

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JON RICHARD GOLDSMITH,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION No.: 4:19-cv-00152
	:	
	:	VERIFIED COMPLAINT
ADAMS COUNTY, IOWA,	:	
Adams County Deputy Sheriff CORY	:	JURY TRIAL DEMANDED
DORSEY and Adams County Sergeant	:	
PAUL HOGAN, <i>in their individual and</i>	:	
<i>official capacities,</i>	:	
	:	
Defendants.	:	

VERIFIED COMPLAINT

COMES NOW Plaintiff Jon Goldsmith through undersigned counsel, and respectfully alleges the following:

PRELIMINARY STATEMENT

Criticism of the way law enforcement officials conduct their public duties is expressive activity given the highest levels of protection by the First Amendment to the U.S. Constitution. This conduct is essential to monitoring encounters between law enforcement and members of the public. No matter how inartfully phrased, such criticism is protected activity and cannot be suppressed or form the basis of retaliation by the leveling of, or the threat of, criminal charges. Nevertheless, officers with the Adams County Sheriff's Department routinely threaten to criminally charge—and, as here, actually file criminal charges against—members of the community who criticize them. The First Amendment does not tolerate this retaliation and criminal punishment of civilians who criticize government officials.

After exercising his First Amendment right to post his criticism of Defendant Dorsey's

conduct during a traffic stop and subsequent use of force on social media, Plaintiff Goldsmith was charged with 3rd Degree Harassment under Iowa Code Section 708.7. Defendant Dorsey and Hogan's filing of criminal charges was expressly intended to retaliate against Mr. Goldsmith for exercising his constitutionally protected right to free speech. As such, Defendants violated Goldsmith's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, sections 7 and 8 of the Iowa Constitution.

This civil rights action seeks declaratory relief, permanent injunctive relief, and damages.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Complaint under the First, Fourth and Fourteenth Amendments to the United States Constitution and 28 U.S.C. § 1331 (federal question) and § 1343 (civil rights) and has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. The Court has authority to issue declaratory and injunctive relief under 28 U.S.C. § 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

3. Venue is proper in this District under 28 U.S.C. §§ 1391 because Defendants reside within the District, and the acts giving rise to this lawsuit occurred within the District.

PARTIES

4. Plaintiff Jon Richard Goldsmith ("Goldsmith") is a citizen of the United States and at all relevant times was a resident of Red Oak in Montgomery County, Iowa.

5. Defendant Cory Dorsey ("Dorsey") was at all times relevant to this Complaint a deputy with the Adams County Sheriff's Department. In his capacity as a deputy for Adams County, Defendant Dorsey had a legal obligation to act in conformity with the United States and Iowa Constitutions and other applicable federal and state laws. Defendant Dorsey is sued in his official and individual capacity and at all times relevant to this Complaint was acting within the

scope and course of his employment with Adams County and the Adams County Sheriff's Department. At all times relevant to this Complaint, he was acting under color of the laws of the United States and the State of Iowa.

6. Defendant Paul Hogan ("Hogan") was at all times relevant to this Complaint a Sergeant with the Adams County Sheriff's Department. In his capacity as a Sergeant for Adams County, Defendant Hogan had a legal obligation to act in conformity with the United States and Iowa Constitutions and other applicable federal and state laws. Defendant Hogan is sued in his official and individual capacity and at all times relevant to this Complaint was acting within the scope and course of his employment with Adams County and the Adams County Sheriff's Department. At all times relevant to this Complaint, he was acting under color of the laws of the United States and the State of Iowa.

7. Defendant Adams County, Iowa ("Adams County") is a municipal corporation existing and operating pursuant to the laws of the State of Iowa. Adams County is the public employer of the other Defendants in this matter and has a legal responsibility to operate according to the laws of the United States and the State of Iowa, including, but not limited to, the United States Constitution and the Iowa Constitution.

FACTUAL ALLEGATIONS

8. Jon Richard Goldsmith ("Goldsmith") was born in Corning, Iowa but has lived in Red Oak, Iowa since 1993.

9. Goldsmith is fifty years old.

10. Goldsmith resides in Red Oak with his wife and the couple have two sons, one of whom is an Assistant Manager at Orschelens in Red Oak, while the other is a student at the University of Iowa, majoring in business.

11. Although Goldsmith now lives with a disability because of diabetes, he had previously managed Earl May's Garden Center in Red Oak and then worked for Orschelens for eight years until his diabetes no longer allowed him to continue working.

12. Like many, Goldsmith created a Facebook account to help him keep in touch with old friends, classmates and colleagues, and to participate in civic life in his local area.

13. Goldsmith initially created his Facebook account/profile back in 2008.

14. At least three years ago, Goldsmith asked to join a private group on Facebook that allowed members to receive Adams County, Iowa news and updates.

15. Goldsmith has always thought of himself as someone who supports law enforcement and the difficult service they perform.

16. On July 27, 2018, Goldsmith and two friends, including Troy Trussle, drove into Corning, Iowa in Adams County to attend the annual "Lazy Days and Battle of the BBQ" outdoor community festival.

17. The event features local visual artists and theater through the Corning Opera House and Corning Center for Fine Arts, as well as performances by local bands, a street dance, quilt and craft shows, a grilling contest, and other festivities located just off Main Street in downtown Corning.

18. When they arrived in Corning, Goldsmith and his friends parked in a parking lot across from the festival and were standing next to Main Street, waiting for traffic to pass.

19. While standing there, Goldsmith and Tussle observed Adam's County Sheriff's Deputy Cory Dorsey pull over an individual named Ed Avila and his passengers for an allegedly faulty break light on his pickup truck.

20. Goldsmith was familiar with Avila as a respected small business owner, and was disturbed by the way he observed officers conduct the Avila stop.

21. After informing Avila of the reason for the stop and asking for everyone's identification, Dorsey informed Avila he would be having his partner, Deputy Evan Ruse, write a warning ticket to fix the break light.

22. Dorsey then told Avila that he would be running his K9 or "drug dog" around Avila's vehicle.

23. Goldsmith watched as Dorsey tapped the bed of Avila's pick-up right before his K9 jumped into the bed.

24. Dorsey informed Avila that the K9 hit on the truck.

25. At this point, Dorsey ordered everyone out of the vehicle and proceeded to pat everyone down and search the individuals.

26. Goldsmith then observed Dorsey make Avila and his passengers stand on the side of the road while Dorsey searched the vehicle.

27. Dorsey discovered no contraband or anything else of note in Avila's vehicle but during the search, Dorsey kept uttering that he was getting a whiff of something.

28. At that point, Dorsey and Ruse gave Avila a ticket for the break light and told him that he was free to go.

29. As they began to walk towards the street festival, Goldsmith observed Dorsey and Ruse walk across the street and for reasons unknown and questionable to Goldsmith, Dorsey then body slammed a gentleman named Mike Arthur to the ground.

30. Mike Arthur was a retired citizen firefighter from Carbon, Adams County, a well-respected member of the small community, and an acquaintance of Goldsmith's.

31. The following morning, July 28, 2018, Goldsmith saw Arthur's booking photo on the the Adams County Facebook newsfeed page.

32. Given his observation of Dorsey's use of force against Arthur, and the traffic stop he observed immediately beforehand involving Avila, Goldsmith was concerned and angry about Dorsey's policing.

33. Goldsmith shared the Adams County Sheriff's Office post of Arthur's mugshot, and posted the following criticism of Officer Dorsey's policing on his own Facebook page on July 28, 2018 at 6:35 AM:



34. Dorsey and his supervisor, Defendant Hogan, became aware of Goldsmith's criticism.

35. On August 3, 2018, Defendant Hogan, a superior of Dorsey's, filed a criminal Complaint against Goldsmith in state District Court in Adams County, charging Goldsmith with harassment in the third degree in violation of Iowa Code Section 708.7(1)(a)(1).

36. Hogan signed an affidavit under oath stating that Goldsmith "did intentionally write a threatening and vulgar statement about Cory Dorsey on Facebook."

37. Hogan elaborated, stating as follows:

I, THE UNDERSIGNED, BEING DULY SWORN, STATE THE FOLLOWING FACTS KNOWN BY ME OR TOLD TO ME BY OTHER RELIABLE PERSONS FORM THE BASIS FOR MY BELIEF THAT THE DEFENDANT COMMITTED THIS CRIME.

ON 7-29-18 AT APPROXIMATELY 0330 JON GOLDSMITH MADE A THREATENING POST ON FACEBOOK IN WHICH HE SINGLED OUT CORY DORSEY MULTIPLE TIMES. IN THE FACEBOOK POST GOLDSMITH REFERRED TO DORSEY AS A "FUCKING PILE OF SHIT." GOLDSMITH ALSO REFERED TO DORSEY AS A "STUPID SUM BITCH." GOLDSMITH ENDED THE FACEBOOK POST WITH "WHEN YOU GET SHIT CANNED I'LL HIRE YOU TO WALK MY DOG AND PICK UP HIS SHIT."

 2-3
SIGNATURE OF AFFIANT

38. Dorsey and Hogan then had a citation issued for Goldsmith to be in Adams County District Court on August 30, 2018 for his Initial Appearance.

39. Goldsmith received the Complaint and Citation to Appear in the mail at this home address in Red Oak on August 6, 2018.

40. Fearful, concerned about retaliation, and not trusting the motives and actions of the Adams County Sheriff's Department and Dorsey and Hogan, Goldsmith copied and pasted his Facebook post and sent the text of that post in an email to his wife on August 6 or 7, 2018.

41. After preserving the text, Goldsmith deleted his Facebook post because of his fear and mistrust.

42. On August 24, 2018, Goldsmith visited with attorney Jonathan Mailander in Atlantic, Iowa and retained Mailander to represent him on the criminal charges in Adams County.

43. After meeting with Mailander, Goldsmith deactivated his Facebook profile.

44. As a result of the charges and his fear of continued retaliation for his post, Goldsmith has experienced anxiety, high blood pressure, and difficulty breathing.

45. A visit to his physician following the filing of charges against him showed that Goldsmith's blood pressure was abnormally high and dangerous, and he was given a prescription medication to lower it to within the normal range.

46. In addition, the initiation of charges made Goldsmith fearful to return to Corning and he rarely makes the visit other than occasionally returning to visit his mother and father's graves in the cemetery.

47. On September 21, 2018, Attorney Mailander filed a Motion to Dismiss the charges against Goldsmith as violative of the First Amendment.

48. Among other things, Mailander's Motion cited to the case *State v. Fratzke*, 446 N.W.2d 781 (Iowa 1989), directly on point, in which the Iowa Supreme Court held that the state could not justify the same harassment charge Goldsmith was charged with against a motorist who wrote a letter to a highway patrolman who had stopped him for speeding, based on the letter's statement that the officer was a "liar," a "thief disguised as a protector," that the arrest was "legalized highway robbery," that the officer "just enjoys stealing people's money so he can show everyone what a red-necked mother-fucker he is," and expressing the letter-writer's hope that the officer would "have an early and particularly painful death hopefully at the side of the road somewhere he's robbing someone else." As the Court explained, "[o]ur Constitution does not permit government officials to put their critics, no matter how annoying, in jail." *Id.* at 782.

49. On October 3, 2018, the Court granted attorney Mailander’s Motion to Dismiss and dismissed the criminal charges against Goldsmith.

50. It was only after those charges were dismissed, and Goldsmith needed to connect with family on Facebook following a loved one’s passing, that Goldsmith reactivated his Facebook account.

51. Adams County has shown deliberate indifference to the constitutional rights of the residents and visitors to its community by failing to train its officers that the pressing of criminal charges against individuals who express their disagreement with officers—even in inarticulate or offensive ways—is conduct that is protected by the First Amendment to the United States Constitution and article I, section 7 of the Iowa Constitution.

52. On July 27, 2018, Adams County Sheriff’s Office Deputy Ruse arrested an individual for disorderly conduct when that individual began cursing at Ruse and another individual.

53. On March 15, 2019, Adams County Sheriff’s Office deputies arrested another individual for abusive epithets and threatening gestures for saying “fuck you” and flipping “the bird.”

CAUSES OF ACTION

COUNT I

42 U.S.C. § 1983 – CONSTITUTIONAL TORT - FIRST AMENDMENT RETALIATION – DEFENDANTS DORSEY & HOGAN

54. Goldsmith incorporates by reference the allegations of the proceeding paragraphs as though set forth at length herein.

55. Publicly criticizing the actions of the government and government officials, however inartfully, is conduct protected by the First Amendment to the United States Constitution.

56. Defendants' conduct in bringing criminal charges against Goldsmith for his critical Facebook post chilled Goldsmith for exercising that right and constituted retaliation and harassment of Goldsmith for his expression of speech protected by the First Amendment to the United States Constitution.

COUNT II
IOWA CODE § 670 – STATE CONSTITUTIONAL TORT - FIRST AMENDMENT
RETALIATION AND DENIAL OF RIGHTS UNDER ARTICLE I, SECTION 7 OF THE
IOWA CONSTITUTION – DEFENDANTS DORSEY & HOGAN

57. Goldsmith incorporates by reference the allegations of the proceeding paragraphs as though set forth at length herein.

58. Publicly criticizing the actions of the government and government officials, however inartfully, is conduct protected by the First Amendment to the United States Constitution and Article I, section 7 of the Iowa Constitution.

59. Defendants' conduct in bringing criminal charges against Goldsmith for his critical Facebook post chilled Goldsmith for exercising that right and constituted retaliation and harassment of Goldsmith for his expression of speech protected by the First Amendment to the United States Constitution and violated Goldsmith's right to free speech protected by article I, section 7 of the Iowa Constitution.

COUNT III
42 U.S.C. § 1983 – CONSTITUTIONAL TORT - FALSE ARREST & STATE TORT –
FALSE ARREST– DEFENDANTS DORSEY & HOGAN

60. Goldsmith incorporates by reference the allegations of the proceeding paragraphs as though set forth at length herein.

61. Goldsmith has a clearly established right under the Fourth and Fourteenth Amendments to the United States Constitution, article I, section 8 of the Iowa Constitution, and Iowa state law to be free from unreasonable seizure of his person, a right Defendants Dorsey and Hogan violated when, claiming to act under proper legal authority, they worked to file criminal charges against Goldsmith without any probable cause or reasonable basis for believing that Goldsmith committed harassment or any other crime in the state of Iowa.

COUNT IV
IOWA CODE § 670 – STATE CONSTITUTIONAL TORT - FALSE ARREST –
DEFENDANTS DORSEY & HOGAN

62. Goldsmith incorporates by reference the allegations of the proceeding paragraphs as though set forth at length herein.

63. Goldsmith has a clearly established right under the Fourth and Fourteenth Amendments to the United States Constitution, article I, section 8 of the Iowa Constitution, and Iowa state law to be free from unreasonable seizure of his person, a right Defendants Dorsey and Hogan violated when, claiming to act under proper legal authority, they worked to file criminal charges against Goldsmith without any probable cause or reasonable basis for believing that Goldsmith committed harassment or any other crime in the state of Iowa.

COUNT V
MONELL CLAIM – FAILURE TO TRAIN –
DEFENDANT ADAMS COUNTY

64. Goldsmith incorporates by reference the allegations in the paragraphs above as if thoroughly set forth at length herein.

65. Defendant Adams County was deliberately indifferent when it failed to properly train Defendant Officers that Goldsmith has a First Amendment and Article I, section 7 right to publicly criticize police officers and their official actions on social media.

66. Without the Adams County deliberate indifference for failing to have a proper policy and to properly train Defendant officers, Goldsmith would not have suffered the retaliatory actions and arrest at the hands of Adams County employees and would not have been injured as a result.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Goldsmith respectfully requests the following:

- a) A declaratory judgment that Defendants' conduct violated Goldsmith's rights under the First Amendment of the U.S. Constitution and Article I, section 7 of the Iowa Constitution;
- b) An award of compensatory damages against all Defendants, joint and severally, in an amount to be determined at trial;
- c) An award of punitive damages against all Defendants;
- d) A permanent injunction, enjoining Defendants, their employees, agents, assigns and all those acting in concert with them, from criminally charging individuals for constitutionally protected speech that criticizes the Defendants and the Defendants actions in conducting their duties for the county, and requiring training of Adams County Sheriff's Office law enforcement officers regarding free speech rights;
- e) An award for costs, expenses and attorney's fees pursuant to 42 U.S.C. § 1988; and
- f) Enter such other relief as this Honorable Court may deem just and deserving.

JURY DEMAND

A trial by jury is hereby demanded.

Tuesday, May 21, 2019

Respectfully submitted,
s/Glen S. Downey

Glen S. Downey
AT0012428

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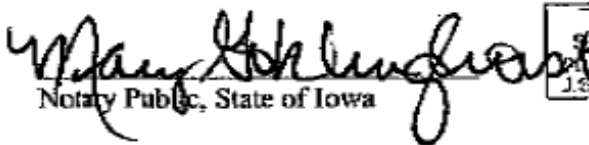
AFFIDAVIT OF VERIFICATION

I, **Jonathan Goldsmith**, having been duly sworn upon oath, do depose and state that I am the Plaintiff in this matter, and that I have read the foregoing Verified Complaint. Regarding the allegations of which I have personal knowledge, I know or believe them to be true.


Jonathan Goldsmith

State of Iowa)
County of Montgomery) ss.

Subscribed and sworn before me this 20 day of May, 2019.


Notary Public, State of Iowa

