

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

No. _____

_____)
 SHAWN MUSGRAVE)
 and NASSER ELEDROOS,)
)
 Plaintiffs,)
)
 v.)
)
 CLERK OF THE SUPERIOR COURT FOR)
 CRIMINAL BUSINESS IN SUFFOLK COUNTY,)
 in her Official Capacity; THE OFFICE OF THE)
 ATTORNEY GENERAL, and THE OFFICE OF)
 THE SUFFOLK COUNTY DISTRICT)
 ATTORNEY,)
)
 Defendants.)
 _____)

COMPLAINT

Pursuant to Rule 6 of the Uniform Rules on Impoundment Procedure, plaintiffs Shawn Musgrave and Nasser Eledroos bring this action to terminate an order of impoundment in a case of significant public interest. In December 2011, an anonymous user of the Twitter social media platform filed an action to set aside an administrative subpoena issued by the Suffolk County District Attorney’s Office that sought, among other things, disclosure of the user’s identity. *In re Administrative Subpoena to Twitter, Inc.*, SUCR2011-11308. Despite significant public interest in the case, all court files pertaining to the action were ordered impounded. Ultimately, the Court compelled Twitter to comply with the subpoena, and terminated the impoundment of its order doing so. However, the Court has maintained impoundment of all other filings in the case for the past five years, including any documents showing the grounds for the subpoena and the legal and factual submissions for and against its enforcement.

Plaintiff Shawn Musgrave is an investigative journalist who has written extensively about the use of social media as a law enforcement intelligence tool, and about surveillance techniques and technologies employed by the Boston Police Department and other law enforcement agencies. He wishes to report on the case at issue, and believes the file will contain documents and information of continued relevance to ongoing public controversies concerning the intersection of law enforcement, social media, privacy, and the First Amendment.

Plaintiff Nasser Eledroos is a technologist at the American Civil Liberties Union of Massachusetts whose work focuses on matters of digital security and government surveillance. He is working on an administrative subpoena white paper designed to educate people about the government's use of this surveillance technique, and wishes to include this case study to explain how the Commonwealth uses administrative subpoenas in practice.

Accordingly, Musgrave and Eledroos bring this action to terminate impoundment of the file in *In re Administrative Subpoena to Twitter, Inc.*, and for other relief as the court deems just and proper.

PARTIES

1. Plaintiff Shawn Musgrave resides in Boston, Massachusetts.
2. Plaintiff Nasser Eledroos resides in Boston, Massachusetts.
3. Defendant Clerk of the Suffolk Superior Court for Criminal Business, who is sued in her official capacity, is located at Three Pemberton Square, Boston, Massachusetts.
4. The Office of the Attorney General of Massachusetts, which may defend the order of impoundment, is located at One Ashburton Place, Boston, Massachusetts.
5. The Office of the Suffolk County District Attorney, which obtained the order of impoundment, is located at One Bulfinch Place, Boston, Massachusetts.

FACTS

6. On or about December 14, 2011, the Suffolk County District Attorney's Office issued an Administrative Subpoena to Twitter, Inc. demanding "all available subscriber information" for the "account or accounts" associated with certain user names, proper names, and hashtags, including "Guido Fawkes" "@p0isAn0N," "@OccupyBoston," and "#BostonPD."

7. Soon thereafter, an anonymous Twitter subscriber filed an action objecting to the administrative subpoena in the Suffolk Superior Court, *In re Administrative Subpoena to Twitter, Inc.*, SUCR2011-11308.

8. National media reported extensively on the case. News articles concerning the matter appeared in the *Boston Globe*, on CNN.com, and on Wired.com, among other outlets.

9. On information and belief, at a hearing on or about December 29, 2011, the Court (Ball, J.) ordered the case impounded.

10. On February 27, 2012, the Court (McIntyre, J.) ordered Twitter, Inc. to comply with the subpoena, in an impounded ruling.

11. Thereafter, the party objecting to the subpoena sought to terminate impoundment of the court file. On March 1, Judge McIntyre vacated the order of impoundment as to the document reflecting her February 27 order requiring Twitter's compliance with the subpoena. However, on March 2, 2012, she entered a memorandum of decision and order impounding every other document and transcript in the case. Attorneys for the objecting party were permitted to view and take notes on that March 2 order, but were not permitted to obtain a copy of it.

12. Plaintiffs are not aware that the Suffolk County District Attorney's Office has announced any criminal charges or other substantial development in connection with the investigation that gave rise to the subpoena.

13. Shawn Musgrave is a professional freelance investigative journalist. Musgrave has written extensively on issues related to law enforcement surveillance of social media, and on the uses of technology by law enforcement that invade reasonable expectations of privacy.

14. On May 15, 2017, Musgrave went to the Suffolk Superior Court to attempt to view the case file in *In re Administrative Subpoena to Twitter*, 2011-CR-11308. After multiple attempts to locate the file, an assistant clerk told Musgrave that no such case exists.

15. Nasser Eledroos, a technologist at the American Civil Liberties Union of Massachusetts, focuses on matters of digital security and government surveillance. He uses his skills first to investigate data-driven and technological questions, and then to present the answers in a way that the general public can understand.

16. Eledroos is currently working on a white paper designed to educate the public about the government's use of administrative subpoenas. He has already analyzed generalized data reflecting the overall frequency with which certain government offices use these subpoenas.

17. It is Eledroos's understanding that the case file in *In re Administrative Subpoena to Twitter*, 2011-CR-11308, is impounded. Eledroos would like to include information about this case in his white paper because it will help him explain to the public how prosecutors in the Commonwealth use this technique.

18. The public has a strong interest in information pertaining to the case because it relates to the tension between the asserted investigatory needs of law enforcement and the First Amendment right to speak anonymously on social media about matters of public concern. This issue received renewed attention in April 2017, when the Department of Homeland Security (DHS) issued a summons to Twitter seeking the identity of the persons behind a Twitter account ostensibly operated by current and former federal immigration employees critical of the Trump

administration. After Twitter sued DHS objecting to the summons, the agency withdrew it. Termination of impoundment in this case will shed further light on the reasons law enforcement agencies have sought to unmask social media users, and whether they are legitimate.

19. Any potential law enforcement interest in maintaining impoundment of the court file in this 2011 action no longer exists, or has significantly lessened with the passage of five years from the original order of impoundment. Defendants have the burden of demonstrating a continued need for impoundment of the file. They cannot do so.

COUNT I

(Request for Termination of Order of Impoundment)

20. Plaintiffs hereby incorporate by reference the foregoing paragraphs as if fully set forth herein.

21. Plaintiffs and the public have right of access to the materials impounded in *In re Administrative Subpoena to Twitter*, 2011-CR-11308, pursuant to Massachusetts common law and First Amendment to the U.S. Constitution.

22. Defendants cannot sustain their burden of demonstrating “good cause” or a compelling governmental interest for continued impoundment of the case file under the common law or the First Amendment.

23. Accordingly, the impoundment order should be terminated.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Shawn Musgrave and Nasser Eledroos respectfully pray that this Court issue an order:

1. Requiring the Clerk of the Suffolk Superior Court for Criminal Business to locate the file in *In re Administrative Subpoena to Twitter*, 2011-CR-11308;

2. Terminating the order of impoundment and ordering the release of any and all materials in the case file to Plaintiffs; and

3. Granting such other and further relief as the Court may deem necessary and appropriate.

SHAWN MUSGRAVE

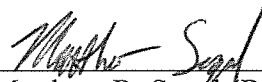
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