

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
 BIRMINGHAM DIVISION**

<b>EMANTIC BRADFORD, SR.,</b>	)	
	)	
<b>APRIL PIPKIN,</b>	)	
	)	
<b>AMERICAN CIVIL LIBERTIES UNION    OF ALABAMA,</b>	)	
	)	<b>Civil Action No.:</b>
<b>ALABAMA STATE CONFERENCE OF THE    NATIONAL ASSOCIATION FOR THE    ADVANCEMENT OF COLORED PEOPLE</b>	)	
	)	
<b>DILLON NETTLES, and</b>	)	
	)	
<b>BENARD SIMELTON,</b>	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
<b>STEVE MARSHALL, in his official capacity as    Attorney General of Alabama, and</b>	)	
	)	
<b>NICHOLAS C. DERZIS, in his official capacity    as Police Chief of the City of Hoover, Alabama,</b>	)	
	)	

Defendants.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

(1) This is an action under the Alabama Public Records Law, Ala. Code § 36-12-40, to compel the production of certain public writings held by the Defendants in their official capacities. Plaintiff seeks injunctive and declaratory relief to compel Defendants to disclose the requested records.

**Jurisdiction and Venue**

- (2) This is an action arising under the laws of the State of Alabama. *See* § 36-12-40.
- (3) This Court has jurisdiction pursuant to Ala. Code §§ 12-11-31(1) and 12-11-33(1).
- (4) Venue is proper in this Circuit Court pursuant to Ala. Code § 6-3-2(b)(3) because

Defendant Derzis is a material defendant. The acts or omissions complained of occurred in Jefferson County. Additionally, on information and belief, Defendant Derzis resides in Jefferson County and Defendant Marshall regularly conducts business in Jefferson County.

- (5) Joinder of the other named defendant, Defendant Marshall, is appropriate pursuant to Alabama Rule of Civil Procedure 20(a) because this complaint asserts against them a right to relief arising out of the same series of transactions or occurrences, and questions of law and fact common to all of them will arise in the action.

### **The Parties**

- (6) Plaintiff Emantic Bradford, Sr. is the father of Emantic (E.J.) Bradford, Jr. and a citizen of Alabama and the United States. Plaintiff April Pipkin is the mother of E.J. Bradford, Jr. and a citizen of Alabama and the United States. The request was signed on their behalf by their attorney, Benjamin Crump.
- (7) Plaintiff American Civil Liberties Union of Alabama (“ACLU of Alabama”) is a non-profit corporation organized under the laws of the State of Alabama. The ACLU of Alabama is a membership-based organization based in Montgomery, Alabama, with members throughout the state. Its mission is to preserve and protect the civil liberties and civil rights guaranteed by the U.S. Constitution, especially the principles contained in the Bill of Rights.
- (8) Plaintiff Alabama State Conference of the National Association for the Advancement of Colored People (“Alabama NAACP”) is a non-profit corporation organized under the laws of the State of Alabama. The Alabama NAACP is a membership-based organization based in Athens, Alabama, with members throughout the state. Its mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination.

- (9) Plaintiff Dillon Nettles is a Policy Analyst at the ACLU of Alabama, and a citizen of Alabama and the United States.
- (10) Plaintiff Benard Simelton is President of the Alabama NAACP, and a citizen of Alabama and the United States.
- (11) Defendant Steve Marshall is the Attorney General of Alabama. In that capacity, he has possession and control over the records that Plaintiffs seek. He is also responsible for ensuring that the Office of the Attorney General conducts its activities in a manner consistent with all constitutional and statutory requirements.
- (12) Defendant Nicholas C. Derzis is Chief of Police of the Hoover Police Department. In that capacity, he has possession and control over the records that Plaintiffs seek. He is also responsible for ensuring that the Hoover Police Department conducts its activities in a manner consistent with all constitutional and statutory requirements.

### **Background**

- (13) On November 22, 2018, a Hoover Police Department officer shot and killed Emantic (E.J.) Bradford Jr., a 21-year old Black man, three times from behind, killing him. The officer later told investigators that he did not give a warning before opening fire, and did not activate his body camera until after he opened fire.
- (14) After the officer shot Mr. Bradford, he and one or more other officers approached Mr. Bradford's body. At or near Mr. Bradford's body, two or more officers then made a fist-bump gesture. On information and belief, they did not attempt to render first aid to Mr. Bradford before making this celebratory gesture.
- (15) On December 13, 2018, Defendant Marshall announced that his office was assuming jurisdiction over the criminal investigation of the shooting of E.J. Bradford. On

information and belief, this is the first time that the Office of Attorney General has used its authority to remove a District Attorney from a homicide investigation since 1954, when the Alabama Attorney General assigned special prosecutors to investigate and prosecute the murder of Albert Patterson.

(16) On February 5, 2019, the Alabama Office of Attorney General publicly issued a report concluding that the officer's actions were "justified and not criminal," and that the officer "followed accepted standards by eliminating the threat Bradford posed," and that the Attorney General would not submit any criminal charges to a grand jury. This report relied on numerous reports, photographs, interviews, video footage, and analyses. However, only a limited portion of these materials were released to the public.

(17) The officers identified as Officer 1, Officer 2, Officer 3, and Officer 4 in the Attorney General's report were on duty, in uniform, and acting under color of law at all times relevant to the records sought in this complaint. Each of their names, faces, and badges were visible to people in the vicinity. Under these circumstances, the officers have no privacy interest in preventing the disclosure of their names.

(18) The Office of the Attorney General of Alabama, as well as the government of the City of Hoover, derives its legitimacy from being both democratically elected and subject to constitutional and statutory limits on its power. Public access to the records requested by Plaintiffs is an important part of that accountability to the public. In the wake of the police killing of E.J. Bradford, which has amplified the fear and mistrust that many Black and brown Alabamians feel toward the police, such transparency and accountability is especially important.

**Plaintiffs' Public Records Requests**

(19) On February 20, 2019, Plaintiffs submitted a public records request, attached as EXHIBIT 1, to Defendant Marshall and Defendant Derzis. The request was delivered to Defendant Marshall via hand delivery and to Defendant Derzis via First Class U.S. Mail and via e-mail to his attorney.

(20) The request seeks the following:

1. All Body-Worn Camera footage recorded by Hoover Police Department inside the Riverchase Galleria Mall on November 22, 2018.
2. All metadata for the footage produced in response to Request 1, including but not limited to date, BWC identifier, assigned officer, categorization and tagging information.
3. All audit and event logs dated November 22, 2018 for the BWC equipment that recorded footage produced in response to Request 1.
4. For any BWC data that could have been responsive to Requests 1, 2, or 3 but has been deleted, all records regarding the deletion and/or the reasons for such deletion.
5. All written documentation of failures to record, interruptions of recording, or terminations of BWC recording pursuant to Hoover Police Department SOP 100.18(B)(5) on November 22, 2018 for officers who were present in the Riverchase Galleria Mall on that date.
6. All other videos in your custody or control that relate to the shooting death of Emantic (E.J.) Bradford Jr. This includes any videos (including cell phone video, mall surveillance video, and any other video) that depict Mr. Bradford, Erron Brown, Brian Wilson, the officers involved in the shooting, or the vicinity of the

shooting preceding, during, and after the shooting of Mr. Bradford until his body was removed from the scene.

7. Documents that identify the names of the officers described as Officer 1, Officer 2, Officer 3, and Officer 4 in the Attorney General's report.
  8. All records and files that were considered, reviewed or utilized by the Attorney General and his staff in issuing his report.
  9. All records, files and correspondence relied upon by the Attorney General in his decision to take over the investigation from the Jefferson County District Attorney.
- (21) There is a strong public interest in public access to these records, including but not limited to: understanding the reasoning and process that the Attorney General used to reach his highly unusual decision to take over the homicide investigation, identifying and understanding the roles and identities of the officers involved in this incident, understanding E.J. Bradford's actions in the Riverchase Galleria before he was shot, and understanding the extent to which Hoover Police Department officers complied with applicable laws and with Hoover Police Department policies and training during and after the shooting of Mr. Bradford.
- (22) In addition to generally sharing the records with the public, Plaintiffs plan to provide analysis and commentary on these records to the public.
- (23) Accordingly, disclosure of the requested records could not reasonably be expected to be detrimental to the public safety or welfare. To the contrary, it benefits the public welfare and serves important values of transparency and accountability.

**Defendant Marshall's Response**

(24) Defendant Marshall responded to the request by letter on March 1, 2019, via a letter signed by G. Ward Beeson III, Chief of the Opinions Division of the Office of Attorney General. In this letter, Mr. Beeson responded on behalf of Defendant Marshall and the Office of Attorney General as follows:

- a. As to Request 2, the Office of the Attorney General asserted that “metadata is not subject to disclosure” but also stated that the office “does not possess a written record of the requested metadata.”
- b. As to Requests 3, 4, and 5, the Office of the Attorney General denied that it possesses any responsive records.
- c. As to Requests 1, 6, 7, and 8, the Office of Attorney General admitted that it possesses responsive records. However, it completely refuses to disclose these records on four grounds: (1) it asserts that all responsive records are “[l]aw enforcement investigative reports and related investigative material” that are protected from disclosure under Ala. Code § 12-21-3.1(b); (2) it asserts that “consistent with the first stated reason and advice given to this Office by the Alabama State Bar, disclosure of investigative records could compromise the pending criminal investigation and/or prosecution of Erron Brown”; (3) it selectively quotes from the public infrastructure exception to Ala. Code § 36-12-40 and asserts that the records fall under this exception because “this Office understands that threats of physical harm, including death, have been made against Hoover police officers regarding this incident”; and (4) without explanation of why this exemption should apply, it asserts that “disclosure would be ‘detrimental to the

best interests of the public.’’ None of these assertions were supported by an index of the records being withheld, nor was any supporting documentation or other evidence provided.

- d. As to Request 9, the Office of the Attorney General produced one responsive document, consisting of a December 11, 2018, letter from District Attorney Danny Carr to Defendant Marshall. The Office of the Attorney General represents that this is the only responsive document in its possession, custody, or control.
- (25) Defendant Marshall’s refusals to produce records in his custody, possession, or control rely on exemptions to the Public Records Law that do not apply or, to the extent they do apply, are asserted in an overbroad manner.
- (26) As to Request 2, to the extent Defendant Marshall asserts that electronically-stored metadata is categorically not subject to disclosure, this assertion is incorrect and any withholding based on such an assertion is unlawful.
- (27) As to Requests 1, 6, 7, and 8, Defendant Marshall’s assertions that records are not subject to disclosure do not apply or, to the extent they do apply, are asserted in an overbroad manner. First, his characterization of all responsive records as being subject to Ala. Code § 12-21-3.1(b) is overbroad on its face. To the extent this provision may apply to any particular responsive record, that determination can be made only after he produces an itemized index that describes each such record and the basis for exempting it from the Public Records Law with particularity. Additionally, as to each responsive document, the information cannot be obtained from other sources without undue hardship. Second, Defendant Marshall’s sweeping assertions of harm to the Erron Brown homicide investigation are so overbroad that they contradict his February 5, 2019, investigation



report, which stated that “the Attorney General can disclose any information that he considered when determining whether to seek criminal charges against Officer 1, unless that information could either (a) prejudice Erron Brown’s case or (b) heighten the public’s condemnation of Erron Brown,” and concluded that “[e]verything that occurred from the moment Erron Brown shot Brian Wilson can be disclosed” to the public.<sup>1</sup> Third, Defendant Marshall’s assertion that the Attorney General “understands that” threats have been made against Hoover police officers is hearsay, lacks specificity, and does not explain why these alleged threats properly trigger the public infrastructure exception to the Alabama Public Records Law. Fourth, Defendant Marshall’s assertion that disclosure would be against the public interest is conclusory and does not does not outweigh the public interest in disclosure. *See Stone v. Consolidated Publishing Co.*, 404 So. 2d 678, 681 (Ala. 1981) (setting forth balancing test).

### **Defendant Derzis’ Response**

(28) Defendant Derzis responded by letter on March 8, 2019 via a letter signed by Cecil H. Macoy of Wallace, Jordan, Ratliff & Brandt, LLC, an attorney representing Defendant Derzis. As to Requests 1, 6 and 7, Defendant Derzis makes the same objections as Defendant Marshall (see ¶ 24 *supra*). As to Requests 2 and 3, Defendant Derzis asserts the same objections as he asserts to Request 1. Defendant Derzis represents that no records responsive to Request 4 or Request 5 exist. Defendant Derzis further represents that no data or video that could have been responsive to Requests 1, 2, or 3 has been deleted.

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<sup>1</sup> *See* Attorney General’s Report Regarding the Officer-Involved Shooting Death of Emantic (“E.J.”) Bradford, Jr. at the Riverchase Galleria on November 22, 2018, at 5 (Feb. 5, 2019), available at <https://ago.alabama.gov/Documents/news/Hoover/Report.pdf>.

- (29) Defendant Derzis’ refusals to produce records in his custody, possession, or control rely on exemptions to the Public Records Law that do not apply or, to the extent they do apply, are asserted in an overbroad manner. Defendant Derzis’ refusals lack merit for the same reasons that Defendant Marshall’s near-identical refusals lack merit. Additionally, Defendant Derzis has custody, possession, or control over electronically-stored records responsive to Request 2. Accordingly, any withholding of such records must be justified by a properly-supported exemption.

### **CAUSE OF ACTION**

#### **Violation of the Alabama Public Records Law**

- (30) The allegations set forth in the foregoing paragraphs are incorporated herein by reference.
- (31) The Alabama Public Records Law, Ala. Code § 36-12-40, provides the public with “a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.”
- (32) The records described in the requests attached as exhibits are public writings within the meaning of Ala. Code § 36-12-40, and are not subject to any exemption from disclosure.
- (33) Defendants Marshall and Derzis have refused to give Plaintiffs access to or copies of numerous documents described in their records request.
- (34) Under the Alabama Public Record Law, “the party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them.” *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856–57 (Ala. 1989). These exceptions “must be strictly construed.” *Id.* at 856. Defendants Marshall and Derzis have not met their burden to justify refusing disclosure.

- (35) Plaintiffs have a statutory right to the public writings they seek, and there is no legal basis for the Defendants' failure to disclose them.
- (36) It is in the interest of the people of Alabama that these records be made available to the public.
- (37) By failing to give Plaintiffs access to and copies of the requested public writings within a reasonable time, Defendants Marshall and Derzis have violated and are continuing to violate Ala. Code § 36-12-40 and Plaintiffs' rights thereunder.

**Requested Relief**

WHEREFORE, plaintiff prays that this Honorable Court:

- A. Assume jurisdiction over this action;
- B. Declare that the requested records are public writings within the meaning of Alabama's Public Records Law, as defined by *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678 (Ala. 1981) (citing Ala. Code § 36-12-2) and other decisions of the Alabama courts;
- C. Declare that Defendants' withholding of the requested public records is unlawful;
- D. Order Defendants to immediately make the requested records available to Plaintiffs;
- E. Direct Defendants to waive all fees associated with Plaintiffs' requests and produce the records by mail or email;
- F. Award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- G. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/Kira Fonteneau

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/s/Randall C. Marshall

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/s/Brock Boone

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/s/Ben Crump

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/s/ Rodney F. Barganier

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**PLEASE SERVE DEFENDANTS AS FOLLOWS:**

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Nick Derzis, Chief  
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Hoover, Alabama 35216

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

<b>EMANTIC BRADFORD, SR., et al.</b>	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
<b>STEVE MARSHALL</b> , in his official capacity as Attorney General of Alabama, and	)	<b>Civil Action No.:</b>
	)	
<b>NICHOLAS C. DERZIS</b> , in his official capacity as Police Chief of the City of Hoover, Alabama,	)	
	)	
Defendants.	)	

**VERIFICATION OF RANDALL C. MARSHALL**

I verify under penalty of perjury that the organization of which I am the executive director, the American Civil Liberties Union of Alabama, is a Plaintiff in the within and foregoing action, and that the facts contained in the complaint are true and correct to the best of my knowledge, information, and belief.

SO VERIFIED this 8th day of March 2019.

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Randall C. Marshall, as Executive Director  
of the American Civil Liberties Union of Alabama

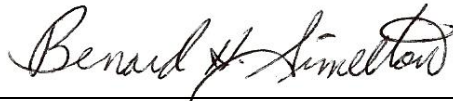
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Defendants.	)	

**VERIFICATION OF BENARD SIMELTON**

I verify under penalty of perjury that the organization of which I am the president, the Alabama State Conference of the National Association for the Advancement of Colored People, is a Plaintiff in the within and foregoing action, and that the facts contained in the complaint are true and correct to the best of my knowledge, information, and belief.

SO VERIFIED this 8th day of March 2019.



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Benard Simelton, as President  
of the Alabama State Conference of the  
National Association for the Advancement of  
Colored People