

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

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ERROL HOUSTON, JR., :
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 Plaintiff, :
 vs. :
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 CITY OF NEW ORLEANS; LEON :
 CANNIZZARO, District Attorney for the : Civil Action No. _____
 Parish of Orleans, and WARREN J. RILEY, :
 Superintendent of the New Orleans Police :
 Department, :
 :
 Defendants. :
-----X

COMPLAINT

Plaintiff Errol Houston, by and through his undersigned counsel, for his complaint against the Defendants City of New Orleans, Leon Cannizzaro, and Warren Riley, alleges as follows:

NATURE OF THE CASE

1. Plaintiff Errol Houston, Jr. is a resident of the City of New Orleans who was arrested by members of the New Orleans Police Department on July 5, 2008. When he was arrested, Mr. Houston's firearm was seized. All charges were refused by the District Attorney soon thereafter. The Orleans Parish District Attorneys' Office has subsequently refused to return Mr. Houston's firearm to him.

2. At the time of his arrest Mr. Houston was in legal possession of his firearm, and remains lawfully entitled to own, carry and possess a weapon. Defendants' refusal

to return his property constitutes a violation of his second amendment and due process rights, as well as civil conversion.

3. Plaintiff brings this action seeking return of his property, as well as injunctive and declaratory relief and damages.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, because this civil action arises under the Constitution and laws of the United States. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because all parties are residents of this district, and all events giving rise to this Complaint occurred within this district.

THE PARTIES

6. Plaintiff ERROL HOUSTON, JR. is, and at all relevant times was, a resident of the City of New Orleans.

7. Defendant CITY OF NEW ORLEANS is a political subdivision of the State of Louisiana and a municipal corporation, which was at all relevant times the employer of the Defendant District Attorney and New Orleans Police Department personnel, named as Defendants herein. Defendant City is directly liable for acts complained of herein due to the policies, practices, procedures and customs of its employees, who are final policymakers with regard to the policies and practices in question.

8. Defendant LEON CANNIZZARO is the District Attorney for the City of New Orleans. As such, Mr. Cannizzaro is responsible for the policies and procedures of the Orleans Parish District Attorneys' Office with regard to the return of property seized from

persons arrested in Orleans Parish. Defendant Cannizzaro is sued in his official and individual capacities.

9. Defendant WARREN J. RILEY is, and at all relevant times was, the Superintendent of Police for the City of New Orleans. As such, Mr. Riley is responsible for the policies and procedures of the New Orleans Police Department with regard to the handling of property seized from persons arrested in the City of New Orleans. Plaintiff believes that his firearm may still be in the physical possession of the New Orleans Police Department. Defendant Riley is sued in his official and individual capacities.

BACKGROUND AND FACTS

10. Mr. Houston is a law-abiding business owner and veteran of the United States Army who resides in New Orleans East.

11. Mr. Houston has no criminal convictions, is block captain of his neighborhood watch association, and is lawfully entitled to possess a firearm. Pursuant to this right, Mr. Houston lawfully owned a properly permitted Glock 22 .40 caliber, serial number KDR488.

12. Mr. Houston possesses a firearm to protect himself and his family against a rash of crime in his neighborhood.

13. On July 5, 2008, Mr. Houston was arrested. Pursuant to this arrest, his firearm was seized.

14. On August 7, 2008, all charges against Mr. Houston were refused by the Orleans Parish District Attorney.

15. When Mr. Houston attempted to retrieve his firearm, he was advised by the New Orleans Police Department that he needed to secure release of his firearm through the

Orleans Parish District Attorneys' Office. Upon information and belief, the NOPD office that advised of this was the "P.I.D."

16. When Mr. Houston went to the District Attorneys' Office, he was advised that he needed to wait 120 to 150 days after the arrest, to see whether the charges would be reinstated.

17. On November 17, 2008 Mr. Houston went to the District Attorneys Office in another attempt to retrieve his firearm. He was told that they needed to run a background check to determine whether the firearm could be released. He was advised to call back in two days and ask for the duty district attorney.

18. When Mr. Houston called back, he was again advised to call in another two days.

19. On approximately November 24, 2008, Mr. Houston was told that the new District Attorney, Defendant Cannizzaro, had implemented a new policy providing that firearms seized during arrests would not be returned. He was further advised that this policy took effect around November 17, 2008.

20. On June 19, 2009 undersigned counsel sent a letter to Defendant Cannizzaro requesting the he return Plaintiff's firearm, and that he revise his policy. Defendant Cannizzaro has failed to do either, and therefore Plaintiff files this lawsuit.

21. At all relevant times, Defendants were acting under the color of law within the meaning of 42 U.S.C. § 1983, *et seq.*

22. Defendants acted knowingly, recklessly, and with deliberate indifference to Plaintiff's rights.

CAUSES OF ACTION

23. Mr. Houston realleges and incorporates by reference each and every allegation set forth above.

24. Defendants' unlawful retention of Plaintiff's firearm violates Plaintiff's right to bear arms under the United States and Louisiana Constitutions.

25. Defendants' unlawful retention of Plaintiff's firearm violates Plaintiff's due process rights under the United States and Louisiana Constitutions.

26. Defendants' unlawful retention of Plaintiff's firearm constitutes a taking of property without just compensation in violation of the United States Constitution.

27. Defendants' unlawful retention of Plaintiff's firearm constitutes conversion under Louisiana law.

PRAYER FOR RELIEF

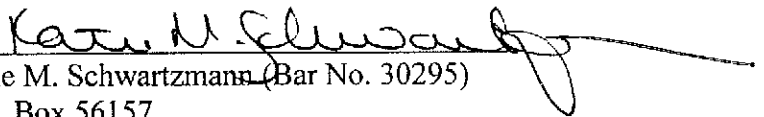
WHEREFORE, Plaintiff Errol Houston prays that the Court enter judgment against Defendants and issue an Order:

- (a) Ordering Defendants to return Plaintiff's firearm;
 - (b) Enjoining Defendants from maintaining the policy of retaining firearms from arrestees without regard to whether the arrestee is convicted of a crime;
 - (c) Declaring that said policy violates the Constitution;
 - (d) Awarding Plaintiff nominal, compensatory and punitive damages;
 - (e) Awarding plaintiff attorneys' fees pursuant to 42 U.S.C. § 1988 and costs;
- and
- (f) Granting plaintiff all other relief that this Court deems just and proper.

Dated: July 2, 2009

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF LOUISIANA

By: 
Katie M. Schwartzmann (Bar No. 30295)
P.O. Box 56157
New Orleans, LA 70156

Attorney for Errol Houston