

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-01964-WYD-CBS

STEVEN HOWARDS,

Plaintiff,

v.

VIRGIL D. "GUS" REICHLER, JR., in his individual and official capacity,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiff STEVEN HOWARDS, by and through his attorney, David A. Lane, of KILLMER, LANE & NEWMAN, LLP, respectfully alleges for his Complaint as follows:

INTRODUCTION

1. This is an action for damages against the Defendant for violating Plaintiff Steven Howards's rights under the First and Fourth Amendments of the Constitution. Mr. Howards alleges that Defendant violated his Fourth Amendment rights when, intentionally, knowingly, recklessly, and with deliberate indifference to his constitutional rights, he subjected him to an intrusive, unjustified, and illegal search and seizure without any basis for believing he was engaged in criminal activity. Mr. Howards additionally alleges that Defendant violated his First Amendment rights when he retaliated against him by arresting him for his valid exercise of his free speech rights. Defendants' conduct under color of state law proximately caused the deprivation of Mr. Howards's federally protected rights.

JURISDICTION & VENUE

2. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. If this Court finds that the Defendant was acting under color of federal law instead of state law pursuant to 42 U.S.C. § 1983 (because the Defendant is a federal law enforcement agent), it should then be found under *Bivens v. Six Unknown Drug Agents*, 403 U.S. 388 (1971). Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343 and 2201. Jurisdiction supporting Mr. Howards' claim for attorney fees is conferred by 42 U.S.C. § 1988.

3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the state of Colorado, and all of the parties are residents of the state. At all pertinent times mentioned herein, Defendant was employed by the United States Treasury Department as a Secret Service agent assigned to protect the Vice President of the United States, Dick Cheney, and was acting under color of federal and state law at the time of this incident.

PARTIES

4. At all pertinent times mentioned herein, Plaintiff Steve Howards was a citizen of the United States of America and a resident of Colorado.

5. At all pertinent times mentioned herein, Defendant was employed as a Secret Service agent and was acting officially and individually within the scope of his duties and employment, under color and authority of state and federal law, and in his official capacities as a United States Treasury Department employee.

FACTUAL BACKGROUND

6. On June 16, 2006, Vice President Dick Cheney was in Beaver Creek, Colorado, as was Plaintiff, Steven Howards.

7. Mr. Howards was walking in Beaver Creek with his young son who was going to a piano lesson, when he saw Mr. Cheney surrounded by people, shaking hands and posing for photographs in an outdoor mall area.

8. Mr. Howards and his son walked to where Mr. Cheney was standing and Mr. Howards, who was approximately 2-3 feet away from Mr. Cheney addressed the Vice President by saying "I think your policies in Iraq are reprehensible" or words to that effect.

9. Mr. Howards and his young son then walked away to go to the piano lesson where he joined his wife and his other young son.

10. This encounter with the Vice President occurred in plain view of dozens of citizens and numerous Secret Service agents.

11. Approximately five to ten minutes later Mr. Howards and his other son began to return through the same area.

12. As Mr. Howards and his son approached the area where the initial encounter occurred, they were intercepted by the Defendant who asked Mr. Howards if he had assaulted the Vice President.

13. Mr. Howards, in shocked amazement, denied that he had assaulted the Vice President.

14. At that point, Mr. Howards, in the presence of his young son, was placed in handcuffs and taken to the Eagle County jail where he was searched and detained for several hours.

15. Although the Defendant told Mr. Howards that he was going to be charged with assaulting the vice-president, the Defendant instructed the Eagle County, Colorado Sheriff's Department to issue Mr. Howards a summons for harassment under Colorado State Law, for harassing the Vice President.

16. On July 6, 2006, the Eagle County District Attorney's office moved to dismiss all charges.

17. On July 10, 2006, the state court dismissed all charges.

18. At no time during these encounters did Steven Howards ever violate any law, federal, state or local.

19. Mr. Howards was arrested without probable cause to believe that he had committed any offense whatsoever.

20. Mr. Howards was arrested in retaliation for his having exercised his First Amendment protected free speech right to speak out to the Vice President and in retaliation for his having exercised his First Amendment right to petition his government.

FIRST CLAIM FOR RELIEF

(§ 1983 Fourth Amendment Violation – Unlawful Seizure)

21. Mr. Howards incorporates all other paragraphs of this Complaint for purposes of this claim.

22. The actions of Defendant as described herein, while acting under color of state and/or federal law, intentionally deprived Mr. Howards of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unlawful seizure as guaranteed by the Fourth Amendment to the

Constitution of the United States of America and 42 U.S.C. §1983 in that Steve Howards was arrested without probable cause to believe he had committed any offense.

23. Defendant intentionally, knowingly, recklessly, and excessively subdued, restrained, detained and falsely arrested Mr. Howards, without any reasonable justification or probable cause.

24. Defendants' conduct proximately caused significant injuries, damages, and losses to Mr. Howards.

SECOND CLAIM FOR RELIEF
(§ 1983 Fourth Amendment Violation – Unlawful Search)

25. Mr. Howards incorporates all other paragraphs of this Complaint for purposes of this claim.

26. The actions of Defendant as described herein, while acting under color of state and/or federal law, intentionally deprived Mr. Howards of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unlawful searches as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983, in that the Defendants had no probable cause or reasonable suspicion to believe that Steven Howards had committed any violation of the law prior to searching his person pursuant to the unlawful arrest.

27. Defendant deliberately and improperly accosted Mr. Howards and intentionally, knowingly, and recklessly subjected him to an illegal, demeaning, and invasive search without any reasonable justification.

28. Defendant's conduct proximately caused damages to Mr. Howards.

THIRD CLAIM FOR RELIEF

(§ 1983 First Amendment Violation – Retaliation for Exercise of Free Speech)

29. Mr. Howards incorporates all other paragraphs of this Amended Complaint for purposes of this claim.

30. In criticizing the actions of the Vice President and the Bush administration in pursuing the war in Iraq, Mr. Howards was engaging in the constitutionally protected activity of free speech and petitioning his government for redress.

31. Mr. Howards's speech was related to matters of public concern.

32. The Defendant's acts of intimidating, threatening, searching, and falsely arresting Mr. Howards were motivated by Mr. Howards's exercise of constitutionally protected conduct.

33. Defendant's actions caused Mr. Howards to suffer injuries that would chill a person of ordinary firmness from continuing to engage in such constitutionally protected activity.

34. Defendant's conduct violated clearly established rights belonging to Mr. Howards of which reasonable persons in Defendants' position knew or should have known.

35. Defendant's acts were done under color of state and/or federal law.

36. Defendant engaged in the conduct described by this Complaint intentionally, knowingly, willfully, wantonly maliciously, and in reckless disregard of Mr. Howards's federally protected constitutional rights.

37. Defendant's conduct proximately caused significant injuries, damages and losses to Mr. Howards.

WHEREFORE, Mr. Howards respectfully requests that this Court enter judgment in his favor and against the Defendants, and grant:

- (a) Appropriate declaratory and other injunctive and/or equitable relief;
- (b) Compensatory and consequential damages, including damages for emotional distress, loss of reputation, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (c) All economic losses on all claims allowed by law;
- (d) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (e) Attorneys fees and the costs associated with this action, including those associated with having to defend against the false criminal charge as well as expert witness fees, on all claims allowed by law;
- (f) Pre- and post-judgment interest at the lawful rate.
- (g) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFF REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

Dated this 3rd day of October 2006.

KILLMER, LANE & NEWMAN, LLP

s/ David A. Lane

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