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TELECOPIER COVERSHEET

DATE: January 10, 2014

TO: PACIFIC DAILY NEWS
MARIANAS GUAM VARIETY
KUAM NEWS/ TV & RADIO
PACIFIC NEWS CENTER
MARIANAS BUSINESS JOURNAL

FAX NO.: (671) 477-3079
FAX NO.: (671) 648-2007
FAX NO.: (671) 637-9870
FAX NO.: (671) 637-8819
FAX NO.: (671) 649-8883

FROM: ANITA P. ARRIOLA, ESQ. 

RE: James L. Adkins v. Alicia G. Limtiaco, et al.; Civil Case No. 09-00029 (U.S. District Court of Guam)

TOTAL PAGES TRANSMITTING (INCLUDING COVER SHEET): 10

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MESSAGE:

Please find enclosed Press Statement for Immediate Release in reference with the above matter.

If there is a problem with transmittal, please call Cassandra (671) 477-9730/33.

3/01
1/2/14

JOINT PRESS STATEMENT

BY GUAM POLICE DEPARTMENT CHIEF OF POLICE FRED E. BORDALLO

AND JAMES L. ADKINS

TO:	Pacific Daily News	Facsimile No.: 477-3079
	Marianas Guam Variety	Facsimile No.: 648-2007
	KUAM News/ TV & Radio	Facsimile No.: 637-9870
	PacificNewsCenter	Facsimile No.: 637-8819
	Marianas Business Journal	Facsimile No.: 649-8883

FROM: - Guam Police Department
Chief of Police Fred E. Bordallo

And

James L. Adkins

FOR IMMEDIATE RELEASE

PRESS STATEMENT

A confidential settlement has been reached in the lawsuit James L. Adkins v. D.B. Anciano, Scrapino Artui, Jesse P. Rodriguez, and John F. Taitano, Civil Case No. CV09-00029 (U.S. District Court of Guam). The Guam Police Department and its officers have learned important lessons from the case and as a result, have developed comprehensive, mandatory training policies to protect the First and Fourth Amendment constitutional rights of Guam residents. These policies will be implemented immediately and are attributable to James L. Adkins' lawsuit.

OK
1-10-14



GOVERNMENT OF GUAM
HAGATNA, GUAM 96932

December 26, 2013

MEMORANDUM

To: All Personnel

From: Chief of Police

Subject: **General Order 13-005, Volume V-A**
Re: Recording and Photographing Public Events and
GPD Officers by the Public

Attached is General Order No. 13-005, Volume V-A, on the above-referenced subject.

All personnel are hereby directed to read and familiarize themselves with the guidelines of this new General Order and implement its procedures immediately.

All Precinct Commanders, Section Officers-in-Charge, and Unit Supervisors shall ensure a copy of this General Order is posted at their respective areas for their personnel to review. All shift supervisors shall conduct roll call briefing on this matter, until all personnel on their shift are aware of the policy and procedures."

For compliance.

A handwritten signature in black ink, appearing to read "Fred E. Bordallo, Jr.".

FRED E. BORDALLO, JR.

Attachment: G.O. 13-005, Vol. V-A
FEB:scr

**GUAM POLICE DEPARTMENT
HAGATÑA, GUAM**

GENERAL ORDER

VOL. V-A

	Date of Issue: December 26, 2013	Effective: Immediately	No. 13-005
Reference: Video Recording, Photographing, and Audio Recording of Public Events and Guam Police Department Officers by the Public.		Rescinds: Not applicable	
Index As:			

Subject: Recording and Photographing Public Events and GPD Officers by the Public.

Purpose: To establish policies and regulations for the recording and photographing of public events and GPD officers by the Public.

THIS ORDER CONSISTS OF THE FOLLOWING NUMBERED SECTIONS:

- I. POLICY
- II. REGULATIONS
- III. CROSS-REFERENCES

I. POLICY

The Guam Police Department (GPD) recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record public events and GPD officers while GPD officers are conducting official business or while

Guam Police Department

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Subject: Recording and Photographing Public Events and GPD Officers by the Public

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acting in an official capacity in any public space, unless such recordings interfere with police activity.

II. REGULATIONS

A. Officers are reminded that photography, including videotaping, of places, buildings, structures and events are common and lawful activities in Guam.

1. If a person is taking photographs or recording from a place where he or she has a right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.
2. Officers must understand that any bystander has an absolute right to photograph and /or video record the enforcement actions of any Police Officer so long as the bystander's actions do not:
 - a. Place the safety of the bystander, or any Police Officer(s), witness(es), victim(s), or suspect(s), in jeopardy;
 - b. Hinder the execution or performance of an Officer's official duties;
 - c. Interfere with or violate any section of any law, ordinance, code, or criminal or traffic article;
 - d. Involve an intrusion into any area, private property, or other location that is closed to the public or designated as a crime scene.
 - e. Incite an immediate breach of the peace or incite others to commit a violation of the law.

B. In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news media. Officers shall be aware that:

1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.

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2. A bystander has the right under the First Amendment to observe and record public events and officers in the public discharge of their duties.
 3. Public events include, e.g., concerts, traffic accidents, crime scenes, and public meetings.
 4. Public settings include, e.g., parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.
 5. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
- C. As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with an officer's safety, officers shall not inform or instruct people that photographing or recording of public events, police officers, police activity or individuals who are the subject of police action (such as a *Terry* stop or an arrest) is not allowed; requires a permit; or requires the officer's consent. Additionally, officers shall not:
1. Order that person to cease such activity;
 2. Demand that person's identification;
 3. Demand that the person state a reason why he or she is taking photographs or recording;
 4. Detain that person;
 5. Intentionally block or obstruct cameras or recording devices; or
 6. In any way threaten, intimidate or otherwise discourage an individual from recording officers' enforcement activities.

NOTE: Officers may ask questions during the course of a contact, but officers are reminded that there is no justification for ordering a person to stop or

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requiring that they answer unless the officer reasonably suspects that a person has committed, is committing, or is about to commit any crime.

- D. Officers are reminded that the public does not have a right to interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, officers from doing their job.
 1. If a person is photographing or recording a public event or police activity from a position that impedes or interferes with the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop photographing or recording.
 2. If a person is photographing or recording a public event or police activity from a position that impedes or threatens the safety of members of the public, an officer shall direct the person to move to a position that will not interfere. However, officers shall not order the person to stop photographing or recording.
 3. A person's recording of an officers' activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the officer(s), does not constitute interference.
 4. A person has the right to express criticism of the police activity being observed. So long as that expression does not jeopardize the safety of any officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.
- E. Evidence on a Camera or Recording Device; Probable Cause
 1. Probable cause exists where officers have "reasonably trustworthy information" sufficient for a prudent officer to believe that a person had committed or was committing a crime. *People vs. Cundiff*, 2006 Guam 12 ¶¶ 26-27.
 2. If an officer has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the officer shall request that the person either:

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- a. Voluntarily provide the device or recording medium (e.g., the memory chip) to the officer; or
 - b. Where possible and practicable, and in the presence of the officer, voluntarily transmit the images or sound via text message or electronic mail to the officer's official government electronic mail account.
 - c. Consent to take possession of a recording device or medium must be given voluntarily. An officer shall not, implicitly or explicitly, coerce consent to take possession of any recording device or any information thereon.
3. If the person provides the device or recording medium to the officer, the officer shall:
- a. Exercise due care and caution with any of the individual's property or electronic device(s);
 - b. Obtain reporting numbers for the evidence obtained, and provide the reporting numbers to the individual;
 - c. In the Evidence/Property Custody Receipt document the item(s) surrendered by the individual in accordance with GPD procedures;
 - d. Document the officer's request and the individual's response in the narrative of applicable field reports and other documents; and
 - e. Submit the device(s) and a request for analysis to the Information Technology Section, via the Evidential Control Section, to access any relevant material as quickly as practicable.

Officers shall not attempt to view, download, or otherwise access any material contained on the device.

4. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable, and the officer believes that exigent circumstances exist insofar as the evidence of criminal activity will be

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lost absent a seizure of the device, the officer shall contact their immediate supervisor.

- a. The supervisor, or other official with supervisory authority over the officer, must be present at the scene before an officer takes any significant action involving a person's use of a recording device. This includes warrantless search or seizure of a camera or recording device, or an arrest.
- b. The officer shall inform their supervisor of the nature of the evidence of criminal acts believed to be contained on the device.
- c. The supervisor shall, in consultation with his/her immediate supervisor (i.e., Operations Sergeant, Precinct Commander, etc.), determine whether exigent circumstances, including the seriousness of the possible crime at issue, permits the seizure of the device without a warrant. Warrantless seizure is permissible only when:
 - (1) There is probable cause to believe that the property holds contraband or evidence of a crime; and
 - (2) The exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.
- d. If the deciding supervisor (i.e., Operations Sergeant, Precinct Commander, etc.), finds that exigent circumstances permit the seizure of the device without a warrant, approval shall be given to the officer for the seizure.
- e. The officer shall obtain and provide reporting numbers to the individual possessing the device.
- f. Any such seizure must be a temporary restraint intended only to preserve evidence until a warrant can be obtained. *Illinois v. McArthur*, 531 U.S. 326,334 (2001).

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F. Viewing/Listening to Evidence on a Camera or Recording Device

1. Absent exigent circumstances, the officer, or follow up investigators, shall obtain a search warrant before viewing photographs or listening to recordings on a camera or memory chip that has been seized as evidence.
 2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or serious injury, officers shall contact his/her supervisor for authorization to review photographs or recordings without a warrant.
 3. The supervisor, in consultation with the deciding supervisor (ie. Operations Sergeant, Precinct Commander, etc.), may authorize such review without a warrant.
 4. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.
- G. Officers shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images or sounds from any camera or other recording device that is in the possession of a non-officer, or that has been voluntarily turned over or seized under the terms of this order.
- H. Officers shall maintain cameras and other recording devices that are in GPD custody so that they can be returned to the owner intact with all images or recordings undisturbed.
- I. Upon taking custody of the device(s), officers are strongly encouraged to either remove the device's battery or switch it to a "Power Off" condition. This will aid in preventing any remote access to or deletion of the data or other material stored within it.



FRED E. BORDALLO, Jr.
Chief of Police