

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF NEW HAMPSHIRE

**Christopher Waid**  
*Plaintiff*  
v.

Docket No.: \_\_\_\_\_

**Robert Harrington**, officially and individually,  
**City of Manchester, NH**  
*Defendants.*

**COMPLAINT FOR DAMAGES**

COMES NOW the Plaintiff, Christopher Waid, by and through undersigned Counsel,  
and for his Complaint for Damages, states as follows:

**Jurisdiction, Cause of Action, and Venue**

1. Christopher Waid (“Christopher” or “Plaintiff”) invokes this Court’s jurisdiction pursuant to 28 U.S.C. § 1331.
2. Christopher brings his federal claims against state actors pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.
3. The Defendants committed their wrongful acts within the State of New Hampshire. Venue is therefore appropriate pursuant to 28 U.S.C. § 1391(b).

**Parties**

4. Christopher is the sole Plaintiff in this action. At all relevant times, Christopher was an individual citizen of the State of New Hampshire residing at 63 Emerald Street, # 462, Keene, NH.
5. The City of Manchester, NH (the “City”) is a City in Hillsborough County in the State of New Hampshire which has supervisory authority over its police officers.

6. Robert Harrington (“Harrington” or the “Officer”) was at all relevant times employed as a police officer by the City. Harrington is being sued in his individual and official capacities, depending on which is appropriate in each situation.
7. When performing the acts described below, the Defendants acted under color of state law, but in excess of Federal constitutional limitations.
8. At all relevant times, the Officer was employed by the City and acted within the scope of his employment.

### **Salient Facts**

9. On April 20, 2017, the Manchester Police Department (“MPD”) was operating a DUI checkpoint on the westbound lanes of Bridge Street in Manchester, New Hampshire.
10. Though not authorized by the DUI checkpoint’s operational plan approved by the Hillsborough Superior Court, the North-side sidewalk which is adjacent to the westbound lanes of Bridge Street was closed. The South-side sidewalk adjacent to the eastbound lanes of Bridge Street remained open.
11. That evening, Christopher was situated on the South-side sidewalk recording the officers involved in the checkpoint with his handheld video recorder.
12. Christopher was accompanied by Ian Bernard, who was also recording.
13. Christopher was situated between the intersection of Bridge Street and McGregor Street (controlled by a stop light), and the intersection of Bridge Street and Plaza Drive, which is not controlled by a stoplight, stop sign, or any other traffic control device.
14. Christopher was not able to get quality video of the officers’ interactions with passing motorists from his vantage point on the South-side sidewalk.

15. Therefore, at around 10:49 p.m., Christopher safely crossed from the South-side sidewalk across the eastbound lane to the island which divides eastbound and westbound traffic on Bridge Street.
16. Ian Bernard followed Christopher from several paces behind.
17. In crossing the eastbound lane, Christopher did not in any way block the travel of any oncoming traffic. Nor did any motor vehicle have to stop, change course, or slow down in order to avoid hitting Christopher.
18. At the time that Christopher arrived on the island, no officers were present on the island.
19. Once Christopher had reached the center island, Harrington yelled, "Get back on the sidewalk where you belong!" Harrington and two other officers immediately approached Christopher.
20. Ian Bernard, who had not reached the center island before the officers did, returned to the South-side sidewalk.
21. Christopher remained on the island from that point until he was arrested, and did not at any time approach the officers.
22. While other officers approached Christopher, Harrington left his position on the North-side sidewalk and crossed the street to the center island where Christopher was standing stationary.
23. As Harrington approached, Christopher noted that the officers' safety was his concern and asked the officers if they were familiar with the *Glik v. Cunniffe* decision.
24. From the point that a police officer first entered the island, Christopher remained in substantially the same place on the island until the point of his arrest.

25. Upon reaching the island, Harrington immediately approached Christopher, grabbed hold of Christopher's camera, and positioned his face approximately six inches from Christopher's face.
26. At this point, Harrington stated, "You're about to get summoned for operating a motor vehicle," and then immediately stated, "You're about to get a summons."
27. As Harrington held onto Christopher's camera, Christopher called out to Ian Bernard, "Are you getting this? He's breaking my camera!" and "You have no right to touch my camera. I'm a member of the press."
28. While holding Christopher's camera in such a way that it could not video record his interaction with Christopher, Harrington stated, "I'm not breaking your camera."
29. Despite having approached Christopher and positioned his face directly in front of Christopher's, Harrington added, "I don't need it in my face."
30. Harrington then twice asked, "You got your ID, sir," while Christopher asserted, "You have no right to touch my camera."
31. Harrington repeated his question, asking if Christopher had his ID. Christopher responded, "I have no obligation to give you any ID, whatsoever."
32. Harrington then stated, "I'm going to lock you up for pedestrian in the roadway if you don't get your ass back on the sidewalk."
33. Christopher noted he was merely crossing the road and then stated, "Go ahead."
34. Harrington repeated, "Your ID?" Christopher responded, "I am not providing ID. I am under no obligation to provide ID unless I'm under arrest." Harrington simply responded, "You're under arrest."

35. At no point did Harrington state any reason for his demand that Christopher provide ID.<sup>1</sup>
36. Harrington seized Christopher's camera pursuant to Christopher's arrest.
37. In the *Gerstein* Affidavit sworn by Harrington on April 20, 2017, Harrington swore that two people had approached the traffic island, and were "stopped on the traffic median." *Harrington Affidavit*, ¶ 3.
38. Harrington falsely alleged in his *Gerstein* Affidavit that it was Christopher who approached him, and that "He [Christopher] moved the camera toward my face in such a way as to cause me concern that he would strike me. I reached out and pushed the camera away from my upper body and held it while I attempted to talk to the subject." *Harrington Affidavit*, ¶ 3. The video from Ian Bernard's camera clearly shows this to be false.
39. While Officer Harrington alleged that he interfered with Christopher's recording because he was afraid he would be struck with the camera, he made no note whatsoever of the heavy Maglite flashlight held in Christopher's other hand.
40. The video from Christopher's camera shows no attempt by Christopher to approach or otherwise position the camera close to Harrington, but does show Harrington aggressively approaching Christopher before grabbing the camera.
41. Christopher was charged with the violation-level offense of Pedestrian in Roadway (RSA 265:36), and Class A Misdemeanor Disorderly Conduct (RSA 644:2, III(b)) (the "Charges").

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<sup>1</sup> Harrington alleges in his *Gerstein* Affidavit that "I asked the subject to produce an ID so that I could write out a summons." *Harrington Affidavit*, ¶ 3. However, Harrington at no point stated any reason for his demand that Christopher produce ID.

42. The Disorderly Conduct complaint alleged that Christopher did “recklessly create a risk of causing a breach of the peace, public inconvenience, annoyance or alarm by disrupting the orderly conduct of business in any public or governmental facility, to wit, cross the roadway, not in a crosswalk and approach<sup>2</sup> Officer Harrington as he conducted a DWI check point detail and place a video camera close to his face<sup>3</sup> causing concern that he was going to strike Officer Harrington and was ordered several times to produce an ID which Christopher Waid refused to [sic].”
43. All of the events in question took place in public areas, including on an island and adjacent roadways and sidewalks, and did not take place in or on a governmental facility.
44. Christopher’s refusal to provide ID is irrelevant, as New Hampshire law requires only those operating a motor vehicle to provide identification. *See* N.H. RSA 265:4 (requiring a person to provide identification when in control of a motor vehicle).
45. Other than the officers and Ian Bernard, there were no other persons present. As such, the Disorderly Conduct complaint has even less credibility. *See State v. Murray*, 135 N.H. 369 (1992) (holding that a police officer cannot be the victim of disorderly conduct under RSA 644:2, III). *See also State v. McCooey*, 158 N.H. 86 (2002) (applying the *Murray* Doctrine to a person charged under the same section of the statute as that under which Christopher is charged).

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<sup>2</sup> *See* ¶¶ 21-25.

<sup>3</sup> *See* ¶ 25.

46. Christopher did not commit the offense of Pedestrian in Roadway as RSA 265:36 allows for pedestrians to cross outside of crosswalks, but prohibits crossing outside of a crosswalk “Between adjacent intersections at which traffic control signals are in operation....” See ¶ 13 (noting that Christopher was not between adjacent intersection at which traffic control signals are in operation).
47. The Charges were *nol prossed* on November 2, 2017.

## Claims

### Count I

(Violation of Plaintiff's 1<sup>st</sup> and 14<sup>th</sup> Amendment Right to Free Speech)

*Against Harrington*

49. Plaintiff incorporates and re-alleges all previous Paragraphs of this Complaint.
50. Plaintiff had a right to video and/or audio record the Officers performing their public duties in public.
51. Harrington, forcibly and without consent, physically prevented Plaintiff from recording his interaction with Harrington, by physically obstructing Plaintiff's use of his camera and/or by falsely arresting Plaintiff in retaliation for his recording.
52. In so doing, Harrington prevented Plaintiff from engaging in his constitutionally-protected right to record the Officers.
53. Harrington's act was intended to chill Plaintiff's lawful 1<sup>st</sup> Amendment speech.
54. Plaintiff's lawful 1<sup>st</sup> Amendment speech was chilled as a result of Harrington's actions.
55. Therefore, Harrington violated Plaintiff's First Amendment rights.
56. As a proximate result of Defendant's willful and wanton deprivation of Plaintiff's 4<sup>th</sup> Amendment and 14<sup>th</sup> Amendment rights to be free from unlawful arrests and/or his 1<sup>st</sup> Amendment and 14<sup>th</sup> Amendment rights to be free to reasonably record police performing their public duties in a public place, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.



Count II  
(Retaliatory Prosecution in Violation of Plaintiff's Right to Free Speech)  
*Against all Defendants*

57. Plaintiff incorporates and re-alleges all previous Paragraphs of this Complaint.
58. Plaintiff had a First Amendment right to video and/or audio record the Officers performing their public duties in public.
59. The Defendants arrested and prosecuted Plaintiff in retaliation for lawfully engaging in said activity, and did so without probable cause. The arrest and prosecution chilled Plaintiff's First Amendment rights.
60. In so doing, Harrington prevented Plaintiff from engaging in his constitutionally-protected right to record the Officers.
61. As a proximate result of Defendant's willful and wanton deprivation of Plaintiff's 4<sup>th</sup> Amendment and 14<sup>th</sup> Amendment rights to be free from unlawful arrests and/or his 1<sup>st</sup> Amendment and 14<sup>th</sup> Amendment rights to be free to reasonably record police performing their public duties in a public place, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.

Count III  
(Battery in Violation of 1<sup>st</sup> and 14<sup>th</sup> Amendments)  
*Against Harrington*

62. Plaintiff incorporates and re-alleges all previous Paragraphs of this Complaint.
63. Officer Harrington acted with the intent to cause a harmful or offensive contact with Plaintiff when he reached out and grabbed Plaintiff's camera, which camera was being used to engage in lawful First Amendment Activity which Harrington had no legal authority or right to prevent, stop, or punish.
64. Officer Harrington actually caused harmful or offensive physical contact with Plaintiff's person and/or an object held by Plaintiff, when he grabbed Plaintiff's camera.
65. Plaintiff did not consent to Harrington's harmful or offensive physical contact with his person and/or the camera which Plaintiff was holding.
66. Harrington's act was intended to chill Plaintiff's lawful 1<sup>st</sup> Amendment speech.
67. Plaintiff's lawful 1<sup>st</sup> Amendment speech was chilled as a result of Harrington's actions.
68. Harrington's act physically interfered with, and therefore violated, Plaintiff's First Amendment right to record public officials performing their public duties in a public place.
69. As a proximate result of Defendant's willful and wanton deprivation of to be free from unlawful battery and violations of his 1<sup>st</sup> Amendment rights, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.

Count IV  
(Battery in Violation of New Hampshire Law)  
*Against Harrington*

70. Plaintiff incorporates and re-alleges all previous Paragraphs of this Complaint.
71. Officer Harrington acted with the intent to cause a harmful or offensive contact with Plaintiff when he reached out and grabbed Plaintiff's camera out of his hands, which camera was being used to engage in lawful First Amendment Activity which Harrington had no legal authority or right to prevent, stop, or punish.
72. Officer Harrington actually caused harmful or offensive physical contact with Plaintiff's person and/or an object held by Plaintiff, when he grabbed Plaintiff's camera out of Plaintiff's hands.
73. Plaintiff did not consent to Harrington's harmful or offensive physical contact with his person and/or the camera which Plaintiff was holding.
74. As a proximate result of Defendant Harrington committing the tort of battery against Plaintiff, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.

Count V  
(False Arrest in Violation of 4<sup>th</sup> and 14<sup>th</sup> Amendments)<sup>4</sup>  
*Against Harrington*

75. Plaintiff incorporates and re-alleges all previous Paragraphs of this Complaint.

76. Harrington, in his individual capacity, consciously and unlawfully arrested Plaintiff, without probable cause or legal right to do so, for Disorderly Conduct (RSA 644:2, III(b)), and violation-level Pedestrian in Roadway (RSA § 265:39), and did so in violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments.

77. Despite the basis given for the Disorderly Conduct charge (*see* ¶ 42), Christopher was not in any government facility, was not required to cross within a crosswalk at that point in the roadway, did not in fact approach Harrington nor place a video camera close to Harrington, and was not required to provide identification.<sup>5</sup> As such, the Disorderly Conduct charge lacked any legal basis.

78. Plaintiff was aware of the curtailment of his personal liberty due to the arrest and did not consent to it.

79. As a proximate result of Defendant's willful and wanton deprivation of Plaintiff's 4<sup>th</sup> Amendment right to be free from unlawful arrests, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.

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<sup>4</sup> *Calero-Colon v. Betancourt-Lebron*, 68 F.3d 1 (1st Cir. 1995); *Wagenmann v. Adams*, 829 F.2d 196 (1st Cir. 1987). Anyone who directs or assists in an unlawful arrest may be liable. *Mechler v. Hodges*, 2006 U.S. Dist. LEXIS 76550 (Southern Dist. OH 2006).

<sup>5</sup> *Sheehy v. City of Plymouth*, 191 F.3d 15 (1st Cir. 1999) (overturning lower court's ruling that defendant officers were entitled to qualified immunity where plaintiff was arrested for disorderly conduct on the sole basis that he refused to provide his name to the officers). *See also Rodriguez v. Comas*, 888 F.2d 899 (1st Cir. 1989) (denying qualified immunity to officer who arrested plaintiff for refusing to answer officer's questions - including plaintiff's name - when the officer otherwise had no probable cause to arrest plaintiff).

Count VI  
*(Respondeat Superior Liability)*<sup>6</sup>  
*Against City*

80. Plaintiff incorporates by reference and re-alleges all previous Paragraphs of this Complaint.

81. The City employed the Officers.

82. When committing their tortious acts, Harrington was acting within the scope of his employment.

83. Harrington's tortious conduct occurred substantially within the authorized time and space limits set by the City pursuant to Harrington's employment.

84. Harrington's tortious conduct was actuated, at least in part, by a purpose to serve the Manchester Police Department and/or the City.

85. As a proximate result of the City's negligence and/or deliberate indifference, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.

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<sup>6</sup> *Porter v. City of Manchester*, 151 N.H. 30, 39-40 (2004).

Count VII  
(Municipal Liability)<sup>7</sup>  
*Against City*

86. Plaintiff incorporates by reference and re-alleges all previous Paragraphs of this Complaint.

87. The City employed Harrington, and supervised his actions.

88. Due to negligence in training and/or by maintenance of a policy or custom, the City allowed Harrington to violate Plaintiff's constitutional rights.

89. As a proximate result of the City's negligence and/or deliberate indifference, Plaintiff has suffered losses as more fully set forth in his Prayer for Relief.

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<sup>7</sup> *Porter v. City of Manchester*, 151 N.H. 30, 39-40 (2004).

### **Prayer for Relief**

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court grant the following relief:

- A. For all claims made pursuant to 42 U.S.C. § 1983: compensatory damages for Christopher's pain and suffering, injury to reputation, lost wages, humiliation, and legal fees and costs associated with the Officers' violations, as well as presumed damages for unlawful arrest; and
- B. Reasonable punitive damages for the individual Officer's willful and wanton or otherwise malicious or callous conduct; and
- C. Pursuant to 42 U.S.C. § 1988, award Christopher's attorney's fees and costs associated with vindication of Christopher's constitutional rights through this action; and
- D. Award Plaintiff all damages to which he is entitled under law, including, but not limited to, damage to his reputation, compensatory damages, consequential damages, expectancy damages, incidental damages, pain and suffering, punitive damages, and attorney's fees and costs; and/or
- E. Award any further relief that this Honorable Court deems just and proper.

**Date:** \_\_\_\_\_

Respectfully submitted,  
Christopher Waid  
By, The Law Offices of Martin & Hipple

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Seth J. Hipple, Esq., Bar No. 19555  
22 Bridge Street, Suite 3  
Concord, NH 03301  
603-856-0202  
sshipple@nhlegalservices.com

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Stephen T. Martin, Esq., Bar No. 19567  
22 Bridge Street, Suite 3  
Concord, NH 03301  
603-856-0202  
smartin@nhlegalservices.com