UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW HAMPSHIRE

ALFREDO VALENTIN **v.** **CITY OF MANCHESTER, ET AL.**	**Case No.: 1:15-cv-00235-PB**

PLAINTIFF'S REPLY TO DEFENDANTS' OBJECTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I. The Defendants Misapprehend Plaintiff's *Monell* Policy Claim

Defendants conflate Plaintiff's *Monell* failure to train claim with Plaintiff's separate and distinct *Monell* policy claim. Defendants, from the very beginning of this case, have sought the protection of qualified immunity by effectively conceding that the MPD had a policy in place at the time of Plaintiff's arrest that deemed the secret recording of the police to be without constitutional protection and in violation of New Hampshire's wiretapping statute. *See* Mar. 8, 2017 Reardon Aff. ¶ 4 (Docket No. 68-4); Defs.' Memo. of Law in Support of Mot. for S.J. at pp. 6, 19 (Docket No. 68-1). This policy was memorialized in an April 5, 2012 training memo that Captain Robert Cunha of the MPD sent to all sworn officers.

The City attempts to avoid liability under Plaintiff's *Monell* policy claim in three ways. First, it argues, without explanation, that the April 2012 training memo is not a "policy per se." Defs.' Obj. p. 8. The MPD's Lt. Reardon, however, testified that it was MPD policy at deposition:

> Q. BY MR. LEHMANN: …. At the time that Mr. Valentin was arrested, is it your understanding that the policy of the Manchester Police Department was that—was to construe the wiretapping statute as prohibiting someone from secretly audio recording you?
> A. Yes, sir.

Reardon Depo. 44:20-45:3, Biss. Decl. at *Ex. II*.[1] In any event, Defendants' Objection amounts to form over substance. However one characterizes the April 2012 memo, it (i) represented the MPD's established view that the secret recording of the police is a chargeable offense after *Glik* and (ii) was sent to Sgts. LeVeille and Sanders who then arrested Plaintiff under this view.

Second, the City argues that a "deliberate indifference" standard applies. *See* Defs.' Obj. p. 8. This argument is misplaced. The "deliberate indifference" standard does not apply to Plaintiff's *Monell policy* claim. *See, e.g., Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 404-05 (1997) ("Where a plaintiff claims that a particular municipal action itself violates federal law, or directs an employee to do so, resolving [the] issues of fault and causation is straightforward.").[2] The "deliberate indifference" standard only applies to Plaintiff's separate failure to train *Monell* claim. *See Joyce v. Town of Tewksbury*, 112 F.3d 19, 22-23 (1st Cir. 1997) (reciting standard in failure to train claim).[3]

Third and relatedly, the City contends that Plaintiff's *Monell* policy claim fails because Plaintiff has not identified "similar incidents involving Manchester Police Officers." *See* Defs.' Obj. pp. 8-9. However—setting aside the March 2017 incident documented on YouTube—a plaintiff can establish liability even for a single incident under a *Monell* policy claim. *See, e.g.*, *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 125–26 (2d Cir. 2004) ("It is not necessary … for plaintiffs to prove that a municipality has followed a particular course of action repeatedly in order to establish the existence of a municipal policy; rather, a single action taken by a municipality is sufficient to expose it to liability."). The United States Supreme Court has rejected the City's argument. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986) (plurality opinion) ("[I]t is

[1] For the sake of completeness, Plaintiff attaches the errata sheet for Lt. Reardon's deposition, which was recently produced. *See* Reardon Depo. Errata Sheet, attached to Third Bissonnette Decl. ("Third Biss. Decl.") at *Ex. CCC*.
[2] *See also Santiago v. Lafferty*, No. 13-12172-IT, 2017 U.S. Dist. LEXIS 49177, at *35 (D. Mass. Mar. 31, 2017) (same).
[3] The two other cases cited by Defendants—*Foley v. Town of Lee*, 871 F. Supp. 2d 39, 52-53 (D.N.H. 2012) and *Norton v. City of S. Portland*, 831 F. Supp. 2d 340, 365 (D. Me. 2011)—are also failure to train cases, not *Monell* policy cases.

plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances. If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly.").

II. The *Monell* Policy Claim is Subject to a Different Standard Than Qualified Immunity

Defendants effectively seek the protection of qualified immunity against Plaintiff's *Monell* policy claim. *See* Defs.' Obj. pp. 3-4. However, there is no qualified immunity defense available to a municipality. As case after case has concluded, the qualified immunity analysis is not a proxy for examining a *Monell* policy claim. *See, e.g., Owen v. City of Independence*, 445 U.S. 622, 657 (1980) ("municipalities have no immunity from damages liability flowing from their constitutional violations").[4] As the Second Circuit succinctly explained in *Askins v. Doe No. 1*, 727 F.3d 248 (2d Cir. 2013):

> It suffices to plead and prove against the municipality that municipal actors committed the tort against the plaintiff and that the tort resulted from a policy or custom of the municipality. In fact, the plaintiff need not sue the individual tortfeasors at all, but may proceed solely against the municipality …. [T]he entitlement of the individual municipal actors to qualified immunity because at the time of their actions there was no clear law or precedent warning them that their conduct would violate federal law is also irrelevant to the liability of the municipality …. The doctrine that confers qualified immunity on individual state or municipal actors is designed to ensure that the persons carrying out governmental responsibilities will perform their duties boldly and energetically without having to worry that their actions, which they reasonably believed to be lawful at the time, will later subject them to liability on the basis of subsequently developed legal doctrine. That policy, however, has no bearing on the liability of municipalities. Municipalities are held liable if they adopt customs or policies that violate federal law and result in tortious violation of a plaintiff's rights, regardless of whether it was clear at the time of the adoption

[4] *See also Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1249-50 (9th Cir. 2016) ("But as a threshold matter, Maricopa County is not eligible for qualified immunity because counties do not enjoy immunity from suit—either absolute or qualified—under § 1983.") (internal citations omitted); *Beedle v. Wilson*, 422 F.3d 1059, 1068 (10th Cir. 2005) ("The Hospital … contends it is not liable because at the time it filed its state suit and opposed Mr. Beedle's various motions to dismiss, the Hospital had a good-faith basis for believing it was not a governmental entity for § 1983 purposes and thus was not precluded from bringing a libel action. This contention approximates a qualified immunity defense in that the Hospital claims a reasonable official would not have known its actions violated a clearly established federal right. Such an argument is misplaced because a governmental entity may not assert qualified immunity from a suit for damages. A qualified immunity defense is only available to parties sued in their individual capacity.") (internal citations omitted); *Tenenbaum v. Williams*, 193 F.3d 581, 597 (2d Cir. 1999) ("While the individual defendants are entitled to qualified immunity, the City is not.").

> of the policy or at the time of the tortious conduct that such conduct would violate the plaintiff's rights. To rule, as the district court did, that the City of New York escapes liability for the tortious conduct of its police officers because the individual officers are entitled to qualified immunity would effectively extend the defense of qualified immunity to municipalities, contravening the Supreme Court's holding in *Owen*.

Id. at 253-55 (internal citations omitted). Qualified immunity also does not apply to Plaintiff's claim for injunctive relief. *Hydrick v. Hunter*, 669 F.3d 937, 939-40 (9th Cir. 2012).[5]

III. Plaintiff's Motive in Recording is Irrelevant

Defendants again claim that Plaintiff's recording was unprotected because it was not of "public concern." Defs.' Obj. pp. 2-3. This is wrong for two reasons.

First, Defendants are incorrect that *Glik* is limited only to those who record the police out of a "public concern" to hold the police accountable. First Amendment protection does not hinge on the recorder's motive. Defendants have not cited a provision of *Glik* that suggests such a limitation. No such limitation exists for good reason: Because gathering information about government officials—irrespective of the recorder's motive—"serves a cardinal First Amendment interest in protecting and promoting the free discussion of governmental affairs" and "may have a salutary effect on the functioning of government more generally." *Glik v. Cunniffe*, 655 F.3d 78, 82-83 (1st Cir. 2011). A recorder may not even know the public value of her work until *after* the incident has unfolded. Defendants' position also mandates that even the *open* recording of the police is unprotected if the recorder does not have a "public reason" to record.

Under Defendants' view, two individuals standing shoulder-to-shoulder could record the same police encounter in exactly the same way. But if only one has a "newsgathering" motive,

[5] In determining whether to grant a permanent injunction, the Court must find that: "(1) plaintiffs prevail on the merits; (2) plaintiffs would suffer irreparable injury in the absence of injunctive relief; (3) the harm to plaintiffs would outweigh the harm the defendant would suffer from the imposition of an injunction; and (4) the public interest would not be adversely affected by an injunction." *Healey v. Spencer*, 765 F.3d 65, 74 (1st Cir. 2014) (quoting *Asociacion de Educacion Privada de P.R., Inc. v. Garcia-Padilla*, 490 F.3d 1, 8 (1st Cir. 2007)). The first element—success on the merits—predominates in this determination. *See Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 10 (1st Cir. 2012) ("In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis.").

that person would have engaged in protected recording. The other individual engaging in identical recording—but without any apparent "newsgathering" motive—could be prosecuted for wiretapping. The First Amendment imposes no such distinction. Compounding this absurd result, the motive of the recorder is rarely apparent to an officer whose activities are being recorded. Under *Glik*, officers do not get to subjectively determine whether a recorder sufficiently has a "public interest" motive to obtain First Amendment protection. If the police had this discretion, they would have a powerful tool to suppress the right to record "that may be misused to deprive individuals of their liberties." *Id.* at 82.[6] Finally, Defendants ignore the emerging question of what constitutes a person who is "newsgathering." The cellphone video camera has been one of the greatest technological advances in protecting constitutional rights from abusive government officials. With this technology, most individuals now have the ability to gather information concerning government behavior that can be disseminated to serve the public interest.

Second, Defendants' claim as to Plaintiff's motive for recording is a mischaracterization of the record. As Plaintiff's deposition demonstrates, he recorded the Defendant Officers for precisely the government accountability reasons that the *Glik* Court held justified the right to record the police under the First Amendment. Plaintiff engaged in the recording to "protect himself" if the MPD violated his rights in taking any action against him. And he did so using only audio functionality, as opposed to video, to protect the officers' identities. *See* Valentin Depo. 43:9-21, Second Biss. Decl. at *Ex. TT*. He testified that he did not trust the MPD. He is under no duty to do so. It turns out that his concern was entirely reasonable given the MPD's decision to unconstitutionally arrest and charge him. As Plaintiff testified, he recorded

[6] Defendants' reference to *Sheppard v. Beerman*, 18 F.3d 147 (2d Cir. 1994) can be rejected. *See* Defs.' Obj. p. 2. This case—which is from 1994, pre-dates *Glik* by 17 years, and is from another circuit—has nothing to do with the right to record the police performing their official duties in public; instead, it concerns an employee's right to be free from retaliation from a government employer under the First Amendment.

> [t]o protect myself because Manchester has been known to violate certain people's rights. And I found that out having seen/observed a few videos on Youtube and television and all that good stuff. Specifically, I don't know exactly which, but I know I have seen them.

Id. at 78:14-79:7.

IV. The Police Officer Defendants Violated Clearly Established Law

Defendants essentially contend that, to avoid qualified immunity, Plaintiff must find a case with an identical fact pattern concerning surreptitious recording. But, as *Glik* itself notes, Plaintiff need not identify a "case directly on point"; rather, "existing precedent must have placed the … constitutional question beyond debate." *Glik*, 655 F.3d at 81. "The salient question is whether … the defendant [had] fair warning that his particular conduct was unconstitutional." *Id.*; *see also Hope v. Pelzer*, 536 U.S. 730, 741 (2002) ("[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances.").[7] The *Glik* and *Gericke* decisions could not have been clearer in providing fair warning to the Officer Defendants: members of the public have a First Amendment right to video and audio record law enforcement officers in a public place when the officers are acting in the course of their official duties, provided that the recording is done peacefully and does not interfere with the officers' performance of their duties. The circumstances of Plaintiff's recording satisfy every element of this rule. Defendants have been unable to point to any "surreptitious" exception to this First Amendment rule in *Glik* or *Gericke*. This is because no such limitation exists, and for good reason: the right to record the police secretly—again, without compromising law enforcement activities—protects individuals from immediate law enforcement retaliation. This case is proof that such retaliation occurs. The two

[7] *See also Matalon v. Hynnes*, 806 F.3d 627, 633 (1st Cir. 2015) ("it is not necessary that the particular factual scenario has previously been addressed and found unconstitutional"); *K.H. v. Morgan*, 914 F.2d 846, 851 (7th Cir. 1990) ("It begins to seem as if to survive a motion to dismiss a suit on grounds of immunity the plaintiff must be able to point to a previous case that differs only trivially from his case. But this cannot be right. The easiest cases don't even arise.") (Posner, J.); *McKenney v. Mangino*, No. 2:15-cv-00073-JDL, 2017 U.S. Dist. LEXIS 55649, at *26 (D. Me. Apr. 12, 2017) ("As a practical matter, the standard advanced by Deputy Mangino [that the plaintiff must identify a case with nearly identical facts] fails to account for the reality that the factual circumstances of each case are, by their nature, unique, and two cases seldom involve nearly identical facts.").

student law review notes cited by Defendants do nothing to change the clarity of the First Amendment rule in *Glik*. In short, *Glik*'s rule is broad in the absence of interference.[8]

In fact, the First Circuit has declined to adopt the Defendants' granular approach in determining whether the law is clearly established. In *Glik*, the First Circuit dismissed the notion that this rule was not clearly established despite the fact that the cases cited by the plaintiff there recognizing the right to record dealt with reporters, not private individuals. *Glik*, 655 F.3d at 83, 84-85. Similarly, in *Gericke*, police officers from the Town of Weare argued that it was not clearly established that the *Glik* decision applied to the recording of police during a "late-night traffic stop," which may create security risks. However, the First Circuit rejected the officers' granular qualified immunity argument, holding that the right to record exists so long as the police "is carrying out their duties in public." *Gericke v. Begin*, 753 F.3d 1, 7 (1st Cir. 2014).

It is also axiomatic that this constitutional rule in *Glik* cannot be limited by statute, including by the provisions of New Hampshire's wiretapping law. Yet this is precisely what Defendants seek here in arguing that the terms of New Hampshire's wiretapping statute can act as a "time, place, and manner" exception to *Glik*'s holding, even where the recording was done without interference. Defs.' Obj. pp. 7-8. Yet the First Circuit has made clear that a restriction on the right to record may be imposed "*only* if the officer can reasonably conclude that the filming itself is interfering, or is about to interfere, with his duties." *Gericke*, 753 F.3d at 8 (emphasis

[8] *Glik*'s only discussion of openness was in its Fourth Amendment holding examining Massachusetts' distinct wiretapping statute Again, Defendants repeatedly conflate the First Amendment analysis with whether probable cause to arrest exists under a wiretapping statute. *See* Defs.' Obj. p. 6. *Hyde* has no relevance here, as the Hillsborough County Superior Court correctly held in dismissing the indictment. *Glik*'s discussion of *Hyde* arose exclusively in its Fourth Amendment analysis concerning whether the specific elements of Massachusetts' wiretap statute were satisfied. But *Glik* does not discuss "openness" beyond the question of how to interpret Massachusetts' wiretap statute. While openness may impose a limiting principle on the right to record under the elements of Massachusetts' wiretap statute, openness does not impose a limiting principle under the First Amendment rule articulated in *Glik* and *Gericke*. Similarly, Defendants cannot rely on *Damon v. Hukowicz*, 964 F. Supp. 2d 120, 147 (D. Mass. 2013), as that case—like *Hyde*—was interpreting Massachusetts' separate and distinct wiretapping statute in assessing whether the defendants there had committed a Fourth Amendment violation. The quote from *Crawford v. Geiger*, 996 F. Supp. 2d 603, 615 (N.D. Ohio 2014) of the *Glik* decision also—correctly—does not contain any "openness" limitation.

added); *see also Glik*, 655 F.3d at 84 ("Such peaceful recording of an arrest in a public space that does not interfere with the police officers' performance of their duties is not reasonably subject to limitation."). It is blackletter law that the Constitution provides rights that are independent of legislative statutes. *See, e.g.*, *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973).[9]

V. The Officer Defendants Did Not Have a Reasonable Expectation of Privacy

Defendants claim that Sgts. LeVeille and Sanders had a reasonable expectation of privacy in their communications with Plaintiff while out in public performing their official duties. This view, if adopted, would be unprecedented. In *Glik* and elsewhere, the First Circuit has made clear that a police officer has diminished privacy rights when performing official duties. *See Jean v. Mass. State Police*, 492 F.3d 24, 29-30 (1st Cir. 2007) (in context of secret recording inside a house, officers' interest in privacy was "virtually irrelevant"; "[o]ne of the costs associated with participation in public affairs is an attendant loss of privacy"). Defendants effectively disregard this pronouncement in *Jean*. Instead, they pivot to *Jean*'s separate and unrelated analysis under *Bartnicki v. Vopper*, 532 U.S. 514 (2001) of "the public interest side of the equation." *See* Defs.' Obj. p. 9. This pivot fails. "[T]he public interest side of the equation"—while germane to *Bartnicki*'s assessment of whether the publication of material that was illegally recorded by another is protected under the First Amendment—is not germane to the "reasonable expectation

[9] Defendants' reliance on *Bleish v. Moriarty*, No. 11-cv-162-LM, 2012 U.S. Dist. LEXIS 93560 (D.N.H. July 6, 2012) (McCafferty, M.J.) is to no avail. *See* Defs.' Obj. pp. 12-13. This is because, in that case, the plaintiff was not arrested simply for recording the police, but rather because the plaintiff was interfering with the officers' ability to perform their jobs, thus triggering her arrest for disorderly conduct. As the Court explained:

> [T]he video evidence demonstrates that Bleish recorded the officers from substantially less than the ten feet the *Glik* court described as being "a comfortable remove." She generally placed herself within two feet of the officers, or closer, and at one point, *she placed her video camera less than a foot away from Patrolman DiFava's face*. Earlier in the incident, *after having been directed to move away from the police cruiser, Bleish reached into it*. Finally, unlike *Glik*, Bleish spoke to the officers throughout the entire incident, frequently asking them questions. And, she spoke to them rather loudly, *from a foot or two away, as they were attempting to take Krouse into custody, a task that presumably required considerable attention, as he was resisting arrest*.

Id. at *33 (emphasis added). Unlike in *Bleish*, here—as explained on Pages 20-21 of Plaintiff's Memo of Law—Plaintiff's recording posed no interference, and there is no dispute that the Defendant Officers arrested Plaintiff simply for recording them.

of privacy" analysis derived from New Hampshire's wiretapping statute.[10] Defendants also ignore the First Circuit case explaining that there is no expectation of privacy with respect to secretly recorded "person to person" communications made by the police of a suspect in the back of a cruiser. *See United States v. Dunbar*, 553 F.3d 48, 57 (1st Cir. 2009). The result here is the same.

VI. Impact of the June 18, 2015 Indictment

Defendants again argue that the June 18, 2015 indictment has an immunizing effect. As case after case has held, it does not.[11] Plaintiff's damages for his successful Fourth Amendment false arrest claim are also not cut off as of the date of the June 18, 2015 indictment. The First Circuit has explained that a prosecutor's successful decision to seek an indictment does not cut off the flow of damages when the defendant officers maliciously prosecuted the plaintiff by "unduly pressur[ing] the prosecutor to seek the indictment." *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 100 (1st Cir. 2013). Indeed, the First Circuit in *Hernandez-Cuevas* favorably cited a Sixth Circuit decision which characterized such undue pressuring as when the defendant officers "made, influenced, or participated in the decision to prosecute." *Id.* (quoting *Sykes v. Anderson*, 625 F.3d 294, 308 (6th Cir. 2010)). Here, as explained on Pages 31-33 of Plaintiff's Memo of Law, Defendant Sgt. LeVeille did not just have conversations with the prosecutor about pursuing criminal charges; rather, he actively lobbied the Hillsborough County Attorney's Office ("HCAO") to seek an indictment, thereby influencing its decison. These were not "minimal

[10] But even if it was germane, Plaintiff's recording—independent of whatever motive he had—was obviously of public concern, as it encompassed officers performing their official duties in public and conversing about the propriety of their search of Plaintiff's home. *See Jean*, 492 F.3d at 30 ("The police do not deny that the event depicted on the recording—a warrantless and potentially unlawful search of a private residence—is a matter of public concern.").

[11] *E.g., Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 308 n.13 (6th Cir. 2005) ("after-the-fact grand jury involvement cannot serve to validate a prior arrest"; rejecting qualified immunity, and noting that an indictment only conclusively establishes the existence of probable cause "where the arrest of the plaintiff was *pursuant* to a grand jury indictment") (emphasis in original). This indictment was secured (i) to avoid having an adversarial probable cause hearing (which was originally scheduled for May 20, 2015) and (ii) after Plaintiff's May 22, 2015 open records request seeking documents following the City's May 15, 2015 dismissal of the original felony charge. *See* May 22, 2015 Open Records Request, attached to Third Biss. Decl., at *Ex. DDD*. This request was denied apparently on the ground that Mr. Chapman was being prosecuted, even though his prosecution had nothing to do with Plaintiff's wiretapping arrest. *See* MPD June 1, 2015 Response, attached to Third Biss. Decl., at *Ex. EEE*.

contacts." Without Sgt. LeVeille's communications to the HCAO seeking an indictment, Plaintiff would not have been needlessly prosecuted for a second time. Given this record, Plaintiff is entitled to judgment as a matter of law on his malicious and retaliatory prosecution claims. At the very least, the record presents a jury question that requires denial of Defendants' Motion for Summary Judgment as to Plaintiff's malicious and retaliatory prosecution claims.[12]

VII. Plaintiff's *Monell* Seizure of the Phone Claim

The City does not dispute that it held Plaintiff's phone for 128 days before seeking a search warrant on July 8, 2015. The City still has offered no reasonable explanation for the delay. Nor has the City attempted to distinguish *Commonwealth v. White*, 59 N.E.3d 369, 378-80 (Mass. 2016), where a 68-day delay was found to be unreasonable. Nor has the City disputed that it failed to train its officers on their constitutional obligation to secure timely warrants when seizing property without a warrant. Nor does the Manchester district court's June 30, 2015 order denying Plaintiff's effort to have the phone returned assist the City's defense. The decision there was based not on the Fourth Amendment principles in *Segura v. United States*, 468 U.S. 796 (1984), but rather on whether the district court had the authority to order the return of the phone under RSA 595-A:6 given the fact that the case had been *nolle prossed* on May 15, 2015.[13] Simply put, the phone never contained contraband because Plaintiff was engaging in protected activity.

[12] While this prosecution was pending, on August 17, 2015, the HCAO asked Plaintiff to plead guilty to misdemeanor wiretapping—despite the protected nature of his recording—in return for serving one year in Valley Street Jail on a suspended basis, 50 hours of community service, and good behavior. Plaintiff rejected this offer. *See* Aug. 17, 2015 Plea Email, attached to Third Biss. Decl., at *Ex. FFF*. This demand that Plaintiff plead guilty to a criminal offense—and be subjected to all its collateral consequences—only highlights what Plaintiff had to endure after the June 18, 2015 indictment during the course of this baseless prosecution. In short, this case represents a complete breakdown in the justice system.

[13] For the context of the Manchester district court's June 30, 2015 order, Plaintiff has attached: (i) his March 30, 2015 Motion for Return of Property, (ii) his June 18, 2015 addendum to this Motion, (iii) the June 18, 2015 hearing transcript on this Motion, and (iv) the City's response. *See* Mar. 30, 2015 Motion to Return Property, attached to Third Biss. Decl., at *Ex. GGG*; June 18, 2015 Addendum, attached to Third Biss. Decl., at *Ex. HHH;* June 18, 2015 Transcript on Motion to Return Property, attached to Third Biss. Decl., at *Ex. III*; State's Response to Motion to Return Property, attached to Third Biss. Decl., at *Ex JJJ.*

Respectfully submitted,

Alfredo Valentin,

By and through his attorneys,

/s/ Gilles R. Bissonnette
Gilles R. Bissonnette (N.H. Bar. No. 265393)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org

Richard J. Lehmann, (N.H. Bar No. 9339)
835 Hanover Street, Suite 301
Manchester, NH 03104
Tel. 603.224.1988
rick@nhlawyer.com

Date: May 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded this date by ECF to:

Robert J. Meagher (N.H. Bar. No. 497)
McDonough, O'Shaughnessy,
Whaland & Meagher, PLLC
42 West Brook Street
Manchester, NH 03101
Tel. 603.669.8300
rmeagher@lawfirmnh.com

/s/ Gilles R. Bissonnette
Gilles R. Bissonnette (N.H. Bar. No. 265393)
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org