

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DARIUS LESTER

(b) County of Residence of First Listed Plaintiff McDowell County, WV
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
JOHN H. BRYAN, Attorney at Law, 411 Main Street, PO
Box 366, Union, WV 24983, 304-772-4999

DEFENDANTS
Senior Trooper J.I. Jones, Incividually

County of Residence of First Listed Defendant McDowell County, WV
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.

 Attorneys *(If Known)*
II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		INTELLECTUAL PROPERTY RIGHTS
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 340 Marine Product Liability		<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i>	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability		SOCIAL SECURITY
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 863 DIWC/DIWW (405(g))
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		FEDERAL TAX SUITS
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN *(Place an "X" in One Box Only)*

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District <i>(specify)</i>	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
 42 USC 1983

VI. CAUSE OF ACTION

Brief description of cause:
 Federal Civil rights Violations Under Color of Law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/10/2025

SIGNATURE OF ATTORNEY OF RECORD

/s/ John H. Bryan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**

DARIUS LESTER,

Plaintiff,

vs.

Civil Action No. 1:25-cv-00153

Senior Trooper J.I. JONES, individually,

Defendants.

COMPLAINT

This complaint, brought pursuant to 42 U.S.C. Section 1983, the Fourth Amendment to the United States Constitution, arises out of the Defendants' use of excessive force on the Plaintiff on or about March 10, 2023 near the town of Big Sandy, McDowell County, West Virginia, within the Southern District of West Virginia.

INTRODUCTION

1. In the early hours of March 2023, Darius Lester was fast asleep inside his uncle's home in Big Sandy, West Virginia, having recently gotten off work as a coal truck driver. At around 5:30 a.m., while still completely dark outside, members of the West Virginia State Police Special Response Team ("SRT") executed a search warrant for the home pursuant to an investigation that was entirely unrelated to Darius. He was suddenly and violently awakened by the SRT team, already inside the home. Before he understood what was happening, he was shot multiple times by one of the SRT officers.

2. The SRT members claimed afterwards that, "[u]pon entry, SRT members encountered a male subject," who "had a hammer in his hand and rushed members of the

SRT...." Given the fact that the SRT members purposefully do not wear body-worn cameras, there is no video footage to corroborate their claim. Moreover, the evidence at the scene showed that Darius was shot on, or in the immediate vicinity, of the couch he had been sleeping on, rather than in the vicinity of the home's front door, which was located on the other side of the home and around a corner.

3. Although the West Virginia State Police immediately performed an investigation of the shooting, it's now two years from the date of the incident and no details about that investigation have been provided - either to the public, or to Darius.

4. Darius therefore brings this lawsuit to vindicate his Fourth Amendment rights to not be subjected to a SWAT team suddenly and violently entering his home and shooting him without justification.

JURISDICTION AND VENUE

5. Darius brings this lawsuit under the Fourth Amendment (as incorporated through the Fourteenth Amendment) to the U.S. Constitution, 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because Darius brings claims under the U.S. Constitution and federal laws. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) because Darius seeks to redress the deprivation of federal constitutional rights under the color of state law or custom.

6. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) because all or a substantial part of the events or omissions giving rise to Darius' claims occurred in this district.

THE PARTIES

7. The Plaintiff Darius Lester was at all times relevant hereto a resident of McDowell County, West Virginia, within the Southern District of West Virginia.

8. The Defendant, Senior Trooper J.I. Jones was at all times relevant hereto a sworn law enforcement officer employed by the West Virginia State Police, assigned to the Beckley Detachment of the said agency, located at 105 Pinecrest Drive, Beckley, West Virginia 25801. During the incident that is the subject of this complaint, the said defendant was acting as a member of the West Virginia State Police Special Response Team. He is named herein in his individual capacity.

FACTS

9. On March 8, 2023, a search warrant was obtained for the home of Plaintiff's uncle pursuant to a child pornography investigation. Plaintiff was not involved in any way in the said investigation. Upon information and belief, the members of the SRT, or the investigators in the underlying investigation, did not know who was Darius Lester was, or that he would be staying at his uncle's home at the time the warrant would be executed.

10. Darius has no criminal history. He was employed as a truck driver for a coal company. On March 10, 2023, the day the warrant was executed, Darius was working the night shift and he arrived home at 4:00 a.m. The only other person in the home was his uncle, who was asleep.

11. Darius went to sleep on a couch that was in a family room style common area on the other side of the home's kitchen. Thus from the home's front door, one would have to walk through the living room area, into the kitchen of the home, then around a corner to the right into

a sort of common area, which then led to guest bedrooms. Darius' uncle was asleep in the master bedroom on the other side of the home.

12. Although Darius had a bedroom available to him, he found it more comfortable to sleep on the futon-style couch in the common area. That common area was then under some level of renovation, which was the reason that tools, such as a hammer, were located in the room. Also located near the couch was a hunting rifle.

13. After working a long, hard night driving the coal truck, Darius fell asleep on the couch. While till dark outside, unbeknownst to Darius, the West Virginia State Police SRT (SWAT team) lined up outside the home's front door to make entry at around 5:30 a.m. It was still dark outside. Since the lights were off inside the home, it was also dark inside the home. Knowing that this would be the case, the SRT used flashlights when they made entry into the dark home.

14. While the SRT claims to have knocked and announced their presence prior to forcing entry, nobody inside the home was awakened or answered the door. Likely expecting this, the SRT had a battering ram at the ready and used it, breaking open the door to make entry.

15. The first to enter the home was the defendant officer, who was the "point man" for the SWAT team. Upon information and belief he was wearing a dark in color tactical uniform and heavily-armored. Unfortunately, the West Virginia State Police opted not to have their SWAT teams wear body-worn cameras (even while mandating that their traffic officers to universally wear them). Thus there is no footage of what happened inside the home.

16. Upon information and belief, the defendant officer, using a weapon-mounted flashlight (which by definition aims his firearm at whatever his flashlight is illuminating) began

to quickly walk through the house, scanning for potential threats with his firearm/light. He walked through the living room and into the kitchen. He then rounded the corner into the common area where Darius was asleep on the couch.

17. Upon information and belief, once the defendant officer encountered the sleeping Plaintiff on the couch in the common area, he shined his weapon and flashlight on him and began shouting at him. It was in this dark confusion of flashlights and shouting that Darius was awakened, only having been asleep for around an hour and a half.

18. As Darius was startled awake, he was confused as to what was happening. While still on the couch/bed, or in the process of attempting to get up amidst the unintelligible shouting and flashlights blinding him, he was shot multiple times. He was entirely unarmed. He had no knowledge of the police presence at the home prior to being shot.

19. Upon information and belief, at the time Plaintiff was shot, there were purposefully no emergency lights outside, given the fact that the officers were purposefully concealing their presence prior to making entry.

20. Upon information and belief, there was no meaningful attempt made by the SRT team to knock and announce in any meaningful way that could have realistically alerted the occupants of the home prior to forcing entry and clearing the dark home with weapon-mounted flashlights.

21. Upon information and belief, the SRT officers purposefully executed the search warrant at a time and manner in which they expected to be able to force entry prior to the home's occupants being awakened. Though such measures might sometimes be necessary for officer safety reasons, here no such reasons existed. There were no particularized allegations included in

the search warrant application alleging that any occupant of the home may have prior criminal convictions, or otherwise believed to be armed or dangerous. As such, the search warrant did not authorize a no knock entry.

22. To the extent that the defendant officer reviewed the search warrant and search warrant affidavit, he was not informed that there was any suspect inside the home that was believed to be armed or dangerous - or even charged with a crime as of that time. There was no indication that it was anything but a routine search warrant to seize computer-related evidence. Yet for some unknown reason, a SWAT team was sent into the house, while the occupants were asleep, with the defendant officer leading the way, treating the warrant execution as if they were expecting armed resistance from inside the house.

23. Defendant Senior Trooper J.I. Jones shot Darius two times - once in his upper torso and once in his left arm. This occurred on or in the immediate vicinity of the couch on which Darius had been sleeping, as indicated by bullet holes and blood all over, as well as under, the couch.

24. As he laid on the couch bleeding after being shot, Darius recalled hearing one of the officers say, "did he have a gun?" Upon information and belief, the SRT officers initially believed that Darius was his uncle. When another SRT officer found the uncle asleep in the master bedroom on the other side of the home, the officers realized that they had shot an unknown young African American male, who was entirely unrelated to their investigation.

25. Upon information and belief, at that point the defendant officer located a nearby hammer, as the room was undergoing renovations and tools were lying around, and he then

fabricated false justification for having shot Darius, claiming that Darius intended to attack him with the hammer.

26. After Darius was shot, the officers tended to him on the very couch that Darius had been sleeping on minutes earlier, applying a tourniquet and calling for EMS. Darius asked what was going on and they told him to “shut up.” The officers also told Darius to “quit looking at them.”

27. Attempting to justify the shooting, as Darius was undergoing emergency medical treatment in a hospital, the West Virginia State Police directed Senior Trooper K.M. Saddler, to file a criminal complaint against Darius, charging him with one felony count of attempt to commit malicious wounding. The narrative alleged:

Upon arrival SRT knocked and announced their presence twice before breaching the door to the target residence. Upon entry, SRT members encountered a male subject, later identified as Darius Lester. Lester had a hammer in his hand and rushed towards members of the SRT with the hammer up, in a striking position. Despite being given verbal commands to drop the weapon, Lester continued towards the SRT members with a deadly weapon still in hand, in a raised position.

A SRT member, reacting to the threat presented by Lester, discharged his firearm twice to stop the threat, striking Lester.

28. Subsequently, no probable cause was found for the charge and it was dismissed by the Magistrate Court of McDowell County on July 6, 2023. Upon information and belief, no probable cause was found because Trooper Saddler testified that he had no personal knowledge of the shooting, despite having sworn to the allegations in the criminal complaint.

29. Upon information and belief, Saddler was utilized in this manner so as to conceal the identity of the shooter, while enabling the West Virginia State Police to deny FOIA requests

seeking information about the shooting from the undersigned counsel and otherwise obstructing the investigation or prosecution of a civil lawsuit.

30. Thereafter, the West Virginia State Police claimed to still be investigating the shooting, denying a FOIA request from the undersigned counsel on August 9, 2023, denying the request pursuant to the active investigation exception of the state FOIA statute - even though now no charges were pending and it had been over five months since the shooting.

31. Then, on March 6, 2024, just days before the one-year statute of limitations for misdemeanor crimes in West Virginia, yet another criminal complaint was filed against the Plaintiff, this time charging him with misdemeanor assault in violation of W. Va. Code § 61-2-11(d)(e)(1), with the affiant being Sergeant Jerry Davis, the state trooper who had been charged with investigating the shooting.

32. Trooper Davis was the individual who was supposedly preparing the report of investigation that would provide a conclusion on whether the shooting of the Plaintiff was justified. Now, two years after the shooting, no report has been provided - either to the undersigned counsel, nor to Darius and his criminal defense attorney. Unbelievably, the misdemeanor charge of assault is still pending two years later.

33. The effect of the pending charge is that the shooting investigation report can be further concealed by the West Virginia State Police via the open investigation exception to the FOIA. Despite the fact that Darius is entitled to the shooting investigation report via discovery production in his pending criminal case, it has not been provided - even after a full year of pendency.

34. Upon information and belief, the West Virginia State Police has purposefully engaged in these actions to attempt to toll the two year statute of limitations for the Plaintiff to file the instant Section 1983 lawsuit, forcing the instant complaint to be filed without the benefit of being able to obtain and review the investigation report.

COUNT ONE - EXCESSIVE FORCE

35. Plaintiff incorporates by reference all the allegations contained in the previous paragraphs.

36. The defendant police officer, Senior Trooper J.I. Jones, under color of state law, used excessive force against the Plaintiff, as described above, on March 10, 2023, by shooting him twice while he was unarmed and suddenly awakened on the couch where he was sleeping in his uncle's home.

37. At the time Plaintiff was shot, he was not suspected of having committed any crime. Nor was the probable cause to suspect or charge him with having committed any crime.

38. Defendant's actions were objectively unreasonable, unlawful, unwarranted, and in violation of Darius Lester's clearly established procedural and substantive rights, including the Fourth Amendment of the U.S. Constitution.

39. At the time he was shot by Defendant Jones, Darius Lester did not pose an immediate safety threat to any individual. He was asleep on a couch that he used for a bed. He was unarmed.

40. At the time he was shot by Defendant Jones, Darius Lester was not attempting to resist arrest or flee arrest, as he was not under arrest. Nor could Darius have been reasonably

confused for his uncle at the time he was shot, as his physical description is vastly different in age and appearance.

41. The claim by the defendant officer that “upon entry” Darius attempted to attack him with a hammer is false and fabricated. Even if Darius had believed that the officers were criminal intruders, there was a hunting rifle nearby that he could have used for that purpose. There would have been no logical reason for him to pick up a hammer - much less use a hammer to attack a highly armed SWAT team wearing body armor. Darius had no criminal history, was not suspected of having committed any crime, and had no reason to attack or resist police officers. The defendant officer had no reason to believe that in executing the search warrant that he would encounter anyone armed or dangerous inside the home.

42. Defendant Jones was without justification under the Fourth Amendment to use deadly force against the Plaintiff. His decision to do so was objectively unreasonable, as Plaintiff did not pose a threat of death or serious bodily injury to himself, or anyone else at the time he was shot.

43. Plaintiff suffered damages as a result of being subject to excessive force and is entitled to recover.

PRAYER

WHEREFORE, based on the above stated facts, the plaintiffs respectfully requests that this Honorable Court award:

1. Damages against the defendant in an amount to be determined at trial which will fairly and reasonably compensate the plaintiff for all compensatory damages to be proven at trial;

2. Punitive damages against the individual defendant in an amount to be determined at trial; and
3. Reasonable attorney fees and costs pursuant to 42 U.S.C. 1988.

PLAINTIFF DEMANDS A TRIAL BY JURY

DARIUS LESTER,
By Counsel

/s John H. Bryan

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