

EXHIBIT B



Massachusetts

November 24, 2021

Via email

Commissioner Jim Montgomery
Department of Conservation and Recreation
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Boston, Massachusetts 02114
jim.montgomery@state.ma.us

Colonel Christopher Mason
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702
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Re: "No Trespass Order" Served on Ms. Erin Nelson Dated June 29th, 2021

Dear Commissioner Montgomery and Colonel Mason,

Our office was contacted by Ms. Erin Nelson after she received a 'No Trespass Order' from the Medford office of the Massachusetts State Police (MSP) which prevents her from entering or remaining on Sheepfold Fells Path, an off leash dog park, located in Stoneham, Massachusetts. The Department of Conservation and Recreation (DCR) operates Sheepfold Fells Path. To the best of our knowledge, based on a review of public records, this Order was not issued at the behest of or by DCR staff; MSP troopers signed the Order in the section requiring the "signature of property owner." The Order bars Ms. Nelson from entering or remaining on the property upon threat of arrest and prosecution for criminal trespass under M.G.L. c. 266, § 120. We have attached a copy of the Order to this letter for ease of reference. It is our understanding that Ms. Nelson was neither given warning nor an opportunity to be heard prior to the issuance of this Order nor after. Ms. Nelson contacted the Woburn district court, DCR, and Chief Counsel of the State Police to inquire how to appeal the Order, but was not provided any information on how to be heard after the Order's issuance. Additionally, the Order does not state an expiration date and therefore has the seeming intent and effect of barring her *permanently*.

We ask that you rescind the No Trespass Order *immediately*. For the reasons explained in more detail below, the ACLU of Massachusetts (ACLUM) believes that the Order, issued without affording Ms. Nelson any procedural due process, violates the Fourteenth Amendment to the United States Constitution and Article 10 of the Massachusetts Declaration of Rights.

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Facts

On June 28, 2021, Ms. Nelson was present at Sheepfold Fells Path with her approximately thirty-pound disability service dog named Talladega. Prior to the Order, Ms. Nelson and Talladega visited the dog park on a regular basis, sometimes daily. On June 28, Ms. Nelson was sitting with Talladega at a bench near the entry of the park when another dog approached Talladega in an aggressive manner. Ms. Nelson began calling out to the owner of the other dog, Ms. Goldenberg, to restrain her dog. Ms. Nelson reports that the other dog then lunged for her ankle, and while Ms. Nelson was calling for Ms. Goldenberg to restrain her dog, Ms. Nelson moved her leg to get the dog away from her and from Talladega. Ms. Goldenberg then called the police, alleging that Ms. Nelson kicked Ms. Goldenberg's dog.

We think it is potentially important context for these events that Ms. Goldenberg is white, and Ms. Nelson identifies as Black, given we have seen throughout this country incidents of Black people being reported to the police for engaging in non-criminal, everyday activities.¹

Responding to Ms. Goldenberg's call, MSP troopers arrived at the park, questioned Ms. Nelson, Ms. Goldenberg, and several witnesses. During this interaction, Ms. Nelson was asked for identification; we do not have information as to whether Ms. Goldenberg was similarly required to produce identification. When Ms. Nelson asked for the reason and if she was being charged, Trooper Bolster responded that identification was needed because of "animal abuse," which Ms. Nelson rebutted.² At no point during her conversation with the officers was Ms. Nelson informed that a 'No Trespass Order' might be issued.

On July 7, 2021, Ms. Nelson received the 'No Trespass Order' in the mail. In the Administrative Journal extract relating to the June 28 incident, three alleged complaints against her are mentioned. One complaint alleges that Ms. Nelson was identified as allegedly displaying a knife after an incident involving another dog and its owner at the park. Ms. Nelson denies these allegations. The second complaint regards the June 28 incident. Ms. Nelson is not aware of a third incident and no other incident is mentioned in the documents produced in response to our public records requests. We are aware of no criminal complaint(s) having been issued against Ms. Nelson in regards to any of these alleged incidents.

At no time prior to the issuance of the Order was Ms. Nelson afforded an opportunity to be heard and at no time since has she been afforded an opportunity to appeal this apparently permanent 'No Trespass Order.'

¹ See, e.g., Associated Press, *Charge in Central Park birdwatcher incident dropped after woman gets racial counseling*, LA TIMES (Feb. 16, 2021), <https://www.latimes.com/world-nation/story/2021-02-16/case-dropped-after-woman-in-racist-nyc-run-in-gets-therapy>; Katherine Hignett, *Who Is 'Dog Park Debbie'? White Massachusetts Woman Calls Cops on Black Man in Viral Video After His Dog Humps Hers*, NEWSWEEK (March 11, 2019), <https://www.newsweek.com/dog-park-debbie-massachusetts-dogs-bbq-becky-1349107>.

² See https://www.youtube.com/watch?v=O-Xpj0SQ_HU;
<https://www.youtube.com/watch?v=mgrupL9t6yU>.

On July 21, ACLUM submitted a public records request to MSP, and on September 16, it submitted a request to DCR. Both agencies produced records responsive to the requests, including records of ‘No Trespass Orders’ previously issued to third parties. Based on a review of the records, ACLUM understands that MSP and DCR often issue ‘No Trespass Orders’ to individuals, barring them from public property, but neither agency has written guidance, policies, or protocols concerning or advising employees about the constitutionality of these practices despite established case law as to the same.

Analysis

The ‘No Trespass Order’ deprives Ms. Nelson of her liberty interests without due process of law in violation of the state and federal constitutions. The Fourteenth Amendment and Article 10 afford all persons the right to be given notice and an opportunity to be heard with regard to deprivations of their liberty interests through governmental action. *See Kennedy v. City of Cincinnati*, 595 F.3d 327, 338 (6th Cir. 2010) (“a police officer . . . should have realized that he cannot deprive a person . . . of access to public grounds without due process of law”); *Carleton v. Town of Framingham*, 418 Mass. 623, 630 (1994) (discussing that our Declaration of Rights affords at least as much protection as the federal constitution with regard to due process).

Ms. Nelson possesses a fundamental liberty interest in being able to enter public spaces freely. *See Vincent v. City of Sulphur*, 805 F.3d 543, 548 (5th Cir. 2015) (“Supreme Court decisions amply support the proposition that there is a general right to go to or remain on public property for lawful purposes”); *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (“Plaintiffs have a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that are open to the public generally”); *Kennedy*, 595 F.3d at 336 (“[I]t is clear that Kennedy had a liberty interest ‘to remain in a public place of his choice’”); *Wholey v. Tyrell*, 567 F. Supp. 2d 279, 286 (D. Mass. 2008) (citing “natural right to travel upon public property in his own community” as a liberty interest). The Order deprives Ms. Nelson of her right to enter public property, and it does so without redress, without warning or notice, and without a timely opportunity to be heard. The Order therefore violates Ms. Nelson’s constitutionally protected rights. *Matter of B.J.M.*, 98 N.E.3d 867, 869, 873 (Ohio Ct. App. 2017) (“It is generally recognized that a person has a privilege to enter and be upon the public areas of public property,” and “due process requires that such persons have a meaningful opportunity to be heard and to contest the decision.”); *Anthony v. State*, 209 S.W.3d. 296, 307 (Tex. Ct. App. 2006) (where a “decision to exclude a person from the park is made before the person has a chance to present any evidence in his or her favor and without any evidence being presented against him or her,” due process is violated).

Ms. Nelson should have been provided, at a minimum, an opportunity to be heard and prior notice before her liberty interests were deprived by the issuance of a No Trespass Order. And certainly, if prior notice is not afforded, a timely opportunity to be heard must have been given, but was not. Because the deprivation occasioned by the No Trespass Order was effected without due process, the Order violates our constitutions. For these reasons alone, the Order must be rescinded immediately.

We also take this opportunity to note that there is strong reason to believe that Ms. Nelson may have been the subject of racial profiling. Too often, persons of color are the ones cited for alleged misconduct when they are in fact the victims of incidents. Per the rules of the Fells

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Reservation, even if friendly, dogs are not allowed to approach other dogs or people unless invited.³ The rules also state that aggressive dogs are not allowed and that dogs must be under control at all times and come to owners when called. In Ms. Nelson's situation, we understand that she and Talladega were the victims of at least two incidents in which a dog and its owner did not follow the park rules. However, as a review of relevant public records seems to confirm, Ms. Nelson has repeatedly been the only person issued a 'No Trespass Order.' This fact further warrants immediate rescission of the Order.

Conclusion

In order to comply with the law, the 'No Trespass Order' against Ms. Nelson should immediately be rescinded. We also believe that the policies and procedures for issuing such notices should be revised and reviewed to bring them into conformity with constitutional requirements.

We are willing to discuss this matter with you further, but, regardless of a meeting, we look forward to hearing that this Order has been rescinded.

Sincerely,

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Encl.

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³ <https://www.mass.gov/location-details/dogs-at-middlesex-fells-reservation>