

ALESSANDRA SOLER
EXECUTIVE DIRECTOR

ZENAIDO QUINTANA
PRESIDENT



July 1, 2014

VIA EMAIL AND CERTIFIED MAIL

TUCSON POLICE DEPARTMENT
CHIEF OF POLICE ROBERTI VILLASENOR
OFFICER DYANNA HICKS (#52781)
OFFICER KAYLA CONYER (#53654)
SERGEANT GRAY (#43119)
TPD DEPUTIES, AGENTS, OFFICERS,
AND EMPLOYEES STILL UNKNOWN
270 South Stone Avenue
Tucson, AZ 85701

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
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RE: *Notice of Claim Pursuant to A.R.S. § 121-821.01*

To Whom It May Concern:

This letter constitutes a Notice of Claim pursuant to Arizona Revised Statute § 12-821.01 against the Tucson Police Department (“TPD”), and the above-named officers and employees and/or agents of TPD. This Notice of Claim is served on behalf of Mr. Jesus Reyes Sepulveda (“Claimant”), whom this office represents. This letter also satisfies the requirements of A.R.S. § 11-622(A), to the extent that section applies. The conduct of other TPD employees, officers, agents or others acting with the authority and/or at the direction of the TPD (“Responsible parties”) may also have contributed to the injuries suffered by Claimant as discussed here within, and when their identities become known, this claim may be supplemented to include them.

This Notice of Claim is given without the benefit of formal discovery and is subject to amendment or supplementation. Claimant reserves the right to amend this Notice of Claim. If for any reason you believe this Notice of Claim is not in compliance with A.R.S. § 12-821.01, or if additional facts/information is needed please contact the attorney listed.

The Claimant seek an award of damages reasonably calculated to compensate for the injuries he suffered in connection with his unlawful and unnecessarily protracted detention on or about January 26, 2014.

Furthermore, the terms and content of this Notice of Claim are subject to Rule 408 of the Arizona Rules of Evidence and Rule 408 of the Federal Rules of Evidence.

I. FACTUAL BASIS FOR CLAIM

This claim arises out of an unlawful detention as a result of TPD's enforcement of S.B. 1070. As described below, TPD officers unlawfully prolonged the stop of Mr. Reyes Sepulveda to conduct an "SB-1070 check" of Mr. Reyes Sepulveda's immigration status (without reasonable suspicion of unlawful presence) and then unilaterally and without any lawful authority took him into custody and transferred him to the custody of Customs and Border Protection ("CBP") agents solely based on his suspected immigration status.

On January 26, 2014, at or around 11 p.m., Mr. Reyes Sepulveda was driving on Campbell Avenue in Tucson, when he was pulled over by a TPD officer, who was later identified as Officer Dyanna Hicks. Officer Hicks did not inform Mr. Reyes Sepulveda of the reason for the stop, but instead asked for his driver's license, registration and proof of insurance, which Mr. Reyes Sepulveda promptly provided. A second officer, later identified as Officer Kayla Conyer, subsequently arrived on the scene.

Officer Hicks informed Mr. Reyes Sepulveda that he had a suspended driver's license due to an unpaid traffic citation and expired insurance. Officer Hicks asked Mr. Reyes Sepulveda to step out of his car, informed Mr. Reyes Sepulveda that he would be cited and released, and directed him to call someone to pick him up as Officer Hicks was going to have his vehicle towed. Mr. Reyes Sepulveda called his sister-in-law to pick him up.

Officer Hicks then performed a search on the car without Mr. Reyes Sepulveda's consent. While Officer Hicks conducted the search, which lasted approximately five minutes, the other Officer called TPD dispatch to conduct an "SB-1070 check" of Mr. Reyes Sepulveda's immigration status. At the direction of her supervisor Sergeant Gray, Officer Hicks then called Border Patrol to respond to the location.

Another officer arrived about five minutes later as back-up. At approximately 11:45 p.m., without any explanation, Officer Hicks handcuffed Mr. Reyes Sepulveda, placed him in her squad car, and transported him to a TPD station at 4410 S. Park Ave, approximately five minutes away from the original location.

Approximately five minutes after Mr. Reyes Sepulveda arrived at the station, two plainclothes CBP agents arrived. The officials told Mr. Reyes Sepulveda he had to sign the tickets or he would be detained. Mr. Reyes

Sepulveda signed the tickets but was not provided with copies. At approximately midnight, the immigration officials drove Mr. Reyes Sepulveda to the Customs and Border Protection station on Swan Road. One of the CBP agents told Mr. Reyes the TPD Officers has no right to conduct such a lengthy investigation simply to write him a citation. The CBP agent also added that Mr. Reyes Sepulveda did not fit within the outlined Immigration & Customs Enforcement priorities.

Mr. Reyes Sepulveda was detained at the Tucson Border Patrol facility until 7:00 a.m. the next morning. Mr. Reyes Sepulveda was then transferred to the Eloy Immigration Detention Center where he remained for three days until he was able to pay a bond.

Mr. Reyes Sepulveda has never been charged with a crime. On this occasion, Mr. Reyes Sepulveda ultimately received a citation for driving with a suspended license and invalid proof of insurance, though the charge for invalid proof of insurance was subsequently dismissed. Such violations would have normally resulted in a cite-in-lieu of detention pursuant to Ariz. Rev. Stat. § 13-3903. At no time during the incident did Mr. Reyes Sepulveda believe that he was free to leave.

The detention of Mr. Reyes Sepulveda was prolonged by TPD beyond the time reasonably necessary to complete the original purpose of the stop (purportedly for driving without valid proof of insurance) without any additional probable cause to believe he was engaging in any unlawful activity that would justify his continued detention. Mr. Reyes Sepulveda was detained without a valid criminal law basis and based solely on suspicion of unlawful presence.

II. LEGAL BASIS FOR CLAIMS

VIOLATION OF CONSTITUTIONAL RIGHTS TO FREEDOM FROM UNREASONABLE SEIZURES

The Responsible Parties, while acting in their official capacity and individual capacities and under the color of law, violated the Claimant's rights to freedom from unreasonable seizures under Article 2, Section 8 (Right to Privacy) and 13 (Equal Privileges and Immunities) of the Arizona Constitutions. By authorizing, acquiescing in, employing, ratifying the actions of and/or failing to adequately train or supervise those directly involved in, and/or participating in or being deliberately indifferent to the stop, warrantless arrest, detention and interrogation of Claimant, the entities and individuals to whom this Notice of Claim is addressed violated Claimant's right to freedom from unreasonable seizure. The Claimant was also subjected to unreasonable seizure based on his actual or perceived race and ethnicity.

**VIOLATION OF EQUAL PROTECTION OF THE LAW
UNDER FOURTEENTH AMENDMENT**

By the actions described above, the entities and individuals to whom this Notice of Claim is addressed violated Claimant's right to freedom from unreasonable seizure as protected by the Fourth Amendment of the United States Constitution and his right to equal protection of the law as protected by the Fourteenth Amendment to the United States Constitution.

FALSE ARREST/FALSE IMPRISONMENT

By authorizing, acquiescing in, employing, ratifying the actions of and/or failing to adequately train or supervise those directly involved in, and/or participating in or being deliberately indifferent to the restraint of Claimant's liberty without lawful justification and without Claimant's consent, the entities and individuals listed to whom this Notice of Claim is addressed subjected the Claimant to false arrest/imprisonment.

Based on the principles of vicarious liability, respondent superior, and municipal liability, the entities and individuals listed in this Notice of Claims are liable for the conduct of their employees and their agents. Thus, the TPD and Police Chief Villasenor are responsible for actions of Officers Hicks and Conyers, Sergeant Gray, and other officers and agents acting with the authority and/or at the direction of the TPD. The entities and individuals due to their failure to adequately train and supervise their officers and agents create additional liability.

III. AMOUNT OF CLAIM

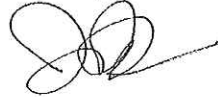
The Responsible Parties conducted themselves in a manner in both their official and individual capacities that violated clearly established rights. Claimant asserts that the Responsible Parties' actions have caused substantial harm that entitles him to monetary damages for the claims listed above, and payment of these claims is justly due.

Claimant would also be entitled to recover punitive damages against the Responsible Parties and any other individual(s) acting in their individual capacities, for their intentional acts because their conduct was malicious or in reckless disregard of the Claimant's clearly established rights.

Claimant will settle for \$250,000 in addition to reasonable costs and attorneys' fees. Notwithstanding, Claimant is willing to engage in settlement negotiations and will consider reasonable offers to settle their claims without further litigation.

Pursuant to A.R.S. § 12-821.01, the entities and individuals named in this letter have sixty (60) days to respond before further legal action can be instituted under Arizona state law. Should you have any questions, please contact me by phone at (520) 344-7857 or by email at jlyall@acluaz.org.

Sincerely,



James Lyall
Staff Attorney
ACLU of Arizona

Copy to: Lisa A. Judge
Office of the Tucson City Attorney
270 South Stone Avenue
Tucson, Arizona 85701

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION
OF ARIZONA