

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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ELAINE BLANCHARD, KEEDRAN	)	
FRANKLIN, PAUL GARNER and BRADLEY	)	
WATKINS, (Dismissed per Court Order)	)	
Plaintiffs,	)	
	)	
and	)	
	)	
ACLU OF TENNESSEE, Inc.	)	
Intervening Plaintiff,	)	
	)	No. 2:17-cv-02120-jpm-DKV
v.	)	
	)	
THE CITY OF MEMPHIS,	)	
Defendant.	)	
	)	

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF  
ADDITIONAL MATERIAL FACTS IN SUPPORT OF ITS RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Plaintiff ACLU of Tennessee ("ACLU-TN"), submits this response to *Defendant's Statement of Additional Material Facts in Support of Its Response to Plaintiff's Motion for Summary Judgment*.

1. At no time since the entry of the Consent Decree has the Memphis Police Department ("MPD") engaged in "political intelligence" for the purpose of interfering with any person's or group's First Amendment rights. (Affidavit of former MPD Police Director Larry Godwin, attached as Exhibit 1; Affidavit of former MPD Police Director Toney Armstrong attached as Exhibit 2, Director Michael Rallings Depo. at pp. 107-113 (all Deposition Excerpts of Director Rallings attached as Coll. Exhibit 3); Deposition of Major Lambert Ross at p. 77 (attached as Exhibit 4); Deposition of Major Stephen Chandler at p. 74 (all Deposition Excerpts

of Major Chandler attached as Coll. Exhibit 5); Deposition of Major Eddie Bass at pp. 67-68 (attached as Exhibit 6)).

**Response No. 1** Disputed. Substantial evidence is in the records demonstrating that MPD has engaged in “political intelligence.” (Exh. A, B C, D, E, F, G, H, I, J, K, L, M, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, SS, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP; Bass Dep. 21, 46-50, 52, 55-56, 58-59; Bonner Dep. 9, 33-35; Chandler Dep. 11-15, 23-24, 28-29, 38, 47-50; Howard Dep. 24-25, 39-40; Patty Dep. 6-26, 34; Rallings Dep. 64-66, 92-93; Reynolds Dep. 17, 25, 30-31, 43, 45, 54-56, 63, 90-99, 104, 108-09, 112-13, 122, 125-26, 128, 186-87; Wilburn Dep 13, 21, 24-26, 27-28, 40-41, 46-47.) All deposition excerpts and exhibits cited herein are attached to Plaintiff’s Motion for Summary Judgment. (Doc. No. 79.)

2. The Office of Homeland Security (“OHS”) of the MPD also began in 2016 the daily distribution of what is known as the Joint Intelligence Bulletin (“JIB”). After the shutdown of the I-40 Bridge, Major Bass instructed OHS to create a method of collecting and disseminating information related to spontaneous events in an effort to adequately allocate resources and protect public safety. (Depo. Reynolds p. 25 attached as Exhibit 12). The JIB was designed to collect information from federal, state, and local agencies regarding known threats to public safety for dissemination to other law enforcement agencies. (Depo. Chandler, pp. 22-25). Several of the first JIBs are attached as Collective Ex. 7.

**Response No. 2** Disputed. JIBs, which OHS circulated between one and three times per day, were reports prepared by OHS that presented national news stories regarding police involved shootings alongside local criminal activities, photographs and profiles of activists and individuals, and lists of movement meetings and events. Chandler described the four categories of information that were to be incorporated into the brief as: (1) Police Shootings/deaths; (2) Riots/protests; (3) Black Lives Matter (BLM); (4) Officer Safety. (Ex. E.). Chandler testified

that, OHS shifted its mission to focus on “local individuals or groups that were staging protests.” (Chandler Dep. 14-15.) Chandler testified that the groups targeted by the JIB were “any of the organizations that arose out of Ferguson,” and specifically named, “Black Lives Matter” and “Take them Down 911 [sic].” (Chandler Dep. 23-24.) Chandler testified that these groups had “made no direct threat” in Memphis. (Chandler Dep. 23-24.). JIBs were celebrated within MPD as “a regional guide to area law enforcement for current and historical intel in reference to . . . BLM encounters” and focused on specific groups, despite the fact that those groups had “made no direct threat” in Memphis. (Ex. F; Bass Dep. 55-56; Chandler Dep. 23-24.) In addition to wide circulation within MPD, JIBS were disseminated to regional law enforcement and to members of the community. (Exs. G, H, I, J; Reynolds Dep. 54-55.).

3. The New Black Panther Party for Self Defense is a radical organization whose leaders have encouraged violence against whites, Jews and law enforcement officers. See <https://www.splcenter.org/fighting-hate/extremist-files/group/new-black-panther-party> (last visited July 9, 2018).

**Response No. 3** This statement is undisputed for the purpose of summary judgment.

4. Ian Jeffries has announced himself to be a member of the New Black Panther Party to Memphis Police Director Michael Rallings. (Depo. Rallings pp. 104-05.) He has been arrested numerous times including just days after the shut-down of the I-40 Bridge, on July 21, 2016, in Southaven, Mississippi. (Depo. Rallings Ex. 57, Attached as Ex. 8). Mr. Jeffries was previously arrested, and pleaded guilty to, aggravated assault of local radio host, Thaddeus Matthews. See Case History attached as Exhibit 9.

**Response No. 4** The first sentence is undisputed for the purpose of summary judgment to the extent that Defendant states that Jefferies told Director Rallings he was a member of the New Black Panther Party. Plaintiff disputes that Jefferies was a member of the New Black Panther

Party as this would be inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement being offered for the truth of the matter asserted. Plaintiff does not dispute that Jeffries was arrested on July 21, 2016 and previously pleaded guilty to assault. Plaintiff disputes that the evidence cited demonstrates that Jefferies has been arrested numerous times.

5. On around December 10, 2016, OHS received information from a reliable source that Spencer Kaaz was in Arkansas supporting the Diamond Pipeline Protest. From that information, MPD was able to work with Valero Refinery to develop a contingency plan for a possible protest that would shut down the refinery. (Attached as Exhibit 10, at Bates 20868.)

**Response No. 5** Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

6. On January 16, 2017, MPD received notice that 20-30 demonstrators had assisted in placing large 55 gallon drums filled with cement at the main delivery entrance of the Valero Refinery. The drums were designed so that the demonstrators would lock arms in the middle of the cement filled barrel. Twelve persons were arrested as a result of these actions. See Exhibit 10 at 20869, 20872.

**Response No. 6** Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

7. Spencer Kaaz was arrested at Valero as part of this demonstration. See Exhibit 10 at 20878.

**Response No. 7** The statement is undisputed for the purpose of summary judgment that

Kaaz was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

8. Spencer Kaaz was also arrested at the Graceland Candlelight Vigil on August 15, 2016. (Pl.'s Ex. Q at 22810.)

**Response No. 8** The statement is undisputed for the purpose of summary judgment that Kaaz was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

9. Paul Garner was arrested at a Graceland protest on July 12, 2016. (Pl.'s Ex. Q at 22803.)

**Response No. 9** The statement is undisputed for the purpose of summary judgment that Garner was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

10. Fergus Nolan was arrested at the Memphis Zoo on May 30, 2016, when he blocked Zoo personnel from parking cars on the greensward area of Overton Park. (Pl.'s Ex. Q at 22816.)

**Response No. 10** The statement is undisputed for the purpose of summary judgment that Nolan was arrested, although he was not convicted of any crime. (Chandler Depo. P. 73.)

11. Subsequently, MPD received reliable information that Mr. Nolan and Mr. Kaaz were using the "Save the Greensward" movement as a cover to disrupt Memphis Zoo operations in an effort to close the Memphis Zoo. (Pl.'s Ex. Q at 22815.)

**Response No. 11** Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

12. An MPD investigation into this criminal enterprise between Nolan and Kaaz found that Mr. Nolan discussed hacking into the Zoo's computer system. It was then determined

that the Zoo's e-commerce site had been tampered with in such a way that it prevented the purchase of tickets from the Zoo's website. (Pl.'s Ex. Q at 22816.)

**Response No. 12** Disputed. This statement is entirely based on a conclusory statement found in a PowerPoint presentation created by Defendant. The basis of this statement of fact is, therefore, inadmissible hearsay under Fed. R. Evid. 801 as it is an out of court statement offered for the truth of the matter asserted.

13. On November 29, 2016, Sgt. Cornwell of OHS emailed Mr. Howard asking of there were any city permits granted for Saturday, December 3, 2016. (Depo. Howard, Ex. 72 at 0999, Howard's Deposition Excerpt and Dep. Exhibit 72 are attached as Collective Ex. 11.) The St. Jude Marathon, Half Marathon, 10k, and 5K were held in downtown Memphis on December 3, 2016. See <http://www.besttimesct.com/results/marathon-awards-2016.HTML> (last visited July 9, 2018). Mr. Howard confirmed that it would be normal procedure for his office and other offices within the City to coordinate when a major event such as the St. Jude Marathon was occurring. (Depo. Howard, p. 46.)

**Response No. 13** This statement is undisputed for the purpose of summary judgment.

Respectfully submitted,

/s/ Thomas H. Castelli

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**CERTIFICATE OF SERVICE**

I certify that on July 16, 2018 the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and served via electronic mail to:

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