evidence locker #17 with no further incident. Case closed.

The foregoing statement is based upon:

my personal observation

I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.

Executed on: 05/30/2016 /s/ Ralph Garcia
Date (mm/dd/yyyy) Officer's Signature

Probable cause has been stated for the issuance of a warrant.

Executed on: _____
Date (mm/dd/yyyy) U.S. Magistrate Judge

Violation Number 4920202 Officer No. 9958
 YOU ARE CHARGED WITH THE FOLLOWING VIOLATION
 Date and Time of Offense (mm/dd/yyyy) 05/30/2016 38 CFR. 1.218(A)9
 Place of Offense WLA GREAT CANYON GATE
11301 WILSHIRE BLVD
LOS ANGELES CA 90073

Offense Description: Facial Basis for Charge
Displaying PLACARDS OR POSTING MATERIALS.

DEFENDANT INFORMATION Phone: ()
 Last Name ROSEBROCK First Name ROBERT M.I. L
 Street Address
 City Los Angeles State CA Zip Code 90049 Date of Birth (mm/dd/yyyy)
 Drivers License No. CA CDL of D.L. State CA Social Security No. [REDACTED] Height 6'2 Weight 185

SEX Adult Juvenile Male Female
 Hair BAYERN Eyes BRN
 VEHICLE VIN: [REDACTED] CMV
 Tag No. [REDACTED] State [REDACTED] Year [REDACTED] Make/Model [REDACTED] PASS [REDACTED] Color [REDACTED]

A IF BOX A IS CHECKED, YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS (on back of yellow copy).
 B IF BOX B IS CHECKED, YOU MUST PAY AMOUNT INDICATED BELOW OR APPEAR IN COURT. SEE INSTRUCTIONS (on back of yellow copy).

\$ 50 Forfeiture Amount
 + \$25 Processing Fee
 PAY THIS AMOUNT → \$ 75 Total Collateral Due

YOUR COURT DATE
 (If no court appearance date is shown, you will be notified of your appearance date by mail.)
 Court Address [REDACTED] Date (mm/dd/yyyy)
 Time (hh:mm)

My signature signifies that I have received a copy of this violation notice. It is not an admission of guilt. I promise to appear for this hearing at the time and place instructed or pay the total collateral due.
 X Defendant Signature ROSEBROCK/1232

STATEMENT OF PROBABLE CAUSE
 (For issuance of an arrest warrant or summons)

I state that on MAY 30, 2016 while exercising my duties as a law enforcement officer in the CENTRAL District of CALIFORNIA
SEE ATTACHED

N/G
Trid
12/01/2016

The foregoing statement is based upon:
 my personal observation my personal investigation
 information supplied to me from my fellow officer's observation
 other (explain above)

I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.

Executed on: 05/30/2016 Officer's Signature [REDACTED]
 Date (mm/dd/yyyy)

Probable cause has been stated for the issuance of a warrant.

Executed on: _____ Date (mm/dd/yyyy) U.S. Magistrate Judge

HAZMAT = Hazardous material involved in incident; PASS = 8 or more passenger vehicle;
 CDL = Commercial drivers license; CMV = Commercial vehicle involved in incident

CVB SCAN JUL 18, 2016 13:14

United States District Court Violation Notice # 4920202

Statement of Probable Cause

(For issuance of an arrest warrant or summons)

I state that on May 30, 2016 while exercising my duties as a law enforcement officer in the Central District of California

On May 30, 2016, at approximately 1210 hours, I, Ralph Garcia, was on duty and in full uniform assigned to bicycle patrol checking the Great Lawn gate and speaking with visitors and Veterans in the area. While checking the great lawn gate I observed Robert Rosebrock on the great lawn taking photographs. I pulled up next to Rosebrock who I believe didn't recognize me at the time. Rosebrock was taking photographs of flags which he later admitted to posting on the fence as well as the grounds of the property. It was at this time I verbally identified myself to Rosebrock as VA Police. Rosebrock was advised the taking of photographs on VA property without authorization for media use is not authorized. Based on Rosebrock's past articles, I know the photos would be used for media purposes (see attached article). Understanding this, I asked Rosebrock what he was going to do with the photographs. Rosebrock stated, "Put them on a website and plaster you guys all over the net with news stories on you. It's called freedom of the press!" I advised Rosebrock if he continued to take photographs he would be cited as he did not have authorization. Rosebrock began stating he intends to take photos for his media blog once again and stated his freedom of the press a second time. He further explained that he will continue to take photos and videos to destroy VA Officers and the VA on his media website. I explained to Rosebrock he would be cited if the photographs continue. Rosebrock put his camera away and was told to sit on the wall of the fence while I continued to investigate. Rosebrock stated, "The grass is a mess, there's trash everywhere and you have done nothing to keep it clean! How dare you let it look like this! You need to clean it up right now!" I explained to Rosebrock I was a Federal Law Enforcement Officer for the US Department of Veterans Affairs and as such my duties do not include doing EMS duties or grounds. I advised him I since it was brought to our attention I would call grounds. He became upset stating, "Why can't you do something now like stop harassing me and go pick up trash!" I explained that cleaning trash on the floor is not one of my job duties and again explained I would contact grounds after speaking with him. I explained another suggestion which was if he wanted to volunteer his time to clean it up the VA and the Veterans would be very appreciative of his efforts, but Rosebrock declined! I observed (2) US Flags affixed to the fence using plastic zip ties. I asked Rosebrock the following:

(Garcia) (Q) Are these flags yours?

(Rosebrock) (A) Yes!

(Garcia) (Q) Did you place them on the fence?

(Rosebrock) (A) Yes I did about 20 minutes ago. I am not dealing with you, you have it out for me, you always have! Just like Thanksgiving your McDonalds protégé! I'm leaving you can't stop me!

I advised Rosebrock he was not free to leave and was currently detained for unauthorized photography as well as displaying items on the fence. Rosebrock stated again he was leaving. I stepped in front of Rosebrock and stated, "Sir, if you attempt to walk away I will take you physically into custody, place you in handcuffs, and charge you with resisting and delaying under California Penal Code 148. You will be booked into Los Angeles County Jail and you will face the local district attorney to answer for the charge. The choice is now yours to make. I have explained the circumstances your facing and the consequence for your actions. Cooperate and stay as told or be arrested." Rosebrock stated, "Fine, I will stay!" Rosebrock sat on the wall while I asked additional questions:

(Garcia) (Q) Why did you put the flags on the fence?

(Rosebrock) (A) Because I can and I am doing this to force you guys to cite me.

(Garcia) (Q) Why are you doing that?

(Rosebrock) (A) Because you guys are jerks, you harassed me yesterday and you're harassing me today! You lost in court. They threw out all your citations because they see this as harassment. So I will keep posting flags on the fence regardless of whatever you guys say because I don't care. So arrest me for it.

(Garcia) (Q) The president ordered flags to be at half-staff, I noticed neither of those are at half-staff first and second you do understand they are not affixed to a proper pole to be flown in that manner? So now you are not flying flags correctly, not at half-staff, and you don't have permission to affix them on the fence in that manner.

(Rosebrock) (A) Well I am not taking them down you can cite me.

I asked Rosebrock to hand me his license. After receiving the license, Sgt. Joel Henderson arrived on scene. Rosebrock took out his camera and stated, "I am taking a picture of this!" I again instructed Rosebrock if he took a photograph he would be cited for the offense. Rosebrock stated, "Go ahead! They will drop it because they don't have time to deal with me!" Rosebrock began taking photographs. I advised Rosebrock he would now be receiving a citation for unauthorized photography and if he continued, his camera would be confiscated for use as evidence in court. Rosebrock began stating he was only planning on taking pictures of trash on VA property and was outraged that there was trash on the ground. I explained to Rosebrock he was going to receive a citation for 38 CFR 1.218(A) (9) Displaying Placards or posting Materials on Property Without Authorization and an additional citation for 38 CFR 1.218(A) (10) taking photographs without permission. Sergeant Henderson removed the flags and I confiscated them. I then issued Rosebrock a United States District Court Violation Notice (#4920202) for a violation of 38 CFR 1.218 (A) (9) displaying placards, materials, on bulletin boards or elsewhere, except as authorized and (#4920201) for violating 38 CFR 1.218(A) (10) taking photographs without permission. Rosebrock refused to sign the citation's but was handed both copies stating his refusal and the time he refused each. Rosebrock was then ordered to depart since he had no official business other than impeding officers by violating the law. I departed the area. I booked the two flags and 3 plastic zip ties into evidence. An evidence form 3524 was completed along with form 3524(a) Tag #1. Lt. Arreygus and I booked it into temporary evidence locker #7, with no further incident. Case closed.

The foregoing statement is based upon:

- my personal observation
my personal investigation
information supplied to me from my fellow officer's observation
other (explain above)

I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.

Executed on: 05/30/2016 Date (mm/dd/yyyy) Officer's Signature

Probable Cause has been stated for the issuance of a warrant.

Executed on: Date (mm/dd/yyyy) U.S. Magistrate Judge

United States District Court Violation Notice # 4920202
Statement of Probable Cause
(For issuance of an arrest warrant or summons)

I state that on May 30, 2016 while exercising my duties as a law enforcement officer in the Central District of California

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The foregoing statement is based upon:

my personal observation

I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.

Executed on: 05/30/2016 /s/ Ralph Garcia
Date (mm/dd/yyyy) Officer's Signature

Probable cause has been stated for the issuance of a warrant.

Executed on: _____
Date (mm/dd/yyyy) U.S. Magistrate Judge

United States District Court CV9 Location Code

Violation Notice CC-11

Violation Number: 6593951
 Offense Name (FBI): STUN, B, 22140
 Officer No.: 6599

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION
 Date and Type of Offense (mm/dd/yyyy): 06/12/2016
 Offense Charged: X CFR, 0 USC, 0 State Code
 SR. CRTZ 1, 218A-10
 6599
 6595

Place of Offense: WLA, VET B PAWS PARKWAY
 HAZMAT 0

TAKE IN VIDEO RECORDING
 PHOTOGRAPHS WITH OUT PERMISSION

DEFENDANT INFORMATION
 Last Name: ROSE, RAY
 First Name: ROBERT
 M.I.:
 Street Address:
 City: LOS ANGELES
 State: CA
 Zip Code: 90049
 Date of Birth (mm/dd/yyyy):
 Other's License No.:
 CDL of D.L. State: CA
 Social Security No.:
 Product: Juvenile Sex: Male Female
 Height: 47
 Eyes: BRN
 Hair: BRN
 Weight: 135
 VEHICLE VIN: TAG No.: STATE: YEAR: MAKE/MODEL: PASS: CABIN:

A IF BOX A IS CHECKED, YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS (on back of yellow copy).
 B IF BOX B IS CHECKED, YOU MUST PAY AMOUNT INDICATED BELOW OR APPEAR IN COURT. SEE INSTRUCTIONS (on back of yellow copy).
 \$ 50 Forfeiture Amount
 + \$30 Processing Fee
 \$ 80 Total Collateral Due
 YOUR COURT DATE: 80
 PAY THIS AMOUNT --

Court Address: Date (mm/dd/yyyy): Time (hh:mm):
 (If no court appearance date is shown, you will be notified of your appearance date by mail.)

My signature signifies that I have received a copy of this violation notice. It is not an admission of guilt. I promise to appear for the hearing at the time and place indicated or pay the total collateral due.
 X Defendant Signature: CEFUS ED TO SIGN

STATEMENT OF PROBABLE CAUSE
 (For issuance of an arrest warrant or summons)

I state that on June 12, 2016 while exercising my duties as a law enforcement officer in the Central District of California with the Full Police Uniform of VA Property I observed ROBERT ROSE and video recording VA Property and VA Police Officers while at VA Property without permission or authority.

N/E
 Trial
 12 01 2016

CV9330201677:00
 The foregoing statement is based upon:
 my personal observation
 information supplied to me from my fellow officer's observation
 other (explain above)
 I declare under penalty of perjury that the information which I have set forth above and on the face of this violation notice is true and correct to the best of my knowledge.
 Executed on: 06/12/2016
 Date (mm/dd/yyyy) Officer's Signature: [Signature]
 Executed on: [Signature]
 Date (mm/dd/yyyy) U.S. Magistrate Judge

HAZMAT = Hazardous material involved in incident; PASS = 8 or more passenger vehicles; CDL = Commercial drivers license; CMV = Commercial vehicle involved in incident

Department of Veterans Affairs
VA Police
Greater Los Angeles HCS
Investigative Report

Investigative Report#: 2016-06-12-1410-8739

VA Facility: Greater Los Angeles HCS

Date/Time Printed 11/7/2016 13:45

This Document is to be handled in accordance with the Privacy Act

Contents shall not be disclosed, discussed, or shared with individuals unless they have a direct need-to-know in the performance of their official duties. The document(s) are to be handled in accordance with For Official Use Only procedures.

Date/Time Received	6/12/16 14:10 PM
Date/Time of Offense:	6/12/16 14:09 PM
Location:	WLA, Veterans Parkway
Investigating Officer	MICHAEL PEREZ
Incident Synopsis:	WLA, Veterans Parkway: Officers observed R. Rosebrock recording and taking photos on VA property without permission. Rosebrock's camera was confiscated and he was issued a citation, (M. Perez/Davis)
Classification Code:	Disorderly Conduct Refusing to Assist or Obey an Officer(F) Disorderly Conduct Unauthorized Photography(F) Investigative Stop For Questioning(F) Investigative Stop Physical Arrest(F)
Final Disposition:	Charged
Initial Disposition:	Charged
Case Status:	OPEN

Use of Force

OC Weapon used:	No
Baton Used:	No
Firearm Drawn:	No
Firearm Used:	No

Complainant

Name:	UNITED STATES GOVERNMENT
Status:	
Work Address	N/A N/A N/A, US

Work Phone
Statement

Victim

Name:	UNITED STATES GOVERNMENT
Gender:	Ethnicity:
Status:	
Driver's License:	State: GENERAL
Work Address:	N/A N/A N/A, US
Work Phone:	
Treatment:	No

Suspect

Name:	Robert L Rosebrock		
SSN:	DOB:	Age:	74

Facility:	Greater Los Angeles HCS	IR#:	2016-06-12-1410-8739
Gender:	M	Ethnicity:	Caucasian
Weight:	225.00	Hair Color:	Grey
Height:		Eye Color:	Green - Light
Skln Tone:	Fair	Mark:	
Status:	Outsider		
Driver's License Number:	[REDACTED]	License State:	CA
Home Address:	[REDACTED]		
	Los Angeles, CA [REDACTED]		
Home Phone:			
Work Address:			
Work Phone:			
Offense(s):	Disorderly Conduct: Refusing to Assist or Obey an Officer(F), Investigative Stop: For Questioning(F), Investigative Stop: Physical Arrest(F), Disorderly Conduct: Unauthorized Photography(F)		
Violation(s):			

Narrative

Origin	On June 12, 2016 while on patrol at the West Los Angeles Veteran Affairs I (Sergeant Michael Perez) received a radio call from Officer Davis advising that he was going to make an arrest at Veterans Parkway.
Initial Observation	I arrived at Veterans Parkway and observed Officer Davis ordering a male black adult to take down a United States flag that was placed on the Veterans Affairs fence line. The male black adult was wearing a red white and blue shirt, pants, and hat (same color and design as the United States flag). I also observed Robert Rosebrock video recording VA property and police officers on VA Federal property without authority or permission.
Investigation	Officer Davis then ordered the male black adult (MBA) to remove a flag from the VA fence line and he refused. Davis issued a citation to the MBA, and confiscated the flag. See IR# 2016-06-12-1406-8738 to review further information regarding Davis' case.

I then made contact with a different subject (frequent Sunday protestor), Robert Rosebrock who was recording VA property and Federal Officers on Federal Veterans Affairs property without permission (violation of Code of Federal Regulation (CFR) 1.218 a (10)-Taking photographs without permission). I then advised the subject that he is taking video recording on Federal property without permission and confiscated his camera (Black in color Sony, Handycam, HDR-CX220, Serial number 3310433) after advising Rosebrock that he was not allowed to record and he continued to video record (video camera was placed into evidence locker #3). I advised Rosebrock that he was being detained and that I will be issuing him a citation. Rosebrock began to walk away and I again advised him that he is being detained and that he not free to leave because I will be issuing him a citation.

I then placed handcuffs on Rosebrock which were double locked and checked for tightness. Rosebrock made no complaint of injury due to handcuffing. I then walked Rosebrock to my patrol car (vehicle #12) and he sat in the rear passenger seating area. Rosebrock began to complain that the handcuffs were to tight and asked him if he would like me to loosen them and he said, "Yes." I then loosened the handcuffs and asked Davis to observe that the handcuffs were double locked and checked for tightness (Davis could fit his pointer finger in the space between Rosebrock's wrist and the handcuffs). Rosebrock made no complaint of injury or request for medical attention. I then issued Rosebrock a United States District Court Violation Notice #6593951 for a violation of 38 CFR 1.218 a (10). Rosebrock refused to sign the citation. Rosebrock was then released and departed the area and Davis and I also departed the area.

At about 2:40 pm (06/12/16) I received a radio call from dispatch advising that an LAFD operator (#134) would like to speak with me regarding a possible medical emergency that may be on our property at Federal Avenue @ San Vicente Blvd. The operator advised that the individual (Rosebrock) is complaining that his wrist is bruised. Officer Morales arrived the Veterans Parkway area and was informed that by Rosebrock that LAFD responded and put a small band aid on his wrist. See Morales' follow up to this incident report for further

information.

Additionally, Rosebrock is a frequent offender on VA property who has over 30 negative contacts with VA federal police for disorderly conduct. Rosebrock has continued over recent years to habitually return to Veterans Affairs property at West Los Angeles (every Sunday) and violate the United States Code of Federal Regulation by hanging flags on VA property; CFR 1.218 a (9)-unauthorized posting of material. Every Sunday Rosebrock also violates the CFR by participating in an unauthorized demonstration- CFR 1.218 a (14)(I). Additionally, every Sunday Rosebrock also violates the CFR by loitering-(CFR 1.218 A (5). Every Sunday Rosebrock has no official business on VA property and does not seek medical treatment or veterans services. Furthermore, every Sunday Rosebrock also violates the CFR by unlawfully taking photographs without permission- CFR 1.218 a (10). Rosebrock has continued over recent years to show a complete disregard for the law, the Code of Federal Regulation, and federal police officers requests and orders to comply with the CFR. Nothing further.

Investigating Officer: MICHAEL PEREZ Signature: _____
Badge: 2140-SGTN Date: ____/____/____
Printed by: DENNIS TROY JR.

<<< End of Report >>>

Follow Up

Investigator: ALI MORALES Date/Time: 6/12/2016 5:08:52PM

On June 12, 2016 at about 1600hrs I went to the Great Lawn gate to give Robert Rosebrock his California Driver License. Upon making contact with Rosebrock he expressed his disapproval of the way he was placed into handcuffs and how his recording camera was confiscated. Rosebrock also stated how he had to call Los Angeles Fire Department to receive medical treatment for his wrist and showed me the band aid they gave him for his right wrists. I didn't notice any injuries to Rosebrocks wrists or hands besides the band aid. After handing Rosebrock his California driver license I departed from the Great Lawn Gate.

Investigator: DENNIS TROY JR. Date/Time: 10/5/2016 4:15:21PM

FOLLOW-UP:

On October 5, 2016, the property that was taken as evidence was returned to the owner, ROSEBROCK, at the Federal Court House at 255 E. Temple Street, Third Floor Courtroom, Los Angeles, CA 90012. This was witnessed by ROSEBROCK'S Federal Public Defender and Officer A. DUNCAN. The 3524 was completed and copies given to ROSEBROCK for his records.

From: mike@11thdistrict.com

To: [REDACTED]

Sent: 1/27/2017 2:03:28 P.M. Pacific Standard Time

Subj: Traffic REDUCTION Coming to Sunset - Brentwood School CUP



Dear Robert --

I have some great news regarding traffic on Sunset Boulevard near the I-405: Brentwood School, one of the largest institutions on our incredibly congested corridor, has just agreed to reduce the traffic generated by its east campus by a whopping and unprecedented 40%.

The school applied for a Conditional Use Permit with the City to modernize and expand its east campus. When it did, I reminded the school of the central promise I made to you and to the entire Brentwood community: I will not support any project along the Sunset Corridor unless it reduces traffic on Sunset Boulevard.

This "Sunset Standard" is the lens through which I view every project on Sunset -- because I am determined to do what people keep telling me is impossible: make traffic better on the corridor. Brentwood School accepted this challenge, agreed to meet this standard, and worked hard with neighbors, with my staff, and with me to develop the conditions to make that happen. On the very first day that the new Conditional Use Permit takes effect, the school will reduce its traffic by 12.5%. After full enrollment, the school will reduce its traffic by 40%.

Such a dramatic reduction in traffic is unprecedented. It may be the single largest traffic reduction any institution in the City of Los Angeles has ever agreed to. It is a sign of leadership on the part of the school, and a sign of great progress for our neighborhood and traffic reduction on the corridor.

This sharp traffic reduction will be enforced with daily traffic counts, submitted to and verified by an independent third party monitor, and certified by the Los Angeles Department of Transportation. This builds on the great traffic reduction and neighborhood protection requirements incorporated into agreements the

school previously reached with the Brentwood Homeowners Association and the Residential Neighbors of Brentwood School.

The news gets even better: At my request, Brentwood School reached an agreement with the Veterans Administration, allowing construction trucks to cut through the VA campus, sparing the rest of us the impact of construction traffic on Sunset Boulevard and other local streets.

This announcement comes as we continue to make significant progress on our Sunset Traffic Initiative. Last month, I secured \$2 million to fund two large traffic improvements efforts suggested by the community – improving the timing of signals and restriping access lanes to freeway. I also asked LADOT to pursue another community-suggested proposal: making one or more lanes of Sunset reversible during peak-hour traffic. We also continue to work with the new Sunset Educational Corridor Association, a collaborative of the local schools that I hope will grow into a genuine Transportation Management Association that will provide and coordinate transportation services in and around the corridor.

Approval of the CUP for Brentwood School, including the provisions of this agreement, is expected to be heard before the City Council's Planning and Land Use Committee at 2:30 p.m. on Tuesday, February 7 in Los Angeles City Hall. You can comment by attending the hearing, or by emailing City Planner Elva Nuno-O'Donnell at elva.nuno-odonnell@lacity.org, and referencing Council File # 17-0020.

I am very thankful for the partnership of the dedicated neighbors, homeowners and Brentwood School representatives who worked with me and my team to reach this agreement. It is groundbreaking in its significant traffic reductions, and it is a powerful statement of what can be done when people work together, think big, and stay determined to get things done.

Thank you for your time and for your partnership.

Regards,



MIKE

Council District 11 · 1645 Corinth Ave, 201, Los Angeles, CA 90025, United States
This email was sent to rosebrock1@aol.com. To stop receiving emails, [click here](#).



U.S. Department of Justice
Civil Rights Division

JMS:TDM:RJO
DJ 207-35-10

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

May 14, 2012

Mark H. Grimes
Baltimore Police Department
Office of Legal Affairs
601 E Fayette St
Baltimore, MD 21202

Mary E. Borja
Wiley Rein LLP
1776 K St NW
Washington, DC 20006

Re: *Christopher Sharp v. Baltimore City Police Department, et. al.*

Dear Counsel:

Judge Paul W. Grimm scheduled a settlement conference in *Christopher Sharp v. Baltimore City Police Department, et. al.* for May 30, 2012. While we take no position on Mr. Sharp's claim for damages against the individual defendants, it is the United States' position that any resolution to Mr. Sharp's claims for injunctive relief should include policy and training requirements that are consistent with the important First, Fourth and Fourteenth Amendment rights at stake when individuals record police officers in the public discharge of their duties. These rights, subject to narrowly-defined restrictions, engender public confidence in our police departments, promote public access to information necessary to hold our governmental officers accountable, and ensure public and officer safety.

The guidance in this letter is designed to assist the parties during the upcoming settlement conference. It specifically addresses the circumstances in this case and Baltimore City Police Department's General Order J-16 ("Video Recording of Police Activity"), but also reflects the United States' position on the basic elements of a constitutionally adequate policy on individuals' right to record police activity.

1. Background

In his complaint, Mr. Sharp alleged that on May 15, 2010, Baltimore City Police Department ("BPD") officers seized, searched and deleted the contents of his cell phone after he used it to record officers forcibly arresting his friend. Compl. at 9-12, ECF. No. 2. Mr. Sharp further alleged that BPD maintains a policy, practice or custom of advising officers to detain citizens who record the police while in the public discharge of their duties and to seize, search, and delete individuals' recordings. *Id.* at 7. On November 30, 2011, BPD and Frederick H.

Bealefeld, III filed a Motion to Dismiss Complaint of for Summary Judgment. According to the Motion to Dismiss, BPD promulgated a general order on recording police activity on November 8, 2011. BPD did not file this policy as an exhibit to its Motion to Dismiss. Instead, BPD filed a declaration providing a brief summary of its contents.

On January 10, 2012, the United States filed a Statement of Interest in this matter. In that statement, the United States urged the Court to find that private individuals have a First Amendment right to record police officers in the public discharge of their duties, and that officers violate individuals' Fourth and Fourteenth Amendment rights when they seize and destroy such recordings without a warrant or due process. The United States also opined that, based on the limited information on the record regarding BPD's development of new policies and training on individuals' right to record the police, BPD failed to meet its burden of establishing that it had taken sufficient action to prevent future constitutional violations. On February 10, 2012, BPD provided the Court, Mr. Sharp and the United States with a courtesy copy of General Order J-16. The same day, BPD released General Order J-16 to the public.¹ Following a hearing on February 13, 2012, Judge Legg denied BPD's motion.

Constitutionally adequate policies must be designed to effectively guide officer conduct, accurately reflect the contours of individuals' rights under the First, Fourth and Fourteenth Amendments, and diminish the likelihood of future constitutional violations. BPD's general order does not meet these requirements in some areas. In other areas, BPD's general order does adequately protect individuals' constitutional rights. We discuss those areas below, as well as others in which BPD should amend the general order to ensure that individual's constitutional rights are protected.

2. Guidance on the Right to Record Police Activity.

A. Policies should affirmatively set forth the First Amendment right to record police activity.

Policies should affirmatively set forth the contours of individuals' First Amendment right to observe and record police officers engaged in the public discharge of their duties. Recording governmental officers engaged in public duties is a form of speech through which private individuals may gather and disseminate information of public concern, including the conduct of law enforcement officers.² See, e.g., *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011) (“[b]asic

¹ Peter Hermann, *Baltimore Police Told Not to Stop People Taking Photos or Video of Their Actions*, The Baltimore Sun, February 11, 2012.

² There is no binding precedent to the contrary. In *Szymecki v. Houck*, 353 F. App'x 852 (4th Cir. 2009), the Fourth Circuit issued a one page, unpublished per curiam opinion summarily concluding – without providing legal or factual support – that the “right to record police activities on public property was not clearly established in this circuit at the time of the alleged conduct.” *Id.* at 853; see also *McCormick v. City of Lawrence*, 130 F. App'x 987 (10th Cir. 2005). In the Fourth Circuit, “[u]npublished opinions have no precedential value.” *United States v. Stewart*, 595 F.3d 197, 199 n.1 (4th Cir. 2010); see also *Glik*, 655 F.3d at 85 (“[T]he absence of substantive discussion deprives *Szymecki* of any marginal persuasive value it might otherwise have had.”).

First Amendment principles” and federal case law “unambiguously” establish that private individuals possess “a constitutionally protected right to videotape police carrying out their duties.”); *Smith v. Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (recognizing the “First Amendment right . . . to photograph or videotape police conduct.”); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (recognizing the “First Amendment right to film matters of public interest”). The First Amendment right to record police activity is limited only by “reasonable time, place, and manner restrictions.” *Glik*, 655 F.3d at 84; *Smith*, 212 F.3d at 1333.

While courts have only recently begun to refine the contours of the right to record police officers, the justification for this right is firmly rooted in long-standing First Amendment principles. The right to “[g]ather[] information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting ‘the free discussion of governmental affairs.’” *Glik*, 655 F.3d at 82 (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). The application of this right to the conduct of law enforcement officers is critically important because officers are “granted substantial discretion that may be used to deprive individuals of their liberties.” *Id.*; *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1035-36 (1991) (“Public awareness and criticism have even greater importance where, as here, they concern allegations of police corruption.”). The “extensive public scrutiny and criticism” of police and other criminal justice system officials serves to “guard[] against the miscarriage of justice,” *Nebraska Press Association v. Stuart*, 427 U.S. 539, 560 (1976) (citing *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)), a harm that undermines public confidence in the administration of government. When police departments take affirmative steps to protect individuals’ First Amendment rights, departments “not only aid[] in the uncovering of abuses . . . but also may have a salutary effect on the functioning of government more generally.” *Glik*, 655 F.3d at 82-83.

Policies should explain the nature of the constitutional right at stake and provide officers with practical guidance on how they can effectively discharge their duties without violating that right. For example, policies should affirmatively state that individuals have a First Amendment right to record police officers and include examples of the places where individuals can lawfully record police activity and the types of activity that can be recorded.³ While this area of the law

³ Police duties discharged in public settings may include a range of activities, including detentions, searches, arrests or uses of force. In *Kelly v. Borough of Carlisle*, 622 F.3d 248 (3d Cir. 2010), the Third Circuit considered whether there was sufficient case law “establishing a right to videotape police officers during a traffic stop to put a reasonably competent officer on ‘fair notice’ that seizing a camera or arresting an individual for videotaping police conduct during the stop would violate the First Amendment.” *Id.* at 262. The Court determined that, because there were no cases specifically addressing the right to record traffic stops and the relevant Third Circuit decisions were inconsistent, there was insufficient case law to support a finding that the right to record traffic stops was clearly established. *Id.* Because the right was not clearly established, the officer involved was entitled to qualified immunity. *Id.* at 262-63. The Third Circuit expressly did not reach the question of whether the First Amendment protects the recording of police activity during a traffic stop, because it did not need to reach that question to decide that the officer should receive qualified immunity. *Id.* In other contexts, the Supreme Court has noted that, when faced with a close call, “the First Amendment requires [courts] to err on the side of protecting political speech rather than suppressing it.” *FEC v. Wisconsin Right to*

is still developing, existing case law is instructive. In *Glik*, an individual engaged in protected activity when he recorded officers allegedly engaging in excessive force in a public park, “the apotheosis of a public forum.” *Glik*, 655 F.3d at 84. Individuals have a right to record in all traditionally public spaces, including sidewalks, streets and locations of public protests.

Courts have also extended First Amendment protection to recordings taken on private property, including an individual filming police activity from his or her home or other private property where an individual has a right to be present. See *Jean v. Massachusetts State Police*, 492 F.3d 24 (1st Cir. 2007) (activist’s posting of a video of “a warrantless and potentially unlawful search of a private residence” on her website was entitled to First Amendment protection); *Pomykacz v. Borough of West Wildwood*, 438 F.Supp.2d 504, 513 (D. N.J. 2006) (individual was engaging in political activism protected by the First Amendment when she photographed police officer while officer was in police headquarters and in municipal building); *Robinson v. Fetterman*, 378 F.Supp.2d 534, 541 (E.D. Pa. 2005) (individual who videotaped state troopers from private property with the owner’s permission was engaged in constitutionally protected speech). The 1991 videotaped assault of Rodney King at the hands of law enforcement officers exemplifies this principle. A private individual awakened by sirens recorded police officers assaulting King from the balcony of his apartment. This videotape provided key evidence of officer misconduct and led to widespread reform. Congress enacted 42 U.S.C. §14141 in response to this incident. Section 14141 granted the U.S. Attorney General the right to seek declaratory or injunctive relief against law enforcement agencies engaged in a pattern or practice of violating the Constitution or federal law.

BPD’s General Order J-16 should affirmatively set forth that individuals have a First Amendment right to record officers in the public discharge of their duties. At numerous points throughout General Order J-16, BPD refers to “Constitutional rights” that form the basis for the policy. For example, General Order J-16 begins with a statement acknowledging that the purpose of the policy is to “to ensure the protection and preservation of every person’s Constitutional rights,” *id.* at 1, and later refers to bystanders’ “absolute right to photograph and/or video record the enforcement actions of any Police Officer.” *Id.* at 2. Yet, General Order J-16 never explicitly acknowledges that this right derives from the First Amendment. Particularly given the numerous publicized reports over the past several years alleging that BPD officers violated individuals’ First Amendment rights, BPD should include a specific recitation of the First Amendment rights at issue in General Order J-16.

Other areas of General Order J-16 also require further clarification. For example, General Order J-16 states that officers may not prohibit a person’s ability to observe, photograph, and/or make a video recording of police activity that occurs “in the public domain,” General Order J-16 at 1, but never defines this term. BPD should clarify that the right to record public officials is not limited to streets and sidewalks – it includes areas where individuals have a legal right to be present, including an individual’s home or business, and common areas of public and private facilities and buildings.

Life, Inc., 551 U.S. 449, 457 (2007). See also *Bertot v. School Dist. No. 1, Albany County, Wyo.*, 613 F.2d 245, 252 (10th Cir. 1979) (“We prefer that governmental officials acting in sensitive First Amendment areas err, when they do err, on the side of protecting those interests.”).

B. Policies should describe the range of prohibited responses to individuals observing or recording the police.

Because recording police officers in the public discharge of their duties is protected by the First Amendment, policies should prohibit interference with recording of police activities except in narrowly circumscribed situations. More particularly, policies should instruct officers that, except under limited circumstances, officers must not search or seize a camera or recording device without a warrant. In addition, policies should prohibit more subtle actions that may nonetheless infringe upon individuals' First Amendment rights. Officers should be advised not to threaten, intimidate, or otherwise discourage an individual from recording police officer enforcement activities or intentionally block or obstruct cameras or recording devices.

Policies should prohibit officers from destroying recording devices or cameras and deleting recordings or photographs under any circumstances. In addition to violating the First Amendment, police officers violate the core requirements of the Fourteenth Amendment procedural due process clause when they irrevocably deprived individuals of their recordings without first providing notice and an opportunity to object. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The right to be heard before being condemned to suffer grievous loss of any kind . . . is a principle basic to our society."); *Stotter v. Univ. of Tex. at San Antonio*, 508 F.3d 812, 823 (5th Cir. 2007) (The notice defendant provided to the plaintiff "was insufficient to satisfy due process because [plaintiff] did not receive the notice until after his personal property was allegedly discarded . . . [D]iscarding [plaintiff's] personal property in this manner violated his procedural due process rights.").

BPD's General Order J-16 addresses the search and seizure of cameras or recording devices. However, the policy does not prohibit more subtle officer actions that nonetheless may infringe upon individuals' First Amendment rights. BPD should instruct officers not to threaten, intimidate, or otherwise discourage an individual from recording police officer enforcement activities or intentionally block or obstruct cameras or other recording devices.

The order also prohibits officers from damaging or erasing the contents of a device without first obtaining a warrant, General Order J-16 at 2. This is not merely a Fourth Amendment question, however. Under the First Amendment, there are no circumstances under which the contents of a camera or recording device should be deleted or destroyed. BPD's general order should include clear language prohibiting the deletion or destruction of recordings under any circumstances.

C. Policies should clearly describe when an individual's actions amount to interference with police duties.

The right to record police activity is limited only by "reasonable time, place, and manner restrictions." *Glik*, 655 F.3d at 8; *Smith*, 212 F.3d at 1333. If a general order permits individuals to record the police unless their actions interfere with police activity, the order should define what it means for an individual to interfere with police activity and, when possible, provide specific examples in order to effectively guide officer conduct and prevent infringement on activities protected by the First Amendment.

A person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity, violate the law, or incite others to violate the law. *See, e.g., Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942) (words “likely to cause a fight” are not afforded First Amendment protection); *see also Louisiana ex rel. Gremillion v. National Ass’n for the Advancement of Colored People*, 366 U.S. 293, 297 (1961) (“criminal conduct . . . cannot have shelter in the First Amendment”). Courts have held that speech is not protected by the First Amendment if it amounts to actual obstruction of a police officer’s investigation – for example, by tampering with a witness or persistently engaging an officer who is in the midst of his or her duties. *See Colten v. Commonwealth of Kentucky*, 407 U.S. 104 (1972) (individual’s speech not protected by the First Amendment where individual persistently tried to engage an officer in conversation while the officer was issuing a summons to a third party on a congested roadside and refused to depart the scene after at least eight requests from officers); *King v. Ambs*, 519 F.3d 607 (6th Cir. 2008) (individual was not engaged in protected speech when he repeatedly instructed a witness being questioned by a police officer not to respond to questions).

However, an individual’s recording of police activity from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does not amount to interference. Nor does an individual’s conduct amount to interference if he or she expresses criticism of the police or the police activity being observed. *See City of Houston, Tex. v. Hill*, 482 U.S. 451, 461 (1987) (“[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.”); *Norwell v. City of Cincinnati, Ohio*, 414 U.S. 14, 16 (1973) (“Surely, one is not to be punished for nonprovocatively voicing his objection to what he obviously felt was a highly questionable detention by a police officer.”) Even foul expressions of disapproval towards police officers are protected under the First Amendment.⁴ *See, e.g., Duran v. City of Douglas, Arizona*, 904 F.2d 1372, 1377-78 (9th Cir. 1990) (individual who was “making obscene gestures” and “yell[ed] profanities” at an officer engaged in conduct that “fell squarely within the protective umbrella of the First Amendment and any action to punish or deter such speech—such as stopping or hassling the speaker—is categorically prohibited by the Constitution.”).

Time, place, and manner restrictions on First Amendment speech must “leave open ample alternative channels for communication of the information,” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). BPD’s general order specifically suggests that, if a bystander’s actions are

⁴ The Supreme Court has carved out an exception for “‘fighting’ words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky*, 315 U.S. at 572. However, the Court has indicated that the fighting words exception “might require a narrower application in cases involving words addressed to a police officer, because ‘a properly trained officer may reasonably be expected to exercise a higher degree of restraint’ than the average citizen, and thus be less likely to respond belligerently to ‘fighting words.’” *Hill*, 482 U.S. at 462. *See also Johnson v. Campbell*, 332 F.3d 199 (3d Cir. 2003) (detainee’s words “son of a bitch” to police officer were not fighting words); *Posr v. Court Officer Shield #207*, 180 F.3d 409 (2d Cir. 1999) (individual’s statement to officer “one day you’re gonna get yours,” spoken while in retreat, were not fighting words); *Buffkins v. City of Omaha, Douglas County*, 922 F.2d 465, 472 (8th Cir. 1991) (finding no evidence that individual caused “an incitement to immediate lawless action” by calling officer “asshole”).

“approaching the level of a criminal offense,” supervisors should “recommend a less-intrusive location to the bystander from which he/she may continue to observe, photograph, or video record the police activity.” *Id.* at 5. This is effective language to guide supervisor’s conduct. However, BPD’s general order does not permit or recommend that “members” – presumably officers – provide this information to bystanders before effectuating an arrest. BPD should revise its general order to provide “members” with the same authority.

General Order J-16 must set forth with specificity the narrow circumstances in which a recording individual’s interference with police activity could subject the individual to arrest. Recent publicized interactions between citizen-recorders and BPD officers highlight the need for clear guidance on this issue. See Peter Hermann, *Police Allow Bystanders to Tape Arrest, But at What Risk?*, The Baltimore Sun, April 3, 2012 (president of the city police union stating that officers “are confused right now” about how to appropriately respond to individuals recording police conduct); see also, *Fox45 Top News Stories Video*, Fox45 WBFF Baltimore, March 22, 2012 (covering the suspension of a BPD officer who confiscated a cell phone from an individual recording police from a family member’s property)⁵; Justin Fenton, *In Federal Hill, Citizens Allowed to Record Police – But Then There’s Loitering*, The Baltimore Sun, February 11, 2012 (BPD officer instructing a citizen-recorder that he would face loitering charges if he failed to move away from the scene of an arrest).

Under “General Information,” General Order J-16 at 2, the policy states that bystanders have an absolute right to record police activity as long as the bystanders’ actions do not fall into one of six exceptions. One exception is that bystanders may not “Interfere with or violate any section of the law, ordinance, code, or criminal or traffic article.” While bystanders clearly may not violate the law, it is less clear under what circumstances an individual’s actions would “interfere” with a law or ordinance. This language encourages officers to use their discretion in inappropriate, and possibly unlawful, ways. Instead, General Order J-16 should encourage officers to provide ways in which individuals can continue to exercise their First Amendment rights as officers perform their duties, rather than encourage officers to look for potential violations of the law in order to restrict the individual’s recording.

D. Policies should provide clear guidance on supervisory review.

First line supervision is a critical component of constitutional policing. Policies should include guidance on when an officer should call a supervisor to the scene and what a supervisor’s responsibilities are once he or she arrives at the scene. A supervisor’s presence at the scene should be required before an officer takes any significant action involving citizen-recorders or recording devices, including a warrantless search or seizure of a camera or recording device or an arrest.⁶

⁵ Available at: http://www.foxbaltimore.com/newsroom/top_stories/videos/wbff_vid_12767.shtml.

⁶ Supervisors should be present at the scene to approve any arrest for conduct related to the use of cameras or recording devices. For example, an arrest for quality of life offenses, including “hindering” or “loitering,” may be based upon the individuals’ alleged interference with police duties while using a recording device. See, e.g., Justin Fenton, *In Federal Hill, Citizens Allowed to Record Police – But Then There’s Loitering*, The Baltimore Sun, February 11, 2012 (BPD

BPD should clarify the role of supervisors. A supervisor's presence at the scene should be required before an officer takes any significant action involving cameras or recording devices, including a warrantless search or seizure. If feasible, supervisors should be present prior to an individual's arrest related to the use of a recording device. At a minimum, supervisors must be present to approve such arrests before an individual is transported to a holding facility. BPD's general order does not include mandatory language requiring supervisors to be present during these occurrences, but rather advises supervisors to be present "if possible." General Order J-16 at 4.

Moreover, BPD's general order includes inconsistent language regarding when a member should contact a supervisor. On page 4, officers are instructed to notify a supervisor *after* an individual has been arrested. Later on the same page, under the supervisor's responsibilities, the supervisor is advised to go to any scene where the actions of a bystander are "approaching the level of a criminal offense." BPD should reconcile this inconsistency and require, at a minimum, a supervisor's presence at the scene to approve all arrests or any other significant action by a member.

E. Policies should describe when it is permissible to seize recordings and recording devices.

Policies on individuals' right to record and observe police should provide officers with clear guidance on the limited circumstances under which it may be permissible to seize recordings and recording devices. An officer's response to an individual's recording often implicates both the First and Fourth Amendment, so it's particularly important that a general order is consistent with basic search and seizure principles. A general order should provide officers with guidance on how to lawfully seek an individual's consent to review photographs or recordings and the types of circumstances that do—and do not—provide exigent circumstances to seize recording devices, the permissible length of such a seizure, and the prohibition against warrantless searches once a device has been seized. Moreover, this guidance must reflect the special protection afforded to First Amendment materials.

Policies should include language to ensure that consent is not coerced, implicitly or explicitly. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973) ("[T]he Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed."). In assessing whether an individual's consent to search was freely and voluntarily given, Courts may consider "the characteristics of the accused . . . as well as the conditions under which the consent to search was given (such as the officer's conduct; the number of officers present; and the duration, location, and time of the encounter)." *United States v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996). BPD's explanation of the process for obtaining consent includes clear guidelines regarding what steps an officer should take once an individual provides an officer with consent to review a recording. However, BPD's general order should include language to ensure that consent is not coerced, implicitly or explicitly.

officer instructing a citizen-recorder that he would face loitering charges if he failed to move away from the scene of an arrest).

Warrantless seizures are only permitted if an officer has probable cause to believe that the property “holds contraband or evidence of a crime” and “the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.” *United States v. Place*, 462 U.S. 696, 701 (1983). Any such seizure must be a “temporary restraint[] where needed to preserve evidence until police c[an] obtain a warrant.” *Illinois v. McArthur*, 531 U.S. 326, 334 (2001). Seizures must be limited to a reasonable period of time. For example, in *Illinois v. McArthur*, the Supreme court upheld a police officer’s warrantless seizure of a premises, in part, because police had good reason to fear that evidence would be destroyed and the restraint only lasted for two hours – “no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant.” *Id.* at 332. Once seized, officers may not search the contents of the property without first obtaining the warrant. *Place*, 462 U.S. at 701 & n.3. In the context of the seizure of recording devices, this means that officers may not search for or review an individual’s recordings absent a warrant.

Police departments must also recognize that the seizure of a camera that may contain evidence of a crime is significantly different from the seizure of other evidence because such seizure implicates the First, as well as the Fourth, Amendment. The Supreme Court has afforded heightened protection to recordings containing material protected by the First Amendment. An individual’s recording may contain both footage of a crime relevant to a police investigation and evidence of police misconduct. The latter falls squarely within the protection of First Amendment. *See, e.g., Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034 (1991) (“There is no question that speech critical of the exercise of the State’s power lies at the very center of the First Amendment.”). The warrantless seizure of such material is a form of prior restraint, a long disfavored practice. *Roaden v. Kentucky*, 413 U.S. 496, 503 (1973) (when an officer “br[ings] to an abrupt halt an orderly and presumptively legitimate distribution or exhibition” of material protected by the First Amendment, such action is “plainly a form of prior restraint and is, in those circumstances, unreasonable under Fourth Amendment standards.”). *See also Rossignol v. Voorhaar*, 316 F.3d 516, 522 (4th Cir. 2003) (Where sheriff’s deputies suppressed newspapers critical of the sheriff “before the critical commentary ever reached the eyes of readers, their conduct met the classic definition of a prior restraint.”). An officer’s warrantless seizure of an individual’s recording of police activity is no different. *See Robinson v. Fetterman*, 378 F.Supp.2d 534, 541 (E.D. Penn 2005) (By restraining an individual from “publicizing or publishing what he has filmed,” officer’s “conduct clearly amounts to an unlawful prior restraint upon [] protected speech.”); *see Channel 10, Inc. v. Gunnarson*, 337 F.Supp. 634, 637 (D.Minn. 1972) (“it is clear to this court that the seizure and holding of the camera and undeveloped film was an unlawful ‘prior restraint’ whether or not the film was ever reviewed.”).

The warrantless seizure of material protected by the First Amendment “calls for a higher hurdle in the evaluation of reasonableness” under the Fourth Amendment. *Roaden v. Kentucky*, 413 U.S. 496, 504 (1973). Police departments should limit the circumstances under which cameras and recording devices can be seized and the length of the permissible seizure. BPD’s general order does not convey that the warrantless seizure of recording material is different than the warrantless seizure of many other types of evidence, in that it implicates the First, as well as the Fourth, Amendment. General Order J-16 should make it clear to officers that, in the ordinary course of events, there will not be facts justifying the seizure of cameras or recording devices. Moreover, General Order J-16 does not define “temporary” seizure. BPD should clarify how long and under what circumstances an officer may seize a recording device, even temporarily,

and how the recordings on the device must be maintained after seizure. A policy permitting officers, with supervisory approval, to seize a film for no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant if that film contains critical evidence of a felony crime would diminish the likelihood of constitutional violations.

F. Police departments should not place a higher burden on individuals to exercise their right to record police activity than they place on members of the press.

The Supreme Court has established that “the press does not have a monopoly on either the First Amendment or the ability to enlighten.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 782 (1978). Indeed, numerous courts have held that a private individual’s right to record is coextensive with that of the press. A private individual does not need “press credentials” to record police officers engaged in the public discharge of their duties. *See e.g., Glik*, 655 F.3d at 83 (“The First Amendment right to gather news is, as the Court has often noted, not one that inures solely to the benefit of the news media; rather, the public’s right of access to information is coextensive with that of the press.”); *Lambert v. Polk County, Iowa*, 723 F.Supp. 128, 133 (S.D. Iowa 1989) (“It is not just news organizations . . . who have First Amendment rights to make and display videotapes of events—all of us . . . have that right.”). The First Amendment “attempt[s] to secure ‘the widest possible dissemination of information from diverse and antagonistic sources,’” including the “promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964).

This principal is particularly important in the current age where widespread access to recording devices and online media have provided private individuals with the capacity to gather and disseminate newsworthy information with an ease that rivals that of the traditional news media. *See Glik*, 655 F.3d at 84 (“[M]any of our images of current events come from bystanders with a ready cell phone or digital camera rather than a traditional film crew, and news stories are now just as likely to be broken by a blogger at her computer as a reporter at a major newspaper.”).

BPD’s general order appropriately does not place a higher burden on individuals to exercise their right to record police activity than in places on members of the press. Policies should not establish different guidelines for media and non-media individuals. BPD’s general order includes language that accomplishes this goal:

“Members of the press and members of the general public enjoy the same rights in any area accessible to the general public.” *Id.* at 4.

“No individual is required to display ‘press credentials’ in order to exercise his/her right to observe, photograph, or video record police activity taking place in an area accessible to, or within view of, the general public.” *Id.*

These two provisions effectively convey that officers should not place a higher burden on individuals to exercise their right to record police activity than in places on members of the press.

3. Conclusion

Comprehensive policies and effective training are critical to ensuring that individuals' First, Fourth and Fourteenth Amendment rights are protected when they record police officers in the public discharge of their duties. If the parties determine that settlement of this matter is feasible, we encourage the parties to reach an agreement that is consistent with the guidance provided above. Please note that this letter is a public document and will be posted on the Civil Rights Division's website. If you have any questions, please feel free to contact us.

Sincerely,

Jonathan M. Smith
JONATHAN M. SMITH *by SES*
Chief
Special Litigation Section

