

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPT.
CIVIL ACTION NO.

 MIKHAEL EL-BAYEH)
)
 Plaintiff,)
)
 v.)
)
 MASSACHUSETTS DEPARTMENT OF)
 TRANSPORTATION; JONATHAN GULLIVER,)
 IN HIS INDIVIDUAL AND OFFICIAL)
 CAPACITY AS HIGHWAY ADMINISTRATOR OF)
 MASSACHUSETTS DEPARTMENT OF)
 TRANSPORTATION; COLLEEN OGILVIE, IN)
 HER INDIVIDUAL AND OFFICIAL CAPACITY)
 AS REGISTRAR OF MOTOR VEHICLES;)
 MASSACHUSETTS DEPARTMENT OF STATE)
 POLICE; CHRISTOPHER S. MASON, IN HIS)
 INDIVIDUAL AND OFFICIAL CAPACITY AS)
 COLONEL OF MASSACHUSETTS DEPARTMENT OF)
 STATE POLICE; MICHAEL P. SIERRA, IN)
 HIS INDIVIDUAL CAPACITY)
)
 Defendants.)
 _____)

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CIVIL ACTION AND COMPLAINT

NOW COMES Plaintiff Mikhael El-Bayeh with a civil action pursuant to Mass. R. Civ. P. 2 and thereunder a Complaint pursuant to Mass. R. Civ. P. 7(a). El-Bayeh seeks equitable relief, relief in the nature of mandamus, damages, and/or such other relief as the Court may deem just and proper against Defendants

pursuant to G.L. c. 231A, §§ 1 *et seq.*, G.L. c. 249, § 5, and 42 U.S.C. § 1983 (1996).

PROPER COURT (JURISDICTION AND VENUE)

1. The Superior Court Department of the Trial Court ("Court") has exclusive original jurisdiction over this action pursuant to G.L. c. 212, § 3 and/or original jurisdiction pursuant to G.L. c. 212, § 4 and G.L. c. 249, § 5.
2. The Court has personal jurisdiction over the parties under G.L. c. 212, § 3, G.L. c. 231A, § 2, and 42 U.S.C. § 1983 (1996).
3. The Court has subject matter jurisdiction over this action under G.L. c. 212, § 3, G.L. c. 231A, §§ 1 *et seq.*, G.L. c. 249, § 5, and 42 U.S.C. § 1983 (1996).

PARTIES

4. Plaintiff Mikhael El-Bayeh is a private citizen. El-Bayeh has been licensed to operate motor vehicles in the Commonwealth since 2004. El-Bayeh resides at 10 Dewey Ave, Woburn, MA 01801.
5. Defendant Massachusetts Department of Transportation ("MassDOT") is a body politic and corporate of the Commonwealth established under G.L. c. 6C, § 2.

MassDOT is the administrator of transportation infrastructure in the Commonwealth. MassDOT's principal place of business is at 10 Park Plaza, Suite 4160, Boston, MA 02116.

6. Defendant Jonathan Gulliver is the executive and administrative head ("Highway Administrator") of the MassDOT Division of Highways, as established under G.L. c. 6C, § 37. Gulliver has been highway administrator since on or about May 1, 2017. Gulliver is being sued in his individual and official capacities. Gulliver resides at 131 Settlers Path, Lancaster, MA 01523.
7. Defendant Colleen Ogilvie is the administrator ("Registrar") of the MassDOT Registry of Motor Vehicles ("RMV"), as established under G.L. c. 6C, § 56. Ogilvie has been Registrar since on or about January 21, 2021. Ogilvie is being sued in her individual and official capacities. Ogilvie resides at 6 Wigwam Circle, Arlington, MA 02474.
8. Defendant Massachusetts Department of State Police ("MSP") is a department within the Executive Office of Public Safety and Security established under G.L. c. 22C, § 2. MSP is the statewide law enforcement agency for the Commonwealth. MSP's principal place

of business (General Headquarters) is at 470 Worcester Road, Framingham, MA 01702.

9. Defendant Christopher S. Mason is the executive and administrative head, styled as Colonel and Superintendent ("Colonel"), of MSP as established under G.L. c. 22C, § 3. Mason has been Colonel since on or about November 15, 2019. Mason is being sued in his individual and official capacities. Mason resides at 2005 Main Street, West Barnstable, MA 02668.

10. Defendant Michael P. Sierra is a uniformed member of MSP (ID# 4398) assigned to the Concord Barracks (Station A-3). Sierra is being sued in his individual capacity. Sierra resides at 413 Lowell Street, Peabody, MA 01960.

STATEMENT OF FACTS

11. U.S. Route 3 is a state highway in Burlington, Middlesex County, Massachusetts under the administration of Defendant MassDOT pursuant to G.L. c. 6C, §3(13).

12. Pursuant to 23 U.S.C. § 103(b)(2), U.S. Route 3 is a highway route designated as part of the National Highway System to "serve interstate and

interregional travel and commerce." 23 U.S.C. §
103(b)(1)(C).

13. Defendant MSP provides patrol services on U.S. Route 3, including regular speed enforcement.

Regulatory History and Current Regulatory Scheme

14. In November 1965, the Massachusetts Department of Public Works ("DPW"), a predecessor agency to the MassDOT Division of Highways, executed speed studies on U.S. Route 3.
15. The speed studies determined that the 85th percentile speeds at several observation stations on U.S. Route 3 ranged from 54 miles per hour to 68 miles per hour, with the lower end values noted as occurring during rainy weather conditions.
16. In its 1966 Annual Report, DPW's Traffic Engineering Section reported that "[a] priority schedule for Speed Control operations was continued in the fiscal year 1965-1966. Radar speed meters were used extensively as were trial runs and ball bank speed test runs on curves to properly establish speed zones based on sound engineering principles with regard to the needs of law enforcement."

17. On February 16, 1966, based on the aforementioned speed studies and sound engineering principles, DPW promulgated Special Speed Regulation ("SSR") #321 "in accordance with the provisions of Section 18, of Chapter 90 of the General Laws" and jointly certified in writing with the Registrar that the regulation was consistent with the public interests. SSR #321 established a 60 mile per hour speed limit on entire length of U.S. Route 3.
18. On January 2, 1974, Congress enacted the Emergency Highway Energy Conservation Act which established a national maximum highway speed limit ("NMSL") of 55 miles per hour on highways with four or more divided lanes as first codified in 23 U.S.C. § 154 (1975).
19. The Act coerced state compliance with the NMSL by directing the U.S. Secretary of Transportation to withhold project approval and Federal funding for states that failed to comply with the NMSL.
20. In 1974, U.S. Route 3 was a four lane divided highway and thus was subject to the NMSL. Massachusetts complied with the NMSL and reduced the posted speed limit on U.S. Route 3 to 55 miles per hour.

21. On November 28, 1995, Congress enacted the National Highway System Designation Act which repealed the NMSL by striking 23 U.S.C. § 154 (1991) in its entirety.
22. In Massachusetts, given that no state statute existed and none was subsequently enacted supporting a 55 mile per hour speed limit on U.S. Route 3, the Massachusetts Highway Department ("MassHighway"), the successor to DPW, had a duty to either (1) revert back to the 60 mile per hour posted speed limit under SSR #321 or (2) execute the proper engineering procedures to promulgate a new SSR.
23. MassHighway did not choose either of these options. Instead, on March 29, 1996, it promulgated SSR #7659, which purported to establish a 55 mile per hour speed limit on U.S. Route 3 and any other state highway that had a prior existing SSR with a 60 or 65 mile per hour speed limit, with certain exceptions that do not include U.S. Route 3.
24. As authority to promulgate SSR #7659, MassHighway declared that "this regulation is an emergency measure which is consistent with the public interest."

25. In the previous litigation related to the present dispute, discussed *infra*, prior counsel for MassDOT informed El-Bayeh that SSR #7659 was an attempt by MassHighway to continue the NMSL despite its repeal.
26. In 1996 and continuing to present day, SSRs are legally required to be supported by documented engineering studies which include speed studies. MassHighway lacked any statutory or regulatory authority whatsoever to unilaterally establish a 55 mile per hour speed limit via a so-called "emergency measure" regulation, and thus SSR #7659, promulgated *ultra vires*, is void *ab initio*.
27. On or about 2005, following substantial completion of a major highway improvement project on U.S. Route 3 that included the addition of a third travel lane, ten foot wide paved shoulders, improved entrance/exit ramps and other enhancements, MassHighway executed new speed studies on U.S. Route 3.
28. In connection with the new speed studies, in an Interoffice Memorandum dated October 31, 2005, MassHighway traffic and regulation engineers advised the Chief Engineer that "[t]he existing posted speed

limit (55 MPH) . . . is not in conformance with MassHighway's Speed Zoning Manual."

29. The memorandum recommended increasing the speed limit to 65 miles per hour in order to "reduce conflict and make the roadway safer" and also cautioned that "98% of motorists are travelling at speeds in excess of 55 MPH . . . this creates a situation where state police must decide what *they* think is an appropriate speed limit, regardless of what is posted, since virtually every vehicle is traveling over the speed limit." (emphasis in original).
30. The 65 mile per hour recommendation was made notwithstanding the fact that the new speed studies indicated that the 85th percentile speeds were between 73 and 76 miles per hour.
31. MassHighway took no action related to the memorandum and maintained its position that SSR #7659 was legally promulgated in the public interest.
32. In February 2009, a Road Safety Audit ("RSA") Final Report commissioned by MassHighway was issued by a contracted engineering consulting firm. The purpose of the RSA was to study the incidence of "Major

- Highway Median Cross-Over Crashes" on a segment of U.S. Route 3 in Bedford, Billerica, and Chelmsford.
33. The RSA report included several recommendations to address the median cross-over crashes, one of which read, "A more substantive change is to possibly change the legal posted speed limit from 55 mph to 65 mph. The thesis is that with the speed limits raised, the speed differential will be effectively reduced. Discussion by the RSA team noted that the large speed range could in fact be influencing the frequency of lane change maneuvers that currently occur increasing the risk of an incident."
 34. No action was taken in accordance with the RSA Final Report recommendation.
 35. In a January 2019 email correspondence, a MassDOT employee who participated in the RSA informed El-Bayeh that MSP, whose members participated in the RSA, was responsible for the decision to maintain the 55 mile per hour speed limit.
 36. In a June 2019 email correspondence, the same MassDOT employee informed El-Bayeh that "MassDOT has been working on initiating the process to change the speed limit [on U.S. Route 3] but it is a multipronged effort (both within MassDOT and MSP)."

37. MSP did not have and continues to not have any statutory authority to dictate posted speed limits or override MassDOT's speed zoning procedures, which are discussed further below.
38. MSP General Order TRF-01 states that the goal of traffic law enforcement is to "[m]inimize the incidence of offenses committed on the roadways and to promote voluntary compliance with traffic laws."
39. The current 55 mile hour speed limit on U.S. Route 3, with a 98% violation rate, does not advance MSP's stated goal.
40. Under the 2009 *An Act Modernizing the Transportation Systems of the Commonwealth*, MassHighway was reorganized into the MassDOT Highway Division.
41. At oral argument on appeal for the prior related litigation regarding the legality of SSR #7659, "[MassDOT] counsel conceded that MassDOT must comply with its own regulations in promulgating SSRs and speed limits." El-Bayeh vs. Massachusetts Dep't of Transp.¹, No. 2020-P-0728 at *4-5 (Mass.

¹ MSP was also a defendant in the case.

App. Ct. April 30, 2021) (unpublished Rule 23.0 decision) (El-Bayeh I).

Setting and Enforcing Posted Speed Limits

42. Traffic signs, included posted speed limits, fall under a comprehensive national highway safety scheme that has existed for over 76 years. "On any highway project . . . constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State transportation department with the concurrence of the [Secretary of Transportation], who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways." 23 U.S.C. § 109(d) (2015).

43. Federal Law also holds States accountable for highway safety. "Each State shall have a highway safety program, approved by the [Secretary of Transportation], that is designed to reduce traffic

accidents and the resulting deaths, injuries, and property damage." 23 U.S.C. § 402(a) (2019).

44. Under the aforementioned statutes, the Federal Highway Administration ("FHWA") has promulgated 23 C.F.R. § 655.603(a) (2009), establishing that the "[Manual on Uniform Traffic Control Devices] approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a)."

45. The General Court has enacted statutes expressly including Massachusetts in this national highway safety scheme. "[MassDOT Highway Division] . . . shall erect and maintain on state highways . . . such direction signs, warning signs or lights, curb, street or other traffic markings, mechanical traffic signal systems, traffic devices, or parking meters as it may deem necessary for promoting the public safety and convenience and shall likewise install and maintain in accordance with the department's *current manual on uniform traffic control devices*, such curb, highway, street or other traffic markings as conditions may require or

as may be necessary to carry out the provisions of other statutes related to highway markings." G.L. c. 85, § 2 (emphasis added). "No such [SSR] shall be effective until there shall have been erected, upon the ways affected thereby and at such points [MassDOT Highway Division] and the registrar, acting jointly, may designate, signs, *conforming to standards adopted by the department*, setting forth the speed or other restrictions established the regulation, and then only during such time such signs are in place." G.L. c. 90, § 18 (emphasis added).

46. MassDOT has adopted the current *2009 Manual on Uniform Traffic Control Devices* ("MUTCD") along with the FHWA approved supplement *The Massachusetts Amendments to the 2009 Manual on Uniform Traffic Control Devices* as the *Official Standards of the Massachusetts Department of Transportation, Highway Division* ("MassDOT Standards").
47. The MUTCD defines "Standard-a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device." MUTCD § 1A-13 01 A. Section 2B-13 of the MUTCD

establishes standards for the erection of the R2-1 Speed Limit Sign.

48. The standards include procedural requirements, "Speed zones (other than statutory speed limits) shall only be established on the basis of an *engineering study* that has been performed in accordance with traffic engineering practices. The engineering study *shall include an analysis of the current speed distribution of free-flowing vehicles.*" MUTCD § 2B-13 01 (emphasis added).
49. MassDOT must document the performance of an engineering study. "Engineering Study-the comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding on the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, *through the application of procedures and criteria established by the engineer. An engineering study*

shall be documented." MUTCD § 1A-13 03 65 (emphasis added).

50. There is no documented engineering study associated with SSR #7659.
51. There is no engineering basis whatsoever for the 55 mile per hour speed limit on U.S. Route 3.
52. MassDOT has promulgated *Procedures for Speed Zoning on State Highways and Municipal Roads* ("MassDOT Procedures") in accordance with MUTCD § 1A-13 03 65 to define the aforementioned "procedures and criteria" for establishing posted speed limits.
53. MassDOT Procedures § 2 states, "A regulatory speed limit is one that has completed a thorough traffic engineering study, has a Special Speed Regulation that has been signed by the roadway owner, the Registry of Motor Vehicles, and the MassDOT Traffic & Safety Engineering Section, and has the appropriate numerical speed limit signage erected to clearly define the special speed zones . . . *the establishment of a regulatory speed limit must follow this procedure or it is in violation of MGL c. 90 § 18 and therefore considered unenforceable.*" (emphasis added).

54. MassDOT Procedures § 5.f discusses how the results of a speed study are used to determine the posted speed limit. "The observed 85th percentile speed is the basis for establishing speed zoning. . . . Generally, once the 85th percentile speed has been calculated, the value is rounded to the nearest multiple of 5 to determine the limit."
55. Given that the 2005 speed studies of U.S. Route 3 determined that the 85th percentile speeds were between 73 and 76 miles per hour, it is not only plausible, but probable, that the posted speed limit would currently be 75 miles per hour on U.S. Route 3, had MassDOT followed its own regulations.
56. The 85th percentile speed method has constitutional significance, as it affirmatively prevents situations like the current one on U.S. Route 3 where the government has granted itself a *de facto* general warrant, in violation of the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights, that gives it virtually unlimited discretion to pull over any car it chooses by way of a speed limit that has a nearly 100% violation rate.

57. Adherence to the 85th percentile speed method mitigates the harm caused by the practice of pretextual stops, which disproportionately affects people of color, as recognized by the Supreme Judicial Court, by properly narrowing the scope of police authorization to make traffic stops for speeding, which has the highest enforcement frequency of any civil motor vehicle infraction.
58. Adherence to the 85th percentile speed method has great practical significance, as MSP alone effectuates approximately 650,000 driver contacts on an annual basis, and a large share of these contacts are made under the guise of purported speeding violations.
59. When a lawfully established SSR becomes necessary to preserve and protect the constitutional rights of a vast majority of individuals travelling on a public way, the promulgation and certification of a lawful SSR ceases to be a matter of administrative discretion, as the establishment of an SSR in such a circumstance is undoubtedly consistent with the public interests.
60. As matter of policy, aside from the obvious fact that posted speed limits do not determine the speed

of traffic, MassDOT Procedures § 3 also debunks the common misconception that arbitrarily low speed limits have some kind of "chilling effect" on higher speeds thereby increasing safety, or conversely that raising speed limits will increase the speed of traffic and thereby decrease safety.

61. MassDOT Procedures § 3 states, "To effectively reduce vehicle speeds, setting speed limits should be included only as a part of a broader strategy that includes geometric changes to the road and other educational and enforcement components. Studies have shown that arbitrarily raising or lowering posted speed limits alone will result in a difference of less than 2 mph in mean and 85th percentile speeds. This small change is not practically meaningful and it appears that new posted speed limits alone, without some additional engineering, enforcement, or educational measures, do not have a major effect on driver behavior or encourage most drivers to comply with the posted speed limit. There is also no evidence that shows arbitrarily lowering or raising the posted speed limit will have a statistically significant impact on crash reductions. Based upon this information,

the purpose of creating a speed zone should not solely be based upon an anticipation of reducing speeds. Rather, the zone should be established to increase safety for all road users by setting a reasonable and proper speed that prudent drivers will follow. A speed limit that has been established in accordance to standard traffic engineering practices will diminish the likelihood of vehicles traveling unsafely at disparate rates, aids in driver expectancy, and assists in law enforcement's ability to enforce." (citations and quotations omitted).

62. Section 3 also identifies 27 factors other than posted speed limits that influence how and why a driver chooses the rate of speed at which they travel.
63. Limited access highways, like U.S. Route 3, are also the safest roadways in general, with the lowest rates of so-called "speeding-related" fatalities and the lowest fatality rates overall. This is because the purpose of a limited access highway, with full control of access, prohibition of pedestrians and cyclists, median separation, lack of at-grade intersections, 12 foot wide lanes,

long sight distances, gentle curves with superelevation (banking), clear zones with rumble strips and barriers, crash attenuators, and so on, is to provide the motoring public with a facility for safe and comfortable high speed travel.

64. No public interest is being served by spending hundreds of millions of tax dollars to build such a highway, and then punishing people when they use it for its intended purpose.
65. The legislative goals associated with speed limits are the promotion of public safety and public convenience, not the manufacture of universal pretexts for traffic stops or the perpetration against the public of an unconstitutional "taxation by citation" revenue raising scheme.
66. Setting arbitrarily low speed limits is not only an effective way to expand the pool of potential violators to stop and cite, it is also an effective way to increase the average fine assessment per citation. This is because under G.L. c. 90, § 20, second par., violations of posted speed limits in excess of ten miles per hour over incur an additional \$10 per mile per hour assessment.

67. Since the speed limit on U.S. Route 3 would presumptively be 75 miles per hour had it been lawfully established, this means that every citation issued may include an additional, unlawful assessment of up to \$200, for citations that could be issued at all.

Prior Related Litigation

68. On July 26, 2018, El-Bayeh was stopped on U.S. Route 3 in Burlington by MSP and issued citation #129162AA alleging a single violation for speeding, 96 miles per hour in a 55 mile per hour zone.
69. El-Bayeh contested the citation in the Woburn District Court, the appeal was docketed under docket no. 1853MV000677. A magistrate hearing was held on October 18, 2018. The magistrate found El-Bayeh responsible and imposed the full assessment of \$415. El-Bayeh requested a *de novo* appeal the same day.
70. The judge hearing took place on November 20, 2018. The judge found El-Bayeh responsible and imposed a lesser assessment of \$300. El-Bayeh filed his claim of appeal to the Trial Court Appellate Division on November 21, 2018.

71. On January 2, 2019, the Appellate Division entered the appeal under docket no. 18-ADCI-148NO. On February 27, 2020, the Appellate Division issued a decision and order affirming the District Court's finding of responsible and dismissing El-Bayeh's appeal.
72. On March 13, 2020, El-Bayeh filed his notice of appeal to the Appeals Court. On June 29, 2020, the Appeals Court entered the case under docket no. 2020-P-0700. On February 26, 2021, the Appeals Court affirmed the decision and order of the Appellate Division. 99 Mass. App. Ct. 1113.
73. On July 2, 2021, the Appeals Court issued the rescript to the Trial Court.
74. On June 21, 2019, El-Bayeh filed a complaint in the Suffolk Superior Court under docket no. 1984CV01987-H against MassDOT and MSP. The complaint alleged that MassDOT had unlawfully promulgated SSR #7659 and sought declarations under the declaratory judgment act that SSR #7659 was unlawfully promulgated and unenforceable, and injunctive relief, including a requirement that MassDOT bring the speed limit into compliance with the law and in the meantime it not be enforced.

75. MassDOT and MSP filed motions to dismiss with opposition on October 31, 2019. On January 30, 2020, the Superior Court heard arguments and took the matter under advisement.
76. On February 4, 2020, the Superior Court issued a memorandum and order allowing MassDOT and MSP's motions to dismiss on the basis of an absence of an actual controversy sufficient to allow invocation of G.L. c. 231A, § 1, a lack of standing, see New Bedford Educators Ass'n v. Chairman of the Mass. Bd. Of Elementary & Secondard Educ., 92 Mass. App. Ct. 99, 107-108 (2017), and a failure to state a claim upon which relief could be granted. See Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974).
77. On May 11, 2020, El-Bayeh filed a notice of appeal. On July 3, 2020, the Appeals Court entered the case under docket no. 2020-P-0728. After full briefing, the Appeals Court held oral arguments on February 23, 2021.
78. On April 30, 2021, the Appeals Court issued a decision and order affirming the order allowing the motion to dismiss on the basis that El-Bayeh lacked standing. 99 Mass. App. Ct. 1122.

79. In its memorandum and order, the Appeals Court explained that it had denied El-Bayeh's standing on the basis that he had been charged with speeding in excess of 80 miles per hour, and thus applying a "but for" analysis, El-Bayeh still would have been stopped under a hypothetical lawfully promulgated speed limit.
80. El-Bayeh filed a motion for reconsideration or modification of decision on May 10, 2021, which the Appeals Court denied the same day.
81. El-Bayeh filed an application for further appellate review with the Supreme Judicial Court on May 21, 2021, the SJC entered the application under docket no. FAR-28276.
82. The SJC denied the FAR application on July 1, 2021. El-Bayeh filed a motion for reconsideration on July 5, 2021. The SJC denied the petition to reconsider denial of FAR Application on August 3, 2021.

Actual Controversies

83. Actual controversies have arisen and persist between El-Bayeh and Defendants MassDOT and MSP.
84. El-Bayeh asserts that an operator violation of SSR #7659, standing alone, does not give rise to

reasonable suspicion or probable cause of a violation of G.L. c. 90, § 17, and thus seizures for such a violation infringe on El-Bayeh's rights under the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights. Defendants MassDOT and MSP deny this assertion.

85. El-Bayeh asserts that an operator violation of SSR #7659, standing alone, does not give rise to probable cause of a violation of G.L. c. 90, § 17, and thus the issuance of a citation for such a violation infringes on El-Bayeh's rights under the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts Declaration of Rights. Defendants MassDOT and MSP deny this assertion.

86. El-Bayeh asserts that an operator violation of SSR #7659, standing alone, does not give rise to reasonable suspicion or probable cause of a violation of G.L. c. 90, § 17, and thus seizures for such a violation infringe on El-Bayeh's rights to interstate and intrastate travel under the United States and Massachusetts Constitutions. Defendants MassDOT and MSP deny this assertion.

87. El-Bayeh asserts that an operator violation of SSR #7659, standing alone, does not give rise to reasonable suspicion or probable cause of a violation of G.L. c. 90, § 17, and thus seizures for such a violation infringe on El-Bayeh's right to engage in interstate commerce under the United States Constitution. Defendants MassDOT and MSP deny this assertion.
88. El-Bayeh asserts that an operator violation of SSR #7659, standing alone, does not give rise to reasonable suspicion or probable cause of a violation of G.L. c. 90, § 17, and thus seizures for such a violation infringe on El-Bayeh's statutory right to operate motor vehicles on the ways of the Commonwealth. Defendants MassDOT and MSP deny this assertion.
89. El-Bayeh asserts that fines and surcharges assessed for violations of SSR #7659, which has not been lawfully made under the authority of G.L. c. 90, § 18, lack any legal basis, and thus El-Bayeh has no duty to pay such fines and surcharges. Therefore, any license deprivation or other penalties and sanctions imposed by MassDOT for failure to pay such fines and surcharges violate El-Bayeh's due

process rights under the 5th and 14th Amendments to the United States Constitution, Part II, c. 1, Section 1, art. 4, of the Massachusetts Constitution, and arts. 1, 10 and 12 of the Massachusetts Declaration of Rights, which forbid property deprivations without due process of law. Defendant MassDOT denies these assertions.

Injuries in Fact and Law and Standing

90. El-Bayeh has been ordered to pay \$300 in fines and surcharges to MassDOT related to the July 26, 2018 citation under pain of adverse administrative actions against him including loss of his operating privileges. El-Bayeh has not paid any fines and surcharges as of the filing date of this Complaint.
91. On August 4, 2021, El-Bayeh was lawfully operating his motor vehicle on U.S. Route 3 in Burlington when Defendant Michael P. Sierra, acting under color of law as a uniformed member of MSP, stopped and detained El-Bayeh without consent, reasonable suspicion, probable cause, or a warrant in violation of El-Bayeh's civil rights.

92. Sierra informed El-Bayeh that he was being stopped and detained for speeding because he was driving 72 miles per hour in a 55 mile per hour zone.
93. Sierra subsequently wrote citation #090579AB against El-Bayeh alleging a single civil motor vehicle infraction for 72 miles per hour in a 55 mile per hour zone.
94. On August 20, 2021, El-Bayeh emailed MSP Chief Legal Counsel requesting termination of the prosecution of citation #090579AB which was issued without probable cause. Staff counsel replied the same day advising El-Bayeh to appeal the citation.
95. El-Bayeh timely requested an appeal and paid the required \$25 fee on August 23, 2021.
96. Defendant Gulliver has a non-discretionary duty under G.L. c. 85, § 2, G.L. c. 90, § 18, G.L. c. 6C, § 37, and G.L. c. 6C, § 25 to ensure that SSRs and speed limit signs in force on state highways comply with the law and are in the public interest.
97. By his acts or omissions, including the failure to promulgate and certify a new lawful SSR on U.S. Route 3 and erect conforming speed limit signs thereunder, Defendant Gulliver set in motion a series of acts by others which Gulliver knew or

reasonably should have known would subject El-Bayeh to the deprivation of his rights, privileges, and/or immunities secured by the Constitution and laws of the United States, culminating in the injuries resulting from the July 26, 2018 and August 4, 2021 traffic stops and citations complained of herein.

98. Defendant Ogilvie has a non-discretionary duty under G.L. c. 90, § 18, G.L. c. 6C, § 37, and G.L. c. 6C, § 25 to ensure that SSRs in force on state highways comply with the law and are in the public interest.
99. By her acts or omissions, including the failure to certify a new lawful SSR on U.S. Route 3, Defendant Ogilvie set in motion a series of acts by others which Ogilvie knew or reasonably should have known would subject El-Bayeh to the deprivation of his rights, privileges, and/or immunities secured by the Constitution and laws of the United States, culminating in the injuries resulting from the July 26, 2018 and August 4, 2021 traffic stops and citations complained of herein.
100. Defendant Mason has charge of the administration and organization of MSP and a duty to make all

necessary rules and regulations for the performance of duties by uniformed members pursuant to G.L. c. 22C, § 3.

101. MSP General Order ADM-07, promulgated pursuant to G.L. c. 22C, § 3, imposes a duty on the Colonel to promulgate and sign internal written directives to provide operational guidance to uniformed members.
102. Defendant Mason had actual or constructive knowledge that SSR #7659 was unlawfully promulgated and unenforceable based on privity to prior litigation that MSP was party to on the same subject matter (El-Bayeh I), as well as references to El-Bayeh I in El-Bayeh's speeding ticket appeal², which MSP Chief Legal Counsel directly prosecuted as Special Assistant Attorney General, MSP's participation in the RSA, and MSP's on-going interactions with MassDOT including those related to agreements for police services on state highways pursuant to G.L. c. 22C, § 29.
103. Defendant Mason failed to issue written directives or otherwise communicate down the chain of command that SSR #7659 was unlawfully promulgated and

² Department of State Police vs. Mikhael El-Bayeh, *supra*.

unenforceable. In doing so, Mason acted with deliberate indifference to the civil rights of travelers on U.S. Route 3 and other state highways.

104. Mason's failure to act is supported by a public records request submitted by El-Bayeh to MSP on August 23, 2021 seeking, *inter alia*, records of any such written directives. MSP did not produce any responsive records supporting the existence of any such written directives.
105. Illegal seizures and issuance of citations without probable cause by MSP members predicated on SSR #7659 enforcement actions were known or obvious consequences of Mason's failure to take easily available measures to address a grave risk of deprivation of rights of third parties, including El-Bayeh, who has suffered injuries in fact as a result.
106. There is a significant likelihood that, unless the Court grants relief, the injuries complained of herein will be repeated against El-Bayeh as he continues to regularly travel and engage in commerce within and without of Massachusetts, at his sole discretion, on and by U.S. Route 3 and

other state highways at presumptively lawful rates of speed.

107. El-Bayeh further asserts that the 55 mile per hour speed limit on U.S. Route 3 under SSR #7659 is so inappropriately set relative to actual traffic conditions that not only is operation in excess of SSR #7659 not *prima facie* evidence of a violation of G.L. c. 90, § 17, compliance with SSR #7659 violates a motor vehicle operator's duty to not obstruct unnecessarily the normal movement of traffic upon a state highway under 720 Code Mass. Regs. § 9.06(6) (a) (2004).
108. El-Bayeh faces a heightened risk of corporeal harm and of damage to his property as the laws being violated by Defendants are intended to promote public safety on state highways, as well as the fact that MassDOT has found that SSR #7659 specifically is increasing the probability of crashes occurring on U.S. Route 3.
109. El-Bayeh faces a serious risk of corporeal harm and damage to his property should he again be forced to pull over on the side of a busy highway without legal justification. There have been multiple recent reported instances where stopped vehicles

have been struck on U.S. Route 3 causing death, severe personal injuries, and property damage.

110. The actual and foreseeable injuries alleged herein have been and will continue to be suffered by many other similarly situated individuals, and thus adjudication on the merits is warranted in the public interest.

111. El-Bayeh is monitoring MSP issued citations on U.S. Route 3 via public records requests and has identified multiple citations alleging facts that pass the "but for" harm analysis outlined in El-Bayeh I.

112. The issues complained of herein are capable of repetition yet evading review, a circumstance that is favorable to adjudication on the merits.

STATEMENT OF CLAIMS

Count I

Declaratory Judgment G.L. c. 231A, § 1, 42 U.S.C. § 1983

113. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 112 as if fully set forth herein.

114. This Court is authorized to issue binding declarations of the rights, duties, status, and other legal relations of parties under statutes and

administrative regulations, including determinations of any question of construction or validity, in any case in which an actual controversy has arisen under G.L. c. 231A, §§ 1,2.

115. This Court is authorized to issue binding declarations under G.L. c. 231A, § 1 to enjoin and determine the legality of the administrative practices and procedures of any state agency alleged to be in violation of the laws of the Commonwealth of Massachusetts under G.L. c. 231A, § 2.

116. This Court is authorized to grant relief in actions at law, suits in equity, and/or other proper proceedings for redress according to the laws of the Commonwealth in accordance with 42 U.S.C. § 1983.

117. A favorable ruling will effectively redress the injuries complained of herein.

118. Actual controversies in which El-Bayeh has standing have arisen and persist between El-Bayeh and MassDOT regarding the promulgation of SSR #7659.

119. El-Bayeh seeks a declaration that MassDOT has promulgated SSR #7659 *ultra vires*, that the certifications that SSR #7659 is consistent with

the public interests are void, and that SSR #7659 is invalid and without legal effect *ab initio*.

Count II

Injunctive Relief G.L. c. 231A, §§ 1-2, 42 U.S.C. § 1983, and/or Writ of Mandamus G.L. c. 249, § 5

120. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 119 as if fully set forth herein.
121. El-Bayeh requests that this Court, whether by Writ of Mandamus and/or permanent injunctive relief, order Defendant MassDOT and/or Defendant Gulliver and/or Defendant Ogilvie to promulgate and certify a new SSR on U.S. Route 3 and bring all non-conforming speed limit signs on U.S. Route 3 and other state highways into conformance with law forthwith.

Count III

Injunctive Relief G.L. c. 231A, §§ 1-2, 42 U.S.C. § 1983, and/or Writ of Mandamus G.L. c. 249, § 5

122. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 121 as if fully set forth herein.
123. Actual controversies in which El-Bayeh has standing have arisen and persist between El-Bayeh and MSP regarding the enforcement of SSR #7659.

124. El-Bayeh requests that this Court, whether by Writ of Mandamus and/or permanent injunctive relief, order Defendant MSP and/or Defendant Mason to immediately cease enforcement of SSR #7659.
125. El-Bayeh requests that this Court further order that until such time that either (1) new SSRs are promulgated and conforming signs are posted thereunder, thereby giving motorists proper notice that a lawfully established SSR is in effect at the relevant locations or (2) non-conforming speed limit signs posted under SSR #7659 are removed, thereby giving motorists proper notice that statutorily enumerated unposted speed limits are in effect pursuant to G.L. c. 90, § 17, MSP members shall only enforce the "basic speed law" on the relevant roadways, as laid out in the first sentence of G.L. c. 90, § 17.

Count IV

Injunctive Relief G.L. c. 231A, §§ 1-2, 42 U.S.C. § 1983, and/or Writ of Mandamus G.L. c. 249, § 5

126. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 125 as if fully set forth herein.

127. Actual controversies in which El-Bayeh has standing have arisen and persist between El-Bayeh and MassDOT regarding the enforcement of SSR #7659.
128. El-Bayeh requests that this Court, whether by Writ of Mandamus and/or permanent injunctive relief, enjoin Defendant MassDOT and/or Defendant Ogilvie from taking any adverse actions against individuals accused of violations of SSR #7659 for failure to pay or contest the related assessments and to provide notice to such individuals that no further action is required related to such violations.
129. El-Bayeh requests that this Court further order that Defendant MassDOT and/or Defendant Ogilvie expunge all prior convictions of violations of SSR #7659 from the records of the RMV, refund all paid assessments and costs to innocent individuals, and otherwise annul or reverse any adverse actions that had resulted from such expunged convictions.

Count V
False Arrest, 42 U.S.C. § 1983

130. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 129 as if fully set forth herein.

131. Defendants have, under color of law, subjected, or caused to be subjected, El-Bayeh to the deprivation of his right to be free from unlawful seizure of his person under the Fourth Amendment to the United States Constitution.

Count VI
Unlawful Issuance of Citation, 42 U.S.C. § 1983

132. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 131 as if fully set forth herein.

133. Defendants have, under color of law, subjected, or caused to be subjected, El-Bayeh to the deprivation of his right to be free from the burden of traffic citations alleging offenses not supported by probable cause under the Fourth Amendment to the United States Constitution.

Count VII
Violation of Right to Travel, 42 U.S.C. § 1983

134. El-Bayeh realleges and incorporates by reference the allegations in paragraphs 1 through 133 as if fully set forth herein.

135. Defendants have, under color of law, subjected, or caused to be subjected, El-Bayeh to the deprivation of his fundamental travel rights under the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff El-Bayeh respectfully requests that this Court:

1. Enter a judgment in accordance with the request for declaratory relief in Count I;
2. Enjoin and/or compel Defendants in accordance with the relief requested in Counts II-IV;
3. Award nominal damages in accordance with Counts V-VII;
4. Order Defendants to bear Plaintiff's costs;
5. Grant such other and further relief as it deems just and equitable.

JURY DEMAND

Plaintiff demands trial by jury on all issues properly so tried.

Respectfully submitted,

/s/ Mikhael El-Bayeh

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