



Webber argues that the Court committed a manifest error of law by failing to consider various videos that he claims were incorporated by reference into his Complaint. ECF 157 at 4. As an initial matter, it is arguable as to whether the videos were even adequately incorporated by reference. Webber provided a hyperlink to only one of the videos, and that hyperlink is buried in the voluminous 31-page appendix to Webber's Complaint. Moreover, while Webber claims the remaining videos are available on C-Span, the online C-Span library, found at [www.c-span.org/30years/](http://www.c-span.org/30years/), currently holds over 250 *thousand* hours of content, and Webber's Complaint does no more than contain generic references to "C-SPAN video" instead of providing the Court with specific identifying information.<sup>1</sup> See *Currier v. Town of Gilmanton*, No. 18-CV-1204-LM, 2019 WL 3779580, at \*3 (D.N.H. Aug. 12, 2019) (while Rule 10(c) authorizes the incorporation by reference of exhibits or writings attached to a pleading, a plaintiff may not place the burden of searching for facts on a court or opposing counsel).

More importantly, even if the videos were deemed to be adequately incorporated into the Complaint, they do not add anything new. Webber states that the videos show the use of headsets and microphones by No Labels and the arresting officers, and that it may reasonably be inferred both that No Labels was communicating with the officers *and* that No Labels was exercising control over their activities. ECF 157 p. 6. However, as the Court's Decision noted, Webber's Complaint specifically alleged "that 'Defendants were often communicating through radios and headset apparatus,'" an allegation, the Court held, that did "not show that No Labels exercised control" in a manner that supports the required elements of Webber's claims. ECF 155 pp. 12-13.

---

<sup>1</sup> Webber's motion includes a shot by shot recount of a video recording and a hyperlink to videos referenced in another defendant's motion to dismiss. ECF 157 p. 6. Neither his recount nor the hyperlink were included in his Complaint or his Response to No Labels' Motion to Dismiss.

Webber also argues that the Court committed a manifest error of law by failing to conclude that an email from a No Labels employee expressing sympathy with Webber's grievances constituted an admission that the arresting officers were under No Labels' control/should be deemed to be No Labels' employees. ECF 157 p. 4. Again, the Court's Decision considered and rejected Webber's claim, stating that "[d]espite the initial sympathy expressed by some staff at No Labels, the organization did not take responsibility." ECF. 155 p. 6; *see Theriault v. Genesis HealthCare LLC*, 890 F.3d 342, 348 (1st Cir. 2018) (a court ruling on a motion to dismiss is under no obligation to "draw unreasonable inferences or credit bald assertions [or] empty conclusions").

Reduced to its essence, Webber's motion is asking the Court for a second bite at the apple, exactly what a Rule 59(e) motion is *not* supposed to be used for. *See Nat'l Metal Finishing Co. v. BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990) ("Rule 59(e) does not allow the losing party to repeat old arguments previously considered and rejected, or to raise new legal theories that should have been raised earlier.")

### CONCLUSION

For the foregoing reasons, No Labels respectfully requests that this Court deny Plaintiff's Motion to Reconsider.

Dated: January 30, 2019

Respectfully submitted,

/s/ Adam B. Pignatelli

Adam B. Pignatelli  
Rath Young & Pignatelli PA  
One Capital Plz  
PO Box 1500  
Concord, NH 03302-1500  
603-226-2600  
abp@rathlaw.com

Jonathan S. Spaeth  
Centre Law & Consulting  
8330 Boone Blvd.  
Suite 300  
Tysons, VA 22182  
703-288-2800 x226  
jspaeth@centrelawgroup.com  
*Admitted via Pro Hac Vice*

*Counsel for Defendant No Labels*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2019, I filed a copy of the foregoing with the Court via electronic filing, which will serve all counsel of record and the Pro Se Plaintiff.

/s/ Adam B. Pignatelli  
Adam B. Pignatelli.