

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ROBERT MACHADO,)	
Plaintiff)	
)	C.A. No. 2012-
v.)	
)	
THE CITY OF CRANSTON and COL. MARCO)	
PALOMBO, JR. in his official capacity as Chief of)	
The CRANSTON POLICE DEPARTMENT,)	
Defendants)	

VERIFIED COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS
SEEKING INJUNCTIVE AND DECLARATORY RELIEF

PARTIES

1. Plaintiff Robert Machado is a natural person and citizen of the United States and of the State of Rhode Island, residing in Cranston, Rhode Island. He is a veteran of the war in Vietnam. Plaintiff has been diagnosed with Post-Traumatic Stress Disorder ("PTSD") resulting from his service and is receiving treatment for the PTSD.
2. Defendant City of Cranston ("The City") is a city chartered by the State of Rhode Island. Defendant Col. Marco Palombo, Jr. is the Chief of the Police Department of the City of Cranston. As such, he is responsible for formulating, executing and administering with the City the laws, customs, practices, and policies at issue in this lawsuit. Through its Police Department, the City has enforced the challenged laws, customs and practices against plaintiff.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 as this case involves a federal question pertaining to the United States Constitution. The Court has pendant jurisdiction over plaintiff's claims arising under state law.

4. Venue lies in this Court pursuant to 28 U.S.C. § 1391 as this is the judicial district where defendant resides and this is the judicial district where the cause of action arose.

STATEMENT OF FACTS

Background

5. The Second Amendment to the United States Constitution provides: “A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”
6. The Second Amendment is incorporated as against the states through the Fourteenth Amendment, such that Defendant cannot, under color of law, deprive Plaintiff of his right to keep and bear arms.
7. Article 1, Section 22 of the Rhode Island Constitution provides: “The right of the people to keep and bear arms shall not be infringed.”
8. Plaintiff legally obtained and possessed various weapons and related items.
9. On or about September 13, 2011, Cranston police officers and fire department paramedics went to Plaintiff’s residence at 474 Farmington Ave., Apt. 3, Cranston, RI in response to a call from Plaintiff’s friend who was concerned Plaintiff might try to harm himself.
10. The officers informed Plaintiff that they were there to check on his well-being.
11. Plaintiff informed the officers that he was not suicidal and that his friend must have misconstrued their earlier conversation.
12. The Cranston Police insisted that Plaintiff submit to a mental health evaluation and he was transported to Our Lady of Fatima Hospital in North Providence, Rhode Island for

evaluation. The doctor at the hospital who examined him said she did not find he had any problems.

13. Without Plaintiff's knowledge, the police officers removed from Plaintiff's home those various weapons and related items and transported them to headquarters for "safe keeping."
14. On information and belief, the Cranston Police Department researched all of the firearms seized through the National Crime Information Center (NCIC) and with all being found negative for any criminal activity.
15. On information and belief, Defendant's officers logged all of the items seized and then forwarded them to its Bureau of Criminal Investigation (BCI) Division for "safe keeping."
16. Plaintiff was released from the hospital the same day.
17. When Plaintiff returned to his home, he found his weapons were missing and he requested that the Police Department return them to him. The Police Department said he should get a letter from his therapist that he was not a threat to himself.
18. The next day Plaintiff received a letter from his therapist, Dr. Lawrence H. Weiner, who is treating his PTSD, attesting to Plaintiff's sanity with no suicidal tendencies or thoughts in indicating that there should be no concern regarding the return of the items to Plaintiff. A true and accurate copy of the letter is attached as Exhibit A.
19. Several days later, Plaintiff visited the Police Department to retrieve a copy of the incident report and inquire about getting his items returned.

20. Plaintiff was informed by an unidentified receptionist that only her supervisor could provide Plaintiff with a copy of the incident report and that the supervisor was not there to provide said report.
21. Plaintiff called Defendant's Department of Internal Affairs on or about October 3, 2011 and explained his situation to Lieutenant Vincent McAteer who provided Plaintiff with a copy of the incident report the following morning. A true and accurate copy of the report Plaintiff received is attached as Exhibit B.
22. Once the report was received, Plaintiff spoke on the telephone once again to Lt. McAteer who informed Plaintiff that he would need a doctor's letter and would need to obtain a court order from the state District Court before his items would be returned.
23. Plaintiff immediately went to the Third Division District Court Clerk in the Noel Courthouse, formerly the Kent County Courthouse, explained what Lt. McAteer had told him. Plaintiff was asked whether he was arrested to which he replied in the negative.
24. Plaintiff was informed by the unidentified Clerk that the matter had nothing to do with the District Court and that there was nothing that could be done there.
25. On or about four days later, Plaintiff received a phone call from Sergeant Patinaud of the Cranston Police Department informing Plaintiff that Plaintiff needed a court order to have his items returned.
26. Plaintiff left a message for Lt. McAteer that was never returned.
27. When they seized Plaintiff's property, Defendants set in motion a series of events that they knew or should have known would result in Plaintiff's inability to recover, or extreme difficulty in recovering, his property.

28. Defendants have a custom, policy, or practice of requiring lawful weapons owners, but not other property owners, to engage in formal litigation to recover their seized property.
29. Plaintiff has been unable to recover his weapons even though his weapons are not evidence, have not been used to commit a crime, and Plaintiff has been cleared by Dr. Weiner as not being a threat to himself or others.
30. By seizing Plaintiff's property without notice, refusing to return it to him, and refusing to allow him a meaningful opportunity to be heard on the matter, Defendants have deprived Plaintiff of his property without due process of law.
31. By setting in motion a series of events that Defendants knew or should have known would result in inability or extreme difficulty in recovering Plaintiff's property, Defendants deprived Plaintiff of his property without due process of law.
32. By maintaining a custom, policy or practice of requiring lawful weapons owners, but not other property owners, to engage in formal litigation to recover their seized property, Defendants have denied Plaintiff the equal protection of the laws.
33. By refusing to return Plaintiff's weapons to him, Defendant has infringed on Plaintiff's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and incorporated to the States by the Fourteenth Amendment as well as Art. 1, Sec. 22 of the Rhode Island Constitution.

Count I-Violation of Plaintiff's Right to Keep Arms

34. Paragraphs 1 through 36 are incorporated as though fully stated herein.
35. Plaintiff is a law abiding individual, competent in the safe handling of weapons. Plaintiff has also been declared by his therapist to not pose a threat of harm to himself or others.

Accordingly, there exists no reason to deny Plaintiff possession of his lawfully obtained weapons.

36. By maintaining and enforcing a set of customs, practices, and policies depriving Plaintiff of his lawfully obtained weapons, Defendant is propagating customs, policies, and practices that violate the Second and Fourteenth Amendments to the United States Constitution as well as Art. 1, Sec. 2 of the Rhode Island Constitution, and thereby damaging Plaintiff in violation of 42 U.S.C. § 1983. Plaintiff is therefore entitled to permanent injunctive relief against such customs, policies, and practices.

Count II-Violation of Plaintiff's Right to Equal Protection

37. Paragraphs 1 through 39 are incorporated as though fully stated herein.

38. Plaintiff is a law abiding individual, competent in the safe handling of weapons. Plaintiff has also been declared by his therapist to not pose a threat of harm to himself or others. Accordingly, there exists no reason to deny Plaintiff possession of his lawfully obtained weapons.

39. By maintaining and enforcing a set of customs, practices, and policies depriving Plaintiff of his lawfully obtained weapons, Defendant is propagating customs, policies and practices that violate Plaintiff's rights to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and Art.1 Sec. 2 of the Rhode Island Constitution, thereby damaging Plaintiff in violation of 42 U.S.C. § 1983. Plaintiff is therefore entitled to permanent injunctive relief against such customs, policies, and practices.

Count III-Violation of Plaintiff's Right to Due Process

40. Paragraphs 1 through 42 are incorporated as though fully stated herein.

41. Plaintiff had a cognizable property interest in his weapons, the seizure and retention of which was caused by Defendant without sufficient due process. Defendant is propagating customs, policies, and practices that violate Plaintiff's right to due process under the Fourteenth Amendment to the United States Constitution and Art. 1, Sec. 2 of the Rhode Island Constitution, thereby damaging Plaintiff in violation of 42 U.S.C. § 1983. Plaintiff is therefore entitled to permanent injunctive relief against such customs, policies, and practices.

Prayer for Relief

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Defendant as follows:

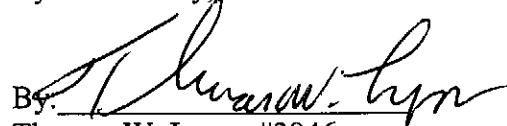
1. An order preliminarily and permanently enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the practice of seizing and retaining lawfully obtained weapons of individuals who are deemed to be of no threat to themselves or others, and who have not been charged with a crime;
2. Declaratory relief that the practice of seizing and retaining lawfully obtained weapons of individuals who are deemed to be of no threat to themselves or others, and who have not been charged with a crime is unconstitutional either on its face and/or as applied to bar those individuals who are legally entitled to possess weapons;
3. Declaratory relief that the practice of requiring weapons owners who are not charged with a crime to engage in formal litigation in order to recover their seized property is unlawful and unconstitutional;
4. The immediate return of Plaintiff's weapons to him;

5. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988;
6. Any other relief as the Court deems just and appropriate.

Respectfully submitted,

ROBERT MACHADO

By his attorney,

By: 

Thomas W. Lyons #2946

RHODE ISLAND AFFILIATE,
AMERICAN CIVIL LIBERTIES UNION

Strauss, Factor, Laing & Lyons

One Davol Square, Suite 305

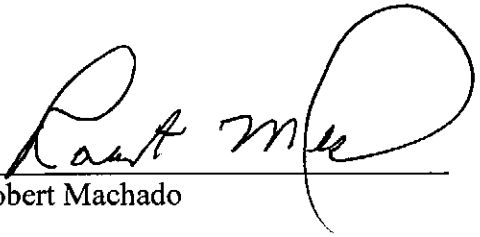
Providence, RI 02903

(401) 456-0700

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

VERIFICATION

I have read the allegations of this complaint and state that they are true and accurate to the best of my knowledge and belief.


Robert Machado

Subscribed and sworn before me this 23 day of May, 2012.

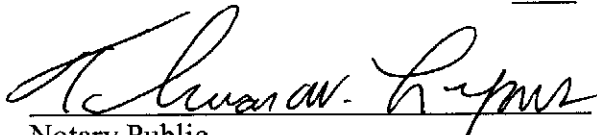

Notary Public
My commission expires: 4/26/2014

Exhibit A

Ann M. Porto, Psy. D. & Associates, Inc.
1524 Atwood Ave., Suite 213
Johnston, RI 02919
T-(401-351-0400)
F-(401-351-0410)

October 4, 2011

To whom it may concern:

Re: Robert E. Machado
247 Farmington Ave.. Apt. #3
Cranston, RI 02920

DOB: 12/1/1947

Robert Machado has been in counseling and psychotherapy with me since April 27, 2009. At no time has he ever demonstrated suicidal tendencies or thoughts, nor has he indicated any serious levels of aggression. Therefore, there should be no concern regarding returning these item from the police report dated 9/13/2011.

Sincerely,



Lawrence H. Weiner, Ed. D.
Licensed Psychologist #00053

Exhibit B



Cranston Police Department
Incident Report

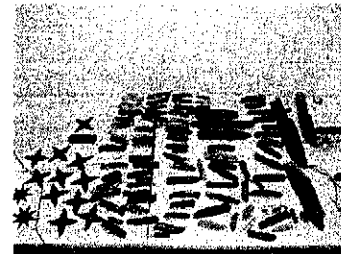
Page: 1
10/03/2011

Incident #: 11-47103-OF
Call #: 11-47103

Date/Time Reported: 09/13/2011 2023
Report Date/Time: 09/13/2011 2108
Status: No Crime Involved
Reporting Officer: OFFICER JON PARISEAULT
Approving Officer: Sergeant BRIAN D'AMICO

Signature: _____

Signature: _____



#	INVOLVED	SEX	RACE	AGE	SSN	PHONE
1	MACHADO, ROBERT E 474 FARMINGTON AV Apt. #3RD CRANSTON RI 02920	M	W	63	NOT AVAIL	401-369-7363

Military Active Duty: N

HEIGHT: 0

BODY: NOT AVAIL.

DOB: 12/01/1947

LICENSE NUMBER: RI 6407465

LOCAL ID: 280069

WEIGHT:

HAIR: NOT AVAIL.

EYES: NOT AVAIL.

COMPLEXION: NOT AVAIL.

PLACE OF BIRTH: ,

ETHNICITY: NOT HISPANIC

[CONTACT INFORMATION]

Home Phone

401-369-7363

Cell Phone

401-241-6056

[APPEARANCE]

GLASSES WORN: NO

EMPLOYER/SCHOOL: TSA

EVENTS(S)

LOCATION TYPE: Residence/Home/Apt./Condo
474 FARMINGTON AV Apt. #3
CRANSTON RI

Zone: 23, BEAT 8

1 SUICIDAL MALE

Cranston Police Department
Incident Report

Page: 2
10/03/2011

Incident #: 11-47103-OF
Call #: 11-47103

#	OTHER PROPERTIES	PROPERTY #	STATUS
1	KBI, INC. QUANTITY: 1 SERIAL #: K06602 DATE: 09/13/2011 Type: PISTOL, SEMI-AUTOMATIC Make: KSI OWNER: MACHADO, ROBERT E	11-2999-PR VALUE: \$400.00 Color: BLACK Caliber: 9	Held for Safe Keeping
2	BROWN BOLT ACTION RIFLE QUANTITY: 1 SERIAL #: OT38744 DATE: 09/13/2011 Type: RIFLE, BOLT ACTION Make: - Not on file OWNER: MACHADO, ROBERT E	11-3000-PR VALUE: \$400.00 Color: BROWN Caliber:	Held for Safe Keeping
3	GOLD DOT AMMUNITION QUANTITY: 10 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3003-PR VALUE: \$100.00	Held for Safe Keeping
4	MISCELLANEOUS AMMUNITION QUANTITY: 27 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3005-PR VALUE: \$100.00	Held for Safe Keeping
5	BAGS OF MISCELLANEOUS AMMUNITION QUANTITY: 2 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3007-PR VALUE: \$20.00	Held for Safe Keeping
6	M18 SMOKE GRENADE QUANTITY: 1 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3009-PR VALUE: \$45.00	Held for Safe Keeping
7	TEAR SMOKE GRENADE QUANTITY: 1 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3010-PR VALUE: \$20.00	Held for Safe Keeping
8	SAMAURI SWORDS QUANTITY: 3 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3012-PR VALUE: \$150.00	Held for Safe Keeping
9	AMMUNITION BELT W/ROUNDS QUANTITY: 3 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3013-PR VALUE: \$50.00	Held for Safe Keeping

Cranston Police Department
Incident Report

Page: 3
10/03/2011

Incident #: 11-47103-OF
Call #: 11-47103

#	OTHER PROPERTIES	PROPERTY #	STATUS
10	GUN CLEANING KIT W/BROWN CASE QUANTITY: 1 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3014-PR VALUE: \$20.00	Held for Safe Keeping
11	HANDGUN HOLSTERS QUANTITY: 3 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3015-PR VALUE: \$50.00	Held for Safe Keeping
12	SCOPE QUANTITY: 1 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3017-PR VALUE: \$50.00	Held for Safe Keeping
13	CHINESE STARS QUANTITY: 14 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3021-PR VALUE: \$100.00	Held for Safe Keeping
14	MISCELLANEOUS KNIVES QUANTITY: 94 SERIAL #: NOT AVAIL DATE: 09/13/2011 OWNER: MACHADO, ROBERT E	11-3019-PR VALUE: \$1,000.00	Held for Safe Keeping

Cranston Police Department
NARRATIVE FOR OFFICER JON A PARISEAULT
Ref: 11-47103-OF

Page: 1
10/03/2011

Entered: 09/13/2011 @ 2112 Entry ID: 425
Modified: 09/17/2011 @ 1443 Modified ID: 425
Approved: 09/17/2011 @ 1617 Approval ID: 396

On 9/13/11, at approx. 2023 hrs., I was dispatched to 474 Farmington Ave. 3rd Flr. for a possible suicidal male. Dispatch advised that a third party had called and stated that his friend is seemingly suicidal and that comments were made that he would harm himself. The man was identified as Bob Machado (12/1/47) and he stated to the caller that he would disembowel himself with a samauri sword. Other information provided was that he had post traumatic stress disorder.

Based on the nature of the call, several units were dispatch including Cranston Fire and Rescue. Upon arrival, Sgt. Nuey, Off. Salvatore, Off. E. Leclerc, Off Ricci, Off. Sasso McHugh, and I attempted to gain access to the third floor, however, both the front and back entrances of the multi-family residence were locked. After a short time, the second floor resident came and unlocked the door for us. Officers and I made our way to the third floor where we did make contact with Machado. He allowed us inside the apartment to speak with him. On the floor laid out was in fact a samauri sword along with several napkins. I secured this item while Sgt. Nuey began to speak with Machado. Rescue personnel were allowed access at that point and assisted in speaking with him. Machado confirmed for us that he had spoken to his friend Savvaf Pirrdis who was the caller. He denied wanting to harm himself. He advised us that he was having tremendous difficulty with his PTSD and that he had been drinking heavily this night. After a short conversation with Rescue personnel, he agreed to go to the hospital on his own recognizance. He was transported to Fatima for treatment.

Before being transported, it was apparent from looking around the apartment that Machado was an avid weapons collector. Based on the nature of this call, all of the weapons that he owned were held for safe keeping by the Cranston Police. Two firearms and several knives, swords, ammunition, and miscellaneous military type weapons were seized. These items were transported to HQ by myself. Both firearms were run NCIC and came back negative. Off. E. Leclerc and I logged in all of these items and forwarded them to the BCI Division for safe keeping. Refer to the property section of this report for further details.