

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

TONY NENNINGER,)
)
Plaintiff,)
)
v.)
)
UNITED STATES FOREST SERVICE,)
Abigail Kimbell, Chief of FS,)
)
MARK REY,)
in official capacity as Under Secretary)
for USDA,)
)
ELLEN HORNSTEIN,) Case No. 07-3028
individually and in official capacity as)
FS legal counsel,)
) DEFENDANTS' MOTION TO
JOHN TWISS,) DISMISS OR, IN THE
individually and in official capacity as FS)
law enforcement chief,) ALTERNATIVE, FOR
) SUMMARY JUDGMENT
)
OFFICER LAMPSHIRE,)
individually and in official capacity in FS)
law enforcement,)
)
OFFICER KROGSTAD,)
individually and in official capacity in FS)
law enforcement,)
)
UNKNOWN JOHN AND JANE DOES,)
individually and/or in official capacities for)
FS and/or other government agencies,)
)
Defendants.)
)

Comes now the defendants, the United States of America, the United States Department of Agriculture, Forest Service (Forest Service); Abigail Kimbell, Chief of the Forest Service; Mark Rey, Under Secretary, Natural Resources and Environment; Ellen Hornstein in her personal and official capacity as Forest Service legal counsel; John Twiss, in his personal and official capacity as Director of the Forest Service's Law Enforcement and Investigations Staff; Chris Lampshire, in his personal and official capacity as a Forest Service Law Enforcement Officer; and Chad Krogstad, in his personal and official capacity as a Forest Service Law Enforcement Officer, by and through their attorneys, Robert C. Balfe, United States Attorney for the Western District of Arkansas, and Assistant U.S. Attorney, Claude S. Hawkins, Jr., and for their motion to dismiss the complaint and amended complaint of Plaintiff, Tony Nenninger, or in the alternative for summary judgment states as follows:

Plaintiff has brought this lawsuit against the United States Department of Agriculture (USDA), Forest Service, and several named and unnamed officials in USDA in both their personal and official capacities. Count I of the amended complaint challenges the constitutionality of Forest Service regulations at 36 C.F.R. §§ 251.54(d)(1), 251.54(d)(2)(i)(E), and 251.54(g)(3)(ii)(H). Specifically, the amended complaint alleges that these regulations violate plaintiff's First Amendment rights to freedom of speech and freedom of religion; Fifth Amendment rights to due process and equal protection; the Restoration of Religious Freedom Act, 42 U.S.C. § 2000bb et seq.; and civil rights laws codified at 42 U.S.C. §§ 1985, 1986, and 1988. Count I further alleges that the individually named defendants violated these rights in implementing and enforcing the regulations.

Count II of the amended complaint alleges that certain law enforcement actions taken by individuals acting in their personal and official capacities violated plaintiff's Fourth Amendment rights and constituted selective enforcement, malicious prosecution, false arrest, assault, invasion of privacy, fraud under duress, and libel. Count III of the amended complaint recasts Counts I and II as a conspiracy, based on the same legal standards.

This case is one of several disputes between the United States and members of the Rainbow Family, including plaintiff. Forest Service regulation codified at 36 C.F.R. Part 251, Subparts B and C, and 36 C.F.R. Part 261, Subpart A, requires those wishing to use or occupy National Forest System lands in noncommercial groups of 75 or more to obtain a special use authorization or permit to do so.¹ Persons wishing to obtain an authorization must provide minimal information in a short application form. *See* 36 C.F.R. § 251.54(d)(1) and (d)(2)(i).

The plaintiff's claims against the Forest Service and the other defendants in their official capacities should be dismissed for failure to state a claim for which relief can be granted. The plaintiff's First Amendment claim is barred by the law of the Circuit and collateral estoppel. In addition, the constitutionality of the Final Rule, including the signature requirement, has been upheld by 24 courts. The plaintiff cannot show that he has a cause of action under the Religious Freedom Restoration Act because the Final Rule does not substantially burden his exercise of religious beliefs. The plaintiff lacks standing to seek equitable relief with respect to the checkpoints and other law enforcement activities conducted at the 2006 and 2007 national

¹ The Forest Service regulations have recently been re-codified, so that the subsections referred to by certain courts considering challenges to these regulations may be different from those referred to by the parties in this litigation. No relevant substantive changes were made to the regulations.

Rainbow Family gatherings, and these law enforcement activities were constitutional. The plaintiff has no cause of action under 42 U.S.C. §§ 1985, 1986, and 1988. The plaintiff's state law claims against the Forest Service and the other defendants in their official capacities are barred by sovereign immunity and the plaintiff's failure to exhaust administrative remedies.

The plaintiff's claims brought against Mr. Twiss, Ms. Hornstein, Mr. Lampshire, and Mr. Krogstad in their personal capacities also should be dismissed for failure to state a claim for which relief can be granted. The United States is the proper party with respect to any claims arising under state law. The plaintiff is not entitled to a Bivens remedy because he and others similarly situated have had ample opportunity to litigate the constitutionality of the Final Rule and its enforcement. This Court lacks jurisdiction over these four defendants, and they are entitled to qualified immunity. In addition, Ms. Hornstein is entitled to legislative immunity from suit.

In support of this Motion, the defendants attach their Brief in Support hereof, Statement of Material Facts, and the following Declarations pursuant to the Rules of Federal Procedure and 28 U.S.C. § 1746:

Exhibit 1: Declaration of Robert C. Balfe

Exhibit 2: Declaration of Ellen R. Hornstein

Exhibit 3: Declaration of John C. Twiss

Exhibit 4: Declaration of John Carpenter

Exhibit 5: Declaration of Tim Lynn

Exhibit 6: Declaration of Gene Smithson

Exhibit 7: Declaration of Christopher J. Lampshire

Exhibit 8: Declaration of Chad Krogstad

CONCLUSION

For the foregoing reasons, plaintiff's amended complaint should be dismissed for failure to state a claim for which relief can be granted or, in the alternative, for summary judgment.

Respectfully submitted,
ROBERT C. BALFE
United States Attorney

By: /s/ Claude S. Hawkins, Jr.

CLAUDE S. HAWKINS, JR.
Assistant United States Attorney
Arkansas Bar No. 77062
Western District of Arkansas
P.O. Box 1524
Fort Smith, Arkansas 72902
Telephone: (479) 783-5125
Fax: (479) 785-2442
E-mail:claude.hawkins@usdoj.gov

OF COUNSEL:

Ellen R. Hornstein
United States Department of Agriculture
Office of the General Counsel
1400 Independence Avenue, S.W.
Stop 1412
Washington, D.C. 20250-1412
(202) 720-9616
ellen.hornstein@usda.gov

Laurie A. Peterson
United States Department of Agriculture
Office of the General Counsel
3201 Federal Building
700 West Capitol Avenue
Little Rock, Arkansas 72201
(501) 324-5246
laurie.peterson@usda.gov

CERTIFICATE OF SERVICE

I, Claude S. Hawkins, Jr., Assistant United States Attorney for the Western District of Arkansas, certify that on January 17, 2008, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification of the filing to the plaintiff:

Tony Nenninger
27 East Stewart Road
Columbia, Missouri 65203
Plaintiff, Pro Se

The undersigned further certifies that a true copy of the foregoing document has been mailed, postage prepaid, to the following non-participants in the ECF system:

/s/ Claude S. Hawkins, Jr.

Claude S. Hawkins, Jr.
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

TONY NENNINGER

PLAINTIFF

VS.

CIVIL ACTION No. 07-3028

UNITED STATES FOREST
SERVICE, ET AL.

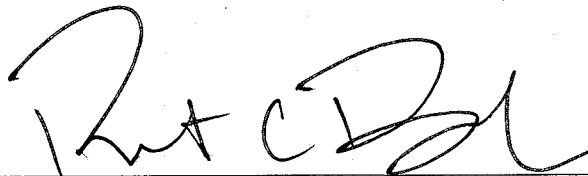
DEFENDANTS

CERTIFICATE OF SCOPE OF EMPLOYMENT

The undersigned United States Attorney, pursuant to the provisions of 28 U.S.C. § 2679(d)(2), and by virtue of the authority vested in me by the Attorney General of the United States under 28 C.F.R. § 15.3(a), hereby certifies as follows:

I have reviewed and analyzed the legal precedent concerning the issue as to the definition of “within scope of employment,” and the information and facts now available with respect to the incidents referred to in the Complaint of Tony Nenninger. On the basis of the legal precedent as applied to Abigail Kimbell, Mark Rey, Ellen Hornstein, John Twiss, Officer Lampshire, and Officer Krogstad were acting within the scope of their federal employment as an employees of the United States Department of Agriculture, Forest Service.

Dated this 16th day of January, 2008


ROBERT C. BALFE
UNITED STATES ATTORNEY
WESTERN DISTRICT OF ARKANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

TONY NENNINGER,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES FOREST SERVICE,)	
Abigail Kimbell, Chief of FS,)	
)	
MARK REY,)	
in official capacity as Under Secretary)	
for USDA,)	
)	
ELLEN HORNSTEIN,)	Case No. 07-3028
individually and in official capacity as)	
FS legal counsel,)	DECLARATION OF
)	ELLEN R. HORNSTEIN
JOHN TWISS,)	
individually and in official capacity as FS)	
law enforcement chief,)	
)	
OFFICER LAMPSHIRE,)	
individually and in official capacity in FS)	
law enforcement,)	
)	
OFFICER KROGSTAD,)	
individually and in official capacity in FS)	
law enforcement,)	
)	
UNKNOWN JOHN AND JANE DOES,)	
individually and/or in official capacities for)	
FS and/or other government agencies,)	
)	
Defendants.)	

DECLARATION OF ELLEN R. HORNSTEIN

I, Ellen R. Hornstein, an attorney in the United States Department of Agriculture (USDA), Office of the General Counsel (OGC), Natural Resources Division (NRD), Washington, D.C., declare that:


1. I am employed by USDA, OGC, NRD, Washington, D.C., as an attorney-advisor. My duties in this position include handling of litigation; development of regulations, directives, and legal opinions; review of legislation; and provision of informal legal advice to the USDA, Forest Service, regarding its Lands and Recreation and Law Enforcement Programs. I have held this position since 1992.

2. My work in this position has included drafting the noncommercial group use regulation at 36 CFR Part 251, Subpart B, which requires a free permit for noncommercial gatherings that involve 75 or more people on National Forest System lands, as well as providing advice regarding the regulation and defending it in court.

3. I performed all the work referenced in paragraph 2 of this declaration, which includes all the actions described in paragraph 12 of the First Amended Complaint in this case, within the scope of my current employment.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 13 December 2007.



Ellen R. Hornstein
Attorney-Advisor
United States Department of Agriculture
Office of the General Counsel
Natural Resources Division

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

TONY NENNINGER,)
)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES FOREST SERVICE,)
)
 Abigail Kimbell, Chief of FS,)
)
 MARK REY,)
)
 in official capacity as Under Secretary)
 for USDA,)
)
 ELLEN HORNSTEIN,)
)
 individually and in official capacity as)
 FS legal counsel,)
)
 JOHN TWISS,)
)
 individually and in official capacity as FS)
 law enforcement chief,)
)
)
 OFFICER LAMPSHIRE,)
)
 individually and in official capacity in FS)
 law enforcement,)
)
)
 OFFICER KROGSTAD,)
)
 individually and in official capacity in FS)
 law enforcement,)
)
)
 UNKNOWN JOHN AND JANE DOES,)
)
 individually and/or in official capacities for)
 FS and/or other government agencies,)
)
)
 Defendants.)
)

Case No. 07-3028

DECLARATION OF
JOHN C. TWISS

DECLARATION OF JOHN C. TWISS

I, John C. Twiss, Director of USDA, Forest Service Law Enforcement and Investigations, Washington, D.C., declare that:

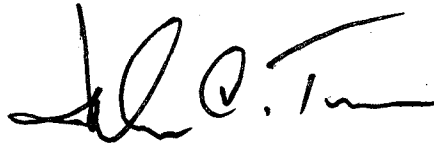
1. I am employed by USDA, Forest Service, Law Enforcement and Investigations, Washington, D.C., as the director. My duties in this position include management of over 700 law enforcement personnel including but not limited to, law enforcement officers and supervisors, law enforcement special agents, and law enforcement criminal investigators. I have held this position since July of 2005.

2. Law Enforcement Officers on National Forest System lands including all National Forests, work under my direction.

3. I performed all the work referenced in paragraph 2 of this declaration, which includes all the actions described in the First Amended Complaint in this case, within the scope of my current employment.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 11 January 2008.

A handwritten signature in black ink, appearing to read "John C. Twiss", is written over a horizontal line.

John C. Twiss
Director
United States Department of Agriculture
Forest Service
Law Enforcement and Investigations

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

TONY NENNINGER,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,
Abigail Kimbell, Chief of FS,

MARK REY,
in official capacity as Under Secretary
for USDA,

ELLEN HORNSTEIN,
individually and in official capacity as
FS legal counsel,

JOHN TWISS,
individually and in official capacity as FS
law enforcement chief,

OFFICER LAMPSHIRE,
individually and in official capacity in FS
law enforcement,

OFFICER KROGSTAD,
individually and in official capacity in FS
law enforcement,

UNKNOWN JOHN AND JANE DOES,
individually and/or in official capacities for
FS and/or other government agencies,

Defendants.

Case No. 07-3028

DECLARATION OF
JOHN CARPENTER

DECLARATION OF JOHN CARPENTER

I, John Carpenter, Deputy Director, Washington Office Operations, USDA, Forest Service Law Enforcement and Investigations, Washington, D.C., declare that:


1. I am employed by USDA, Forest Service, Law Enforcement and Investigations, Washington, D.C. My duties in this position include oversight of investigations and internal affairs, training, administration, enforcement, and homeland security. I have held this position since November of 2006. From March of 2006 through November 2006, I was the Asst. Director, Enforcement and Liaison. Prior to March 2006, I was a Senior Special Agent with the Forest Service assigned to the National Academy.

2. The Forest Service has consistently and fairly enforced the Final Rule¹ and other laws and regulations in the context of other noncommercial gatherings on National Forest System lands involving 75 or more people.

3. The checkpoints at the 2006 and 2007 national Rainbow Family gatherings were conducted in compliance with the Forest Service's national vehicle checkpoint policy.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 17 January 2008.


John Carpenter
Deputy Director, USDA
Forest Service
Law Enforcement and Investigations

¹ USDA, Final Rule, Land Uses & Prohibitions, 60 Fed. Reg. 45,258 (Aug. 30, 1995)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

TONY NENNINGER,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,
Abigail Kimbell, Chief of FS,

MARK REY,
in official capacity as Under Secretary
for USDA,

ELLEN HORNSTEIN,
individually and in official capacity as
FS legal counsel,

JOHN TWISS,
individually and in official capacity as FS
law enforcement chief,

OFFICER LAMPSHIRE,
individually and in official capacity in FS
law enforcement,

OFFICER KROGSTAD,
individually and in official capacity in FS
law enforcement,

UNKNOWN JOHN AND JANE DOES,
individually and/or in official capacities for
FS and/or other government agencies,

Defendants.

Case No. 07-3028

DECLARATION OF
TIM LYNN

DECLARATION OF TIM LYNN

I, Tim Lynn, Assistant Director, Investigations and Internal Affairs, USDA, Forest Service Law Enforcement and Investigations, Washington, D.C., declare that:

1. I am employed by USDA, Forest Service, Law Enforcement and Investigations, Washington, D.C. I was the Incident Commander at the 2006 Rainbow Gathering held on Forest Service land located in Colorado, and have personal knowledge of the actions of Forest Service personnel during that gathering.

2. The checkpoints at the 2006 national Rainbow Family gathering were conducted in compliance with the Forest Service's national vehicle checkpoint policy.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 17 January 2008.



Tim Lynn
Assistant Director, USDA
Forest Service
Law Enforcement and Investigations

DECLARATION OF GENE SMITHSON

I, Gene Smithson, Senior Special Agent, USDA, Forest Service Law Enforcement and Investigations, Washington, D.C., declare that:

1. I am employed by USDA, Forest Service, Law Enforcement and Investigations, Washington, D.C. I was the Incident Commander at the 2007 Rainbow Gathering held on Forest Service land located in Arkansas, and have personal knowledge of the actions of Forest Service personnel during that gathering.

2. The checkpoints at the 2007 national Rainbow Family gathering were conducted in compliance with the Forest Service's national vehicle checkpoint policy.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 17 January 2008.



Gene Smithson
Senior Special Agent, USDA
Forest Service
Law Enforcement and Investigations

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

TONY NENNINGER,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES FOREST SERVICE,)
 Abigail Kimbell, Chief of FS,)
)
 MARK REY,)
 in official capacity as Under Secretary)
 for USDA,)
)
 ELLEN HORNSTEIN,)
 individually and in official capacity as)
 FS legal counsel,)
)
 JOHN TWISS,)
 individually and in official capacity as FS)
 law enforcement chief,)
)
 OFFICER LAMPSHIRE,)
 individually and in official capacity in FS)
 law enforcement,)
)
 OFFICER KROGSTAD,)
 individually and in official capacity in FS)
 law enforcement,)
)
 UNKNOWN JOHN AND JANE DOES,)
 individually and/or in official capacities for)
 FS and/or other government agencies,)
)
 Defendants.)

Case No. 07-3028
DECLARATION OF
CHRIS LAMPSHIRE

DECLARATION OF CHRISTOPHER J. LAMPSHIRE

1. I, Christopher Lampshire, have been a Federal Law Enforcement Officer with the USDA Forest Service since June of 2001. As a Law Enforcement Officer for the US Forest Service we are often assigned to special details and or incidents. This includes being assigned to the National Incident Management Teams as a law enforcement officer assigned to Hurricane Katrina Relief efforts in February and March of 2006 and the National Rainbow Gathering that occurred during June and July 2006 on the Routt National Forest in Colorado. I am currently assigned to the Helena National Forest located in Helena, Montana and have been there since November of 2003.

2. During the 2006 National Rainbow Family gathering that took place on the Routt National Forest in Colorado, an information and safety station was set up, and all vehicles were being stopped to inform the operator and all of the other occupants of vehicles of the extreme fire danger, and the illegal gathering. Vehicle operators and their occupants were also informed that if they continued past that point they would be entering an illegal, non permitted gathering and are subject to a being stopped and issued a citation for being in the area of the illegal gathering, and given the opportunity to turn around. Occupants of the vehicle were also handed a flyer that further explained the illegal gathering.

3. On June 22, 2006 while on duty as a uniformed Federal Law Enforcement Officer for the US Forest Service on the Routt National Forest near Steamboat Springs, Colorado for the National Rainbow Family Gathering incident management team, I observed a vehicle that was being operated by Nenninger, who had passed the information and safety station about one half mile up the road.

4. After stopping the vehicle for being inside the illegal gathering area, I approached the vehicle and asked the driver if who was later identified as Nenninger, if he had stopped at the information check point and if he had received a flyer. At this time Nenninger made

several comments about this be an illegal detainment and that the he did not belong to the Rainbow Family, but he was going to the gathering. Nenninger also made statements that the Forest Service did not have any right to restrict the peaceful and religious gathering of citizens that was taking place.

5. At this time I asked him if he received a flyer at the information station and he showed it to me. I explained to him that everyone in the vehicle was going to be issued citations for entering an illegal unpermitted gathering of 75 or more people, and explaining why they was going to be issued a citation. After the explanation I asked everyone in the vehicle if there were any illegal drugs guns or other illegal items in his vehicle. Nenninger and his passengers stated that they were not aware of any illegal drugs or items in his vehicle. I then asked Nenninger for consent to search his vehicle, so that I could be sure that there were not any illegal items in the vehicle. Nenninger then stated that he would not allow me to search the vehicle and that I again had no right to stop him. At this time I informed him that he was given the opportunity to turn around at the information station or enter the gathering area where he may be stopped and cited for entering the illegal gathering, and that his choice of continuing into the gathering area is the reason for the stop. At this time I asked Nenninger and the other occupants for their identification so that I could start issuing citations.

5. After receiving their id's Officer Krogstad and his canine showed up on scene, and I informed Nenninger and that Officer Krogstad was going to walk his canine around the vehicle to make sure that there was not any illegal substance in the vehicle while I started on the issuing of the citations. Officer Krogstad then approach the vehicle had a brief discussion on what to do for the safety of the canine. After Officer Krogstad walked his canine around the vehicle, he informed that his canine indicated that there was an illegal narcotic in that vehicle.

6. After this confirmation I went back up to Nenninger and informed him of what Officer Krogstad's canine had indicated, and I again asked all of the occupants of the vehicle if they had any illegal drugs on them. They all stated that they did not. I informed that the canine has indicated that there were narcotics in the vehicle and that if they did not hand over the drugs we would have to search everything in the car. They again stated that they did not have any drugs.

7. At this time I asked everyone to exit the car and move to the side of the road and sit down so that would not be in any danger from being struck by another vehicle, and so we could search the vehicle safely. Again Nenninger stated that we did not have the right to search the vehicle and that he did not see the canine do anything.

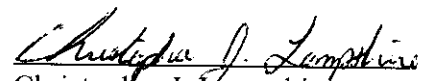
8. While officer Krogstad and another officer searched the vehicle I started to fill out citation to everyone in the vehicle. While filling out the citations I again asked Nenninger and the other occupants if they had any narcotics, because it would make things a lot easier and we would not have to search the whole vehicle. At this time one of the passengers looked up at me and stated that he has a pipe he used to smoke marijuana in his pocket.

9. I informed him that he was going to be cited for possession of Marijuana as well as attending an illegal gathering. After receiving the confession about the pipe I issued the passenger a citation for the pipe and informed Nenninger that he needed to be extremely careful of who he picks up in the future, and that that passenger had left the pipe in the van, and did not admit it was his, then Nenninger would be the responsible party for the illegal narcotics. After the search of the vehicle was complete I issued everyone the appropriate citation and thanked Nenninger for his cooperation and ended the contact.

10. I performed all the work referenced in paragraphs 2 through 9 of this declaration, which includes all the actions described in the First Amended Complaint in this case, within the scope of my current employment.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 11 January 2008.


Christopher J. Lampshire
USDA Forest Service
Law Enforcement Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

TONY NENNINGER,)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 UNITED STATES FOREST SERVICE,)
)
 Abigail Kimbell, Chief of FS,)
)
)
 MARK REY,)
)
 in official capacity as Under Secretary)
 for USDA,)
)
)
 ELLEN HORNSTEIN,)
)
 individually and in official capacity as)
 FS legal counsel,)
)
)
 JOHN TWISS,)
)
 individually and in official capacity as FS)
 law enforcement chief,)
)
)
 OFFICER LAMPSHIRE,)
)
 individually and in official capacity in FS)
 law enforcement,)
)
)
 OFFICER KROGSTAD,)
)
 individually and in official capacity in FS)
 law enforcement,)
)
)
 UNKNOWN JOHN AND JANE DOES,)
)
 individually and/or in official capacities for)
 FS and/or other government agencies,)
)
)
 Defendants.)
)

Case No. 07-3028

DECLARATION OF
CHAD KROGSTAD

DECLARATION OF CHAD KROGSTAD

1. I, Chad Krogstad, have been a law Enforcement Officer with the USDA Forest Service for the past six years. I am a graduate of the University of Idaho and the Federal Law Enforcement Training Center. I also maintain a Patrol and Narcotics certified K9 which I have utilized as a narcotics certified K9 since January of 2004. One of my duties as a Law Enforcement Officer is participating in law enforcement incident details. This includes being assigned to the National Incident Management team as a law enforcement officer assigned to the National Rainbow Gathering that occurred during June and July 2006 on the Routt National Forest in Colorado. While assigned to the National Rainbow Gathering incident in 2006 I was stationed on the Gallatin National Forest in Montana and am currently assigned to the Ouachita National Forest in Arkansas.

2. On June 22, 2006 while assigned as a Forest Service Law Enforcement Officer to the National Rainbow Gathering incident on the Routt National Forest in Colorado, my assignment included assisting other Forest Service Law Enforcement Officers conducting an informational checkpoint on forest roads within the Routt National Forest. My assignments also included responding to assist other officers conducting investigations or requesting assistance to have me utilize my narcotics certified K9 (Kevlar) to alert to the odor of narcotics by walking K9 Kevlar around a vehicle and allowing him to sniff the air around a vehicle. K9 Kevlar is trained to alert to the odor of marijuana, cocaine, methamphetamine and heroin, and alert in a passive manner. K9 Kevlar responds to the odor of narcotics through changes in behavior to include breathing changes, head changes, responding to air movement, and ultimately sitting when he can get as close to the source of the odor as possible. I have successfully

utilized K9 Kevlar in numerous narcotics investigations, to included vehicle area sniffs, search warrant searches, consent searches, and open field sniffs. K9 Kevlar has also successfully maintained an annual certification per Forest Service policy conducted be certified evaluators to observe K9 Kevlar and myself as a K9 team. K9 Kevlar and I also maintain a certification through the National Narcotics Detection Dogs Association (NNDDA).

3. Records of the Violation notice issued to Nenninger by Officer Lampshire for occupying National Forest Land without a permit also indicated a violation notice issued to Mr. Paul Searles a passenger in Nenninger's vehicle at the time of the incident involving Nenninger, for possessing marijuana on National Forest Land. This violation notice indicated that the odor of marijuana was present based on possession of illegal narcotics or drug paraphernalia located in Nenninger's vehicle at the time K9 Kevlar sniffed the air around the vehicle.

4. I performed all the work referenced in paragraph 2 and 3 of this declaration, which includes all the actions described in the First Amended Complaint in this case, within the scope of my current employment.

I declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on 11 January 2008.



Chad Krogstad
Law Enforcement Officer
USDA Forest Service
Ouachita National Forest