

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

2014 NOV 12 P 3:43

U.S. DISTRICT COURT  
RICHMOND, VIRGINIA

BRANDON HOWARD,

*Plaintiff,*

v.

JOHN HUNTER,

*Defendants.*

Case No. 3:14cv5 774(JRS)

COMPLAINT

The Plaintiff, Brandon Howard, for his Complaint against the Defendants herein, says as follows:

**INTRODUCTION**

1. This case arises out of the unlawful arrest and detention of Brandon Howard ("Howard"), who was arrested while lawfully in possession of a weapon and while engaging in protected speech, all without probable cause and in violation of the rights guaranteed to him by the First, Second, Fourth, and/or Fourteenth Amendments of the United States Constitution. Additionally, upon information and belief it is alleged that the baseless incarceration of Howard was motivated by his lawful possession and open carry of a firearm, and his exercise of his protected speech rights. As such, the actions taken against Howard violated his constitutional rights to lawfully engage in protected speech, and to lawfully possess a weapon as guaranteed by the First and Second Amendments to the United States Constitution.

2. Insofar as the unlawful arrest and/or detention of and retaliation against Howard were caused and/or carried out by City of Hopewell police officers or other persons acting under color of state law, Howard brings this lawsuit pursuant to 42 U.S.C. § 1983 to vindicate his federal rights as guaranteed by the First, Second, Fourth and/or Fourteenth Amendments.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343, as it is an action seeking redress under the laws and statutes of the United States for the deprivation of rights secured by the Constitution and the laws of the United States.

4. Venue properly lies in the Eastern District of Virginia under 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to this action occurred within this District.

### **PARTIES**

5. Plaintiff Brandon Howard resides within the City of Hopewell, Commonwealth of Virginia.

6. Defendant Sergeant John Hunter ("Hunter") is a police officer for the City of Hopewell Police Department. He is sued in his individual capacity. In all respects set forth in this Complaint, Hunter acted under color of law of the Commonwealth of Virginia.

## FACTS

7. On Monday August 26, 2013, at approximately 5:00 PM, Howard arrived at the River Road highway overpass in the City of Hopewell, overlooking the I-295 northbound freeway in the City of Hopewell, Virginia.

8. After arriving on the overpass, Howard stood on the shoulder abutting the overpass roadway and displayed a 6 foot by 4 foot sign that said "Impeach Obama" while overlooking the I-295 northbound freeway.

9. While holding the sign, Howard had a DMTS Panther Arms AR-15 rifle, 7.62 x 39 mm slung over his shoulder on a strap, and a .380 caliber Bersa Thunder sidearm pistol in a belted holster on his waist.

10. Both weapons were lawfully owned by Howard at that time, and at no point during his time on the overpass did Howard draw or brandish either weapon.

11. For approximately thirty minutes Howard continued to lawfully display his protest sign. At no point during this time was Howard approached by any citizens, and Howard did not directly engage any citizens about his protest.

12. After approximately 30 minutes of protesting, a police officer pulled up to the area on the overpass where Howard was lawfully protesting, and parked his vehicle. The officer did not exit his vehicle at that time.

13. Shortly thereafter, three to five additional police cruisers arrived in Howard's vicinity, flashing their emergency lights, within one to two minutes of each other.

14. Once they all arrived, approximately six to eight officers exited their vehicles, with their guns drawn, commanding Howard to drop his sign and get on the ground with his hands spread above his head.

15. Howard immediately complied with the officers' orders, Watch Sergeant and Scene Commander Sergeant John Hunter stated to Howard "what do you think you are doing threatening people on my interstate," to which Howard replied that he had not threatened anyone, and that he was simply exercising his First and Second amendment rights. To this, the officer replied "not on my overpass you're not."

16. After giving his reply, Howard was approached by Hunter, and by force and/or a show of force, Hunter handcuffed Howard against his will. Howard asked if he was being arrested, and Hunter responded by saying "I'm not arresting you, I'm detaining you." Howard then asked the officer if he was free to leave, and the officer replied that he was not and that he was "being detained."

17. After being handcuffed, Howard was placed in the back of a police cruiser, and was then forcibly and against his will transported to the City of Hopewell Police Station. This was done without informing Howard of his legal rights, without informing him of any charge or complaint against him and without providing him with any basis or authorization for his arrest and detention.

18. While en route to the police station, Officer Hunter saw a man who he recognized and who was later identified as Commonwealth Attorney Rick Newman walking along the road. The officer stopped the vehicle and spoke with Newman, telling him that Howard was "threatening people on the overpass" with a gun.



19. At the time of the seizure, transportation, and detention of Howard, the Defendants did not have any probable cause to believe that Howard had committed a crime, nor did the Defendant have any legitimate or lawful basis to seize, arrest, or detain him.

20. After being forcibly seized and taken to the City of Hopewell Police Station, Howard was placed inside an interrogation room with his handcuffs still binding his hands behind his back, for over an hour and a half.

21. Howard was not interrogated or questioned in any way during the entire course of his unlawful detention.

22. After the hour and a half detention, an individual identifying himself as Officer Cheyenne entered the interrogation room where Howard was being held, removed Howard's handcuffs, and told him that he was free to leave.

23. At that time, Officer Cheyenne returned Howard's weapons and drove him back to the overpass where he had been seized.

24. Upon inspecting his returned weapons after he arrived home, Howard noticed that the muzzle of his AR-15 rifle had been damaged by Hunter after he threw the rifle in the trunk of the police car. Howard noted that the flash suppressor on the AR-15 was chipped, and the barrel was scratched. The scratch is approximately 2 ½ inches long and 1/8 inch wide.

25. Howard immediately called the police department upon his return home, and informed them about the damage to his weapon. Howard filed an official complaint with the police department concerning the damage to his rifle and his unlawful arrest.

26. Upon completion of the internal investigation by Sergeant Irons, Howard received a letter from Deputy Chief of Police for the city of Hopewell Robert Skowron dated September

20, 2013, concluding that Sergeant John Hunter was “in violation of department policy,” and that he would “be disciplined according to policy guidelines and [] sent to remedial training.”

27. Since the September 20, 2013 letter, Howard has not received any further contact from the Hopewell police department concerning the August 26, 2013 incident.

## **FIRST CAUSE OF ACTION**

### **Unlawful Seizure Under the Fourth Amendment**

28. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

29. The actions of Defendants, as alleged herein, deprived Howard of his constitutional rights to be free from unreasonable seizure and not to be deprived of his liberty without due process of law, as guaranteed by the Fourth and Fourteenth Amendments.

30. The actions of Defendants were committed under color of state law so as to give rise to liability under 42 U.S.C. § 1983.

31. As the proximate result of said actions, Howard has sustained the damages previously set forth.

32. Pursuant to 42 U.S.C. § 1988, Howard is entitled to attorneys’ fees and costs, including expert fees, incurred in bringing the claims alleged in this count.

## **SECOND CAUSE OF ACTION**

### **Deprivation of Right to Bear Arms Under the Second Amendment**

33. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

34. The actions of the Defendants as alleged herein were an effort to deprive Howard of the right to keep and bear arms in a lawful manner consistent with the Second Amendment to the U.S. Constitution and pursuant to Virginia law.

35. The Defendants act of intimidation and arrest were undertaken with the intent and purpose to deprive Howard of his right to possess firearms in a manner consistent with state and federal law.

36. The actions of the Defendants in this respect were committed under color of state law and/or the law of the United States of America and deprived Howard of his right to keep and bear arms guaranteed by the Second Amendment to the United States Constitution.

37. As the proximate result of said actions, Howard has sustained the damages previously set forth.

### **THIRD CAUSE OF ACTION**

#### **Deprivation of Right to Free Speech Under the First Amendment**

38. The allegations of the foregoing paragraphs are re-alleged as if set out in full.

39. The actions of the Defendants as alleged herein were an effort to deprive Howard of the right to engage in protected Speech under the First Amendment to the U.S. Constitution.

40. The Defendants act of intimidation and arrest were motivated by the desire to deprive Howard of his right to engage in lawful protest speech protected by the First Amendment.

41. The actions of the Defendants in this respect were committed under color of state law and/or the law of the United States of America and deprived Howard of his right to engage in speech guaranteed by the First Amendment to the United States Constitution.

42. As the proximate result of said actions, Howard has sustained the damages previously set forth.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

43. That this Court award Plaintiffs nominal, compensatory and punitive damages in an amount to be determined at trial;

44. That this Court enter an order enjoining the Defendants and any officers and/or agents acting on behalf of or in conjunction with the Defendants from arresting the Plaintiff because of his exercise of his Second Amendment rights and privileges protected by the Constitution and laws of the United States;

45. That this Court order Defendants to pay Plaintiff's attorneys' fees and costs, including expert fees, pursuant to 42 U.S.C. § 1988; and

46. That this Court order any and all such other and further relief as it may deem proper.

47. A jury trial is hereby demanded.

Dated: November 10, 2014



Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Raul Novo', is written over a horizontal line.

Raul Novo (VSB # 41065)

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Participating Attorney for The Rutherford Institute

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Brandon Howard

(b) County of Residence of First Listed Plaintiff City of Hopewell  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Raul Novo, Ltd.  
2103 Lake Avenue  
Richmond, VA 23230, 804-614-6920

## DEFENDANTS

John Hunter

County of Residence of First Listed Defendant City of Hopewell  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Section 1983

Brief description of cause:

False arrest and imprisonment in violation 2d, 4th and 14th Amendments of US Constitution

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
11/10/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY