

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JAMES ALLEN TERRY, JR.

VERSUS

DOCKET NO.

CITY OF NEW ORLEANS; C. RAY NAGIN, Mayor, City of New Orleans; EDDIE COMPASS, former Superintendent of the New Orleans Police Department; WARREN J. RILEY, Superintendent of the New Orleans Police Department; JOHN DOE and JANE DOE, certain unknown officers of the New Orleans Police Department; MARLIN N. GUSMAN, Criminal Sheriff of Orleans Parish; RICHARD L. STALDER, Secretary of the Louisiana Department of Public Safety and Corrections; and CORNEL H. HUBERT, Warden of Elayn Hunt Correctional Center.

.....
COMPLAINT UNDER 42 U.S.C. 1983
.....

I. INTRODUCTION

The complaint of James Allen Terry, Jr., an individual of the full age of majority who is domiciled in Orleans Parish, Louisiana, respectfully represents:

1.

This is an action pursuant to 42 U.S.C. §1983, for damages to redress Defendants' violations of Article I, Section 9 and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, as well as pendent claims made pursuant to state law.

II. JURISDICTION AND VENUE

2.

This Court has jurisdiction in this action pursuant to 28 U.S.C. §§ 1331 and 1343. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3.

Venue is proper in this Court pursuant to 28 U.S.C. §1391 (b). At all times relevant, Defendants City, Nagin, Compass, Riley, Does and Gusman were residents of this District. A substantial part of the events giving rise to this claim occurred in this District.

4.

Declaratory relief is authorized pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202. A declaration of the law is necessary and appropriate to determine the respective rights and duties of the parties to this action.

III. THE PARTIES

5.

Made Defendants herein are:

- (a) Defendant City of New Orleans is a political subdivision of the State of Louisiana and a municipal corporation, which was at all relevant times the employer of the Defendant New Orleans Police Department (NOPD) personnel and the Mayor of the City of New Orleans, named Defendants herein. Defendant City is directly liable for the acts complained of herein due to the policies, practices, procedures and customs of its police department and its employees. It is also responsible for the hiring, training, supervision, discipline

and control of the Defendant NOPD personnel named as Defendants herein as well as other unnamed police employees and supervisors who had responsibility for the acts and omissions described herein. Defendant City is also vicariously liable for the actions of its employees as described herein, under state law.

- (b) Defendant C. Ray Nagin is a person of the full age of majority and is a resident of the Eastern District of Louisiana. At all times pertinent herein, he was the duly elected Mayor of the City of New Orleans. Defendant Nagin was responsible for the supervision, administration, policies, practices, procedures and customs for the City of New Orleans and its police department, as further described herein. He was responsible to see that the safety and security of the City, its residents and visitors, were protected in the event of a major hurricane event. He was responsible for the hiring, training, discipline, supervision and control of the NOPD chiefs, supervisors and officers who are Defendants herein, including Defendants former- Superintendent Eddie Compass and former- Deputy Chief Warren Riley. He was a final policymaker. He is sued individually and in his official capacity. At all pertinent times herein he was acting under color of law and in the course and scope of his employment.
- (c) Defendant Eddie Compass was the Superintendent of Police for the City of New Orleans at all pertinent times herein. He was responsible for the supervision, administration, policies, practices, customs and procedures of the NOPD, as well as the hiring, training, supervision, discipline and control of

police personnel under his command, which includes the NOPD defendants named and referenced herein as well as other, unnamed police employees who had responsibility for the acts and omissions described herein. He was responsible for seeing that the safety and security of the city, its residents and visitors were protected in the event of a major hurricane event. He is of the full age of majority and is a resident of the Eastern District of Louisiana. He is sued individually and in his official capacity. At all pertinent times herein he was acting under color of law and in the course and scope of his employment. He was a final policymaker for the City of New Orleans relating to police practices, policies, customs and procedures.

- (d) Defendant Chief Warren J. Riley was deputy chief of the New Orleans Police Department, employed by the City of New Orleans at all pertinent times herein. He was responsible for the operations and implementations of policies, practices, customs and procedures of the NOPD, as well as the hiring, training, supervision, discipline and control of police personnel under his command, which includes the NOPD defendants named and referenced herein as well as other, unnamed police employees who had responsibility for the acts and omissions described herein. He is of the full age of majority and is a resident of the Eastern District of Louisiana. He is sued individually and in his official capacity. At all pertinent times herein he was acting under color of law and in the course and scope of his employment.

- (e) Defendants John Doe and Jane Doe are persons of the full age of majority and, on information and belief, are residents of the Eastern District of Louisiana. At pertinent times herein Defendants John Doe and Jane Doe were employees of the City of New Orleans, serving as police officers with the NOPD. They are each sued in their individual and official capacities. At all pertinent times herein they were acting under color of law and in the course and scope of their employments.
- (f) The identities of John Doe and Jane Doe are currently unknown to the Plaintiff, despite diligent efforts to ascertain their identities. Each of these defendants is well aware of their own acts and omissions in this matter, as are the other City of New Orleans defendants, and their identities are known to the City of New Orleans and the NOPD defendants named herein.
- (g) Marlin N. Gusman is a citizen and resident of Louisiana. At all times material to this action, Mr. Gusman has been the Criminal Sheriff for Orleans Parish. As such, he is the agency official ultimately responsible for the daily functioning and administration of Orleans Parish Prison, hereinafter "OPP", and for ensuring the safety and proper care of inmates in the custody of Orleans Parish. He is sued in his official and individual capacities. At all pertinent times herein he was acting under color of law and in the course and scope of his employment.
- (h) Richard L. Stalder is a citizen of Louisiana. At all times relevant to Plaintiff's claim for damages and declaratory relief, Defendant Stalder was Secretary of

the Department of Public Safety and Corrections of the State of Louisiana, and, as such, was responsible for ultimately ensuring the safety and welfare of inmates in the physical custody of the Louisiana Department of Corrections. He is sued in his individual capacity. At all pertinent times herein he was acting under color of law and in the course and scope of his employment.

- (i) Cornel H. Hubert is a citizen of Louisiana. At all times relevant to Plaintiff's claim for damages and declaratory relief, Mr. Hubert was the Warden at Elayn Hunt Correctional Center. In that capacity he is responsible for the daily functioning and administration of Elayn Hunt. Defendant Hubert has a duty and obligation under law to ensure, among other things, that inmates have access to sanitary living conditions, a law library, medical care, and that inmates are not detained beyond their release dates. He is sued in his official and individual capacity. At all pertinent times herein he was acting under color of law and in the course and scope of his employment.

IV. FACTUAL ALLEGATIONS

6.

On September 11, 2005, Complainant was residing in St. Vincent's Guest House, which is located on the corner of Magazine Street and Race Street in the City of New Orleans.

7.

On the night of September 11, 2005 Complainant was standing on the porch of his residence, when a unit of the Iowa National Guard saw him. For reasons unknown to complainant, members of the National Guard climbed over the fence around his residence and

broke into the building. By breaking a window, they then broke into Complainant's room, in which he resided with two other persons.

8.

The national guardsman had no probable cause to believe that Complainant had committed crime, and neither did they have a warrant for the search of his residence. The national guardsmen found a BB gun and one marijuana cigarette.

9.

Upon information and belief, the national guard personnel notified the New Orleans Police Department who arrested Complainant for looting, possession of a controlled dangerous substance and possession of a firearm, notwithstanding the fact that no probable cause existed for the search of Complainant's residence, nor was there probable cause to believe that Complainant had committed any offense.

10.

Complainant was taken to the Greyhound Bus Station in the city of New Orleans, which had been converted into a city jail. After having his booking pictures taken, Complainant was made to pose with a member of the Iowa National Guard as though he were a "trophy." Complainant alleges on information and belief that Marlin N. Gusman, the Criminal Sheriff of Orleans Parish, was administering this makeshift jail.

11.

For two days, Complainant was forced to sleep on oil-soaked concrete using his shoes as a pillow. All his personal effects were taken away and were never returned.

12.

After two days at the Greyhound station, Complainant was transported to Elayn Hunt Correctional Center in St. Gabriel, Louisiana where he was placed in a maximum-security cellblock, although Complainant had committed no offense whatsoever and had not been convicted of any offense.

13.

The cells at Elayn Hunt Correctional Center were holding two to three times the number of people they were designed to hold.

14.

After a month in the maximum-security cellblock, Complainant was moved to Hunt's carpentry shop, where he slept on a mat on the concrete floor. The carpentry room had been converted into a holding area and was so crowded that each man's mat touched his neighbor's mat. There was one toilet for 65 men and a constant infestation of insects.

15.

Complainant is a New Orleans resident and U.S. Army veteran, with no criminal history whatsoever.

16.

Complainant and other detainees at Elayn Hunt did not have access to the law library or exercise facilities. Because they were not allowed access to the law library, Complainant and other detainees attempted to trade items from the prison store with other inmates who had access to legal documents, such as writs of habeas corpus. Other than to eat meals, they did not leave their makeshift cells except one to two times per week when they were allowed to

go to the prison yard for an hour or two. The Complainant was also wearing disposable contact lenses at the time of his arrest, which are not meant to be worn for prolonged periods of time. Complainant was unable to get care for his eyes, and his disposable contacts deteriorated and eventually tore. His eyesight was impaired for the remaining period of his incarceration. Complainant filed numerous "sick calls" and was denied access to eye care.

17.

Complainant was incarcerated for 190 days without being formally charged with a crime. He was released on April 4, 2006 with no information on his status or whether or not he would receive a day in court. Upon information and belief, he has never been formally charged with any offense.

18.

He was taken before a person while at Elayn Hunt Correctional Center but it is not known whether such person was a magistrate or a judge. That person informed him that he was arrested for looting, possession of a controlled dangerous substance, and possession of a firearm and, upon information and belief, fixed his bail at the outrageously high sum of \$300,000.00.

19.

Plaintiff has never been convicted of a criminal offense and is entitled to possess a firearm under the applicable provisions of the laws of the State of Louisiana. Additionally, the "firearm" in question was a BB gun, did not belong to Complainant, and, upon information and belief, was broken.

20.

Complainant was unlawfully arrested while going about his lawful business in his own residence. No warrant or probable cause existed for the search of his residence and no probable cause existed for the arrest of his person.

21.

Plaintiff was effectively denied bail by the outrageously high figure that was fixed as his bail. He was denied the right to counsel and the right to habeas corpus. Complainant was arrested without probable cause and detained for a period of seven months for no reason whatsoever.

VI. CAUSES OF ACTION

22.

Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.

23.

The seizure and detainment of Complainant's person without probable cause is contrary to the provisions of the Fourth Amendment to the Constitution of the United States.

24.

The forced entry into and subsequent search of Complainant's residence without probable cause or a warrant was contrary to the provisions of the Fourth Amendment to the Constitution of the United States.

25.

The unlawful incarceration of Plaintiff, without charges, a hearing, or access to the courts, as well as the conditions in which he was confined, was contrary to the provisions of the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

26.

The denial of the right to counsel during Complainant's unjustified incarceration was contrary to the Sixth Amendment to the Constitution of the United States.

27.

The excessive bail fixed for Complainant, as well as the conditions to which he was confined, was in violation of the provisions of the Eighth Amendment to the Constitution of the United States.

28.

The denial of Complainant's right to habeas corpus was in violation of Article I, Section 9 of the Constitution of the United States.

29.

As a result of the foregoing, Complainant brings this action for damages under the provisions of 42 U.S.C. § 1983.

30.

In addition, Complainant is asserting pendent claims under the laws of the State of Louisiana for false imprisonment, malicious prosecution, denial of due process, bail, counsel and speedy trial guarantees provided in state law.

31.

The actions and omissions of the Defendants as described herein were done with deliberate indifference to the constitutional and statutory rights of the Plaintiff. The Defendants have acted maliciously, willfully, wantonly, and in reckless disregard of Plaintiff's rights.

32.

The acts and omissions of the Defendants described herein were also done with negligence, gross negligence and/or intent, in violation of the constitutional and statutory rights of Plaintiff.

33.

The acts and omissions of the Defendants described herein were done under color of law and within the course and scope of their employments.

WHEREFORE, Complainant prays for the following:

1. That Plaintiff be awarded compensatory and punitive damages;
2. That Plaintiff be awarded nominal damages;
3. That a declaratory judgment be issued holding that Plaintiff's constitutional rights were violated;
4. That Plaintiff be awarded costs and attorney fees pursuant to 42 U.S.C. § 1988 and any other applicable provision of the law;
5. That Plaintiff be awarded judicial interest from the date of judicial demand; and
6. For all other just and equitable relief as this Court deems proper.

Respectfully Submitted,



Alfred B. Shapiro, Bar No. 9963

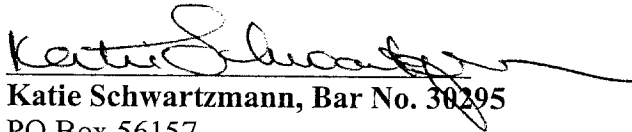
Trial Attorney

1500 Lobbell Avenue, Suite B

Baton Rouge, Louisiana 70806

Fax: (225) 928-4195

*General Counsel of the American Civil Liberties Union
Foundation of Louisiana*



Katie Schwartzmann, Bar No. 30295

PO Box 56157

New Orleans, Louisiana 70156

Fax: (504) 522-0618

*Staff Attorney for the American Civil Liberties Union
Foundation of Louisiana*