

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**RECEIVED**

FEB 26 2013

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY 

JOHN EDWARD FODDRILL SR

Plaintiff

v.

MICHAEL D. BERNARD, individually and  
In his official capacity as San Antonio City  
Attorney, WILLIAM P. McMANUS,  
individually and in his official capacity as  
San Antonio Police Chief and the  
CITY OF SAN ANTONIO

Defendants

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NO. 5:13-CV-00051

JURY DEMANDED

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**COMPLAINT**

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The Plaintiff, John E. Foddrill Sr, files this Complaint and, by way of claims against the Defendants, shows:

**1.0. STATEMENT OF THE CASE**

1.1. John E. Foddrill Sr brings this civil action for damages, injunctive, and declaratory relief against the City of San Antonio, its City Attorney, Michael Bernard, and its Police Chief, William McManus. The Defendants threaten Mr. Foddrill with arrest if he enters two of the most public of places in San Antonio, the San Antonio City Council Chambers and City Hall. The Defendants used a device known as a Criminal Trespass Letter to deprive Mr. Foddrill from exercising his First Amendment rights. To threaten Mr. Foddrill with arrest for the peaceful exercise of the most fundamental right afforded every United States citizen, the right to peaceably assemble, petition government, and seek redress for grievances therefrom, blatantly violates Mr. Foddrill's First Amendment rights.

1.2. To make matters worse, the Defendants use the threat of arrest to retaliate against Mr. Foddrill for his exercise of his First Amendment rights. And, as Defendants intend, their prior restraint and retaliation is having a devastating economic and emotional impact on Mr. Foddrill.

1.3. By this action, Mr. Foddrill seeks a declaration that the policy enacted and executed by the Defendants

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violates the First and Fourteenth Amendments, and is an unconstitutional prior restraint on his First Amendment rights. He also seeks injunctive relief to prohibit such conduct in the future, and damages to compensate him for the damages caused by the Defendants.

## **2.0. JURISDICTION AND VENUE**

2.1. This civil action arises under 42 U.S.C. §1983 and seeks vindication of Mr. Foddrill's rights under the First and Fourteenth Amendments to the Federal Constitution. This Court has jurisdiction to provide monetary and injunctive relief, pursuant to 28 U.S.C. §§1331 and 1343(a) (3)-(4).

2.2. This Court has jurisdiction to provide declaratory and other relief, pursuant to 28 U.S.C. §§2201(a) and 2202.

2.3. All events took place in this judicial District and Division. Bernard and McManus reside in Bexar County, where the City of San Antonio is located. Thus, venue is proper, pursuant to 28 U.S.C. §1391(b).

## **3.0. PARTIES**

3.1. **John E Foddrill Sr.** John E. Foddrill Sr is an individual, who, at all times relevant hereto, resides in San Antonio, Texas.

3.2. **Michael D. Bernard.** Mr. Bernard is an individual who resides in Bexar County, Texas. Mr. Bernard may be served with service of process at his place of employment, the City Attorney's office at City Hall 100 Military Plaza, San Antonio, Texas 78205. At all relevant times, Defendant Bernard was City Attorney and acted under color of law and as agent, servant, and employee of the City of San Antonio. As such, he was responsible for upholding the laws of the United States and Texas. Plaintiff sues him in his individual capacity and in his official capacity, for damages and injunctive relief.

3.3. **William P. McManus.** Mr. McManus is an individual who resides in Bexar County, Texas. Mr. McManus may be served with service of process at his place of employment, the San Antonio Police Department 315 South Santa Rosa, San Antonio, Texas 78207. At all relevant times, Defendant McManus was Police Chief and acted under color of law and as agent, servant, and employee of the City of San Antonio. As such, he was responsible for upholding the laws of the United States and Texas. Plaintiff sues him in his individual capacity and in his official capacity, for damages and injunctive relief.

3.4. **The City of San Antonio.** The City of San Antonio is a home rule municipality formed and

serving its Mayor, Julian Castro at the San Antonio City Hall 100 Military Plaza, San Antonio, Texas 78205. The Defendant City operates, and is responsible for, its police department and the city attorney. For purposes of this litigation, Bernard and McManus were final policymakers for the City of San Antonio. Plaintiff sues the City because its banning practice, custom, and *de facto* policy violate the U.S. Constitution.

#### 4.0. STATEMENT OF FACTS

4.1. On or about December 12, 2012 the City Clerk for San Antonio TX was sent certified mail 7011 2970 0003 1115 4477 by Plaintiff John E Foddrill Sr , Frank Wells ,Guadalupe Carreon Jr. And John E Foddrill Jr. requesting that they be allowed to attend a public meeting on December 17, 2012 without fear of harassment or arrest. They asked that John E Foddrill Sr and Michael Cuellar be allowed to attend a public meeting on December 17, 2012. The City was asked to declare null and void criminal trespass warnings issued to both Foddrill and Cuellar (July 1, 2009 and August 31, 2012 respectively). The exact wording is: "As law-abiding citizens/taxpayers of the City we request that we be allowed to attend the Ethics Review Board hearing scheduled for December 17, 2012, future hearings and other public meetings with no fear of harassment or arrest." "We ask that illegal, unconstitutional criminal trespass warnings barring entry into City buildings by John E Foddrill Sr. and Michael Cuellar be declared void and null ". City officials did not reply.

4.2. Numerous requests were made of the Defendants and City officials to provide a written statement allowing Plaintiff John E Foddrill Sr to attend public City Council meetings without fear of arrest since the ban was issued on July 1, 2009 immediately after Mr. Foddrill reported public /police corruption to City officials. Via certified mail, regular mail, email and phone requests were made of the defendants and other City officials to lift the ban and expose the underlying public/police corruption... Mayor Julian Castro was sent certified mail 7011 2970 0003 1115 4224 on September 1, 2012 ....On December 24, 2012 City Councilman Bernal was sent certified mail 7011 3500 0002 4211 2425 ...Councilman Cris Medina was sent certified mail 7011 2970 0003 4937 2300 on August 29, 2012 and certified mail 7011 2970 0003 1115 4231 on September 1, 2012 ....On August 28, 2012 certified mail 7011 2970 0003 4937 2263 was sent to the City Clerk..On April 4, 2012 certified mail 7011 1570 0001 1678 1523 was sent to Bexar County District Attorney Reed asking that the ban be lifted. Copies were forwarded to Defendant McManus, Defendant Castro, Defendant Bernard and others. .... On February 13, 2012

illegal and was not the person to contact about the criminal trespass warning or criminal activity inside the City. On May 29, 2012 certified mail 7011 2970 0003 4937 4793 was sent to Soules informing him of the video recording. ....Councilperson Leticia Ozuna, Councilman Carlton Soules, Councilman Cris Medina and the City Clerk were sent certified mail 7011 1570 0001 1676 7015 on January 12, 2012 ...The Office of the City Clerk was sent certified mail 7011 1570 0001 1676 9217 on January 9, 2012 ...On September 9, 2011 Councilman Bernal was sent certified mail 7010 3090 0002 7006 8533...On August 13, 2011 certified mail was sent to SAPD Assistant Chief Geraldine Garcia and the SAPD command staff ....No replies to these inquiries or others pre-dating these examples were ever received.

4.3. On the night of July 4, 2011 armed SAPD officers assigned to the Mental Health Unit were dispatched to Mr. Foddrill's home to perform a mental health examination in response to his reports of criminal activity and the ban prohibiting him from attending public meetings. The officers roused Mr. Foddrill and his wife Susan who had recent neck/spine surgery from bed where they were sleeping. After discovering that there was no urgent need requiring their intervention they spoke to Mr. and Mrs. Foddrill for over two hours about the reports of criminal activity and the ban. They then apologized on behalf of the honest members of the SAPD and for honest City employees for the disturbance. Officer Bandoske then published report SAPD-2011-070s097 stating: Mr. Foddrill "did not display any signs of mental illness nor was he a danger to himself or others". With this official police report on file the defendants continued to ignore all requests that the ban be lifted and that Mr. Foddrill be allowed to attend public meetings.

4.4. On July 5, 2011 Mr. Foddrill sent a letter to Defendant Castro, Defendant McManus and other City officials complaining of the middle of the night "raid". On or about August 6, 2011 Mr. Foddrill submitted a sworn affidavit to SAPD Internal Affairs complaining of the middle of the night "raid" in response to his reports of corruption and the long-standing ban and the fact that San Antonio Police Department Mental Health Division Sergeant Romana Lopez published a fraudulent report and submitted this report to SAPD Deputy Chief Muro stating that she dispatched the armed officers because she did not have Mr. Foddrill's phone number and that she couldn't call him. Mr. Foddrill received no response to the letter or the official complaint.

4.5. On May 18, 2011 attorney Edward Pina who was retained by Mr. Foddrill to have the City lift the

ban contacted defendant Bernard via Facsimile and first class mail. Attorney Pina reminded defendant Bernard that on Sept. 10, 2010 at a meeting Bernard stated that the criminal trespass warning letter would be withdrawn stating: "During our meeting you informed me that you would withdraw your letter of July 1, 2009 and that the prohibitions would be lifted and that you would send me a letter to this effect in the near future. I still have never received your letter". Defendant Bernard did not lift the ban nor did he provide any documentation indicating why he issued the ban as was requested by attorney Pina.

4.6. On October 12, 2011 Mr. Foddrill and his family received a threatening phone call from Canada at 3 a.m. warning them to stop reporting Councilman Bernal's involvement in the public corruption and ban. Officer Soto - Badge # 9739 created Case# SAPD 11261976 and the AT&T Annoyance Call Bureau created a report. On November 2, 2011 the San Antonio City Council was addressed during the "Citizens To Be Heard" portion of the weekly Council meetings. A video was made of the presentation showing how citizen Allen Ellebracht informed the Council of the ban and of the terroristic threats that Mr. Foddrill and his family were receiving for reporting the ban and underlying corruption. Bernal's supporters then began making threats via the Internet. On November 17, 2011 Officer Walker- badge # 9721 created Case # SAPD 11287895 concerning online threats warning Mr. Foddrill to stop exposing the ban covering up reports of corruption and Councilman Bernal's involvement in the crimes. Both police reports were closed with no action and the defendants provided no response.

4.7. The Criminal Trespass Letter informed Mr. Foddrill that he could no longer set foot in the San Antonio City Hall or the Municipal Plaza Building. The City Hall and Municipal Plaza Building are places traditionally held in trust for the public's use, and, at least for the purposes of San Antonio's historic City Hall, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions for over 100 years. Both buildings are located on the historic Main Plaza, which has served as a traditional public forum for over 200 years. These are the very buildings where Mr. Foddrill would have to go to complain about issuance of the Criminal Trespass Letter. Whether intended or not, the effect of the Criminal Trespass Letter was to expose Mr. Foddrill to arrest if he attempted to go to a City Council meeting to complain about the Criminal Trespass Letter. If he did go to Council to complain, he could be imprisoned up to six (6) months and fined \$2,000.

4.8. Prior to receiving the Criminal Trespass Letter, Mr. Foddrill had no idea that such letters existed. In fact, the City had kept the fact that it had adopted a policy which allowed them to arrest citizens for attending

criminal justice professionals can execute the policy to arrest persons they seek to exclude from attending public meetings. The City has never revealed any written guidelines that would fetter the unbridled discretion of the Defendants to determine that a citizen can be arrested for merely entering a traditionally public forum.

4.9. Since the City's secret policy of banning any citizen it chooses from public participation has come to light, the City has attempted to explain its policy. Unfortunately for Mr. Foddrill, the City's attempts to explain its actions have only added to the economic damage done to him. As if it weren't bad enough that Mr. Foddrill, who had a promising career as a the City's Telecommunications Manager prior to being terminated for reporting massive public/police corruption, the Defendants began a public campaign to justify their actions by defaming Mr. Foddrill and wrongly accusing him of being a threat to public safety.

4.10. The Defendant McManus made the statement, which appeared in the press and on-line, that: A Criminal Trespass Warning letter can be issued in direct response to a threat, threatening behavior, and/or harassment wherein repeated contacts by an individual are made thus creating an environment of fear. Criminal Trespass Warning letters are typically issued when the behaviors previously mentioned are clear and obvious. Since the Defendants have only publicly identified two such criminal trespass letters, the obvious inference to be drawn by the public, and Mr. Foddrill's prospective employers, is that he has engaged in "...threat[s], threatening behavior, and/or harassment wherein repeated contacts by an individual are made thus creating an environment of fear."

4.11. Defendant Bernard also has aggravated the injury done to Mr. Foddrill by the adoption of the unconstitutional policy represented by the Criminal Trespass Letter. First, Bernard insinuated on the radio that the ban issued to Mr. Foddrill would only prohibit him (or any other person banned) from entering city property "...unless they have an appointment or business there," which is simply not true. But more damaging to the Plaintiff, Bernard announced to the public, on the radio, that the City would only issue the Criminal Trespass Letter "...in instances where people, including the police department, feel there is a real threat to people who work here or to visitors here...if the police department and others come to the conclusion that someone is a threat that is sufficient for us. That's all it takes...." The clear insinuation is that Mr. Foddrill was, since July 1, 2009, "a real threat to people." in spite of the fact Mr. Foddrill had never been asked to leave any meeting, had never been

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accused/convicted of a crime, had never been accused of making threats against anyone and that San Antonio police officer Bandoske on July 5, 2011 published an official report stating: Mr. Foddrill “did not display any signs of mental illness nor was he a danger to himself or others”.

4.12. Since the issuance of the Criminal Trespass Letter, Mr. Foddrill has not been to any of the public places from which he was banned. The City would only make records that were requested via the Open Records Act available for viewing under armed guard at the Frio Street Police Sub-Station where Mr. Foddrill and, Mr. Michael Cuellar were only able to review records behind security checkpoints. Again, the inspection was supervised by an armed guard.

4.13. Mr. Foddrill has repeatedly asked the Defendants how long his ban would continue, if there any appeal from the ban, and why he was banned. Despite his repeated requests and those of others, including Attorney Edward Pina and the media, even under the state’s Public Information Act, the Defendants never responded with appropriate information and adamantly refuse to do so. Nor have they ever provided Mr. Foddrill with an opportunity to appeal from the indefinite ban, and have steadfastly refused to do so.

4.14. Since issuing the Criminal Trespass Letter, the Defendants have refused to lift or limit the ban contained therein, in retaliation for the Plaintiff’s continued participation in First Amendment activities. It is no coincidence that, during the time the City refused to lift the unconstitutional ban or even tell the Plaintiff why the ban was being imposed, the Plaintiff was prohibited from participating and influencing some of the most controversial events occurring in San Antonio. During the fall of 2012 the Plaintiff found himself in the midst of an ethics controversy relating to Pat Giovanni. *See* New Ethics Complaints Filed at City Hall, [http://www.mysanantonio.com/news/local\\_news/article/New-ethics-complaints-filed-at-City-Hall-4051313.php](http://www.mysanantonio.com/news/local_news/article/New-ethics-complaints-filed-at-City-Hall-4051313.php).

4.15. During this time period, a disinterested attorney acting for the City found that Mr. Foddrill was not so dangerous that he could not briefly attend an ethics committee meeting for limited purposes. The email sent by that attorney indicated that the ban could be “temporarily lifted” by the City whenever it suited their purpose. However, even in light of the reassurance given by an attorney not involved with the issuance of the Criminal Trespass Letter, the Plaintiff still feared arrest if he attended any such meetings. Requests for a written statement by the City lifting the ban was ignored.

4.16. The City is intentionally using the Criminal Trespass Letter to keep the Plaintiff from attending any

and other reports of public / police corruption. At no time during this continuing controversy has the Plaintiff been allowed to attend any City Council Meetings. He never had the chance to put the facts occurring in the City's ethics crisis or actual reports of criminal activity before the City Council in the citizens-to-be-heard section of any City Council Meeting. He could not appear before the City Council even to complain of his banishment. The City adamantly has refused to tailor the ban to remove the chilling effect of the letter, and continues the ban indefinitely to retaliate against the Plaintiff's involvement in the reports to Federal / State agencies and others of the public /police corruption, the bond fraud, the accounting fraud, the theft of public funds and other crimes committed by City persons.

4.17. Mr. Foddrill has been employed in the Telecommunications field for over forty years. He retired as a manager after thirty years of service with SBC /ATT. At the request of SBC Group President Jim Calloway he took a position with Valero Energy and founded the Voice-Planning and Design Group for CEO Bill Greehey. As the Telecommunications Manager for the City of San Antonio TX he was recognized as "Employee of the Month" in February 2005.

4.18. Since being banned by the Defendants and since their appearing in the media insinuating he was dangerous and a threat to city employees, Mr. Foddrill has been unable to find employment in his chosen profession. Given the seriousness of the claims made by the Defendants to justify their unconstitutional action, it is unlikely that he will be able to find suitable employment in his chosen profession in the near future.

4.19. The Defendant City apparently has no written procedures determining how they ban unwanted citizens from the public forum, although, upon information and belief, banning has become a settled practice and custom and *de facto* policy of the City.

4.20. In a recent radio interview, the Mayor acknowledged the existence of the official policy of banishment and that the Defendant McManus, as the chief of police, plays a major role in promulgating and executing the City's unconstitutional policy. According to the Mayor, the City intended to review the City's banishment policy, which he characterized as "informal."

4.21. The ban imposed by the Criminal Trespass Letter is not a reasonable time, place, and manner restriction. In fact, it is the opposite, a totally unreasonable restriction without precedent or justification in federal



## **5.0. CAUSES OF ACTION**

### **5.1. First Cause of Action: Violation of First Amendment Rights (42 U.S.C. §1983)**

5.1.1. Under color of state law and through a municipal policy or custom, the Defendants have deprived, and continue to deprive, Mr. Foddrill of his right to freedom of expression, including through expressive conduct, to peaceably assemble, and to freely petition for redress of grievances under the First Amendment.

5.1.2. Defendants' policy of banning individuals from City Hall is a prior restraint on the exercise of these rights, and its application, and threatened application, to Mr. Foddrill exercising such rights at City Hall and in the Municipal Plaza Building, both traditional public forums. The ban is not narrowly tailored to serve any compelling governmental interest and fails to leave open ample alternative channels of communicating Plaintiff's messages.

5.1.3. It was only after Mr. Foddrill requested that the City disclose potentially embarrassing information concerning an ongoing criminal conspiracy inside the City to defraud our government, our judicial system and our taxpayers, that he was banned.

5.1.4. The selective use of the policy by the City demonstrates that the policy is not content-neutral. Rather, in application, the policy permits and encourages official discrimination among speakers based on the content of their speech and does so without being narrowly tailored to advance a compelling governmental interest. Further, to the extent that Defendants assert the policy is in fact applied only to instances of particular types of conduct, such as publicly stated by the Defendants, such assertion is merely pretext for content discrimination against Plaintiff.

5.1.5 Additionally, Defendants' policy respecting issuance of criminal trespass notices banning citizens from City Hall and the Municipal Plaza building is unconstitutionally overbroad and vague, delegating to a wide range of city employees effectively unrestrained discretionary authority to ban any individual from any or all city property for substantial periods, even permanently, merely because that individual's conduct is subjectively viewed by a city employee as unacceptable for any reason.

5.1.6. As Plaintiff's experiences show, the city's criminal trespass notice policy sweeps within it an unreasonably broad range of protected First Amendment activity that, despite enjoying heightened protection under federal law, could nonetheless be subjectively viewed as unacceptable by city employees lacking any further

5.1.7. Further, the threat of being banned from City Hall imposes a significant chilling effect on any individual who wishes to exercise the First Amendment rights of free expression and assembly but reasonably fears significant interference with the ability to access and interface with city government should that individual run afoul of the vague prohibitions of the city's policy, as interpreted by city employees delegated an immense degree of discretion.

5.1.8. The unconstitutional overbreadth and vagueness of the city's policy, coupled with its chilling effect on First Amendment rights, renders the policy facially unconstitutional and invalid in all applications.

**5.2. Second Cause of Action: Official Retaliation in Violation of First Amendment Rights (42 U.S.C. §1983)**

5.2.1. Defendants' actions to ban Mr. Foddrill from City Hall and the Municipal Plaza Building constitute unlawful official retaliation against him for his exercise of his First Amendment rights to free expression, peaceable assembly, and petitioning for the redress of grievances. The City has also refused to limit or lift the ban in order to retaliate against the Plaintiff for his First Amendment activities.

5.2.2. The Defendants' unlawful retaliation has caused economic injury to Mr. Foddrill and caused him to suffer mental pain and anguish.

**5.3. Third Cause of Action: Violation of Due Process (42 U.S.C. §1983)**

5.3.1. Under color of state law and through *de facto* municipal policy, practice, or custom, Defendants have deprived, and continue to deprive, Mr. Foddrill of his right to substantive due process of law under the Fourteenth Amendment.

5.3.2. The Plaintiff possesses a fundamental liberty interest, protected by the Due Process Clause, in entering and remaining in City Hall and the Municipal Plaza Building for the purposes of expressing protected speech or engaging in any of the myriad governmental-individual interactions that regularly take place at City Hall and city offices.

5.3.3. Mr. Foddrill likewise has a fundamental liberty interest, protected by the Due Process Clause, in being in public places, like City Hall and the Municipal Plaza Building.

5.3.4. Defendants' banning of Mr. Foddrill from those areas unconstitutionally infringes those protected fundamental liberty interests because it burdens those interests and is not narrowly tailored to advance a

#### **5.4. Fourth Cause of Action: Violation of Due Process (42 U.S.C. §1983)**

5.4.1. Because Defendants gave Mr. Foddrill no reasons for an indefinite ban from the city properties and have no standards for such a ban (other than apparently their whim), no hearing thereon, and no appeal therefrom, they denied him procedural due process of law, unconstitutionally depriving him of his First Amendment rights and depriving him of any avenue to report the "fraud upon the court" orchestrated by the City Attorney's Office in February 2009 in an effort to hide public corruption and Mr. Foddrill's illegal termination as the Telecommunications Manager for reporting the three decades of criminal activity .

#### **6.0. DECLARATORY RELIEF**

6.1. Mr. Foddrill seeks declaratory relief that Defendants violated his rights under the First and Fourteenth Amendments, as described above.

6.2. Defendants have deprived Plaintiff of his federal constitutional rights to freedom of expression and due process of law, to peaceably assemble, and to petition their government for redress of grievances, causing irreparable harm to Plaintiffs. Through continued enforcement of their policy respecting issuance of criminal trespass notices, the Defendants threaten further violations of those same rights.

6.3. Mr. Foddrill is thus entitled to a declaration, pursuant to 28 U.S.C. §2201, that his rights arising under the Constitution have been violated by the Defendants' actions and that the City's policy is facially unconstitutional and as applied to him.

#### **7.0. DAMAGES**

7.1. Pursuant to 42 U.S.C. §1983, Mr. Foddrill seeks from damages the Defendants as allowed by law for the deprivation of his constitutional rights, and retaliation against him for the exercise of his First Amendment rights. Mr. Foddrill has suffered as a result of such deprivations, and seeks appropriate monetary damages for the loss of employment with the City, for the loss of past and future earnings, damage to his earning capacity, for the damage to his reputation, for other economic damages, and for mental anguish, and/or emotional distress.

7.2. Mr. Foddrill seeks such damages against Defendants, jointly and severally, for the injuries that he has suffered at their hands. Because of the willful, wanton, and malicious nature of the conduct of Defendants Bernard

severally, and punitive damages against each of them, in their individual capacities.

## **8.0. INJUNCTIVE RELIEF**

8.1. Mr. Foddrill continues to be deprived of his federal constitutional rights under the First Amendment and the Due Process Clause of the Fourteenth Amendment, causing him irreparable harm and threatening additional, immediately impending irreparable injuries.

8.2. Defendants continue to maintain their *de facto* policy, practice, and custom of banning Mr. Foddrill from returning to City Hall or city offices in violation of 42 U.S.C. §1983. Plaintiff thus is entitled to an injunction, preventing Defendants and their agents, employees, and any other persons or entities acting on their behalf, from further enforcement of the banning order complained of herein.

8.3. Mr. Foddrill continues to be deprived of his federal constitutional rights under the First and Fourteenth Amendments as a result of Defendants' acts in retaliation against his exercise of his constitutional rights, causing him irreparable harm.

8.4. The Defendants' past practice of retaliation, in violation of 42 U.S.C. §1983, provides Mr. Foddrill with a reasonable basis to fear additional retaliatory acts by Defendants, based on his planned future exercise of his constitutional rights.

8.5. Mr. Foddrill thus is entitled to an injunction preventing Defendants and their agents, employees, and any other persons or entities acting on their behalf, from engaging in any retaliatory acts against him, based on his past, present, or future exercise of rights protected under the First and Fourteenth Amendments or based on the filing or prosecution of this or any other suit seeking to enforce his rights.

## **9.0. NO QUALIFIED IMMUNITY**

9.1. Because the First and Fourteenth Amendment law under which this suit is brought has long been well-settled in the context of the facts alleged herein, neither Defendant Bernard nor Defendant McManus are entitled to claim qualified or good faith immunity.

## **10.0. ATTORNEYS' FEES**

10.1. Mr. Foddrill he seeks attorneys' fees and costs, pursuant to 42 U.S.C. §1988, and any other statutory authority which may allow such fees in the event that he retains an attorney to represent him.

**11.0. PRAYER FOR RELIEF**

Mr. Foddrill respectfully prays that this Court:

11.1.1. Enter declaratory judgment that, acting under color of law and with authority, Defendants intentionally, and with complete and deliberate indifference to Mr. Foddrill's First and Fourteenth Amendment rights, deprived him of those rights;

11.1.2. Enter temporary and permanent injunctions against Defendants, enjoining them from further banning Mr. Foddrill from city premises, as described herein, and from retaliating against Plaintiff in the future for the past, present, or future exercise of his First and Fourteenth Amendment rights or for prosecuting this action to enforce is rights;

11.1.3. Award actual damages to Mr. Foddrill, against all Defendants, jointly and severally, together with pre-judgment and post-judgment interest;

11.1.4. Enter judgment for punitive damages against Defendants Bernard and McManus, individually, to punish them for their clearly unconstitutional misconduct and in an amount sufficient to deter them and others from engaging in similar misconduct in the future;

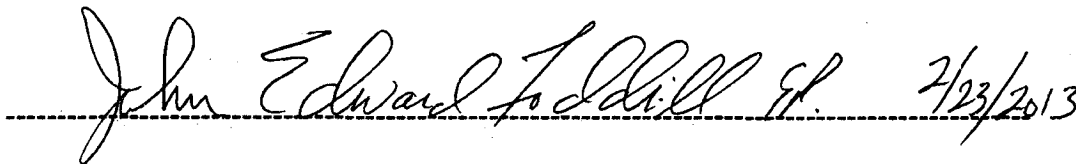
11.1.5. Order Defendants to pay the Plaintiff's attorneys' fees and costs; and,

11.1.6. Grant all other and additional relief to which Mr. Foddrill may be entitled, at law or in equity.

Dated: February 23, 2013

JURY DEMANDED

Respectfully submitted,

A handwritten signature in cursive script that reads "John Edward Foddrill Sr." followed by the date "2/23/2013". The signature is written over a horizontal dashed line.

John Edward Foddrill Sr. (Pro Se)

9650 Limestone Pond

San Antonio TX 78254

210-824-3502

POLICE REPORT



# San Antonio Police Department

Offense Case # SAPD11167835	Incident Type INCIDENT	CFS Number SAPD-2011-07C2097
Primary Offense		Page 2 of 2
Date / Time Occurred 7/5/2011 21:27 to 7/5/2011 23:15		Date / Time Reported 7/5/2011 23:16

**Narrative Legend**

O1 = FODDRILL, JOHN

**Narrative Information**

While assigned to the Mental Health Detail, Officer J. Smarro, #483, and I were requested by SARIC to meet with O1 and conduct a mental health assessment of him. We went to his listed residence and talked with O1 for more than an hour and a half. O1 is very concerned that he has pointed out "approximately \$4M of fraud a year involving telephone bill payments that occurred over the last 20-25 years and no one will investigate it." O1 is bitter that he "was the employee of the month five months after he started working for COSA and then they fired him four months later after he 'blew the whistle' on his boss and the misappropriation of City funds."

O1 did not display any signs of mental illness nor was he a danger to himself or others. O1 seemed to be very credible and had documentation to substantiate his accusations. O1 stated he was very frustrated with his inability to reach anyone within the city to help him out with his complaints. O1 has been without a job for approximately 5 years and feels the city is preventing him from being able to get employment elsewhere. We all agreed that my partner and I were not the solution for him on this evening and our reason for meeting with O1 was to rule out or find any potential mental illness. O1 was given our card, as well as our city phone information. O1 cautioned us on making a report about this but was glad we were there to listen to him.

## PORTION OF OFFICIAL CORRESPONDENCE - 7/7/2011

11-167835



July 7, 2011

**TO:** Deputy Chief Anthony Muro  
PSC

**FROM:** Sgt. Romana Lopez, POP

**SUBJECT:** Interview with John Foddrill

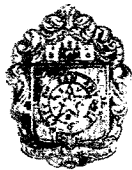
Mr. Foddrill by telephone but he did not receive an answer. The neighbor explained that he knew Mr. Foddrill was home because Mrs. Foddrill had a recent surgery. The officers went back to Mr. Foddrill's home just as Mr. Foddrill came to the door. The officers stated that they spoke to Mr. Foddrill for nearly an hour while standing outside the home before they were allowed entry. Initially Mr. Foddrill refused to allow them entry into his home and said he wanted his lawyer, a stenographer, and a recorder present. Once inside the home, the officers felt they had a good visit with Mr. Foddrill and his wife who appeared in a neck brace but later laughed with the officers during their conversation. After speaking to Mr. Foddrill at length, Officers Bandoske and Smarro were unable to find a mental health issue involved, no crisis, and no signs of danger to self or others. According to the officers, Mr. Foddrill is frustrated that no one will investigate what he considers to be a misappropriation of funds by the City of San Antonio.

I am attaching Officer Bandoske's report along with the emails related to this case and the documents that Mr. Foddrill attached to his email.

# City of San Antonio Police Department

William P. McManus

Chief of Police



*An Organization of Value-Oriented People*

*Reflective of our Diversity*

*Dedicated to Serving the Community*

*With Integrity, Honor, and Fairness*

*That All May Know Justice, Equality*

*And Freedom Under the Law*

July 1, 2009

John E. Foddrill  
9650 Limestone Pond  
San Antonio, Texas 78254

RE: Criminal Trespass Warning

Dear Mr. Foddrill:

We are writing on behalf of the City of San Antonio. You are hereby placed on notice that, effective immediately, you are not to enter or remain on certain City-owned or City-leased properties and buildings. This notice is made pursuant to Section 30.05 (Criminal Trespass) of the Texas Penal Code.

You are prohibited from entering or remaining in San Antonio City Hall. San Antonio City Hall is located at 100 Military Plaza in San Antonio, Texas.

You are prohibited from entering or remaining in the Municipal Plaza Building. The Municipal Plaza Building is located at 114 W. Commerce in San Antonio, Texas.

You are prohibited from entering or remaining in that portion of the Public Safety Building occupied by the Information Technology Services Department. The Public Safety Building is located at 515 S. Frio in San Antonio, Texas.

You are prohibited from entering or remaining in that portion of the Riverview Towers Building that is occupied by offices of the City of San Antonio. The Riverview Towers Building is located at 111 Soledad in San Antonio, Texas.

These prohibitions shall remain in effect until you are notified, in writing, by someone with authority to act on behalf of the City of San Antonio that these prohibitions have been lifted.

Sincerely,

William P. McManus  
Chief of Police

Michael D. Bernard  
City Attorney

# City of San Antonio Police Department

William P. McManus

Chief of Police



*"The San Antonio Police Department is dedicated to improving the quality of life by creating a safe environment in partnership with the people we serve. We act with integrity to reduce fear and crime while treating all with respect, compassion, and fairness."*

April 1, 2013

John E. Foddrill  
9650 Limestone Pond  
San Antonio, Texas 78254

Re: Criminal Trespass Warning

Dear Mr. Foddrill:

Notwithstanding the criminal trespass warning you were given on July 1, 2009, you may enter on City of San Antonio premises as an ordinary member of the public would do. However, this letter does not afford you any greater access to City premises than ordinary members of the public would have.

Sincerely,

William P. McManus  
Chief of Police

Michael Bernard  
City Attorney

WPM:sf





U.S. Department of Justice  
United States Marshals Service

**PROCESS RECEIPT AND RETURN**

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF <u>John E Foddrill Sr</u>	COURT CASE NUMBER <u>5:13-cv-00051-XR</u>
DEFENDANT <u>City of San Antonio TX JULIAN CASTRO</u>	TYPE OF PROCESS <u>S/C</u>
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <u>JULIAN CASTRO</u> <u>MAYOR</u>	
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) <u>CITY HALL 100 Military Plaza San Antonio TX 78205</u>	

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW: <u>John E Foddrill Sr</u> <u>9650 Limestone Road</u> <u>San Antonio TX 78254</u>	Number of process to be served with this Form - 285 <u>1</u>
	Number of parties to be served in this case <u>3</u>
	Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):  
Personal Service

Signature of Attorney or other Originator requesting service on behalf of: <u>JE Foddrill Sr</u>	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER <u>210 829 3502</u>	DATE <u>3-9-2013</u>
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**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. <i>(Sign only first USM 285 if more than one USM 285 is submitted)</i>	Total Process <u>3</u>	District of Origin No. <u>20</u>	District to Serve No. <u>20</u>	Signature of Authorized USMS Deputy or Clerk <u>[Signature]</u>	Date <u>4/1/13</u>
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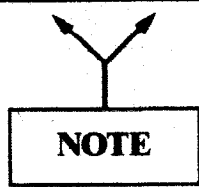
I hereby certify and return that I  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service <u>4/1/13</u>
	Time <u>pm</u>
Signature of U.S. Marshal or Deputy <u>[Signature]</u>	

Service Fee <u>8.00</u>	Total Mileage Charges (including endeavors) <u>8.57</u>	Forwarding Fee	Total Charges <u>16.57</u>	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS: TOU 2000 0001 1112 1112



U.S. Department of Justice  
United States Marshals Service

**PROCESS RECEIPT AND RETURN**

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF <i>John E Fiddrell Sr.</i>	COURT CASE NUMBER <i>5:13-cv-00051-XR</i>
DEFENDANT <i>Michael D. Bernard</i>	TYPE OF PROCESS <i>SLC</i>

**SERVE** → **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN  
*Michael D. Bernard - City Attorney*

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)  
*City Hall 100 Military Plaza San Antonio TX 78205*

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

[ <i>John E Fiddrell Sr. 7650 Limestone Road San Antonio TX 78254</i> ]	Number of process to be served with this Form - 285	<i>1</i>
	Number of parties to be served in this case	<i>3</i>
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):  
Fold

*Personal Service*

Signature of Attorney or other Originator requesting service on behalf of: *J. G. Hill*

PLAINTIFF  
 DEFENDANT

TELEPHONE NUMBER: *210-529-3502* DATE: *3-9-2013*

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process <i>3</i>	District of Origin No. <i>2</i>	District to Serve No. <i>2</i>	Signature of Authorized USMS Deputy or Clerk <i>[Signature]</i>	Date <i>4/13/13</i>
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I hereby certify and return that I  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

Address (complete only if different than shown above)

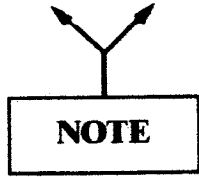
A person of suitable age and discretion then residing in the defendant's usual place of abode.

Date of Service: *4/9/13* Time: \_\_\_\_\_ am/pm

Signature of U.S. Marshal or Deputy  
*[Signature]*

Service Fee <i>8.00</i>	Total Mileage Charges (including endeavors) <i>9.57</i>	Forwarding Fee	Total Charges <i>16.57</i>	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS: *7011 2:00 PM 11:57 AM*



U.S. Department of Justice  
United States Marshals Service

**PROCESS RECEIPT AND RETURN**

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF <b>John E Feddrill SR</b>	COURT CASE NUMBER <b>5:13-cv-00051-XR</b>
DEFENDANT <b>William P. McManus</b>	TYPE OF PROCESS <b>S/C</b>
<b>SERVE</b>	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <b>William P. McManus Police Chief</b>
<b>AT</b>	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) <b>SAPD 315 South Santa Rosa San Antonio TX 78207</b>

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

**John E Feddrill SR**  
**9650 Limestone Pond**  
**SAN ANTONIO TX 78254**

Number of process to be served with this Form - 285	<b>1</b>
Number of parties to be served in this case	<b>3</b>
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

**Personal Service**

Signature of Attorney or other Originator requesting service on behalf of: <b>John E Feddrill SR</b>	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER <b>210 829 3502</b>	DATE <b>3-9-2013</b>
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**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process <b>3</b>	District of Origin No. <b>20</b>	District to Serve No. <b>20</b>	Signature of Authorized USMS Deputy or Clerk <b>[Signature]</b>	Date <b>4/15/13</b>
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I hereby certify and return that I  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service <b>4/11/13</b>
	Time <b>pm</b>
	Signature of U.S. Marshal or Deputy <b>[Signature]</b>

Service Fee <b>8.00</b>	Total Mileage Charges (including endeavors) <b>6.87</b>	Forwarding Fee	Total Charges <b>14.87</b>	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS: **7011 500 0001 115 8158**

