No. 25-1380

In the

UNITED STATES COURT OF APPEALS

for the

FIRST CIRCUIT

JASON GRANT, ALLISON TAGGART,
LISA PETERSON, AND SAMANTHA LYONS,

Plaintiffs-Appellants,

v.

TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, BEVERLY J. CANNONE, GEOFFREY NOBLE, MICHAEL D'ENTREMONT, AND MICHAEL W. MORRISSEY,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Massachusetts
No. 1:25-cv-10770-MJJ
The Honorable Myong J. Joun

REPLY TO OPPOSITION TO EMERGENCY MOTION FOR INJUNCTIVE RELIEF

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REPLY TO OPPOSITION TO
EMERGENCY MOTION FOR INJUNCTIVE RELIEF

Not a day goes by recently where there is a lack of public outcry about the perception that First Amendment rights or due process rights are being trampled upon by the current presidential administration. But a lack of respect for the Constitution begins closer to home. A few citizens who want to quietly protest near a small courthouse might not grab the headlines of deporting a man with no due process or of mass terminating visas for the exercise of First Amendment rights. Yet the odor of disrespect for the Constitution fills the nostrils of Liberty any time she takes a breath in Dedham, Massachusetts. This Court can either send a cleansing wind through the streets of Dedham, or it can simply add to the wretched stench that chokes our Constitutional rights. Its choice is binary.

1.0 Judge Cannone Exceeded Her Powers

The government has *finally* decided to try and justify Judge Cannone's power grab, trying to justify it as necessary to safeguard Karen Read's Sixth Amendment rights. But they ignore the fact that the government is the party that sought to stifle protest, not Ms. Read. The Sixth Amendment argument is a pretext.

Let us set aside that the government waived the argument regarding Judge Cannone's lack of power below and be charitable and hear them out. The government provides us with some argument about how trial courts have the power

and the duty to ensure a fair trial. No dispute there. But what the government misses is that their entire argument cites nothing but cases justifying a trial court's power in trials it presides over and *inside* the courthouse. The only case they cite, despite being overtly criticized for waiving the issue below, is *Cox v. Louisiana*. However, in *Cox*, the Supreme Court dealt with a legislature, with the clear authority to regulate the streets outside a courthouse, passing legislation to stifle protest. 379 U.S. 536 (1965). That is not what happened here.

The government in this case hopes that this Court is inobservant, and that this Court will simply gloss over the fact that neither Judge Cannone, the District Court, nor a single government lawyer ***has ever found a single case*** where a trial court judge reached outside the courthouse, down the street, around the corner, and stuffed a gag in Lady Liberty's mouth – because no judge has apparently ever tried to do this until we got to Dedham, Massachusetts, and Judge Cannone sought to stop people from holding up signs mocking her.

2.0 If the Protesters Here Got Due Process, then the Definition of Due Process has Changed Drastically

The Government claims that since Judge Cannone received an email from third parties, that the Appellants here got due process *en passant* or something. If that works, then the Trump Administration should breathe a sigh of relief as it is challenged on due process in deportation hearings. Anti-Immigrant groups should

simply send un-signed emails and file unauthorized amicus briefs before deportation-friendly judges. No notice need be provided to the deportees, they need no opportunity to be heard. Third party communications from people in favor of one side of the argument will be due process enough. C. Abrego-Garcia can remain in prison in El Salvador so long as any number of anti-immigrant groups send an unsigned email to the judge.

The Commonwealth does not dispute there was no jurisdiction over the Appellants to issue injunctive relief against them. The Commonwealth does not dispute that the Appellants were not given formal notice and an opportunity to be heard The Commonwealth admits that the Appellants could not intervene in the state court proceeding.

The government's reliance on the fact that Judge Cannone held a hearing that didn't involve Appellants is preposterous. Judge Cannone may have held a televised, public hearing, but Appellants, the individuals who would be among the people to be enjoined, had no opportunity to be heard. If the government thinks this is due process, then let us schedule a hearing where they are not invited to participate, not served with any notice, where the last time *the court did the same thing,* the Court not only said that intervention was impermissible, but did so with seething anger. We can then tell the Commonwealth that they got due process because they

could petition to Justice Jackson to review the decision, if she decides to accept discretionary review, which is extraordinary. *That* is what due process means?

Although Appellants could have attacked the buffer zone collaterally by initiating a proceeding in the state appellate courts, by that point, Appellants had already been denied their due process in the trial court. There is no requirement that they seek or exhaust relief in the state appellate courts in original proceedings before seeking relief in the federal court for the denial of due process. Both Mass. Gen. Laws, ch. 211, § 3 petition and a Section 1983 suit are collateral attacks on the denial of due process and the Commonwealth does not get to dictate which one Appellants choose *after* due process was denied, to try and weasel out of their unconstitutional actions and deprivation of their rights. The time for due process was *before* Judge Cannone entered her buffer zone injunction.

3.0 If the Order Were "Narrowly Tailored" it Would have Addressed the One Issue that Seems to be of Concern – Noise.

At Oral Argument below and in their briefing, the government seems to address only one issue of concern – noise outside the courthouse. Now, they acknowledge that the order could have been narrowly tailored to permit quiet demonstration, but they raise a new concern: some drivers might honk their horns. (Opp. at 20-21). If this were the real issue, then Judge Cannone could have tailored her order, assuming she had authority and afforded an opportunity to be heard, to

address decibel levels, as noise ordinances commonly do, and to ensure motor vehicle operators used their horns appropriately.

Of course, none of that still justifies a broad order over the masses. Judge Cannone legislated too wide a net. Jason Grant, Allison Taggart, Lisa Peterson, and Samanth Lyons—were *they* the noisy ones? Did *they* encourage drivers to honk? The Commonwealth never accused them of it. Judge Cannone had no idea who was 200 feet outside the courthouse. Recall that the purported government interest is in protecting Ms. Read's right to a fair trial, so the order restricting Grant, Taggart, Peterson, and Lyons (who had not been shown to be a threat to Read's rights) should have been narrowly tailored to address the specific harm—noise—without needlessly over-infringing Appellants' rights. But Judge Cannone did not care whose rights she was infringing, and the District Court ignored that Judge Cannone is not a legislator who gets to set policy for the populace, unlike a judge who can only adjudicate as to the parties within her jurisdiction. Appellants' right to quiet protest is unduly infringed by an order not tailored to them nor the purported disturbance in the slightest.

4.0 The *Spicuzza* Order is Useless Here

Understandably, the government wants the *Spicuzza* decision to control. Meanwhile, the *Spicuzza* Court willfully avoided the two key issues here – Judge Cannone's lack of authority to rule outside her courthouse and the application of the

First Amendment to public sidewalks. The SJC determined there was no "record evidence sufficient to establish that the 200-foot buffer zone ordered by the Superior Court extends beyond the court house grounds onto public sidewalks or other areas that constitute a public forum[.]" *Spicuzza v. Comm.,* 494 Mass. 1005, 1008 (2024). Of course, the government now admits it included such public areas—the buffer zone was specifically expanded **because there were public grounds for demonstration within 200 feet**. Nor is there citation by the government to the issue of the *Spicuzza* court addressing Judge Cannone's actions being *ultra vires*, because just like the government below, the *Spicuzza* court did not address it at all, one way or the other. Nothing in the *Spicuzza* decision is even persuasive, much less controlling, when this case is entirely about quiet protest on public sidewalks.

5.0 Comity

The only rebuttal that the government seems to have offered is that the Protesters here are welcome to be arrested and then they can challenge the *ultra vires*, unconstitutional order that was imposed without due process. "Should the plaintiffs ever be arrested or otherwise impeded or punished for the exercise of their right of free speech, they will have an abundance of state and federal remedies to which to appeal" is what they argue. That is where we are right now – exercising federal remedies.

6.0 Remedy

The Court need not completely strike down the Order on an expedited basis. It needs to, however, examine how it is being applied, as it is banning quiet protest, which could in no way address any stated governmental motivations here. It is also being applied (as addressed in two companion cases) to bar newsgathering (*Derosier, et al. v. Noble, et al.,* Case No. 1:25-cv-10812-DJC) inside the zone and to even apparently give State Troopers authorization to violently assault citizens. *See* Composite Exhibit 1, *Delgado, et al. v. Noble, et al.,* Case No. 1:25-cv-10818-RGS. This Court need only temporarily enjoin the enforcement of the order to the extent that it applies to anyone quietly protesting by holding signs or other means that do not cause disorder, intimidation, or noise. Then, in the ordinary course, we can address the additional constitutional violations.

Date: April 21, 2025.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I certify that:

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 1893 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

Date: April 21, 2025.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza
MARC J. RANDAZZA

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: April 21, 2025.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza
MARC J. RANDAZZA

Composite Exhibit 1

Delgado v. Noble

(Amended Complaint with Exhibits, and Declaration of John Delgado)

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

JOHN DELGADO, Plaintiff, v. GEOFFREY NOBLE, in his official capacity as Superintendent of the Massachusetts State Police; JOHN DOES 1 & 2 in their official capacities as Massachusetts State Police officers and in their personal capacities; TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS; BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham; and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney Defendants.	Civil Action No. 1:25-cv-10818-RGS

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FIRST AMENDED COMPLAINT

The Karen Read trial has garnered significant public attention and Judge Cannone has pretextually shut down all First Amendment activity within an ill-defined "buffer zone" declared on the streets, public walkways, public library, and private properties surrounding the Dedham Courthouse. Judge Cannone entered the order, ex parte, enjoining Plaintiff (and everyone else), who are not subject to her jurisdiction, from speaking on private property and on traditional public fora. It is a lawless, *ultra vires* act, that violates constitutional guarantees of free speech and due process. Cannone had no power to impose the buffer zone, and now the zone is being enforced in such a draconian manner that the Massachusetts State Police are using it as license to physically assault members of the public and to shut down even the quiet speech of a man walking peacefully, with a sticker on his jacket.

To remedy this wrong, Plaintiff, JOHN DELGADO, brings suit against the TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court, GEOFFREY NOBLE, as Superintendent of the Massachusetts State Police; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham, Massachusetts, and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney. Acting on this unconstitutional order, Mr. Delgado was accosted by two unidentified Massachusetts State Police officers, one of whom assaulted him and ripped off a sticker from a jacket he was wearing. They did this to enforce an unlawfully entered "buffer zone." If an individual can wear a jacket that says "FUCK THE DRAFT" inside a courthouse, it is a clearly established violation of the First Amendment for a cop to assault a citizen for wearing a "Real Justice for John O'Keefe FKR" sticker on a public sidewalk at a distance from a courthouse.

GEOFFREY NOBLE is sued in his official capacity only as Superintendent of the Massachusetts State Police; Defendants MICHAEL d'ENTREMONT and MICHAEL W. MORRISSEY are sued in their official capacities only as Chief of the Dedham Police Department and Norfolk County District Attorney. JOHN DOES 1 & 2 (Massachusetts State Police officers) are sued in their official and personal capacities.

Plaintiff brings claims under 42 U.S.C. § 1983 for Defendants' violation of his First and Fourth Amendment rights, and alleges as follows:

THE PARTIES

1. Plaintiff John Delgado is a natural person who resides in Massachusetts.

2. Defendant Geoffrey Noble is the Superintendent of the Massachusetts State Police and, at all relevant times, worked in the Commonwealth of Massachusetts.

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3. Defendant John Doe 1 is an officer with the Massachusetts State Police and, at all relevant times, worked in the Commonwealth of Massachusetts.

4. Defendant John Doe 2 is an officer with the Massachusetts State Police and, at all relevant times, worked in the Commonwealth of Massachusetts.

5. Defendant Michael d'Entremont is the Chief of the Police Department of the Town of Dedham, Massachusetts, and, at all relevant times, worked in Dedham, Massachusetts.

6. Defendant Michael W. Morrissey is the Norfolk County, Massachusetts, District Attorney and, at all relevant times, worked in Norfolk County, Massachusetts.

7. Defendant Trial Court of the Commonwealth of Massachusetts is a judicial entity organized under Mass. Gen. Laws. ch. 211B, § 1.

8. Defendant Beverly J. Cannone is a Justice of the Norfolk County Superior Court and, at all relevant times, worked in Dedham, Massachusetts.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this civil action per 28 U.S.C. § 1331 as this is a civil action arising under 42 U.S.C. § 1983 and the First and Fourth Amendments to the U.S. Constitution.

10. This Court has personal jurisdiction over all defendants as they are all citizens or organs of the Commonwealth of Massachusetts, and the defendants committed the acts complained of within the said Commonwealth.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) as all defendants reside in this District and all events giving rise to the claim occurred in this District.

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FACTUAL BACKGROUND

1.0 General Background

12. On or about January 29, 2022, John O'Keefe, a Boston Police Officer, died.

13. On or about June 9, 2022, a true bill was returned in the Trial Court of the Commonwealth of Massachusetts, Superior Court Department, Norfolk County, indicting Karen Read and charging her with a) second degree murder of O'Keefe per G.L. c. 265, § 1; b) killing O'Keefe with her motor vehicle while intoxicated per G.L. c. 265, § 13 ½; and c) a hit-and-run death of O'Keefe under. G.L. c. 90, § 24,(2)(a ½)(2).

14. Judge Beverly Cannone is the presiding judge in the Read prosecution, in the case styled *Commonwealth v. Read,* Case No. 2282CR00017, in the Trial Court of the Commonwealth of Massachusetts, Superior Court Department, Norfolk County (hereinafter "*Read* Case").

15. A trial in the *Read* Case was held in 2024, which resulted in a mistrial after the jury failed to reach a unanimous decision (hereinafter "first trial").

16. A second trial in the *Read* Case began on April 1, 2025 (hereinafter "second trial").

17. Prior to the first trial, the Commonwealth filed a motion to *inter alia* create a "buffer zone" beyond the grounds of the Norfolk Superior Courthouse, to prohibit any individual from demonstrating in any manner about Read, law enforcement, the DA, potential witnesses, and evidence within 500 feet of the court complex during the trial.

18. Judge Cannone then issued an order granting the Commonwealth's motion, asserting that the Commonwealth's perceived inconveniences overcame everyone else's First Amendment rights, without regard for any differentiation between members of the public, and expressly ordered that "no individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the

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parking area behind the Norfolk County Registry of Deeds building. Individuals are also prohibited from using audio enhancing devices while protesting." *See* **Exhibit A**.

19. Speech that does not qualify as a "demonstrat[ion]" was not restricted. Thus, a nearby café could advertise breakfast using a bullhorn and parade its menu on picket signs and placards; Celtics and Bruins fans could similarly honor their teams by hooting/hollering and carrying placards. And in fact, commercial speech was permitted within the zone.

20. In advance of the second trial, the Commonwealth again moved for a buffer zone, but with a larger area (again, encompassing private property and traditional public fora, including public sidewalks and other areas). The Commonwealth also sought specific instructions to request police to use force to quash any dissent or protest. *See* **Exhibit B.**

21. Without an opportunity for affected persons to intervene or be heard, Judge Cannone issued an Order on March 25, 2025, granting the Commonwealth's motion, asserting that the basis for the first motion warranted a *larger* buffer zone for the second trial, and expressly ordered that "no individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. The buffer zone shall further be extended to include the area bounded by Bates Court, Bullard Street, Ames Street, and Court Street. Individuals are also prohibited from using audio enhancing devices while protesting." *See* **Exhibit C** (hereinafter "Second Prior Restraint Order").

22. Judge Cannone lacks the authority to issue an order taking away anyone's First Amendment rights outside the courthouse, unless they are parties to the proceeding before her or in privity with them. This Court may enjoin Judge Cannone from engaging in acts that the she has

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no authority to take. *See, e.g*, *OA VW LLC v. Massachusetts DOT*, 76 F. Supp. 3d 374, 378 (D. Mass. 2015). It should do so immediately.

23. Massachusetts State Police officers took action to enforce the buffer zone order during the first trial, and the State Police, including Defendants Doe 1 & 2, under the control and direction of Defendant Noble, are acting to enforce the Second Prior Restraint Order.

2.0 State Police Officers Interfere with Newsgathering and with Delgado Exercising his Clearly Established Rights

24. Michel Bryant is a Host and Producer with Justice Served TV.

25. On April 1, 2025, Bryant was walking on the sidewalk near the Dedham Courthouse, inside the "buffer zone," but he was not protesting, he was news gathering.

26. While doing so, he recorded a video through his phone titled "Arrest Threats by Mass Staties in #KarenRead Case."

27. A true and correct copy of the video appears at **Exhibit D**.

28. While Bryant was newsgathering, he interviewed Plaintiff John Delgado.

29. Delgado was not protesting; he was, however, wearing a blue sticker that says, "Real Justice for John O'Keefe FKR."

30. While newsgathering in the "buffer zone," two unidentified Massachusetts State Police officers, Defendants John Does 1 & 2, approached Delgado and told him that he could not remain in the area, despite the fact that he was only walking and talking to a reporter.

31. Doe 1 told Delgado, "That's gotta go" in reference to Delgado's sticker.

32. Doe 1 violently assaulted and battered Delgado, ripping the sticker off his jacket.

33. Doe 1 then threatened Delgado "I don't want to see you walking by here again."

34. The aforesaid police encounter with Delgado appears as part of **Exhibit D**.

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35. The video streamed live from Bryant's phone to YouTube on or about 9:33 am EDT on April 1, 2025.

36. Bryant later uploaded this video of the interaction to his YouTube Channel, JSTV – Justice Served TV, on April 2, 2025, as part of his reporting, at https://www.youtube.com/watch?v=rI4M9y-6Xec.

37. The video was part of the longer broadcast "Karen Read Trial: Jury Selection Begins! Michel LIVE at the Courthouse | Linda Breaks It All Down" at https://www.youtube.com/live/gnRtGAD4LSM.

38. Plaintiff wishes to continue wearing communicative stickers related to the *Read* case, including in the buffer zone, but fears further assault & battery, destruction of property, and interference by the Massachusetts State Police, including, but not limited to, the Doe Defendants.

CAUSE OF ACTION

Count I

Violation of the First Amendment to the United States Constitution
Declaratory Judgment & Injunctive Relief
(42 U.S.C. 1983 – First Amendment)

(Against All Defendants)

39. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

40. The Second Prior Restraint Order is facially unconstitutional. It is a content-based regulation of protected speech in a public forum that cannot withstand strict scrutiny. While the Supreme Court has upheld a statute relating to picketing or parading near courthouses, it has not approved of a 200-foot buffer with an additional larger, ill-defined area. *Contrast Cox v. Louisiana*, 379 U.S. 559 (1965). It is overinclusive—it includes speech in private businesses and homes and in traditional public fora. And, it is underinclusive, as it does not regulate other forms of speech directed at potential jurors (the ostensible "fair trial" reason given).

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41. The Second Prior Restraint Order purports to address noise and to minimize prospective jurors' exposure to viewpoints about the Read case, but it is targeted solely to speech in the ambit of the Read case when Judge Cannone and the Superior Court routinely conduct jury trials without such restrictions.

42. Judge Cannone could have taken measures to reduce jurors' exposure to noise and public speech without imposing content-based restrictions.

43. The Second Prior Restraint Order is unconstitutionally vague. Plaintiff cannot ascertain where he may not demonstrate as the purported bounds are not bounds at all. Plaintiff cannot ascertain exactly what speech is prohibited—it is unclear if he can wave political signs or wear stickers that say "Vote Against DA Morrissey" or "Judge Cannone is Corrupt."

44. The Second Prior Restraint Order was imposed with no authority to do so. Cannone lacks the authority to issue an order taking away anyone's First Amendment rights outside the courthouse, unless they are parties to the proceeding before her or in privity with them.

45. The Second Prior Restraint Order is an unconstitutional prior restraint on speech.

46. The Second Prior Restraint Order is unconstitutional as applied. Defendants have been purposely targeting people, like Plaintiff.

47. The Second Prior Restraint Order was imposed with no authority by a judge to shut down First Amendment-protected speech on public sidewalks that are not part of Courthouse property, or at least not actually adjacent to the courthouse.

48. Plaintiff has been injured, or reasonably fears imminent injury, by these constitutional violations, and Plaintiff is entitled to relief.

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49. Therefore, Plaintiff is entitled to a declaration that the Second Prior Restraint Order is unconstitutional and they are entitled to an injunction against all Defendants prohibiting enforcement of the Second Prior Restraint Order.

Count II
Violation of the First Amendment to the United States Constitution: Retaliation
(42 U.S.C. 1983 – First Amendment)
(Against Does 1 & 2)

50. Plaintiff John Delgado hereby repeats and realleges each and every allegation in the foregoing paragraphs as if set forth fully herein.

51. The Doe Defendants' conduct of threatening Delgado on account of his April 1, 2025, constitutionally protected activity of wearing a sticker is unconstitutional and violates his First Amendment right to freedom of speech and expression.

52. It is clearly established that there is a First Amendment right to wear expressive clothing in and around a courthouse. *See, e.g., Cohen v. California*, 403 U.S. 15 (1971).

53. The Doe Defendants' restriction on Delgado's speech is content-based and is in violation of the Free Speech Clause of the First Amendment.

54. Delgado desires to continue to wear expressive clothing on the sidewalks near and/or abutting the Dedham Superior Courthouse.

55. Even a momentary deprivation of First Amendment rights is an irreparable injury.

56. The violation of Delgado's First Amendment rights has proximately caused him damage, including mental and emotional injury.

57. Delgado has been injured, or reasonably fears imminent injury, by these constitutional violations, and Delgado is entitled to relief, including, but not limited to, compensatory damages and injunctive and declaratory relief.

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Count III

Violation of the Fourth Amendment to the United States Constitution: Unlawful Seizure
(42 U.S.C. 1983 – Fourth Amendment)
(Against Doe 1)

58. Plaintiff John Delgado hereby repeats and realleges each and every allegation in the foregoing paragraphs as if set forth fully herein.

59. At all times relevant to this Complaint, Delgado had a clearly established right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizure of his personal property by law enforcement officers such as Defendant Doe 1.

60. At all times, Delgado had a possessory interest in the sticker he was wearing.

61. Doe 1 unlawfully and unreasonably seized Delgado's property because he ripped off and destroyed the sticker Delgado was wearing.

62. Such seizure was warrantless and without probable cause.

63. There were no governmental interests to warrant such intrusion on Delgado's interests; assuming, *arguendo*, the Second Prior Restraint Order was lawful, Delgado could have covered the sticker rather than endure an assault on his person and its destruction.

64. Due to Doe 1's unlawful conduct, Delgado is entitled to all allowable damages under law, including, but not limited to, the value of the sticker.

65. Delgado desires to continue to wear expressive clothing on the sidewalks near and/or abutting the Dedham Superior Courthouse.

66. Violating Delgado's Fourth Amendment rights proximately caused him damage.

67. Delgado has been injured, or reasonably fears imminent injury, by these constitutional violations, and Delgado is entitled to relief, including, but not limited to, compensatory damages and injunctive and declaratory relief.

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Count IV

Violation of the Fourth Amendment to the United States Constitution: Unreasonable Force
(42 U.S.C. 1983 – Fourth Amendment)
(Against Doe 1)

68. Plaintiff John Delgado hereby repeats and realleges each and every allegation in the foregoing paragraphs as if set forth fully herein.

69. At all times relevant to this Complaint, Delgado had a clearly established right under the Fourth Amendment to the United States Constitution to be free from unreasonable force by law enforcement officers such as Defendant Doe 1.

70. Doe 1 unlawfully and unreasonably used force against Delgado when he assaulted and battered him and he ripped off and destroyed the sticker Delgado was wearing.

71. Such use of force was warrantless and without probable cause.

72. There were no governmental interests to warrant such intrusion on Delgado's interests; assuming, *arguendo*, the Second Prior Restraint Order was lawful, Delgado could have covered the sticker rather than endure an assault and battery on his person.

73. Due to Doe 1's unlawful conduct, Delgado is entitled to all allowable damages under law, including, but not limited to, mental injury and emotional distress.

74. Delgado desires to continue to wear expressive clothing on the sidewalks near and/or abutting the Dedham Superior Courthouse.

75. Violating Delgado's Fourth Amendment rights proximately caused him damage.

76. Delgado has been injured, or reasonably fears imminent injury, by these constitutional violations, and Delgado is entitled to relief, including, but not limited to, compensatory damages and injunctive and declaratory relief.

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Count V

Violation of the Fourteenth Amendment to the United States Constitution
(42 U.S.C. 1983 – Procedural Due Process)

77. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

78. Defendants' conduct of issuing and enforcing the Second Prior Restraint Order is unconstitutional and violates Plaintiff's rights to due process of law under the Fourteenth Amendment.

79. Prior to being deprived of his right to speak freely and to assemble, Delgado was entitled to due process.

80. There was no hearing, no opportunity to be heard, nor was there any due process whatsoever. There was merely an arbitrary and capricious action designed to harm Plaintiff and others, issued by one person on account of anticipated First Amendment protected activity.

81. Judge Cannone's Second Prior Restraint Order was issued in the absence of statutory authority or inherent authority over persons not brought within her jurisdiction through process.

82. Judge Cannone's Second Prior Restraint Order was a usurpation of legislative and regulatory functions, not a judicial act.

83. Judge Cannone has no authority over what non-parties to a proceeding may do off courthouse property, let alone on private property or traditional public fora.

84. The Massachusetts Constitution does not empower Superior Court Justices with explicit or inherent authority to regulate private property or traditional public fora in the way they might regulate courthouse property, and the Federal Constitution prohibits depriving citizens of their liberties without any authorization or without due process.

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85. No statute empowers Superior Court Justices with explicit or inherent authority to regulate private property or traditional public fora in the way they might regulate courthouse property.

86. No ordinance empowers Superior Court Justices with explicit or inherent authority to regulate private property or traditional public fora in they way they might regulate courthouse property.

87. Plaintiff has been injured, and reasonably fears more imminent injury, by these constitutional violations, and Plaintiff is entitled to relief.

88. Plaintiff is entitled to a declaration that the Second Prior Restraint Order is unconstitutional and that he is entitled to an injunction on the Second Prior Restraint Order's enforcement.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on each claim asserted or hereafter asserted in the Complaint, and on each defense asserted or hereafter asserted by the Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court:

A. A declaration that the Second Prior Restraint Order is unconstitutional under the First Amendment of the United States Constitution.

B. A declaration that enforcing the Second Prior Restraint Order is unconstitutional under the First Amendment of the United States Constitution.

C. A declaration that the Second Prior Restraint Order is was unconstitutionally imposed in violation of the Fourteenth Amendment of the United States Constitution.

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D. A declaration that the Second Prior Restraint Order is was an *ultra vires* act that suppressed First Amendment rights and was used to violate Plaintiff's First, Fourth, and Fourteenth Amendment rights.

E. A declaration that enforcing the Second Prior Restraint Order cannot be enforced as it was entered in violation of the Fourteenth Amendment to the United States Constitution.

F. A declaration that JOHN DOE 1 & 2's actions constituted a violation of Plaintiff's First Amendment rights.

G. A declaration that JOHN DOE 1's actions constituted an unlawful seizure and unreasonable force against Plaintiff.

H. A preliminary and permanent injunction enjoining each Defendant from interfering with Plaintiff's right to lawfully engage in constitutionally protected expression and activity within Dedham, Massachusetts.

I. To award Plaintiff damages for the violation of his constitutional rights.

J. To award Plaintiff his reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and any other applicable law; and

K. To award such other relief as this Honorable Court may deem just and proper.

Dated: April 17, 2025.

Respectfully Submitted,

/s/ Marc J. Randazza
Marc J. Randazza, BBO# 651477
mjr@randazza.com, ecf@randazza.com
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Attorneys for Plaintiff.

RANDAZZA | LEGAL GROUP

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2025, the foregoing document was served on all prior parties or their counsel of record through the CM/ECF system and informally served on all newly-added parties as follows:

John R. Hitt
Massachusetts Attorney General's Office
One Ashburton Place
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Counsel for Trial Court of Massachusetts, Beverly J. Cannone, and Michael Morrissey

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Counsel for Michael d'Entremont

/s/ Marc J. Randazza
Marc J. Randazza

RANDAZZA | LEGAL GROUP

Exhibit A

April 4, 2024, Buffer Zone Order

Commonwealth v. Read

214

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
22-00117

COMMONWEALTH

vs.

KAREN READ

MEMORANDUM OF DECISION AND ORDER ON COMMONWEALTH'S MOTION FOR BUFFER ZONE SURROUNDING NORFOLK SUPERIOR COURT AND REQUEST FOR ORDER PROHIBITING SIGNS OR CLOTHING IN FAVOR OF EITHER PARTY OR LAW ENFORCEMENT

The Commonwealth seeks an Order from this Court (1) establishing a buffer zone around the Norfolk Superior Courthouse in Dedham during the trial of the defendant, in which demonstrations related to the case would be prohibited, and (2) prohibiting any individual from wearing any clothing or insignia related to the case in the courthouse during trial. While the Court recognizes and appreciates the constitutional right of the people to peacefully protest under the First Amendment to the United States Constitution,[1] the defendant has the right to a fair trial by an impartial jury under the Sixth Amendment to the United States Constitution. See U.S. Const. amend. VI ("the accused shall enjoy the right to a speedy and public trial, by an impartial jury"); *Skilling* v. *United States*, 561 U.S. 358, 377 (2010). "This right, ensuring the defendant 'a fair trial,' has also been characterized as 'a basic requirement of due process.'" *In re Tsarnaev*, 780 F.3d 14, 18 (1st Cir. 2015), quoting *Skilling*, 561 U.S. at 378.

To ensure the defendant's right to a fair trial, the Court may restrict protected speech so long as the restrictions do not "burden substantially more speech than is necessary to further the

[1] This court acknowledges the helpful *amicus curiae* memorandum submitted by the American Civil Liberties Union of Massachusetts, Inc.

government's legitimate interests." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 799 (1989). In this case, it is well documented that protestors have shouted at witnesses and confronted family members of the victim. Individuals have also taken to displaying materials which may or may not be introduced into evidence during trial, and airing their opinions as to the guilt or innocence of the defendant on their clothing or on signage. Witness intimidation has also been a prevalent issue in this case. Given these past actions, the Court concludes there is a substantial risk that the defendant's right to a fair trial will be jeopardized if prospective jurors are exposed to the protests and messages displayed on signs or otherwise, particularly before this Court has had an opportunity to instruct the jurors about their obligations with regard to remaining fair and unbiased. The risk extends during trial where jurors and witnesses would have no choice but to be exposed daily to the messages and viewpoints of the protestors when entering and leaving the courthouse or sitting in the courtroom.

The defendant here is entitled to a fair trial with an impartial jury, free from outside influence, focused solely on the evidence presented in the courtroom during trial and the applicable law. To protect this right, this Court must reduce the risk of exposing witnesses or jurors in this case to such outside influences.

ORDER

It is, hereby, **ORDERED** that no individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. Individuals are also prohibited from using audio enhancing devices while protesting.

It is further **ORDERED** that no individuals will be permitted to wear or exhibit any buttons, photographs, clothing, or insignia, relating to the case pending against the defendant or relating to any trial participant, in the courthouse during the trial. Law enforcement officers who are testifying or are members of the audience are also prohibited from wearing their department issued uniforms or any police emblems in the courthouse.

Date: April 4, 2024

Beverly J. Cannone
Justice of the Superior Court

Exhibit B

March 17, 2025, Commonwealth's Motion for Buffer Zone

Commonwealth v. Read

611

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 2282-CR-0117

COMMONWEALTH

v.

KAREN READ

CLERK'S OFFICE
NORFOLK COUNTY
FILED
2023 MAR 17 PM 2:

COMMONWEALTH'S MOTION FOR BUFFER ZONE AND ORDER PROHIBITING SIGNS OR CLOTHING IN FAVOR OF EITHER PARTY OR LAW ENFORCEMENT

During the defendant's first trial, the Court established a buffer zone in which demonstrations were prohibited within 200 feet of the courthouse complex. The Commonwealth requests that this buffer zone be re-established for the defendant's upcoming retrial, but with two important modifications. First, on the western side of the courthouse facing Court Street, the extent of the buffer zone was inadequate to prevent such demonstrations from jeopardizing the integrity and fairness of the proceedings; the demonstrations could be heard inside the courthouse, including by the jurors during their deliberations. To prevent this from reoccurring, the Commonwealth requests that the buffer zone be extended to include the area encompassed within Bates Court, Bullard Street, Ames Street, and Court Street. Second, the Commonwealth requests that the Court's buffer zone order expressly include a mechanism for its enforcement. Where a person is believed to have violated the buffer zone provision, and has refused requests to comply, law enforcement personnel should be authorized to use reasonable physical force and to arrest that person to ensure compliance.

Additionally, the Commonwealth requests that the Court again order that individuals are not permitted to wear or exhibit any buttons, photographs, clothing, or insignia, relating to the case or to any trial participant, in the courthouse during the retrial.

Background

On March 26, 2024, the Commonwealth moved for an order barring demonstrations within a buffer zone of 500 feet around the courthouse complex, and prohibiting certain items from being worn or displayed inside the courthouse, during the defendant's first trial. (Dkt. 254). A group of individuals moved to intervene in the case to oppose the Commonwealth's request. (Dkt. 265). The American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") sought leave to file an "*amicus curiae* memorandum," essentially in opposition to the request. (Dkts. 266, 267). The defendant took no position on the matter.

Following a hearing on April 4, 2024, the Court denied the motion to intervene, granted the ACLUM leave to submit its memorandum (which the Court noted it had read), and ordered that:

> "no individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. Individuals are also prohibited from using audio enhancing devices while protesting"
>
> and
>
> "no individuals will be permitted to wear or exhibit any buttons, photographs, clothing, or insignia, relating to the case pending against the defendant or relating to any trial participant, in the courthouse during the trial. Law enforcement officers who are testifying or are members of the audience are also prohibited from wearing their department issued uniforms or any police emblems in the courthouse."

(Dkt. 274) (the "buffer zone order," copy attached as Exhibit A).

The would-be intervenors filed a petition for extraordinary relief pursuant to G.L. c. 211, § 3, in the Supreme Judicial Court for Suffolk County, challenging both the denial of intervention and the buffer zone order (case no. SJ-2024-0122). Soon thereafter, a second petition under G.L. c. 211, § 3, was filed by an association of individuals who wished to demonstrate in the buffer

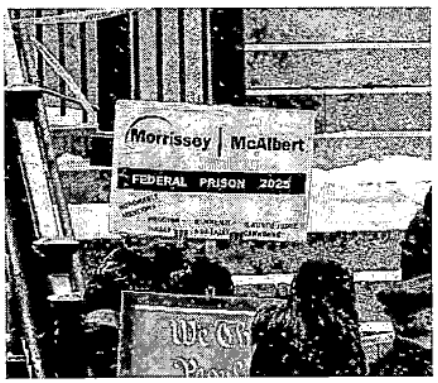
zone during the trial and two members of the association (case no. SJ-2024-0123). The Commonwealth opposed the petitions, and the defendant again took no position.

On April 12, 2024, a single justice of the Supreme Judicial Court denied the petitions. See memorandum of decision and judgment, copy attached as Exhibit B. The single justice held that the denial of the motion to intervene was "an ordinary procedural ruling" not requiring the Court's extraordinary intervention and therefore denied any relief from that ruling. The single justice also determined, on the merits, that the buffer zone order passed constitutional muster and did not violate the petitioners' First Amendment rights. Specifically, the establishment of the buffer zone was a content-neutral and reasonable time-place-manner restriction on speech that was narrowly tailored to serve a significant governmental interest and that left open ample alternative channels for communication of information.

The petitioners appealed the single justice's judgment to the full Supreme Judicial Court (case no. SJC-13589). The Commonwealth filed a response; the defendant further declined to take a position. On April 26, 2024, the full Court issued an order affirming the judgment, and on May 2, 2024, it issued an opinion stating the reasons for that order. See Spicuzza v. Commonwealth, 494 Mass. 1005 (2024). The Court held that the single justice did not commit an error of law or abuse his discretion in determining that the denial of the motion to intervene was not a matter warranting the Court's exercise of its extraordinary power of general superintendence. See id. at 1007. As to the petitioners' constitutional arguments, the full Court similarly concluded that the restriction created by the buffer zone was content neutral and not a prior restraint on speech, it was narrowly tailored to serve a significant governmental interest, and it left open ample alternative means of communication. See id. at 1007-1008.

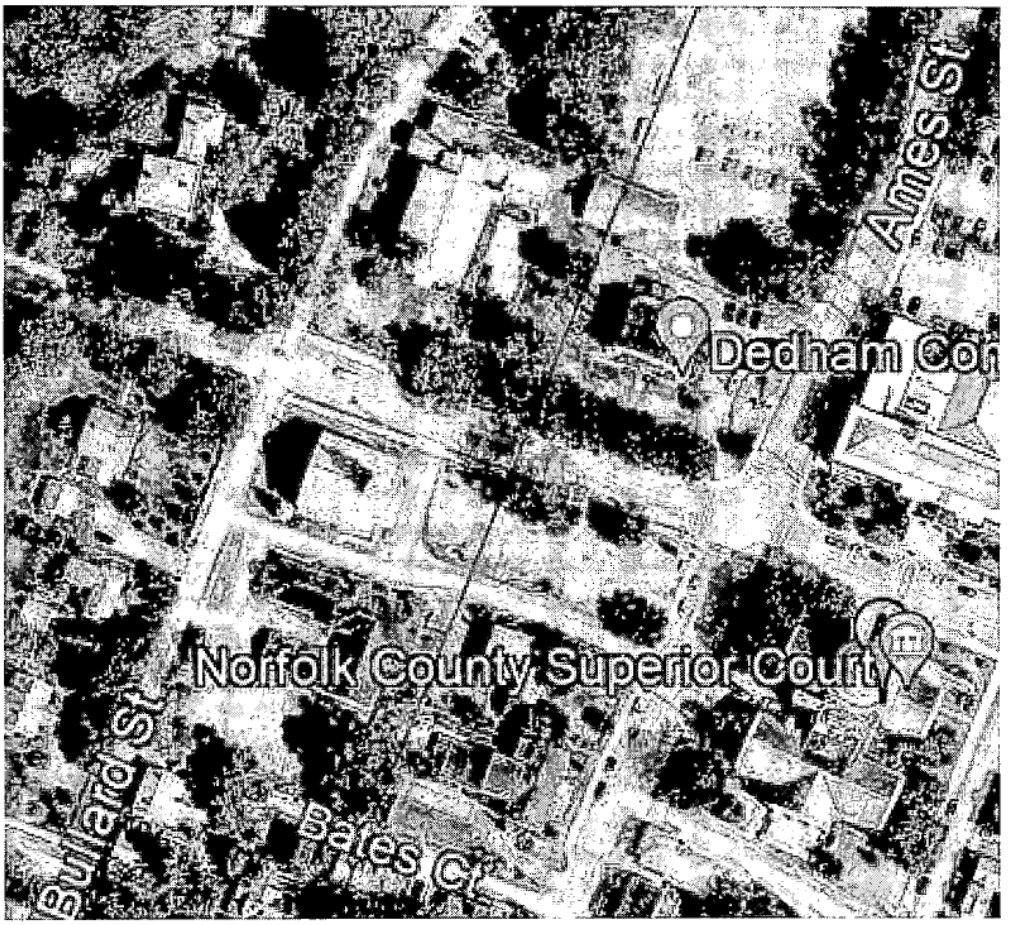
Discussion

The factual circumstances and concerns that necessitated the creation of the buffer zone last time are no less present or compelling today. This case continues to garner significant public interest and media attention, locally and nationally, and is the subject of commentary on various social media platforms. The proceedings are still attended by groups of individuals demonstrating in front of the courthouse, displaying references to materials that may or may not be introduced in evidence at retrial, and airing their opinions as to the trial judge, prosecutors, witnesses, and the guilt or innocence of the defendant on their clothing or on signage. Shown below, for example, are photographs of demonstrators who appeared (despite the inclement weather) at the hearing on February 6, 2025:



In addition, and as the Court found when it issued the buffer zone order, protesters have shouted at witnesses and have confronted family members of the victim. Witness intimidation also remains a prevalent issue in this case, with additional criminal charges having been filed earlier this month. See Commonwealth v. Aidan Kearney, Stoughton Dist. Ct. No. 2555-CR-225. See also Affidavit of Juror Doe (Dkt. 380) (describing efforts by individuals to intimidate, harass, and "dox" jurors following declaration of mistrial). The re-establishment of a buffer zone is therefore necessary to help ensure that both parties receive a fair retrial, free from outside influences. See Spicuzza, 494 Mass. at 1009, citing Commonwealth v. Underwood, 358 Mass. 506, 511 (1970) (noting the Commonwealth too has the right to, and an interest in the defendant receiving, a fair trial, and the buffer zone order also supported that right).

During the first trial, the 200-foot extent of the buffer zone was adequate to prevent any demonstrations occurring on the southern, eastern, and northern sides of the courthouse complex from interfering with the proceedings inside the courthouse. See Affidavit of Massachusetts State Police Sergeant Michael W. Hardman ("Aff."), filed herewith, at ¶ 3. On the western side of the complex, however, it proved to be inadequate. On that side there are larger, open spaces that extend beyond 200 feet from the courthouse—in particular, the paved and grassy areas along High Street between Bullard Street and Ames and Court Streets. These areas are shown in the Google Maps screenshot below, along with a red line superimposed to indicate the extent of the 200-foot buffer zone on that side of the complex:



(Aff., ¶ 4). Groups of demonstrators gathered in these areas, presumably with the property owners' permission, and engaged in coordinated shouting and chanting aimed directly at the courthouse. (Aff., ¶ 5). Even when standing just outside the buffer zone, these demonstrators could be heard inside the courthouse, including during deliberations. See Aff., ¶ 5; Affidavit of Juror Doe at ¶ 10 ("During jury deliberations we could hear protesters outside screaming and yelling.").

As another consequence of the 200-foot extent of the buffer zone, individuals positioned in these areas were close enough to Court and Ames Streets to encourage passenger and commercial vehicles traveling on those streets to honk their horns as a form of demonstration. (Aff., ¶ 6). This happened repeatedly, and the honking—especially from the air horns of the

commercial vehicles—could easily be heard inside the courthouse. (Aff., ¶ 6).[1] In connection with the first trial, the Massachusetts State Police issued more than two dozen citations for horn violations and other motor vehicle offenses. (Aff., ¶ 6).

To maintain the integrity of the retrial proceedings, and to prevent witnesses and prospective or seated jurors from being subjected to these demonstrations, the Commonwealth requests that the buffer zone on the western side of the courthouse complex be extended to include the area encompassed within Bates Court, Bullard Street, Ames Street, and Court Street. The extended buffer zone would range from approximately 300 feet between the northern ends of the complex and Bullard Street to roughly 400 feet between the complex and Bullard Street along High Street. (Aff., ¶ 7). This would bring within the buffer zone those areas where demonstrations undermined the buffer zone's very purposes, while at the same time ensuring that demonstrators are not moved any farther away from the courthouse complex than is necessary to prevent those same issues from recurring. It is narrowly tailored to address the specific problems that were encountered from experience at the first trial, and it will still leave open ample alternative channels of communication and outlets for demonstrations.

The Commonwealth also requests that the order re-establishing a buffer zone expressly state that a violation of any of the provisions of the order may constitute contempt of court and that law enforcement officers are authorized to enforce compliance with the order by using reasonable physical force and arresting any person who officers reasonably believe to be in violation of the order and who has refused to follow officers' prior verbal requests to comply. Officers will continue to seek compliance in the first instance through verbal requests and the use

[1] This continues to be a demonstration tactic, as shown in the above photograph of the individual at the February 6 hearing who is holding up a sign that says, "Honk for Justice." Frequent honking has occurred at nearly every hearing held in this case over the past several months and has been clearly audible in the upstairs courtrooms.

of de-escalation techniques to the maximum extent possible. (Aff., ¶ 8). But where an individual refuses to comply, officers need to be able to use reasonable physical force and to make an arrest to ensure compliance with the order and to avoid jeopardizing their own safety and that of the public. (Aff., ¶ 8). The order itself may provide that authorization. See Commonwealth v. Williams, 439 Mass. 678, 686 (2003), citing Commonwealth v. Garner, 423 Mass. 735, 745-746 (1996) (courts may authorize law enforcement personnel to use reasonable force to carry out lawful orders, and courts are not constitutionally required "to prescribe with exactitude the particular degree of force to be used" in carrying out orders).

For these reasons, the Commonwealth respectfully requests that the Court allow this motion and issue an order with the following (or substantially similar) terms:

- The Court hereby establishes a "buffer zone" around the courthouse complex during retrial of this case. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. The buffer zone extends 200 feet from the courthouse complex and further includes the area encompassed within Bates Court, Bullard Street, Ames Street, and Court Street. No individual may demonstrate in any manner, including carrying signs or placards, within the buffer zone, unless otherwise ordered by this Court. Individuals are also prohibited from using audio enhancing devices while demonstrating.

- No individual will be permitted to wear or exhibit any buttons, photographs, clothing, or insignia, relating to the case pending against the defendant or relating to any trial participant, in the courthouse during the retrial. Law enforcement officers who are testifying or are members of the audience are also prohibited from wearing their department issued uniforms or any police emblems in the courthouse.

- A violation of any provision of this Order may constitute contempt of court. Court officers may eject or exclude entry to any person believed to have violated the provision against wearing or exhibiting certain clothing or items in the courthouse. Any person believed to have violated the buffer zone provision of this Order, and who has refused a prior verbal request by law enforcement personnel to comply with that provision, may be subject to arrest. Law enforcement personnel may use reasonable physical force where necessary to compel such person's compliance with that provision.

Respectfully submitted
for the Commonwealth,

/s/ Hank Brennan
Hank Brennan
Specially Appointed Assistant District Attorney

/s/ Adam C. Lally
Adam C. Lally
Assistant District Attorney

/s/ Laura A. McLaughlin
Laura A. McLaughlin
Assistant District Attorney

Dated: March 17, 2025

Certificate of Service

I hereby certify that a copy of the foregoing was served on counsel for the defendant via email on March 17, 2025.

/s/ Hank Brennan
Hank Brennan
Specially Appointed Assistant District Attorney

Exhibit C

March 25, 2025, Buffer Zone Order

Commonwealth v. Read

630

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
22-00117

COMMONWEALTH

vs.

KAREN READ

MEMORANDUM OF DECISION AND ORDER ON COMMONWEALTH'S MOTION FOR BUFFER ZONE AND ORDER PROHIBITING SIGNS OR CLOTHING IN FAVOR OF EITHER PARTY OR LAW ENFORCEMENT

Prior to the defendant's first trial, on April 4, 2024, this Court issued an order establishing a buffer zone around the Norfolk Superior Courthouse prohibiting any individual from demonstrating in any manner within 200 feet of the courthouse complex and from wearing any clothing or insignia related to the case in the courthouse during trial. The Commonwealth now moves for the Court to reestablish the buffer zone for the defendant's upcoming second trial and modify the previous order by extending it to include area encompassed within Bates Court, Bullard Street, Ames Street, and Court Street.[1]

To ensure the defendant's right to a fair trial, the Court may restrict protected speech so long as the restrictions do not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 799 (1989). For the same reasons that compelled the Court to establish a buffer zone for the first trial, it is necessary to establish a buffer zone for the second trial to ensure the defendant's right to a fair trial.

[1] During argument on the motion, the Commonwealth withdrew its request for a second modification to the April 4, 2024 Order.

The case continues to garner significant public interest. When the matter is in court, individuals line the sidewalks outside the courthouse, loudly chanting and voicing their opinions about witnesses, attorneys, and the strength of the Commonwealth's case. They display matters which may be in evidence during trial or share their viewpoints as to the guilt or innocence of the defendant on their clothing or on signage. If prospective jurors are exposed to the protestors and messages displayed on signs or otherwise, particularly before this Court has had an opportunity to instruct the jurors about their obligations with regard to remaining fair and unbiased, there is a substantial risk that the defendant's right to a fair trial will be jeopardized. The risk extends during trial where jurors and witnesses would have no choice but to be exposed daily to the messages and viewpoints of the protestors when entering and leaving the courthouse or sitting in the courtroom or jury room.

Additionally, the Court concludes that modification to the April 4, 2024 Order is necessary. Despite the 200-foot buffer zone around the courthouse complex during the first trial, on the western side of the courthouse complex where there is a large open space running along High Street between Bullard Street and Ames Street, the collective voices of groups of demonstrators gathering outside the buffer zone could be clearly heard inside the courthouse. See Affidavit of Massachusetts State Police Sergeant Michael W. Hardman at par. 5. Vehicles honking their horns in response to signs and gestures from these demonstrators could also be heard frequently during the first trial. See *id.* at par. 6. Indeed, after trial, a deliberating juror reported that during deliberations, the jurors could hear protestors outside screaming and yelling. See Affidavit of Juror Doe at par. 10.[2] To ensure a fair trial with an impartial jury, extending the

[2] The Court also recognizes the list of concerns sent to the Court by the "Karen Read Trial Prepare Together Group"—a group of local business owners and organizations that experienced issues with protestors during the first trial.

buffer zone is necessary to prevent jurors from outside influence and to prevent interruptions and distractions during trial.

It is, therefore, **ORDERED** that no individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. The buffer zone shall further be extended to include the area bounded by Bates Court, Bullard Street, Ames Street, and Court Street. Individuals are also prohibited from using audio enhancing devices while protesting.

It is further **ORDERED** that no individuals will be permitted to wear any buttons, photographs, clothing, or insignia, relating to the case pending against the defendant or relating to any trial participant, in the courthouse during the trial. Law enforcement officers who are testifying or are members of the audience are also prohibited from wearing their department issued uniforms or any police emblems in the courthouse.

Date: March 25, 2025

Beverly J. Cannone
Justice of the Superior Court

Exhibit D

Michel Bryant Video
April 1, 2025

To be filed conventionally with the Clerk's Office

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

JOHN DELGADO,

Plaintiff,

v.

GEOFFREY NOBLE, in his official capacity as Superintendent of the Massachusetts State Police; JOHN DOES 1 & 2 in their official capacities as Massachusetts State Police officers and in their personal capacities; TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS; BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham; and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney,

Defendants.

Civil Action No. 1:25-cv-10818-RGS

PLAINTIFF'S AMENDED MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, AN INJUNCTION PENDING APPEAL

[ORAL ARGUMENT REQUESTED]

RANDAZZA | LEGAL GROUP

Does 1 & 2 are Massachusetts State Police officers who violently accosted Plaintiff John Delgado, with Doe 1 assaulting Plaintiff and ripping off and destroying a sticker he was wearing on his jacket, on the pretense of an inapplicable state court order in a case to which he was not even a party. That state court order was issued by Defendant Judge Beverly Cannone in an affront to the First and Fourteenth Amendments to the U.S. Constitution—it restrains protected speech without due process. If an individual can wear a jacket that says "FUCK THE DRAFT" inside a courthouse, it is a clearly established violation of the First Amendment for a cop to assault a citizen for wearing a "Real Justice for John O'Keefe FKR" sticker on a public sidewalk at a distance from a courthouse, and having done so apparently pursuant to Judge Cannone's general warrant is especially egregious. Plaintiff, therefore, moves this Honorable Court, pursuant to Fed. R. Civ. P. 65, for a temporary restraining order and for a preliminary injunction or, in the alternative, per

Fed. R. Civ. P. 62(d), for an injunction pending appeal, enjoining Defendants, their agents, employees, and all persons acting in concert with them, from unlawfully and unconstitutionally prohibiting Plaintiff from engaging in protected speech, on public sidewalks in Dedham, Massachusetts, with special attention paid to the "Buffer Zone" unconstitutionally imposed by Judge Cannone.[1] In support hereof, Plaintiff refers to the accompanying memorandum of law in support hereof and exhibits thereto, incorporated herein by reference.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a Temporary Restraining Order:

   a. enjoining the unlawful order in its entirety,

   b. enjoining Defendants, their agents, employees, and all persons acting in concert with them, from applying the order in any way that prohibits Plaintiff from wearing expressive stickers on public sidewalks; Threatening, arresting, or using force against Plaintiff for engaging in Constitutionally-protected speech; and,

   c. Enjoining the enforcement of Judge Cannone's Order of March 25, 2025;

to be followed by a preliminary injunction enjoining the same.

2. Set an expedited hearing for a preliminary injunction pursuant to Fed. R. Civ. P. 65(a), consolidated with the trial on his Complaint.

3. Grant such other and further relief as the Court deems just and proper.

[1] Plaintiff originally sought similar relief by motion of April 8, 2025 (ECF No. 9). As the Court has not yet acted on that and Plaintiff has since amended his Complaint, Plaintiff now files this amended motion.

RANDAZZA | LEGAL GROUP

REQUEST FOR ORAL ARGUMENT

Plaintiff believes that oral argument may assist the court. This matter involved significant Constitutional issues that oral argument will help to address.

CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), undersigned counsel hereby certify that they attempted in good faith to confer with Defendants to narrow the issues in this motion prior to filing, but were unable to do so.

Dated: April 17, 2025.

Respectfully Submitted,

/s/ Marc J. Randazza
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Attorneys for Plaintiff.

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2025, the foregoing document was served on all prior parties or their counsel of record through the CM/ECF system and informally served on all newly-added parties as follows:

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Counsel for Michael d'Entremont

/s/ Marc J. Randazza
Marc J. Randazza

RANDAZZA | LEGAL GROUP

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

JOHN DELGADO,

Plaintiff,

v.

GEOFFREY NOBLE, in his official capacity as Superintendent of the Massachusetts State Police; JOHN DOES 1 & 2 in their official capacities as Massachusetts State Police officers and in their personal capacities; TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS; BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham; and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney

Defendants.

Civil Action No. 1:25-cv-10818-RGS

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, AN INJUNCTION PENDING APPEAL

RANDAZZA | LEGAL GROUP

RANDAZZA | LEGAL GROUP

John Delgado was walking on a public sidewalk, talking to a news reporter, when he was accosted by two Massachusetts State Police officers. The police gave an unconstitutional command for Delgado to leave a public space on which he had every right to be present, and John Doe 1 violently tore off a sticker from Delgado's jacket. The police were purporting to enforce an unconstitutional and unlawful Prior Restraint Zone imposed by a state judge acting outside her authority in violation of the First Amendment and the Fourteenth Amendment. This violation of Delgado's First and Fourth Amendment rights cannot be allowed to recur.

The Massachusetts State Police are over-zealously using the pretext of a Prior Restraint Zone to restrict lawful speech and movement. By unlawfully prohibiting even expressive content on a peaceful citizen's clothing and assaulting and battering them because the police do not like critical expression, they are over the line. This Court is requested to enjoin the enforcement of the Prior Restraint Zone on its face and as applied by the State Police. Specifically, Plaintiff seeks an injunction under all counts of his First Amended Complaint. Pursuant to Fed. R. Civ. P. 65(a)(2), Plaintiffs request that the trial on the merits of all claims be advanced and consolidated with the hearing on this motion for preliminary injunction.

1.0 Factual Background[1]

Karen Read was indicted in Norfolk County, Massachusetts for John O'Keefe's murder. The case has drawn significant attention, including criticism aimed toward Judge Beverly Cannone. Cannone is the presiding judge in the Read prosecution, in *Commonwealth v. Read,* Case No. 2282CR00017 (hereinafter the "*Read* Case"). The Norfolk County District Attorney's

[1] Unless otherwise stated, all facts are drawn from the First Amended Complaint. Delgado has verified the facts set forth therein in his declaration at **Exhibit A** ("Delgado Decl.") at ¶ 3.

office, led by Michael W. Morrissey, is prosecuting the *Read* Case on behalf of the Commonwealth. A 2024 trial resulted in a mistrial after the jury failed to reach a unanimous decision (hereinafter "first trial"). A second trial in the *Read* Case began on April 1, 2025 (hereinafter "second trial").

Prior to the first trial, the Commonwealth sought a "buffer zone" beyond the grounds of the courthouse to prohibit demonstrating within 500 feet of the court. Massachusetts citizens moved to intervene to oppose the buffer-zone motion. Justice Cannone denied intervention and *declared that the citizens had no right to intervene*, even though the sought-after order would directly affect them. Judge Cannone granted the Commonwealth's motion, asserting that Read's right to a fair trial overcame everyone else's First Amendment rights. *See* First Amended Complaint, Exhibit A. Speech other than "demonstrat[ions]" was unrestricted.

In advance of the second trial, the Commonwealth again sought a buffer zone, but with a larger area (encompassing private property and traditional public fora, including public sidewalks and other areas). Without an opportunity for affected persons to intervene or be heard, Judge Cannone issued an Order on March 25, 2025, granting the motion, asserting that the basis for the first motion warranted a larger buffer zone for the second trial, and expressly ordered that:

> no individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. The buffer zone shall further be extended to include the area bounded by Bates Court, Bullard Street, Ames Street, and Court Street. Individuals are also prohibited from using audio enhancing devices while protesting.

See First Amended Complaint, Exhibit C (hereinafter "Second Prior Restraint Order").

Massachusetts State Police officers are harassing citizens on public sidewalks now – threatening them with arrest for even being within 200 feet of the Norfolk County Courthouse and

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violently accosting them, destroying their property. They are doing this under color of the Second Prior Restraint Order.

On April 1, 2025, Plaintiff was walking on the sidewalk near the Courthouse, inside the "buffer zone." He was being interviewed by Michel Bryant, a Host and Producer with Justice Served TV. Bryant took video that he streamed online entitled "Arrest Threats by Mass Staties in #KarenRead Case." A copy of the video appears at Exhibit D to the First Amended Complaint. Said video streamed live from Bryant's phone to YouTube at 9:33 am EDT on April 1, 2025.[2]

Delgado was wearing a blue sticker that said, "Real Justice for John O'Keefe FKR." This sticker offended Defendants and resulted in a one-sided altercation between Doe 1 (an unidentified State Police officer) and Delgado: Defendant Doe 1 told Delgado, "That's gotta go" in reference to Delgado's sticker. Defendant Doe 1 then ripped Delgado's sticker off his jacket. Defendant Doe 1 then threatened Delgado, telling him "I don't want to see you walking by here again."

Delgado wishes to continue to walk in peace within the buffer zone, wearing whatever he likes – including expressive content.[3] However, he is chilled in doing so because of the threat of arrest and unlawful orders by Massachusetts State Police on April 1 in their enforcement of the buffer zone. Delgado credibly fears further violence and misuse of authority from the Massachusetts State Police. *See* Delgado Decl. at ¶ 4. Plaintiff reasonably fears that the State

[2] Bryant later uploaded this video of the interaction to his YouTube Channel, JSTV – Justice Served TV, on April 2, 2025, as part of his reporting, at https://www.youtube.com/watch?v=rI4M9y-6Xec. The video was part of the longer broadcast "Karen Read Trial: Jury Selection Begins! Michel LIVE at the Courthouse | Linda Breaks It All Down" at https://www.youtube.com/live/gnRtGAD4LSM.

[3] The right to do so could not be more clearly established. *See Cohen v. California*, 403 U.S. 15 (1971) (upholding a citizen's right to wear a jacket in a courthouse with the phrase "Fuck the Draft" emblazoned on it).

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Police, including Defendants Doe 1 and Doe 2, under the control and direction of Defendant Geoffrey Noble, Superintendent of the Massachusetts State Police, will continue to retaliate against him for expressing himself, interfere with his First Amendment protected activities extrajudicially by assaulting him, or simply arrest him for doing so. *Id*. at ¶ 5. Delgado reasonably fears that the Norfolk County DA, under the control and direction of Defendant Morrissey, will seek his prosecution for violation of the Order if he engages in protected speech. *Id*. at ¶ 7. Delgado also reasonably fears that Judge Cannone will attempt to hold him in contempt if he continues to engage in protected speech in the vicinity of the courthouse. *Id*. at ¶ 8. Thus, Plaintiff comes to this Court seeking injunctive relief invalidating the Prior Restraint Zone, or if it is permitted to survive, prohibiting Defendants from enforcing the Prior Restraint Zone against him as applied – to prohibit peacefully and quietly wearing a sticker within a certain distance from the Norfolk County Superior Court.

2.0 Legal Standard

Fed. R. Civ. P. 65 injunctive relief.[4] A temporary restraining order or preliminary injunction must (1) state the reasons why it issued; (2) state its specific terms; and (3) describe in reasonable detail the act or acts restrained or required. Fed. R. Civ. P. 65(d). Injunctive relief should be issued if: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm if the injunction did not issue; (3) the balance of equities tips in plaintiff's

[4] If this Court declines to enter the injunction, Plaintiffs request that the Court err on the side of the Constitution and at least grant an injunction pending appeal per Fed. R. Civ. P. 62(d). Such is proper if the movant makes "a strong showing that they are likely to succeed on the merits, that they will be irreparably injured absent emergency relief, that the balance of the equities favors them, and that an injunction is in the public interest." *Together Emples v. Mass Gen. Brigham Inc*., 19 F.4th 1, 7 (1st Cir. 2021). The test is nearly identical to the standard test for a preliminary injunction. *See Winter v. NRDC, Inc*., 555 U.S. 7, 20 (2008).

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favor; and (4) the injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). "In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (*per curiam*). Fed. R. Civ. P. 65(a)(2) provides that "[b]efore or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing." Such consolidation is appropriate where (a) "the record is complete and ripe for review[,]" and (b) there is "no reason for delay" especially where "the evidence reasonably admits of only one outcome." *Bays' Legal Fund v. Browner*, 828 F. Supp. 102, 105 n. 3 (D. Mass. 1993).

3.0 This Court Should Enjoin the Order and its Enforcement

3.1 Plaintiff has Standing

A plaintiff has standing when he intends to engage in a Constitutionally protected activity, which has been proscribed by the government, and there is a credible threat of prosecution. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 56-57 (1st Cir. 2003) (finding standing when a plaintiff "is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences"). A plaintiff has standing if a challenged statute or regulation operates to "chill" the plaintiff's exercise of his First Amendment rights. *Doe v. Bolton*, 410 U.S. 179, 188 (1973). Plaintiff was engaged in First Amendment protected activity, walking while wearing a sticker on his jacket. *Cohen v. California*, 403 U.S. 15 (1971). Defendants threatened him with arrest for violating the Prior Restraint Zone if he continued to do so, assaulted him and seized his sticker, and Plaintiff reasonably fears he will be held in contempt by Judge Cannone if he continues to exercise his rights. Plaintiff has standing to bring suit and seek this injunction.

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3.2 Plaintiff is Likely to Succeed

A plaintiff must allege two "essential elements" for a § 1983 cause of action: "(i) that the conduct complained of has been committed under color of state law, and (ii) that this conduct worked a denial of rights secured by the Constitution or laws of the United States." *Finamore v. Miglionico*, 15 F.4th 52, 58 (1st Cir. 2021) (*quoting Chongris v. Bd. of Appeals of Andover*, 811 F.2d 36, 40 (1st Cir. 1987)). Defendant Cannone, without due process, entered an unconstitutional order which provided the justification for state police officers acting under color of law to violate Delgado's First Amendment right to free speech and Fourth Amendment freedom from unreasonable seizures and excessive force. Defendants have prohibited him from quietly and unobtrusively walking while wearing a sticker on matter of public concern, while in a traditional public forum. Defendants cannot be permitted to interfere with such activity on public sidewalks or assault him and destroy his property should he do so. He is likely to succeed on the merits.

3.2.1 Plaintiff's First Amendment Rights are being Violated

Judge Cannone violated Plaintiffs' constitutional rights by issuing her Second Prior Restraint Order, without due process, in an *ultra vires* act, and the remaining Defendants violated his rights by retaliating against him for engaging in protected speech. Because Defendants' actions infringe on Plaintiff's First Amendment rights, Defendants must justify their actions. *Comcast v. Mills*, 435 F. Supp. 228, 233 (D. Me. 2019) (citing *Reilly v. Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017)); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 509 (1969). Delgado's sticker does not within one of the few "historic and traditional categories of expression long familiar to the bar" for which content-based restrictions on speech are permitted. *United States v. Alvarez*, 567 U.S. 709, 717-18 (2012) (cleaned up).

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In traditional public spaces, like the sidewalks near a courthouse, "the rights of the state to limit the exercise of First Amendment activity are 'sharply circumscribed.'" *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011) quoting *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). "There is practically universal agreement that a major purpose of the First Amendment was to protect the free discussion of governmental affairs[.]" *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011) (cleaned up).

Content-based regulations are subject to strict scrutiny, which requires the government to demonstrate "a compelling interest and . . . narrow[] tailor[ing] to achieve that interest." *Reed v. Gilbert,* 576 U.S. 155, 155 (2015) (*quoting Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)). Narrow tailoring in the strict scrutiny context requires the restriction to be "the least restrictive means among available, effective alternatives." *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 666 (2004). Defendants' actions fail strict scrutiny.

There is no compelling interest in prohibiting wearing a sticker on the sidewalks in front of the courthouse nor within any radius of the courthouse. Plaintiff has not done anything that would rise to "serious evil" that justifies the threats of arrest imposed by Defendants. *United States v. Treasury Employees*, 513 U.S. 454, 475 (1995). When issuing the unconstitutional order establishing the Prior Restraint Zone, Judge Cannone purported to be protecting Ms. Read's right to a fair trial by prohibiting "demonstrations,"[5] but she had no power to impose the Order, as she has no power outside the courthouse over strangers to a proceeding. Even if the Order were legally

[5] Plaintiffs do not concede this is the true justification or that it is sufficient to justify the order. Further, Ms. Read did not seek the prior restraint—the Commonwealth did. The mere presence of sticker-wearers does not and could not compromise Ms. Read's right to a fair trial. If Ms. Read believes a man walking down the street wearing a sticker is a threat to her Sixth Amendment rights, she has never expressed that view, despite having a phalanx of lawyers who could.

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imposed, and thus not facially invalid, it is invalid as applied to Delgado. Whatever interest Judge Cannone intended to advance, the Order contains no standards channeling officers' discretion toward that interest. Instead, the Order "vests unbridled discretion in a government official over whether to permit or deny expressive activity," *Lakewood v. Plain Dealer Pub. Co*., 486 U.S. 750, 755 (1988), and its sweep is far broader than necessary to accommodate any legitimate government interest. This is borne out by the violent enforcement over a mere sticker.

It is "well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Reed*, 576 U.S. at 168-69 (quoting *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y*., 447 U.S. 530, 537 (1980)). Even facially content-neutral regulations will be considered content-based if they cannot be "justified without reference to the content of the regulated speech." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Here, only speech related to the state case is prohibited. No one else was accosted for any message on their clothing, and most outerwear contains messaging promoting the designer/manufacturer.

Sidewalks and streets and parks outside a courthouse are given greater First Amendment deference than the inside of the courtroom. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 817 (1985). Public streets and sidewalks, "are presumptively traditional public forums, and the Supreme Court has repeatedly reaffirmed their status as places for expressive activity." *Watchtower Bible & Tract Soc'y of N.Y., Inc v. Jesus*, 634 F.3d 3, 11 (1st Cir. 2011); *see also McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (holding unconstitutional a no-protest zone that was only 35 feet). "For the First Amendment does not speak equivocally. . . . It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving

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society, will allow." *Bridges v. California*, 314 U.S. 252, 263 (1941). On its face, the Order "restricts access to traditional public fora" and the State Police have used it to crack down on all First Amendment activity, including lawful newsgathering. *See, Derosier, supra.*

Defendants are expected to argue the Second Prior Restraint Order is a content-neutral regulation because it changes the location of the content. Even facially content-neutral regulations are content-based if they cannot be "justified without reference to the content of the regulated speech." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). The regulation in *Ward* was about volume and expressly had nothing to do with content. In the challenge to the buffer zone order for the first trial, made by different individuals, the Massachusetts Supreme Judicial Court determined that it was content neutral, because it had an "incidental effect on some speakers or messages but not others" citing *Ward*. *Spicuzza v. Commonwealth*, 494 Mass. 1005, 1008 (2024). In actuality, one must directly look at the content of the speech barred under the first and second Orders from Judge Cannone. Commercial speech advertising a nearby café is permitted. An individual may hold up a sign within the Zone that says "Marry Me" or "Buy Gold." But if the sign says "Impeach Judge Cannone," it is barred. There is nothing "incidental" about it—it is expressly aimed at content.

Assuming, *arguendo*, the "buffer zone" is content neutral, such restrictions are subject to intermediate scrutiny, meaning they must be "narrowly tailored to serve and significant government interest, and … leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). The order is not narrowly tailored—Judge Cannone could simply instruct jurors to ignore the demonstrations or take other corrective action. The order need not be directed at such a broad amount of speech. And, it does

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not leave open ample alternative channels—the news media cover the area closest to the courthouse, leaving Plaintiff unheard. The *Spicuzza* Court asserted it was narrowly tailored because 200 feet is less than the original 500 feet the Commonwealth requested, but that does not justify 200 feet. 494 Mass. at 1008.[6] Thirty feet is enough to ensure passage for those who need access. As to the fear of extraneous influence (*id.*), curative jury instructions are commonplace.[7] While the *Spicuzza* Court asserted there were alternative channels, it made this pronouncement in the absence of evidence and identified none. 494 Mass. at 1008. Since Judge Cannone did not properly narrow her order, it should be enjoined, along with attempts to enforce it.

3.2.2 Defendants' Actions Constitute a Prior Restraint

"The principal purpose of the First Amendment's guaranty is to prevent prior restraints." *In re Providence Journal Co.*, 820 F.2d 1342, 1348 (1st Cir. 1986). When, as here, a prior restraint forbids pure speech, not speech connected to any conduct, "the presumption of unconstitutionality is virtually insurmountable." *Id.* "Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 530, 559 (1976). "The Supreme Court has roundly rejected prior restraint." *Kinney v. Barnes*, 443 S.W.3d 87, 91 n.7 (Tex. 2014) (citing Sobchak, W., *The Big Lebowski*, 1998). Prior restraints "bear a heavy presumption against [their] constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

When a trial court tries to take away First Amendment rights *in its very realm – the*

[6] The Spicuzza Court also specifically excluded sidewalks from its analysis. *Spicuzza v. Commonwealth*, 494 Mass. 1005, 1008 (2024).

[7] Courts, for example, routinely instruct jurors to ignore protestors who remind jurors of their power to acquit against the evidence (also known as "jury nullification"), which instructions are abided. *See, e.g., United States v. Kleinman*, 880 F.3d 1020, 1031 (9th Cir. 2018).

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courthouse itself, the Supreme Court requires that it make specific findings justifying closure. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 558 (1980). Here, Judge Cannone went beyond her realm of the courthouse, and issued an order that purports to restrict speech in a traditional public forum. There are cases discussing *legislative* authority over such areas, such as *Cox v. Louisiana,* 379 U.S. 536 (1965). But Plaintiff cannot find a single case where a Court purported to command contempt authority over demonstrators outside the courthouse grounds. Moreover, Plaintiff has never engaged in any conduct that would warrant a prior restraint. If Paul Robert Cohen can wear a jacked that says "Fuck the Draft" inside a courthouse, Delgado can wear his inoffensive sticker on the sidewalks outside of the courthouse. *Compare Cohen, supra.* The Court must immediately act to end the ongoing prior restraint.

3.2.3 Doe 1 Violated Delgado's Fourth Amendment Rights

Defendant Doe 1 violated Delgado's Fourth Amendment rights twofold: in the use of unreasonable force against him and in the seizure of his sticker. While the value of the sticker may be nominal, the Constitution does not authorize state officials to haphazardly seize any and all property of a nominal value. And it certainly does not condone assaulting citizens in the process of doing so. If a citizen cannot feel safe walking down the public sidewalk, lest an armed police officer stop him and seize his expressive property, then we are not in the United States anymore.

A "seizure" under the Fourth Amendment "occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113. Destruction of property is a Fourth Amendment seizure. *See id*. at 124-25; *Maldonado v. Fontanes,* 568 F.3d 263, 270-71 (1st Cir. 2009) (holding the Fourth Amendment was violated when a dog was killed, citing cases deeming it to be a seizure as destruction of

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property). Doe 1 had no warrant to seize Delgado's sticker, and:

> a warrantless search or seizure is "per se unreasonable[] unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of 'exigent circumstances.'" *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75 (1971). And he is right that "[t]o show exigent circumstances, the police must reasonably believe that there is such a compelling necessity for immediate action as will not brook the delay of obtaining a warrant," like "when delay would risk the destruction of evidence" — with our caselaw requiring that the police have "an objectively reasonable basis" for believing that evidence destruction "is likely to occur." *See United States v. Samboy*, 433 F.3d 154, 158 (1st Cir. 2005) (quotation marks omitted).

Belsito Communs., Inc. v. Decker, 845 F.3d 13, 24-25 (1st Cir. 2016). Here, there was no basis for a warrant, let alone any "compelling necessity." Even if the sticker was prohibited, Delgado should have been given a chance to cover it or leave, rather than being detained while police destroyed it. This Court must enjoin Defendants to ensure Plaintiff's property will be protected.

Similarly, Delgado requires protection against Defendants' unreasonable force against him. The Fourth Amendment prohibits officers from "exceed[ing] the bounds of reasonable force in effecting an arrest or investigatory stop." *Raiche v. Pietroski*, 623 F.3d 30, 36 (1st Cir. 2010) (*citing Graham v. Connor*, 490 U.S. 386, 394-95 (1989)). To demonstrate a violation based on excessive force, "a plaintiff must show that the defendant officer employed force that was unreasonable under the circumstances." *Jennings v. Jones*, 499 F.3d 2, 11 (1st Cir. 2007). To determine whether force was unreasonable, courts "balance the individual's interest against the government's weighing three non-exclusive factors: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight." *Raiche*, 623 F.3d at 36 (internal quotations and alterations omitted). Delgado was neither arrested nor the subject of an investigatory stop, and the use of force against him was excessive under the

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circumstances. There was no crime. Wearing a sticker posed no threat to anyone. Nor was he resisting or evading. The use of force, no matter how minimal, was unreasonable. Plaintiff recognizes that "[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment." *Graham v. Connor*, 490 U.S. 386, 397 (1989) (internal quotation and citation omitted). However, that does not mean that *every* minor battery is allowable—some may nonetheless violate the Fourth Amendment. *Compare Murphy v. May,* 714 F. Supp. 3d 851 (E.D. Mich. 2024). There was no reason for Doe 1 to lay hands on Delgado, and injunctive relief is necessary to prevent future misconduct by Defendants.

3.2.4 Plaintiff Deserved Due Process – It Was Denied

It is an affront to due process that a court can deprive hundreds of people of their First Amendment rights without an opportunity to be heard. Judge Cannone's order was issued without jurisdiction over Plaintiff, *ex parte,* and without authority. Judge Cannone has no authority outside the courthouse complex. Controlling traditional public fora (sidewalks) and private property is not essential to the function of the judicial department, to the maintenance of its authority, or to its capacity to decide cases, else such orders would've been commonplace for centuries. Nor is it part of the ancillary functions. Judge Cannone undertook land-use regulation, the province of the legislature or town. Restrictions on nonparty speech, such as protests or publications, face strict scrutiny. *In Care and Protection of Edith*, a juvenile court's attempt to restrict nonparty media coverage was struck down for overbreadth and lack of necessity (421 Mass. 703). *See also Shak v. Shak* (2020)(a Probate Court declined to extend restrictions to nonparties absent evidence of their direct involvement) (484 Mass. 658).

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Procedural due process is protected by the Fourteenth Amendment, which reads, in relevant part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." The Massachusetts Constitution also protects procedural due process. *Duarte v. Commissioner of Revenue*, 451 Mass. 399, 412 n.20 (2008) (quoting *Pinnick v. Cleary*, 360 Mass. 1, 14 n.8 (1971)) (holding that "Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution, and arts. 1, 10 and 12 of its Declaration of Rights, are the provisions in our Constitution comparable to the due process clause of the Federal Constitution"). In Constitutions, the "fundamental requirement of due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner." *Id*. at 412 (quotes and citation omitted). "[T]he specific dictates of due process generally require[] consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

There was no meaningful opportunity to be heard— it was issued on an *ex parte* basis. *Ex parte* communications can "shadow the impartiality, or at least the appearance of impartiality," of a proceeding and "may, in some circumstances, constitute a deprivation of due process of law." *Grieco v. Meachum*, 533 F.2d 713, 719 (1st Cir. 1976), cert. denied, 429 U.S. 858 (1976), *overruled on other grounds by Maine v. Moulton*, 474 U.S. 159 (1985). Here, Judge Cannone only heard from the Commonwealth. The *Spicuzza* Court was glaringly silent on the question of due process. Thus, the *ex parte* motion by the Commonwealth denied Plaintiff his due process.

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It is fundamental that a court cannot bind non-parties who are not brought within the court's jurisdiction. Due process requires a court to have general or specific jurisdiction over a defendant to avoid "offend[ing] traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945) (citations omitted). Similarly, jurisdiction typically does not attach until service of a writ or other process. *Chisholm v. Gilmer*, 299 U.S. 99, 102-103 (1936). A judge cannot rule by fiat over any territory, both public and private, and any person outside her courthouse, irrespective of jurisdiction.[8] As the First Circuit observed:

> a federal court will not impose judgment on a party that is not offered the opportunity to defend itself. *Lambert*, 355 U.S. at 228. The idea that process is not only due but must be duly provided is so "universally prescribed in all systems of law established by civilized countries," *Twining v. New Jersey*, 211 U.S. 78, 111 (1908), that courts have only seldom to remind litigants that such is the case. *See, e.g., Brown v. American Nat. Bank*, 197 F.2d 911, 914 (10th Cir. 1952) ("It is a familiar rule of frequent enunciation that judgment may not be entered with binding effect against one not actually or constructively before the court."); *Bronco Wine Co. v. Frank A. Logoluso Farms*, 214 Cal. App. 3d 699, 717 (1989) ("Rendering a judgment for or against a nonparty to a lawsuit may constitute denial of due process under the United States and California Constitutions. . . . Notice and a chance to be heard are essential components to the trial court's jurisdiction and for due process. Without jurisdiction over the parties, an *in personam* judgment is invalid."); *Demoulas v. Demoulas*, 428 Mass. 555, 591 (1998) ("The judge did not have jurisdiction over nonparties, and we cannot make awards in favor of nonparties. .").

Wilson v. Town of Mendon, 2002 U.S. App. LEXIS 4352, *17-19 (1st Cir. Mar. 19, 2002). Here, Plaintiffs were never brought within Judge Cannone's jurisdiction and her order cannot bind them.

The order's vagueness further evidences a deprivation of due process. The order, like any regulation, must define the offense with sufficient definiteness so that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and

[8] To suggest otherwise would mean that Judge Cannone's order is a general warrant that leaves "to the discretion of the executing officials the decision as to which persons should be arrested[,]" an affront to the Fourth Amendment. *Steagald v. United States*, 451 U.S. 204, 220 (1981)

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discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). A great degree of specificity and clarity of such notice and restriction is required when First Amendment rights are at stake. *Gammoh v. City of La Habra*, 395 F.3d 1114, 1119 (9th Cir. 2005); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1057 (9th Cir. 1986). A regulation is vague if it either fails to place people on notice of exactly which conduct is prohibited, or if the possibility for arbitrary enforcement is present. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). The Second Prior Restraint Order is a vague, unconstitutional regulation. Government regulations which rely on a viewer's subjective interpretation of facts are void for vagueness. *Morales*, 527 U.S. at 56-64 (holding a provision criminalizing loitering, which is defined as "to remain in any one place with no apparent purpose," void for vagueness because the provision was "inherently subjective because its application depends on whether some purpose is 'apparent' to the officer on the scene"); *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 554-55 (9th Cir. 2004) (holding a statute requiring physicians to treat patients "with consideration, respect, and full recognition of the patient's dignity and individuality" void for vagueness because it "subjected physicians to sanctions based not on their own objective behavior, but on the subjective viewpoint of others").

Morales provides a useful guidepost for when enforcement of a statute or regulation may be unconstitutionally vague:

> If the police are able to decide arbitrarily which members of the public they will order to disperse, then the Chicago ordinance becomes indistinguishable from the law we held invalid in *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90 (1965). Because an officer may issue an order only after prohibited conduct has already occurred, it cannot provide the kind of advance notice that will protect the putative loiterer from being ordered to disperse.

527 U.S. at 58-59. Here, Plaintiffs have no precise ability to know whether their speech is prohibited. Is a sign saying "Judge Cannone likes Pineapple on Pizza" prohibited? The order is

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vague and subject to arbitrary and discriminatory enforcement. Thus, the issuance of the Second Prior Restraint Order violates Plaintiff's 14th Amendment right to due process.

3.3 No Abstention Doctrine Applies

No abstention doctrines are applicable here. As Defendants conceded in the related *Grant* case, *Rooker-Feldman* abstention does not apply (ECF No. 31 at 16:11 in *Grant* case), as that doctrine does not bar actions by a nonparty to an earlier suit, and Plaintiff is not a party to the Karen Read trial. Abstention under *Younger v. Harris*, 401 U.S. 37 (1971), does not apply, either, as that doctrine may only apply when litigation between the same parties and raising the same issues is pending in state court, neither of which is present here. *Mass. Delivery Ass'n v. Coakley*, 671 F.3d 33, 42-43 (1st Cir. 2012).

The Court need not be concerned with Eleventh Amendment immunity regarding claims against Judge Cannone. Ordinarily, a judge would be immune from such claims. However, the Eleventh Amendment does not apply to a government officials' *ultra vires* actions, meaning where such officials act "without any authority whatsoever." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 n.11 (1984). As already explained, Judge Cannone had no authority whatsoever to impose a prior restraint zone well outside the confines of the courthouse that encompassed both traditional public forums and private property. Her actions were *ultra vires*, and she does not enjoy Eleventh Amendment immunity.

3.4 There is Irreparable Injury that will Continue if Not Enjoined

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). In such cases "a plaintiff's irreparable harm is inseparably linked to the likelihood of success on the merits of

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plaintiff's First Amendment claim." *WV Assn'n of Club Owners and Fraternal Srvs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009).

"Irreparable harm is presumed in cases of constitutional violations." *Castillo v. Whitmer*, 823 Fed. App'x 413, 417 (6th Cir. 2020). "[C]ourts have found that violations of the Fourth Amendment constitute irreparable harm sufficient to justify injunctive relief." *Brown v. Greene Cty. Vocational Sch. Dist.*, 717 F. Supp. 3d 689, 696 (S.D. Ohio 2024) (cleaned up). Defendants deprived Plaintiff of his First and Fourth Amendment rights by imposing the unconstitutional Prior Restraint Order and then using that order to justify ripping off his sticker, and Plaintiff fears further application of the Order and will be irreparably harmed absent injunctive relief.

3.5 The Balance of Equities Tips in Plaintiff's Favor

When the government restricts First Amendment rights, the balance of hardships weighs in a plaintiff's favor. *See Firecross Ministries v. Municipality of Ponce*, 204 F. Supp. 2d 244, 251 (D.P.R. 2002) ("the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs' constitutionally protected speech"). The balance of equities tips in Plaintiff's favor. Failing to grant the injunction will continue to deprive him of his constitutional rights pursuant to the First and Fourth Amendments. Defendants will suffer no harm if Plaintiff is granted the requested injunctive relief. Rather, an injunction will merely restore the rights guaranteed by the U.S. Constitution.

3.6 Injunctive Relief is in the Public Interest

The public interest "favors protecting First Amendment rights." *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, (S.D. W.V. 2013); *see also Carey v. FEC*, 791 F. Supp. 2d 121, 135-36 (D. D.C. 2011); *Mullin v. Sussex Cnty., Del.*, 861 F. Supp. 2d 411, 428 (D. Del. 2012). The

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public interest is served by issuing an injunction where "failure to issue the injunction would harm the public's interest in protecting First Amendment rights in order to allow the free flow of ideas." *Magriz v. union do Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143, 157 (D.P.R. 2011) (citation omitted). Moreover, the unconstitutional actions here harms nonparties to the case because they limit or infringe upon their rights. *See Wolfe Fin. Inc. v. Rodgeres*, 2018 U.S. Dist. LEXIS 64335, at *49 (M.D. N.C. April 17, 2018) (*citing McCarthy v. Fuller*, 810 F.3d 456, 461 (7th Cir. 2015). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights[.]" *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Nor is there any harm to the interests of justice and a fair trial; demonstrations are not uncommon without such restrictions and a jury can be properly instructed. Thus, the public interest weighs in favor of enjoining Defendants' enforcement of the Second Prior Restraint Order.

3.7 At Most, a Minimal Bond Should Be Required

The Court should not require a bond because Defendants will suffer no damages from an injunction against enforcement of an unconstitutional order, *see All-Options, Inc. v. Att'y Gen. of Indiana*, 546 F. Supp. 3d 754, 770–71 (S.D. Ind. 2021), while requiring the posting of a bond would negatively impact Plaintiff's ability to exercise his First and Fourth Amendment rights. If a bond is required, Plaintiff requests that it be a token amount of $1.

4.0 Conclusion

Plaintiff has the right to continue wearing his sticker on the public sidewalks. The Court should enter a preliminary injunction (and, in consolidation with a trial on the merits, permanent injunction upon final judgment) against the Defendants, enjoining the Second Prior Restraint Order and preventing them from taking any further action against Plaintiff on account of such and from

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taking any action to try to apply that order. The order should be declared facially invalid or at least invalid as applied, with further application enjoined.

Dated: April 17, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2025, the foregoing document was served on all prior parties or their counsel of record through the CM/ECF system and informally served on all newly-added parties as follows:

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Marc J. Randazza

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Exhibit A

Declaration of John Delgado

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

JOHN DELGADO, Plaintiff, v. GEOFFREY NOBLE, in his official capacity as Superintendent of the Massachusetts State Police; JOHN DOES 1 & 2 in their official capacities as Massachusetts State Police officers and in their personal capacities; TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS; BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham; and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney Defendants.	Civil Action No. 1:25-cv-10818

DECLARATION OF JOHN DELGADO

I, John Delgado, hereby declare:

1. I am over 18 years of age. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.

2. I am the Plaintiff in the above-captioned proceeding.

3. I have reviewed the allegations in the First Amended Complaint (ECF No. 15). The allegations within the First Amended Complaint are true and correct to the best of my knowledge and understanding. Similarly, the documents made exhibits to the First Amended Complaint are true and correct copies of what they are represented to be to the best of my knowledge and understanding.

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4. I intend to continue wearing stickers similar to the one violently ripped off my jacket by Defendant Doe 1 on the public sidewalks within 200-feet of the Norfolk Superior Courthouse, but I am chilled from doing so due to what happened on April 1, 2025. Given that there has been no indication of any reining in of law enforcement, I credibly fear further violence and misuse of authority from the Massachusetts State Police were I to wear such a sticker again.

5. I fear that the State Police, including Defendants Doe 1 and Doe 2, under the control of Geoffrey Noble, Superintendent of the Massachusetts State Police, will continue to retaliate against me for expressing myself, interfere with my First Amendment protected activities extrajudicially by assaulting me, or simply arrest me.

6. I fear that the Dedham Police, under the control of Chief Michael d'Entremont, will arrest me for violation of the Order if I engage in protected speech.

7. I fear that the Norfolk County DA, under the control and direction of Defendant Morrisey, will seek my prosecution for violation of the Order if I engage in protected speech.

8. I fear that Judge Cannone will attempt to hold me in contempt if I continue to engage in protected speech in the vicinity of the courthouse.

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

Dated: 04 / 17 / 2025

By: _____
John Delgado

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