

RANDALL DICKERSON, GEORGE
HARPER, AND DAKOTA DEMOSS

DOCKET NO: C704293 DIV: 21
705293

19TH JUDICIAL DISTRICT COURT

VERSUS

COLONEL LAMAR DAVIS,
SUPERINTENDENT OF THE LOUISIANA
STATE POLICE AND THE LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana, through the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, and Colonel Lamar Davis, Superintendent, through undersigned counsel, who respectfully requests to dissolve the Temporary Restraining Order issued in this matter for the reasons below:

1.

On March 4, 2021, Petitioners filed a Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, or Alternatively, Writ of Mandamus.

2.

On March 4, 2021, Honorable Judge Ronald Johnson signed a Temporary Restraining Order “prohibiting, restraining, and/ or enjoining Defendants from taking any further action on Internal Affairs Case Nos. 21-007, 21-008 and 21-009, and any other administrative investigations related to the July 16, 2019 (Morgan Blake) and May 23, 2020 (Antonio Harris) incidents pending the hearing of and ruling on Petitioners’ request for a Preliminary Injunction.”

3.

La. C.C.P. Art. 3603(A) provides, “A temporary restraining order shall be granted without notice when: (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.”

4.

La. C.C.P. Art. 3607 provides in pertinent part, “An interested person may move for the dissolution or modification of a temporary restraining order or preliminary injunction, upon two

days' notice to the adverse party, or such shorter notice as the court may prescribe. The court shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

The court, on its own motion and upon notice to all parties and after hearing, may dissolve or modify a temporary restraining order or preliminary injunction.”

5.

Defendant moves to dissolve the Temporary Restraining Order granted on March 4, 2021 because it was granted in contravention of Art. 3603, which requires that it “clearly appear from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.”

6.

The Petition filed by Petitioners was not verified and was not supported by an affidavit attesting that there would there be irreparable injury to the Petitioners before the adverse party or his attorney can be heard in opposition.

7.

Petitioners have not suffered any loss of property at this time and this action is premature.

8.

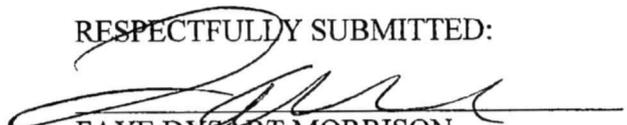
The matters complained of in the Petition fall within the exclusive jurisdiction of the Louisiana State Police Commission, as provided for in Article 10, Section 50 of the Constitution of Louisiana 1974.

9.

The restraining or enjoining of Louisiana State Police from conducting administrative investigations of Petitioners' actions would cause irreparable injury to the State of Louisiana.

WHEREFORE, the State of Louisiana, through the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, Colonel Lamar Davis, Superintendent prays that the Temporary Restraining Order signed on March 4, 2021 be dissolved.

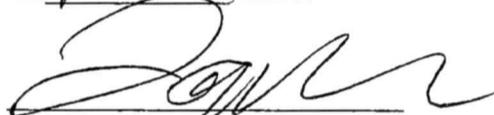
RESPECTFULLY SUBMITTED:



FAYE DYSART MORRISON
LSBA 23049
MICHELE GIROIR
LSBA Bar Roll No. 22393
Department of Public Safety & Corrections
Office of State Police
7979 Independence Blvd., Suite 307 (70806)
P.O. Box #66614
Baton Rouge, LA 70896
Telephone: (225) 925-6103
Facsimile: (225) 925-4624

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing on Randall Dickerson, George Harper, and Dakota DeMoss through counsel of record, Mr. Michael DuBos, and Adam Karamanis via email and by placing a copy of the same in the United States First Class Mail, postage prepaid, on this 5 day of March, 2021.



Faye Dysart Morrison

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ORDER

IT IS HEREBY ORDERED THAT:

- a) Petitioners, Randall Dickerson, George Harper, and Dakota DeMoss, show cause **on the 11 day of March 2021, at 1 o'clock p.m.** why the Temporary Restraining Order should not be dissolved.

Signed in _____, Louisiana on this ____ day of _____, 2021.

Honorable Ronald Johnson
19th Judicial District Court

PLEASE SERVE:

Service Not Necessary

Parties agreed to hearing date via telephone conference with Judge Johnson.

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**MEMORANDUM IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY
RESTRAINING ORDER**

MAY IT PLEASE THE COURT:

The State of Louisiana, through the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, Colonel Lamar Davis, Superintendent, through undersigned counsel, submits the following memorandum in support of its motion and represents that the Temporary Restraining Order issued in this matter should be dissolved for the following reasons.

FACTS

Petitioners seek to enjoin the Louisiana State Police (“LSP”) administrative investigations into two separate uses of force that potentially constitute violations of LSP policy regarding use of force. The Temporary Restraining Order (“TRO”) they obtained extends to any administrative investigations arising out of those two events. The result is that Petitioners have stopped the investigations into eleven administrative violations and potentially other issues of public safety. They did so without showing irreparable harm. They did so without providing the required verified petition or affidavit and they did so in the wrong jurisdiction. For all these reasons, the TRO should be immediately dissolved.

Louisiana State Police is investigating the actions of its troopers as the public has demanded of all law enforcement. The allegations being investigated are uses of force and potential Constitutional violations. LSP cannot adequately investigate these issues without interviewing those persons suspected of those policy violations. Not only is the conduct under investigation but the training, supervision and review of those actions are all under investigation. The types of policy violations that LSP needs to address can be observed by a complete review of the attachments that petitions shared with this honorable court. A detailed review should demonstrate the importance of LSP completing these investigations. Enjoining this type of

investigation undermines the public safety and that is the irreparable harm. The irreparable harm occurs to the public and to this agency if there is another allegation of excessive use of force against our troopers.

On March 4, 2021, Petitioners filed a Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, or Alternatively, Writ of Mandamus.

On March 4, 2021, Honorable Judge Ronald Johnson signed a Temporary Restraining Order “prohibiting, restraining, and/ or enjoining Defendants from taking any further action on Internal Affairs Case Nos. 21-007, 21-008 and 21-009, and any other administrative investigations related to the July 16, 2019 (Morgan Blake) and May 23, 2020 (Antonio Harris) incidents pending the hearing of and ruling on Petitioners’ request for a Preliminary Injunction.”

LAW AND ARGUMENT

Petitioners have not demonstrated Irreparable Harm

Petitioners seek to avoid any further investigation into their conduct. They couch their request in terms of violation of a property right or a due process violation related to their jobs. No action has been taken against their jobs at this point. They are employed. They are being paid and no other administrative action has been taken against them other than paid leave. Participating in an investigation does not constitute a due process violation. Any deprivation of property right in the form of discipline has not occurred and would not occur until the completion of the investigation. At that point, there is a constitutional right to appeal via La. Const. art. 10, sec. 50, and a review process for penalty for violations of the rules, via LSP Commission Rule 12.20 which provides the penalty for violation of the rules. The rules do not provide for terminating the investigation. The rules provide for an appeal and any “disciplinary action taken against the Louisiana State Trooper in violation of these Rules may be reduced, modified or reversed by the Commission.” Where a remedy is provided, there can be no due process violation. They have a right to appeal and a right to a review any disciplinary action including back pay. This does not constitute irreparable harm.

Petitioners did not comply with the statute to obtain an ex parte TRO

La. C.C.P. Art. 3603(A) provides, “A temporary restraining order shall be granted without notice when: (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) The applicant's attorney

certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.”

The comments to the statute indicate the reason for the statute is to reduce the practice of issuing ex parte restraining orders without notice of any kind, and to permit the conduct of some type of adversary proceeding before, rather than after, the issuance of injunctive relief. In other words, it was created for just this type of situation. Petitioners did not verify their representations to the court on the point of irreparable harm prior to Louisiana State Police having an opportunity to be heard.

This Honorable Court Does Not Have Jurisdiction Over This Subject Matter

The 19th Judicial District Court does not have jurisdiction over the subject matter of this request. Petitioners seek to stop the administrative investigation because they want to stop any potential discipline against them. The review of discipline for Louisiana State Police Troopers falls squarely within the Constitutional authority of the Louisiana State Police Commission. *La. Const. Art 10 sec. 50*, which provides:

The State Police Commission shall have the **exclusive power and authority to hear and decide all removal and disciplinary cases**, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses. The decision of the commission shall be subject to review on any question of law or fact upon appeal to **the court of appeal** wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final. (Emphasis added)

Moreover, the LSP Commission has the exclusive authority over violations of their own rules. *La. Const. art. 10 sec. 48*.

The law provides for dissolution of the TRO

La. C.C.P. Art. 3607 provides in pertinent part, “An interested person may move for the dissolution or modification of a temporary restraining order or preliminary injunction, upon two days notice to the adverse party, or such shorter notice as the court may prescribe. The court shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.”

CONCLUSION

Louisiana State Police is investigating the actions of its troopers as the public has demanded of all law enforcement. The allegations being investigated are uses of force and potential Constitutional violations. LSP cannot adequately investigate these issues without interviewing those persons suspected of those policy violations. Not only is the conduct under investigation but the training, supervision and review of those actions are all under investigation.

The types of policy violations that LSP needs to address can be observed by a complete review of the attachments that petitions shared with this honorable court. A detailed review should demonstrate the importance of LSP completing these investigations. Enjoining this type of investigation undermines the public safety and that is the irreparable harm. The irreparable harm occurs to the public and to this agency if there is another allegation of excessive use of force against our troopers.

WHEREFORE, the State of Louisiana, through the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, Colonel Lamar Davis, Superintendent prays that the Temporary Restraining Order signed on March 4, 2021 be dissolved.

RESPECTFULLY SUBMITTED:



FAYE DYSART MORRISON

LSBA 23049

MICHELE GIROIR

LSBA Bar Roll No. 22393

Department of Public Safety & Corrections

Office of State Police

7979 Independence Blvd., Suite 307 (70806)

P.O. Box #66614

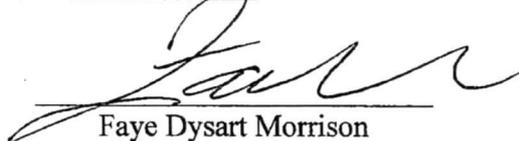
Baton Rouge, LA 70896

Telephone: (225) 925-6103

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I hereby certify that I have served a copy of the above and foregoing on Randall Dickerson, George Harper, and Dakota DeMoss through counsel of record, Mr. Michael DuBos, and Adam Karamanis via email and by placing a copy of the same in the United States First Class Mail, postage prepaid, on this 5th day of March, 2021.



Faye Dysart Morrison