

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL WILDEY JR.,
Plaintiff,

v.

SGT. NICOLAS SALAMONE, in his
official and individual capacities, CPL.
BRADLEY ELLMANN, in his official and
individual capacities, and CHESTER
TOWNSHIP, NEW JERSEY,
Defendants.

Civil Action No. 2:26-cv-01672 (JKS) (CF)

ORAL ARGUMENT REQUESTED

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY
INJUNCTION AND/OR PERMANENT INJUNCTION**

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1.0 INTRODUCTION

Both parties agree on the law – the Plaintiff has the Constitutional right to observe and record public police activity. *See* ECF No. 21 at 5-6. Nevertheless, Defendants violated that right, and want to continue to enjoy the privilege of violating that right.

Defendants raise irrelevant and after-the-fact pretexts in an effort to justify their unlawful actions; such as “Cathy’s Law” N.J.S.A. 2A:58D-2(b). In addition, Defendants’ claimed need for “additional discovery” lacks merit as the Defendants’ own bodycam video footage speaks for itself, and Defendants do not dispute the authenticity of the footage. Why the Defendants will not simply agree to follow the law is uncertain. But their refusal is reason to grant the injunction.¹

2.0 PLAINTIFF IS LEGALLY ENTITLED TO A TRO/PI

Again, Plaintiff and Defendants agree that the 4-factor legal standard outlined by *Holland v. Rosen*, 895 F.3d 272, 285-86 (3d Cir. 2018) applies to this case – that Plaintiff must show:

(1) a reasonable likelihood of success on the merits; (2) irreparable harm to the applicant; (3) whether the denial of a preliminary injunction would injure the moving party more than the issuance of an injunction would harm the non-moving party; and (4) whether the grant of relief would serve the public interest.

Id. Defendants have failed to refute that all 4 factors support Plaintiff’s Motion.

3.0 LIKELIHOOD OF SUCCESS

3.1 The Burden of Proof Rests with the Government

In discussing the relative burdens, Defendants misapply the legal holding of *Reilly v. City of Harrisburg*, 858 F.3d 173 (3d. Cir. 2017) (holding “government bears the burden of proof” on

¹ As a matter of judicial economy, summary judgment is also appropriate. *See* Fed. R. Civ. P. 1. Plaintiff has filed a letter seeking leave for early summary judgment. (ECF No. 7). These motion papers are not intended to be a summary judgment motion filed without leave. Nevertheless, the request for an early summary judgment motion should be granted. If the Defendants wished to present additional evidence, they could have done so with declarations or other evidence in opposing the injunctive relief. Should they wish to examine the Plaintiff at the preliminary injunction hearing (if there is one) they are free to do so.

the question of likelihood of success when the government violates the First Amendment.). The government must prove a compelling government interest once it is shown that they violated the First Amendment. *See id.* at 180, *citing Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). The defense argues that this rule only applies if a plaintiff is seeking to invalidate a *statute*, but not if the plaintiff is suing over the violation of First Amendment rights in action. That makes no sense. If that were the state of the law, then the government would have free reign to violate the Constitution, with no burden upon them as long as they agree with plaintiff regarding the current state of the law, and forcing a plaintiff to find a facial challenge to a statute.

The First Amendment violating censorship and Fourth Amendment violating seizure here was not pursuant to any law except the law of “we have the guns and the badges, so you will do what we tell you to do.” Now that they belatedly cooked up a story that this was somehow something to do with an inapplicable statute, perhaps there could be an as-applied challenge to Cathy’s Law (although even that makes no sense), but that would be premature before we figure out if anyone is gullible enough to believe this impossible-to-believe after the fact rationalization for their actions. As discussed below, Cathy’s Law clearly does not apply to the scenario, and even if it did, there is no part of that law that requires the destruction of evidence nor the harassment of a private citizen taking photographs of the police.

We have a First Amendment right to observe and record the police discharging their official duties. *Fields v. City of Philadelphia*, 862 F.3d 353, 359 (3d Cir. 2017) (“[R]ecording police activity in public falls squarely within the First Amendment right of access to information.”); *Morales v. Maxwell*, 600 F. Supp. 3d 497, 512 (D.N.J. 2022). *See also Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011) (First Amendment right to record police is clearly established and “An important corollary to this interest in protecting the stock of public information is that there is an

undoubted right to gather news from any source by means within the law.”); *Turner v. Lieutenant Driver*, 848 F.3d 678, 688 (5th Cir. 2017); *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *Irizarry v. Yehia*, 38 F.4th 1282, 1289 (10th Cir. 2022); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (there is a First Amendment “right to gather information about what public officials do on public property” and “to record matters of public interest”). In fact, Defendants concede this. *See* ECF No. 21 at 5-6. The fact that Plaintiff has not brought a facial statutory challenge does not mean the burden shifts back to him. The burden lies with the police to tell us why they not only stopped Mr. Wildey from taking photos, but why they compelled him to destroy all of the photos he had already taken. What were they up to that required such secrecy?

3.2 Cathy’s Law is both Irrelevant and Immaterial

Defendants attempt to justify their unconstitutional actions by coming up with new theory that they were attempting to enforce Cathy’s Law, N.J.S.A. 2A:58D-2(b) (“first responder who is dispatched to or is otherwise present at the scene of a motor vehicle accident or other emergency situation, for the purpose of providing medical care or other assistance, shall not photograph, film, videotape, record, or otherwise reproduce in any manner, the image of a person being provided medical care or other assistance...”). The Court should see this for what it truly is: an “after-the-fact” *post hoc* justification for Defendants’ improper conduct. “Government justification for interfering with First Amendment rights must be genuine, not hypothesized or invented *post hoc* in response to litigation.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543, n*8, (2022); *Smith v. Twp. of Clinton*, 2018 U.S. Dist. LEXIS 149366, *13 (D.N.J. 2018) (holding that law enforcement’s “*post hoc* justification are not relevant” in a 1983 action).

Cathy’s Law does not apply, and that *is* obvious and *was* obvious. Plaintiff did not arrive in a fire truck or an ambulance, he arrived in his own private car. The Police knew this, because

they are on camera trying to gin up a parking violation. (ECF No. 1-3 at 00:02:05). The Defendants knew that Mr. Wildey was there as private citizen observing and recording public police activity.

Further, Cathy’s Law applies to taking pictures of “a person being provided medical care.” N.J.S.A. 2A:58D-2(b). The record and the bodycam footage show that there was *no person there being provided medical care*. See ECF No. 1 at ¶ 9; ECF No. 1-1; and ECF No. 1-2. With all this time to get their story straight, the best excuse the government came up with is an attempt to ask this court to amend Cathy’s Law to now encompass photographs of empty wrecked cars and police officers near them? There is no torture so medieval and depraved that it could be applied to the language of Cathy’s Law to make it scream out in agony that it means what the Police try to claim it means today. They’re not being candid. The bodycam video proves it.

The Court can watch the bodycam video for itself and see that the Defendants made no reference to Cathy’s Law to Wildey, nor to each other, nor did they seek to determine whether the accident victim had been photographed. Defendants could have simply asked Plaintiff if he had taken photos of the victims – they didn’t. Of course, even if Wildey *had* taken the most grotesque and voyeuristic photos of one of the victims of the accident (he did not) it might change the *optics* of this case, but not the *law*. Wildey can take pictures of anything he wants – especially a scene of the police acting in their official capacities.

Let us pretend that Defendants genuinely thought Wildey had arrived in a fire truck, not his personal car, and that he was there in his official capacity, and everything else Cathy’s Law required – then why order him to destroy the evidence? Even in the absence of a First Amendment violation, as discussed in the Motion (ECF No. 6 at 6, 8-10) (but not addressed in the government’s opposition) The Fourth Amendment is in play here as much as the First. The Fourth Amendment liberates us from unreasonable searches and seizures in the absence of a warrant supported by

probable cause. *See, e.g., United States v. White*, 804 F.3d 132, 136 (1st Cir. 2015). Seizure of a camera without probable cause would be a Fourth Amendment violation. *See, e.g., United States v. Place*, 462 U.S. 696, 701 (1983) (“[T]he Court has viewed a seizure of personal property as per se unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.”). Here, Wildey’s photographs were indeed seized, but they were also irrevocably destroyed when the officer coerced Wildey to not only delete them, but to go through his deleted items folder to permanently vaporize them. (ECF No. 1-2 at 00:00:39; ECF No. 1-3 at 00:00:50).

Defendant Ellmann was looking over Plaintiff’s shoulder as he deleted the images at his command. *Id.* He could simply have looked at the photos while doing that and seen that no photos of a victim were taken, and then let Plaintiff go about his business. Instead of that, the video shows that Plaintiff was not free to leave. Defendants demanded, “Give me your phone. It’s going to be seized for evidence.” *See* ECF No. 1-1 at 00:00:29; ECF No. 1-2 at 00:00:40. At that point, there certainly was no probable cause to seize the phone. But even if we entertained that, Defendants stated Plaintiff could keep his phone if “you delete them [the photographs] right now.” ECF No. 1-1 at 00:00:39; ECF No. 1-2 at 00:00:50.² If there was a crime, then seize the evidence and quickly get a warrant. If there had been probable cause and they seized the phone while they sought a warrant to then examine its contents, that might have been permissible. *Place*, 462 U.S. at 701. But the Defendants knew full well there was no probable cause of anything except they didn’t like being photographed. The last shadows of their credibility vanished when Wildey was forced to destroy evidence, and not hand it over. The bodycam footage reveals that Defendants had no

² A law enforcement officer went from demanding the seizure of “evidence,” to demanding that this evidence be deleted “right now.” This makes it clear that the intent was intimidation and censorship and not any bona fide belief that probable cause existed.

interest in investigating whether any of the photos were of the accident victim – rather they demanded he delete all of his photos. When Defendants took the next step and specifically watched over him and demanded that Plaintiff delete them from his cellphone’s “recently deleted” folder, that was that. ECF No. 1-1 at 00:00:53; ECF No. 1-2 at 00:01:04. It was only after Plaintiff complied with these unconstitutional demands, Defendants stated, “Alright. He can leave.” ECF No. 1-1 at 00:01:15; ECF No. 1-2 at 00:01:27. Neither the First nor Fourth Amendments will abide this governmental conduct.

While Defendants claim that Wildey’s deletion was voluntary, it is not voluntary to do something you are compelled to do under threat of arrest or seizure of property. **Exhibit 1**, Declaration of Michael Wildey (“Wildey Decl.”) at ¶¶ 12-13. However, even if it was voluntary, the Defendants pressing the issue to demand re-deletion from the “deleted items” folder comes with not even the slightest hue of a voluntary act.

4.0 PLAINTIFF CONTINUES TO SUFFER IRREPARABLE HARM

The deprivation of Plaintiff’s constitutional rights is *ipso facto* irreparable harm. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Nevertheless, defendants contend that Plaintiff cannot show irreparable harm because “Plaintiff was never touched, his phone never taken from him, he was not physically restrained, and he was not arrested.” ECF No. 21 at 2 and 9. This is not the winning argument that Defendants think it is. All they have shown here is that Plaintiff chose to acquiesce in the face of armed men, in the hope that he would not be arrested and/or have his phone taken away from him. The controlling undisputed fact here is that ***Defendants threatened to do these things to Plaintiff if he did not comply***; hence he has clearly shown what irreparable harm he faces if he tries to exercise his constitutional rights again in Chester Township. 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.” *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968) (“[w]here there is coercion there cannot be consent.”)).

Defendants further argue that Plaintiff’s “delay in filing in and of itself shows no real or immediate danger to his rights, as nothing has happened to Plaintiff in the interim.” By this argument, Defendants argue that a citizen’s compliance with a government agent’s unconstitutional demands acts as a waiver of those constitutional rights – which is not the case. *See Boyd v. City of Jersey City*, 2018 U.S. Dist. LEXIS 99025, *14-15 (D.N.J. 2018) (court holding the law “does not intend that a person involved in a police encounter should have an incentive to flee or resist, thus endangering himself, the police, and the innocent public. ... Adjudication of an alleged violation of a person’s Fourth Amendment rights is better suited for a courtroom.”) Plaintiff has chosen this courtroom to adjudicate the violation of his constitutional rights.

And *of course* nothing has happened to him in the interim. He has remained at home, refraining from responding to incidents he hears on his scanner, as he did before, because he sees no point in going to photograph a scene if he will be arrested for taking photographs, or if the police have the right (which they clearly continue to maintain they do) to force him to delete any footage he creates. *See* ECF No. 1 at ¶¶ 36, 45, 53, and 57; Wildey Decl. at ¶¶ 12-14.

5.0 A TRO/PI IMPOSES NO HARM ON DEFENDANTS, HENCE ANY BALANCING INQUIRY FAVORS THE PLAINTIFF

Defendants argue:

Should the Court continue in its balancing inquiry, Plaintiff fails to show that not issuing the injunction would injure him more, or that the injunction serves the public good. As noted above, Plaintiff has been injunction-free since August 2025

with no citations, arrests, or any issue in the intervening 6 months. Thus, one can conclude that should no injunction issue, the status quo is not harmful to Plaintiff.

(ECF No. 21 at 10).

Once again, Defendants argue that the “status quo” of Plaintiff’s subservience/compliance to unconstitutional government edicts is evidence that Plaintiff is not being harmed or injured by the government edict in question. This is wrong. “The assertion of serious First Amendment questions has been held to compel a finding that the balance of hardships tips sharply in the plaintiff’s favor.” *GJJM Enters., LLC v. City of Atl. City*, 293 F. Supp. 3d 509, 521 (D.N.J. 2017) citing *American Bev. Ass’n v. San Francisco*, 871 F.3d 884, 898 (9th Cir. 2017).

In this case, all Plaintiff is asking from the Defendants that they respect the public’s constitutional rights and cease trying to stop members of the public (including Plaintiff, himself) from exercising their First Amendment rights. How can that cause Defendants any harm?

Further, the “status quo” is a citizen who once listened to his police scanner and rushed out to accident scenes to photograph them now remains at home when this information comes out over the scanner. ECF No. 6-1 at 1; Wildey Decl. at ¶¶ 4-13. Again, what is the point of going to a scene to photograph it if the police continue to argue, even in their papers here, that they have every right to make him delete that footage? The government’s argument is bizarre. If an abusive husband beats his wife, and she flees to a battered women’s shelter, when she takes out a restraining order, should he argue “*I ain’t hit her none since!*”? Mr. Wildey can not freely do what he once did, which was to use his clearly established First Amendment rights. An injunction solves that problem while we sort out summary judgment.

6.0 A TRO/PI SERVES THE PUBLIC’S INTERESTS

Enforcement of the First Amendment is always in the public interest. *GJJM Enters., supra*, citing *Tenafly Eruv Assoc., Inc. v. Borough of Tenafly*, 309 F.3d 144, 177 (3d Cir. 2002) (“When

there are no societal benefits justifying the suppression of First Amendment rights, the public interest is in favor of granting an injunction.”).

Defendants claim, “this injunction is not in the broader public interest, merely Plaintiff’s own interest. There has been no showing or inclination that other members of the public are at risk of, or have had, their constitutional rights allegedly being violated in a similar manner.” This ignores the fact that Plaintiff’s footage is, itself, a public service. Wildey listens to his police scanner, drives to accident or incident scenes, photographs them, and passes the information on to his network. *See* ECF No. 6-1 at 1; Wildey Decl. at ¶¶ 4-7. He does so in order to help other members of the public avoid those areas and avoid traffic. ECF No. 6-1; Wildey Decl. at ¶ 9. And does so in case his footage is helpful in civil or criminal cases. ECF No. 6-1; Wildey Decl. at ¶ 10. If a town crier is silenced, it is not only the crier who loses his rights, but those who rely on him or benefit from hearing him are also impacted.

Further, the allegation that the public is not at risk is contradicted by the New Jersey Attorney General Law Enforcement Directive No. 2021-11 entitled, “First Amendment Right to Observe, Object to, and Record Police” which states:

In particular, given widespread ownership of smartphones over the past decade, recordings of police activity are now routine. The First Amendment’s protection of an individual’s right to record “police officers conducting their official duties in public” is well-recognized. *Fields v. City of Philadelphia*, 862 F.3d 353, 355 (3d Cir. 2017). In order to continue building better relationships between communities and police, ***this Directive is necessary to ensure that the First Amendment’s bounds are as clear as possible*** – to both civilians and law enforcement with respect to the right to observe, object to, and record police activity.

(ECF No. 1-3 at 1) (emphasis added).

Why would it be ***necessary*** for the New Jersey Attorney General to distribute this directive to New Jersey State Law Enforcement Agencies? The answer is to prevent the type of incidents that took place here. The very fact the New Jersey Attorney General’s Directive exists is proof

that the public remains at risk of their First Amendment Rights being violated in the same manner as Plaintiff. Had Defendants simply complied with the law (the relief sought in Plaintiff's Motion for TRO/PI), lawsuits like Plaintiff's would not be necessary.

7.0 NO MATERIAL ISSUES OF FACT REMAIN

Although this is not the summary judgment argument, Defendants raise this issue so it will be addressed. Defendants allege that "there are significant facts to be developed that may materially conflict with Plaintiff's version of events once discovery is undertaken." ECF No. 21 at 11. Really? Like what? While we are not yet at summary judgment, the Court should grant leave to seek it. The Plaintiff has shown that there are no material facts at issue, so now if they wish to avoid summary judgment, the Defendants must identify "specific facts showing that there is a genuine [dispute] for trial" in order to survive a summary judgment motion. *Charney v. Wildwood*, 732 F. Supp. 2d 448, 452 (D.N.J. 2010) (nonmoving party must provide "affirmative evidence that contradicts the evidence offered by the moving party.") "[M]ere allegations, conclusions, conjecture, and speculation will not defeat summary judgment." *Rakowski v. City of Brigantine*, No. 19-21847, 2022 U.S. Dist. LEXIS 19554, 2022 WL 326992, at *1 (D.N.J. Feb. 3, 2022).

In this case, all of the relevant facts are provided in the bodycam footage recorded by the Defendants themselves. The fact is that Defendants violated Plaintiff's First, Fourth, and Fourteenth Amendment rights by detaining him, threatening to seize his property and forcing him to delete his legally obtained photographs. Defendants allege that there *could be* contradictory evidence of "Plaintiff's initial interaction with law enforcement that was not captured by Sgt. Salamone's body worn camera." ECF No. 21 at 11. Oh? Then where is the declaration claiming that? Even with this "Cathy's Law" story they made up, they couldn't even allege contradictory facts? They're just making up something they want the Court to speculate on? And what could possibly have happened beforehand that would justify making the Plaintiff delete his footage?

Unless there is an undisclosed national security issue, of greater importance than the top secret designation that was on the Pentagon Papers, nothing could have justified this action.

If there was an interaction between Plaintiff and Defendants prior to the bodycam recordings, where is that footage? Defendants cannot create an issue of fact by citing to missing evidence that they destroyed.

Nevertheless, if Defendants feel that there is potential evidence which contradicts what is seen on the bodycam video recordings, Defendants can appear at court to give sworn testimony to the Court at a hearing on Plaintiff's Motion for TRO/PI.

8.0 CONCLUSION

For the reasons laid out herein, Plaintiff requests entry of an Order: 1) issuing a preliminary injunction, and/or permanent injunction enjoining Defendants, their agents, employees, and all persons acting in concert with them, from unlawfully and unconstitutionally prohibiting Plaintiff from engaging in observing and photographing police activity occurring in public spaces; and/or 2) for such other further relief as the Court may seem just and proper.

Dated: March 17, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2026, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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