

ORIGINAL

No. _____

24-7299

IN THE

FILED
MAR 12 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

Jerry L. Hoffman — PETITIONER
(Your Name)

vs.

Delgado et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Cir. Ct. of Apps.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jerry L. Hoffman
(Your Name)

18470 SE 18th Lane
(Address)

Williston, Florida 32696
(City, State, Zip Code)

(352) 339-4682
(Phone Number)

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QUESTION(S) PRESENTED

1. Whether there exists a circuit split on municipal recording bans violating the First Amendment?
2. Whether a Middle District Court can dismiss with prejudice and without independent evaluation a case based on a previously unresolved case the Plaintiff dismissed before summary judgement or trial.
3. Whether a city ordinance that prohibits video recording in public areas within enclosed City-owned, controlled, and leased properties by declaring all areas as limited public forum, is a prior restraint on free speech and free press, is presumptively unconstitutional under the First Amendment?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Jerry L. Hoffman Jr.
PETITIONER
V.
Jose Delgado and City of Punta Gorda Florida
RESPONDENT

RELATED CASES

Jerry L. Hoffman Jr. v. Jose Delgado and City of Punta Gorda
Case No.2:23-cv-130-SPC-NPM
U.S. District Court for the Middle District of Florida, Judgement
September 21, 2023

Jerry L. Hoffman Jr. v. Jose Delgado and City of Punta Gorda
Case No.23:13213A
U.S Court of Appeals for the 11th Circuit Judgement entered
January 3, 2025.

Jerry L. Hoffman Jr. v. Jose Delgado and City of Punta Gorda
Case No. 23:13213A
U.S. Court of Appeals for the 11th Circuit En Banc entered
February 21, 2025

Charlotte County Florida Circuit Court for the 20th Judicial
Circuit Judge Lisa Porter Case No. 22-1209F
Case No. 22001209F Judgement, December 19, 2023

District Court of Appeal of the State of Florida
Six District Court Case No. 6D2024-0247

Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Petitioner Jerry L. Hoffman discloses the following; there is no parent or publicly held company owning 10% or more of Petitioner's stock.

Respectfully submitted

ls/ J L Hoffman
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FEBRUARY 22, 2025

ORIGINAL

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APPENDIX B	Middle District of Florida Judge's order and Plaintiff's complaint
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Boyd v. Benton County, 374 F.3d 773 (9th Cir. 2004)	p7
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 3, 2025

[] No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 13, 2025, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment Right of freedom of speech and free press.

Fourth Amendment Right to be secure in our person, papers and effects.

Fourteenth Amendment Right to due process of law.

Statement of the Case

This case addresses violations of the First, Fourth, and Fourteenth Amendments.

Specifically, it concerns:

1. The First Amendment right to free speech and free press, including the right to video record public officials performing their duties in public spaces without prior restraint.
2. The Fourth Amendment right to be secure in one's person, papers, and effects, alongside protections against excessive force and unlawful seizures.
3. The Fourteenth Amendment right to due process of law.

Hoffman, a disabled veteran, entered the public lobby of the police department on July 28, 2023, to file a complaint and submit a FOIA request. He was denied service and subsequently arrested under a city ordinance. Police body-worn camera (BWC) footage corroborates the following facts:

- Officers did not inquire whether individuals present with Hoffman had consented to be recorded. Nor did they inform Hoffman that ceasing video recording was required to receive service, as due process under the ordinance would necessitate. Instead, they ordered Hoffman to "step outside" or face trespass charges.

- After Hoffman requested the Police Information Officer and began to leave, an officer employed excessive force: shoving Hoffman to the floor, dragging him across it, and physically grabbing him again, even though Hoffman was neither detained nor arrested at that time.
- The officer retaliated by arresting Hoffman on fabricated charges, falsely claiming Hoffman struck him. While handcuffed and lying face down on the floor, Hoffman endured additional excessive force as the officer pulled upwards on his arms, nearly dislocating his shoulders. This punitive conduct occurred despite Hoffman posing no threat, as confirmed by BWC footage.
- The officer in question has a documented history of excessive force complaints and prior termination.

Further compounding these constitutional violations:

- Hoffman's own body-worn camera (BWC) was seized by the officers without a warrant. After four requests to return the recording device, the footage was neither introduced in criminal court nor provided during discovery, despite Hoffman receiving a receipt for the device. To date, the camera remains in police custody.
- Hoffman was not Mirandized upon his arrest, depriving him of his rights and protections during the process.

The ordinance itself presents significant constitutional issues:

- It functions as a prior restraint, inhibiting government transparency without a compelling interest. For example, the city manager permits mainstream media to record in the police department without others' consent, but Hoffman—holding a differing viewpoint—is restricted.
- Its language is overbroad, prohibiting recording in public spaces within city-owned, controlled, or leased property. This contradicts Supreme Court precedent in *United States v. Grace*, 461 U.S. 171 (1983), which recognizes traditional public forums like streets, sidewalks, and parks as spaces protected for expressive activities.
- It fails First Amendment scrutiny, as prior restraint based solely on business interests lacks justification (*Standard of Review for Prior Restraint and Censorship*, 16A Am. Jur. 2d Constitutional Law §476). The ordinance also violates the principles of viewpoint neutrality and alternative channels of communication as established in *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983).

Despite these issues, the Middle District Court dismissed Hoffman's complaint with prejudice, relying on *Sheets v. City of Punta Gorda*, 415 F.Supp.3d 1115 (M.D. Fla. 2019). Notably, the *Sheets* case was dismissed by the plaintiff before

resolution, rendering its application here inappropriate. The Middle District Judge also erred by:

- Overlooking critical facts, such as the timeline of Hoffman's arrest and the officer's unprovoked use of excessive force. Hoffman was neither detained nor informed he was under arrest before being assaulted, contrary to the judge's assertion.
- Ignoring Supreme Court precedent requiring liberal construction of pro se complaints (*Estelle v. Gamble*, 429 U.S. 97 (1976)) and failing to view facts most favorably to Hoffman.
- Dismissing evidence of the officer's manufactured arrest and punitive actions, violating Fourth Amendment protections (*Boyd v. Benton County*, 374 F.3d 773 (9th Cir. 2004); *Franks v. Delaware*, 438 U.S. 154 (1978); *Devenpeck v. Alford*, 543 U.S. 146 (2004)).

Excessive force during Hoffman's arrest further contravenes the reasonableness standard established in *Graham v. Connor*, which evaluates the totality of circumstances from the perspective of a reasonable officer.

The 11th Circuit Court of Appeals affirmed the ruling and swiftly dismissed Hoffman's timely en banc petition. This decision conflicts with other appellate courts, which have upheld First Amendment protections against prior restraint

more robustly. Each day the ordinance remains in effect constitutes an ongoing infringement on free speech.

Hoffman respectfully urges this court to reconsider the case in light of these errors and constitutional principles.

Continues on next page.

Sec. 15-48. Control of Access to City-owned, Controlled and Leased Property

- (a) Consistent with decisions of the U.S. Supreme Court, public access to areas within enclosed facilities owned, controlled, and leased by the City of Punta Gorda may be restricted depending upon whether such areas are classified as "designated public forum", "limited designated public forum", or "nonpublic forum". How areas within enclosed facilities owned, controlled, and leased by the City of Punta Gorda are classified is based upon their intended use. For example, there are certain areas which are intended primarily for the use of City employees in the conduct of their business; there are certain areas which, while primarily intended for the use of City employees in the conduct of their business, may from time to time be utilized for the convening of public meetings; there are certain limited areas which may be open to the public while engaging in legitimate business with City officers or employees; and there may be certain areas which are primarily intended for the convening of public meetings.
- (b) The City Manager is hereby authorized to manage public access to enclosed City-owned, controlled, and leased property. In the performance of such responsibilities, the City Manager shall have the authority to identify which areas are to be considered designated public forum, limited designated public forum, or nonpublic forum.
- (c) Upon the classification of areas within enclosed City-owned, controlled, and leased property, the City Manager is hereby authorized, subject to the availability of appropriated funds, to employ whatever means he deems necessary and appropriate to separate designated public forums from nonpublic forums, including, but not limited to the use of physical barriers and signage. The City Manager shall also have the authority to develop and implement procedures to regulate and control public access within City-owned, controlled, and leased property to provide for the security and privacy of public visitors; to provide for the security and privacy of City employees and officers; and to minimize potential disruptions to the work of City government. Any person who engages in conduct that causes disruptions to the work of City government shall be deemed to no longer be present within the City-owned, controlled, or lease property on legitimate public business.
- (d) The City Council Chambers and conference rooms in the City Hall and City Hall Annex are hereby declared to be nonpublic forums unless or until a public meeting is convened in such areas pursuant to public notice. All City employee work areas within City Hall and the City Hall Annex which are designated by appropriate signage as work areas shall be considered as nonpublic forums. Members of the public are prohibited from entering City employee work areas without being escorted by a City employee. All other areas of the City Hall and City Hall Annex are hereby designated as limited public forums and only persons who are present to engage in legitimate public business with City officers or employees shall be authorized. It shall be a violation of this Ordinance to be within a nonpublic forum or a limited public forum without authorization. Unauthorized persons found by the City Manager or his designee to be within a nonpublic forum or a limit public forum and who refuse to leave the premises upon request, shall be considered a trespasser. Law Enforcement,

at its option, at the request of the City may issue a trespass warning notice for this conduct.

- (e) Except within the City Council Chambers, conference rooms, and other locations in which a public meeting is being conducted pursuant to a public notice, it shall be unlawful and a violation of this Ordinance, to record video and/or sound within City-owned, controlled, and leased property, without the consent of all persons whose voice or image is being recorded. ~~This prohibition shall not apply to any law enforcement activities.~~ In addition to being a violation of this Ordinance, if anyone who is observed to be recording video and/or sound within City-owned, controlled, or leased property, without the consent of all persons whose voice or image is being recorded, and such person refuses to cease activity after being advised that such activity is prohibited under this Ordinance, such refusal shall be considered to be a disruption to the work of City government. Therefore, such persons shall be deemed to no longer be present within the City-owned, controlled, or leased property on legitimate public business. The City Manager and his designees are hereby authorized on behalf of the City of Punta Gorda, Florida to request any person who refuses to cease the unconsented video and/or sound recording to immediately leave the premises. Any person who refuses to cease the unconsented video and/or sound recording, and refuses to immediately leave the premises following the request of the City Manager or his designee, shall be considered as a trespasser. Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for this conduct.
- (f) The City Manager and his designees may have cause to remove any person they determine:
 - (1) Acts in any manner which violates or is reasonably suspected to violate any federal, state or local law, ordinance, rule or regulation; or
 - (2) Acts in any manner which violates any City rules or policy, including but not limited to the Facility Rules; or any directive on any sign or notice at the public property.
- (g) The City Manager and his designees are hereby authorized on behalf of the City of Punta Gorda, Florida to warn persons of this prohibited activity and request such activity to cease. Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for these violations of conduct.

(h) **Facility Rules.** The following conduct is prohibited within the interior spaces of all City-owned controlled, and leased buildings of the City of Punta Gorda:

- (1) Engaging in any conduct prohibited by federal, State of Florida, or City of Punta Gorda law.
- (2) Possessing any weapons, except as specifically permitted by law.
- (3) Smoking, chewing tobacco, use of e-cigarettes or vaping devised, or carrying any lighted or smoldering pipe, cigar, or cigarette.
- (4) Disruptive, harassing or unsafe behavior, including conduct which interferes with City employees or City officials in the performance of their duties, or interferes with the proper use of the City facility by others.
- (5) Abusive or harassing behavior, including use or display or obscene language, gestures, or graphics.
- (6) Blocking entrances, exits, fire exits, access areas, or otherwise interfering with the provision of services or the use of City property.
- (7) Entering or remaining in nonpublic areas without authorization. Areas inside City buildings, including offices, hallways, stairways, and elevators are open to the public only to the extent necessary to attend to City business, or attending a City-authorized function, event, or activity to which the person is an invitee, or attending a duly noticed public meeting. Otherwise, such areas are deemed nonpublic areas.
- (8) Any act which could result in substantial risk of harm to persons or property.
- (9) Disrupting City business, events, or other City sponsored or authorized activities.
- (10) Leaving unattended packages, backpacks, luggage, or other personal items. Any such items are subject to immediate confiscation.
- (11) Laying down or sleeping in chairs, benches, or otherwise.
- (12) Possession of illegal drugs.
- (13) Posting or affixing to City property without permission from the City Manager, or his/her designee, any signs, leaflets, posters, flyers, pamphlets, brochures, and written, pictorial or graphic material of any kind.
- (14) Tampering with or unauthorized use of building or facility systems or devices, including electrical, plumbing, locks, doors or cameras.
- (15) Audio and/or video recording anywhere inside of City buildings except during duly noticed public meetings, or as otherwise approved by the City Manager, or his/her designee. Except as otherwise approved by the City Manager, or his/her designee, audio and/or video recording may only be conducted within the City Council Chamber, and any room, or office within which said activity has been authorized by law. Any person found to be conducting audio and/or video recording except as authorized by herein, must cease doing so immediately if any visitor, City employee or City official expresses his/her desire not to be recorded. This rule does not apply to audio and/or video recording performed by authorized law enforcement personnel engaged in the performance of their official duties. Audio and/or video recording of public meetings must be undertaken in a quiet and orderly manner so as not to interfere with the conduct of the meeting, block the view of any person attending the public meeting, or block any aisle, row, ingress or egress.

- (16) Remaining in a City building after posted hours of operation or after the conclusion of an authorized "after hours" public meeting or event.
- (17) Failure to cease conduct specifically prohibited in items 1 through 16 above immediately after a request by City staff to do so.
- (18) A copy of the foregoing Facility Rules shall be posted in close proximity to all public entrances of City-owned, controlled, and leased buildings of the City of Punta Gorda.

(Ord. No. 1872-17, <sec> 1, 05-03-2017; Ord. No. 1938-2020, <sec> 1, 05-20-2020)

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REASONS FOR GRANTING THE PETITION

A United States Court of Appeals has entered a decision inconsistent with the decisions of eight other United States Courts of Appeals on similar important First Amendment matters of free speech and free press without prior restraint.

A United States Court of Appeals has departed from the accepted and usual case of judicial proceedings, or sanctioned such a departure by the Middle District of Florida, as to call for an exercise of this Court's supervisory power.

The lower courts' decisions reflect significant errors in both factual assessment and legal reasoning, resulting in a failure to uphold fundamental constitutional protections. This case presents critical questions concerning First, Fourth, and Fourteenth Amendment rights that demand the Supreme Court's review to ensure the consistent and just application of constitutional principles. Hoffman respectfully requests that this Court grant the petition for a writ of certiorari to correct these profound missteps and uphold the rule of law.

Respectfully submitted,
Jerry L. Hoffman

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerry L. Hoffman Jr.

A handwritten signature in black ink, appearing to read "J L Hoffman".

Date: February 25, 2025