

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

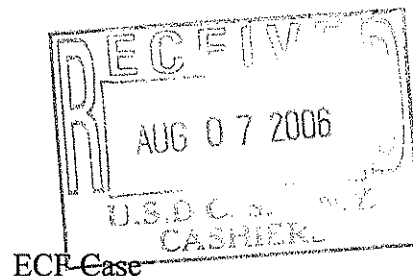
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RAKESH SHARMA,

Plaintiff,

-versus-

The CITY OF NEW YORK; KATHERINE
OLIVER, Commissioner of the Mayor's Office of
Film, Theatre and Broadcasting; JAMES ALAMIA,
Detective of the New York City Police Department;
DANIEL D'ALESSANDRO, Detective of the New
York City Police Department; and MARC,
ALVAREZ Detective of the New York City
Police Department,

Defendants.
-----X



FIRST AMENDED COMPLAINT

06 Civ. 166 (RCC)

PRELIMINARY STATEMENT

1. This is a civil rights action to vindicate the right of law-abiding members of the public to engage in filmmaking and photography in public places in New York City. The plaintiff Rakesh Sharma is an independent documentary filmmaker who in May 2005 was detained for several hours, searched, and harassed by members of the New York City Police Department for doing nothing more than filming on a public sidewalk in midtown Manhattan.

2. During the course of his detention, Mr. Sharma was told that he would need to obtain permission before filming on New York City streets in the future. Though Mr. Sharma was unable to discover written guidelines about who is required to have a film permit or about how decisions are made to grant or to deny film permit applications, the Mayor's Office of Film, Theater and Broadcasting ("MOFTB") informed him that he needed a permit, even though he

was simply using a hand-held video camera to make a documentary film. He therefore applied for a permit in November 2005, but the MOFTB denied his application and refused to provide him with a written explanation for its decision.

2A. Upon information and belief, the NYPD conducts a substantial number of investigations of photographers and filmmakers, with the Department's Intelligence Division participating in many of those investigations. Despite the frequency of such investigations, the NYPD has no policies, procedures or training specifically addressing the investigation of First Amendment protected filmmaking and photography. As a result, members of the Department are unlawfully detaining filmmakers and photographers and are unlawfully attempting to coerce them into destroying images or disclosing them to police officials.

3. The defendants have violated Mr. Sharma's rights under the First and Fourth Amendments to the United States Constitution and his rights under New York State law. Mr. Sharma would like to resume filming in New York City but is afraid to do so because he fears further police detention and harassment, particularly since he is unable to obtain a permit. He seeks declaratory and injunctive relief that will allow him to film in public places, and he seeks compensatory damages for his unlawful treatment in May 2005.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over the plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1343(3-4).

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that plaintiff's claims arise in the Southern District of New York.

6. Jurisdiction to grant declaratory judgment is conferred by 28 U.S.C. §§ 2201, 2202. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. § 1988.

7. This court has supplemental jurisdiction over all state constitutional and state law claims pursuant to 28 U.S.C. § 1367(a).

PARTIES

8. Plaintiff RAKESH SHARMA is a documentary filmmaker who resides in Mumbai, India.

9. Defendant the CITY OF NEW YORK is a municipal corporation within the State of New York.

10. Defendant KATHERINE OLIVER is the Commissioner of the MOFTB. She is sued in her official capacity for injunctive relief.

11. Defendant JAMES ALAMIA is a Detective in the NYPD. He is sued for compensatory damages.

12. Defendant DANIEL D’ALESSANDRO is a Detective in the NYPD. He is sued for compensatory damages.

12A. Defendant MARC ALVAREZ is a Detective in the NYPD. He is sued for compensatory damages.

FACTS

13. Rakesh Sharma is a critically-acclaimed independent international filmmaker. His most recent film, “Final Solution,” documents politics in India through a study of violence in the state of Gujarat. His previous film, “Aftershocks – A Rough Guide to Democracy,” presents the struggle of two small villages destroyed by the January 20, 2001 earthquake against a government-controlled corporation seeking to profit from the earthquake. His documentaries use candid footage of people, places, and events. He does not use actors, sets, or a crew in his films, and often uses a small, hand-held video camera to film.

14. Mr. Sharma is approximately five feet nine inches tall, South Asian, has dark brown skin, and wears a beard. Mr. Sharma is a conscientious, law-abiding citizen. Prior to the incident that prompted this lawsuit, Mr. Sharma had never been arrested or detained by law enforcement officials in the United States or anywhere else in the world.

15. In May 2005, Mr. Sharma was visiting New York City to attend a screening of his most recent movie, “Final Solution.” The screening was co-hosted by the New School University and Columbia University. While in New York, Mr. Sharma intended to film background footage for

his next documentary film, which examines changes in the lives of ordinary people, including taxi drivers, in the post-September 11th world.

16. On May 13, 2005, Mr. Sharma left his hotel at approximately 2:30 p.m. to shoot background footage for his film with a small, hand-held video camera. After walking for approximately ten minutes, Mr. Sharma noticed an interesting visual of cabs emerging from an underpass (“Park Avenue South Underpass”). He stopped near 39th Street and Park Avenue and filmed traffic emerging from the Park Avenue South Underpass for approximately thirty minutes, tilting his camera up to capture the only well-lit building getting direct sunlight among a cluster of other buildings in shadows. He saw no notices prohibiting filming in the area and had seen Caucasian tourists shooting footage in that area the previous afternoon, as well as at the time he was filming.

17. When Mr. Sharma was satisfied with his footage of that scene, he started walking towards Times Square, intending to continue filming images of the city.

18. Mr. Sharma was approached by Detective James Alamia, a man in plain clothes. He flashed his badge rapidly, and asked Mr. Sharma to identify himself. Without hesitation, Mr. Sharma complied with this request and turned over his passport, which the officer kept. Mr. Sharma explained that he was a filmmaker visiting New York City to attend a screening of his film.

19. Detective Alamia questioned Mr. Sharma with words to the effect of “why are you filming the MetLife building?” Mr. Sharma explained that, as part of his work on an upcoming

film involving taxi drivers, he was filming taxicabs emerging from the Park Avenue South Underpass. He said he had no knowledge of, or interest in, the MetLife building, and that he had only tilted his camera up to film the sunlight hitting the buildings as an incidental backdrop.

20. During the course of their conversation, Detective Alamia, who continued to retain Mr. Sharma's passport, instructed Mr. Sharma to accompany him back to the corner of 39th Street and Park Avenue. Mr. Sharma complied with Detective Alamia's request, and offered to put him in touch with his hosts in New York City to verify his identity, which Detective Alamia declined.

21. Detective Alamia then summoned two uniformed patrolmen, Officers Michael Ramirez and John Mola, from across the street to guard Mr. Sharma while Detective Alamia stepped away. When he returned after several minutes, Detective Alamia told Mr. Sharma that he thought it was suspicious that he was filming a "sensitive building" for thirty minutes, and that he would need to be investigated further.

22. Mr. Sharma asked Detective Alamia if he had broken the law, or if he needed police permission to film on the streets of New York City. Detective Alamia did not answer directly, but said, essentially, that shooting for less than five minutes might be fine. When Mr. Sharma asked whether filming for fifteen or twenty minutes would be permissible, Detective Alamia replied with words to the effect of "Buddy, that is going to be a big problem." Mr. Sharma then informed Detective Alamia that he had planned to shoot video footage around the World Trade Center memorial and of the Brooklyn Bridge over the next few days. Detective Alamia told Mr. Sharma that in order to do that, he would need to get permission from every precinct in which he planned to film before he shot any film.

23. Detective Alamia told Mr. Sharma to remain on the corner with Officers Michael Ramirez and John Mola. Detective Alamia continued to retain Mr. Sharma's passport. Detective Alamia then told Mr. Sharma that he was going to look into Mr. Sharma's shoulder bag. When Mr. Sharma asked whether that was legal, Detective Alamia said words to the effect of "I am asking you for your permission. Are you denying me your permission? What are you hiding anyway? Do you have something to hide? And what is in your pockets?" Feeling intimidated by Detective Alamia's hostile and angry demeanor, the presence of the other two officers, and the fact that Detective Alamia still had his passport, Mr. Sharma opened his bag, which contained an umbrella, a banana, a copy of the *New York Times City Guide*, and an issue of *Time Out New York*.

24. Mr. Sharma attempted to turn on his video camera in order to show Detective Alamia his footage, believing that viewing the footage would put the officer's suspicions at ease. Seeing this, Detective Alamia charged at Sharma, shoved him in the chest, and grabbed his camera. He said words to the effect of "we know how to deal with you guys, asshole" and told Mr. Sharma that he was authorized to punch him if necessary. From then on, Detective Alamia kept Mr. Sharma's camera as well as his passport.

25. Mr. Sharma was stunned and scared. He asked Detective Alamia to at least turn the camera off so that the battery would not run out. In response, Detective Alamia pointed to the ground and said words to the effect of "Don't move. You are lucky it is me or else you would be down there with your hands cuffed behind your back." Detective Alamia's actions and threats caused Mr. Sharma to fear for his physical safety.

26. In total, Mr. Sharma was made to wait on the on the corner of 39th Street and Park Avenue outside of a Starbucks café for approximately two hours, during which time hundreds of people passed by or gathered to stare at the scene. Mr. Sharma felt ashamed and humiliated. Officers Michael Ramirez and John Mola guarded Mr. Sharma during this entire time. The officers told him that he was not allowed to move, and Detective Alamia retained both his passport and his camera throughout the period.

27. During this time, Detective Alamia, Officer Ramirez, and Officer Mola repeatedly denied Mr. Sharma permission to make a phone call. He was commanded to keep his hands out of his pockets and in plain view at all times.

28. Toward the end of the two hours, Officer Kenneth McCann arrived and questioned Mr. Sharma. He asked Mr. Sharma the same questions about what he was doing in New York City and why he was filming the MetLife building, and also asked Mr. Sharma for his professional identification, which Mr. Sharma provided.

29. After approximately two hours, Detective Daniel D'Alessandro and Detective Marc Alvarez arrived. They were briefed by Detective Alamia, who handed Mr. Sharma's passport and camera to the detectives. The two detectives questioned Mr. Sharma, again asking him the same series of questions as the other officers. The two detectives then asked Mr. Sharma to accompany them to the 17th Precinct. Mr. Sharma complied, feeling that he had no choice in the matter: in addition to the fact that the detectives were holding both his passport and his camera at this point, he feared that if he did not comply he would be treated as a suspected terrorist, and

could be arrested or held for an unknown period of time without the opportunity to contact his hosts or family and friends.

30. Detective D'Alessandro and Detective Alvarez drove Mr. Sharma to the 17th Precinct. In the car, Mr. Sharma told the detectives that Detective Alamia had shoved him, snatched his camera, and called him an "asshole." Detective D'Alessandro apologized and said words to the effect of "we have some young detectives who have not had adequate time for training."

31. At the precinct, the detectives escorted Mr. Sharma into a room. Detective D'Alessandro brought in a computer and, in the presence of both the detectives, Mr. Sharma searched the internet for his name in order to verify his identity. The search revealed many web pages that mentioned him. At this point, seemingly satisfied that Mr. Sharma was who he claimed to be, the detectives returned Mr. Sharma's passport; however, they continued to hold his camera.

32. After the internet search, Detective D'Alessandro expressed his appreciation for Mr. Sharma's cooperation, and Mr. Sharma asked for his camera back. However, the detectives insisted, against Mr. Sharma's opposition, that it was necessary for them to view the footage on the camera and to show it to their supervisor. The detectives proceeded to play the film, which contained footage of the taxi cabs at Park Avenue as well as footage from Mr. Sharma's recent trip to Los Angeles. The detectives then left the room with Mr. Sharma's camera, presumably to view the footage and to show it to their supervisor. The detectives returned after approximately half an hour. Upon information and belief, the detectives did not have a warrant to search Mr. Sharma's camera.

33. Finally, sometime after 6 p.m., Detective Alvarez returned to the room where Mr. Sharma was being held and returned his camera to him. The two detectives apologized again for the conduct of their colleague and for having detained Mr. Sharma for so long. Mr. Sharma was then released from the precinct without being charged with any offense.

34. Mr. Sharma later noticed that the LCD screen flap of his camera was scratched and that the display window was cracked, which had not been the case when he was using the camera earlier that day.

35. Mr. Sharma proceeded to a book launch relating to the life of taxi drivers hosted by the New York Taxi Workers Alliance that he was scheduled to film, but was so shaken up by the experience that he was unable to film the event. Mr. Sharma was also unable to sleep that night.

36. Mr. Sharma did not film in New York City on May 14th and 15th out of fear that he would again be harassed by the NYPD. He was forced to cancel an appointment with a taxi driver who had taken the day off so that he could meet with Mr. Sharma to drive around the city shooting footage for his film. This significantly set back Mr. Sharma's filming schedule. Mr. Sharma's sole source of income is the sale of his films. As a result, delays in production seriously impact his livelihood.

37. Prior to this incident, Mr. Sharma had also planned to film the World Trade Center memorial commemoration on September 11, 2005 to include in his upcoming film. He had already contacted his travel agent and tentatively made travel arrangements. He canceled his plans because of his fears regarding police harassment while filming in New York City.

38. In November 2005, Mr. Sharma wanted to shoot in New York City for his next film. As a result of Detective Alamia's directive that Mr. Sharma get permission before filming, Mr. Sharma's counsel at the New York Civil Liberties Union sought to ascertain what permit rules might apply to Mr. Sharma and what standards might govern a permit application should he file one.

39. The Administrative Code of the City of New York makes filming on public city property without a permit punishable by a fine or up to 90 days imprisonment, or both. The MOFTB is the New York City agency that issues film permits. Neither the City's regulations nor the MOFTB's own guidelines, however, clearly indicate what types of film activities require a permit. Mr. Sharma's counsel repeatedly attempted to clarify with the MOFTB what standards govern the issuance of permits. Several conversations with various MOFTB staff, including Dean McCann, Production Manager, yielded no specific information.

40. Seeking further clarification, on September 21, 2005, Mr. Sharma's counsel sent a Freedom of Information Law request to the MOFTB for "any rules, regulations, or other official guidelines that do exist" regarding the film permitting scheme. The request was addressed to Nicole Allegretti, Production and Marketing Associate, and was sent via facsimile and first class mail. In response, the MOFTB sent the NYCLU a letter dated October 7, 2005 that said: "In response to your recent inquiry under the Freedom of Information Law, attached please find the guidelines which govern permit issuance." The only materials enclosed with the letter were printouts of the MOFTB's website, which did not offer any further clarification regarding permitting guidelines.

41. A letter dated October 7, 2005 was sent to Dean McCann, Production Manager at the MOFTB, by fax and first class mail summarizing conversations with MOFTB staff regarding the film permitting policy. The letter expressly confirmed that that MOFTB had told the NYCLU that, “there are no written guidelines that embody this policy or lay out requirements for permitting for filming in the city, and specifically that there is nothing in writing that details which, if any, filming requires an official city permit and which does not.” The letter asked that the MOFTB correct any misunderstanding; otherwise, it would be taken as an accurate reflection of MOFTB policy. As of the filing of this complaint, the NYCLU has received no reply.

42. In preparation for Mr. Sharma’s November trip to New York City, on November 4th, Mr. Sharma’s counsel telephoned the MOFTB to inquire whether an independent documentary film maker with only a hand-held video camera required a permit to film in New York City. Mr. Sharma’s counsel spoke with an MOFTB employee who would only identify herself as “Marielle” (she declined to spell her name or reveal her last name), who stated that Mr. Sharma would need a permit.

43. As a result, Mr. Sharma applied for a permit. The MOFTB website states that an applicant for a film permit must present an original certificate of insurance for “at least One Million Dollars . . . in US currency or its equivalent of Comprehensive General Liability for each instance of claim” in order to be eligible for a filming permit. The only stated exceptions to this insurance requirement are for still photography or student films. Mr. Sharma found that the costs of obtaining such insurance were prohibitively expensive.

44. On November 9, 2005, Mr. Sharma applied for a permit from the MOFTB to film in New York City on the dates of November 11 through November 25, 2005. He requested in his application that the insurance requirement be waived, given the prohibitive expense, and the fact that the risk of any damage or injury was negligible for a single person carrying a small, hand-held camera. In a cover letter attached to his application, he also explained that he is a documentary filmmaker who operates in the spontaneous cinema verité style: he had planned to walk around the city, interviewing individuals on the streets, and perhaps riding with taxi drivers on their daily rounds. Given this, it was impossible for Mr. Sharma to specify an exact location where he would be filming.

45. On November 10, 2005, an MOFTB employee who would only identify herself as "Margarita" (later identified as Margarita Acevedo) telephoned Mr. Sharma and denied his application over the phone. She refused to fax or e-mail a written denial of the permit application, claiming that the MOFTB has a policy of not responding in writing to permit applications. She also refused to put Mr. Sharma in touch with someone else who could work with him on his permit application, despite his request. In that phone conversation, Margarita indicated to Mr. Sharma that the MOFTB had denied Mr. Sharma's request for a waiver of the insurance requirement and was denying his application both because of his lack of insurance and because he was unable to specify an exact location where he would be filming on each day.

46. Without a permit, Mr. Sharma canceled his plans to film during his November visit because he feared being harassed or detained by the NYPD.

46A. Upon information and belief, the NYPD receives a large number of reports to its terrorism hotline regarding “suspicious” photography and filming. It is one of, if not the most common type of report received by the hotline.

46B. Upon information and belief, a significant number of photographers and filmmakers have been stopped or detained by members of the NYPD. Some of these photographers and filmmakers have been unlawfully detained, searched, and threatened with arrest if they would not disclose or destroy their film. Photographers have also been subjected to a second round of questioning by members of the NYPD’s Intelligence Division.

46C. Upon information and belief, the Intelligence Division of the NYPD is maintaining a database that includes the identities of everyone investigated for photography by the Division, regardless of the outcome of the investigation.

46D. Upon information and belief, despite the fact that the NYPD investigates a substantial number of individuals engaged in First Amendment protected photography and filming, the Department has no policies, procedures, or training specifically governing investigations of photography, including about the circumstances in which photographers or filmmakers may be detained or about officers’ coerced viewing or destruction of images. As a result of this lack of policies, procedures, and training, members of the NYPD are violating the constitutional rights of filmmakers and photographers, including the rights of Mr. Sharma.

46E. Mr. Sharma plans to be in New York City as early as September 2006 for a screening of his films and to film on city sidewalks, but he fears that he will be harassed, detained, or possibly arrested for doing so.

47. The defendants' actions were taken under color of law.

48. Mr. Sharma filed a Notice of Claim on August 9, 2005.

FIRST CAUSE OF ACTION

49. The defendants' actions violated the plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

50. The defendants' actions violated the plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

51. The defendants' actions violated the plaintiff's rights under §§ 1, 6, 8, 11, and 12 of Article I of the New York State Constitution.

FOURTH CAUSE OF ACTION

52. The defendants' actions violated the plaintiff's rights under the common law of New York to be free from false arrest, assault, and battery.

FIFTH CAUSE OF ACTION

53. New York City's film permitting scheme violates the First Amendment and 42 U.S.C. § 1983 and § 8 of Article I of the New York State Constitution.

WHEREFORE, the plaintiff requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue a declaratory judgment that the plaintiff's arrest and detention violated the First, Fourth, and Fourteenth Amendments to the United States Constitution and violated the Constitution and the laws of New York;
- (3) Issue a declaratory judgment that the MOFTB's permitting scheme for filming in public areas violates the First Amendment to the United States Constitution and violates the New York State Constitution and the laws of New York;
- (4) Issue an injunction enjoining the MOFTB from enforcing its permitting scheme for filming in New York City;
- (5) Award the plaintiff Rakesh Sharma compensatory damages;
- (6) Award the plaintiff's attorneys' fees and costs; and
- (7) Grant any other relief the Court deems appropriate.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION



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Counsel for the Plaintiff

Dated: August 7, 2006
New York, N.Y.

*These individuals are students who the Court has authorized to serve as counsel in this matter pursuant to the Southern District's Plan for Student Practice in Civil Actions.