

THIRD JUDICIAL DISTRICT COURT
COUNTY OF DOÑA ANA
STATE OF NEW MEXICO

OSCAR GUTIÉRREZ SÁNCHEZ,

Plaintiff,

Cause No. _____

vs.

CITY OF SUNLAND PARK, a governmental
entity of the State of New Mexico, and Officer
ISMAEL RODRÍGUEZ of the Sunland Park
Police Department, individually,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO STATE CONSTITUTION
AND THE NEW MEXICO TORT CLAIMS ACT**

PRELIMINARY STATEMENT

1. This case arises from the Sunland Park Police Department's unlawful detention of Oscar Gutiérrez Sánchez, a resident of Las Cruces, a person of color, and an immigrant. On the night of March 13, 2018, Sunland Park Police Officer Ismael Rodríguez wrongly detained and falsely arrested Mr. Oscar Gutiérrez Sánchez, who was driving home with his five-year-old son. During the course of a pretextual traffic stop that night, Officer Rodríguez, without consent, without probable cause, and without exigent circumstances, unlawfully searched Mr. Gutiérrez Sánchez' vehicle using a drug-detection dog. In conducting this unlawful search, Officer Rodríguez forced Mr. Gutiérrez Sánchez and his young child to wait in their truck on the side of the highway for nearly 45 minutes.

2. Ultimately, Officer Rodríguez and the drug detection dog found no contraband in Mr. Gutiérrez Sánchez' vehicle because he did not have any. Plaintiff Oscar Gutiérrez Sánchez

now seeks, through his counsel, the ACLU OF NEW MEXICO, declaratory relief and damages for the civil rights violations Defendants committed under Article II, Sections 10 and 18, of the New Mexico Constitution, and the New Mexico Tort Claims Act.

JURISDICTION AND VENUE

3. Mr. Gutiérrez Sánchez brings his claims in this Complaint under Article II, Sections 10 and 18, of the New Mexico Constitution, and the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-12 (waiver of immunity for torts committed by law enforcement officers) and 41-4-4 (indemnity).

4. This Court has jurisdiction over this action under NMSA §§ 41-4-18 and 44-6-4.

5. This Court is the proper venue for Mr. Gutiérrez Sánchez' claims because the Defendants violated his rights in Doña Ana County. NMSA § 38-3-1.

6. On May 18, 2018, Mr. Gutiérrez Sánchez timely filed a Tort Claims Notice with Mayor Javier Perea of the City of Sunland Park.

PARTIES

7. Plaintiff Oscar Gutiérrez Sánchez is a 35-year-old resident of Las Cruces, New Mexico, and a lawful permanent resident of the United States.

8. Defendant City of Sunland Park is a municipality formed under the laws of New Mexico. It is responsible for overseeing and operating the Sunland Park Police Department and for employing, training, and overseeing Sunland Park police officers, including Officer Rodríguez, who was an employee of Sunland Park at the time that the events in this Complaint occurred. The City of Sunland Park is a governmental entity subject to suit under state law.

9. At all times relevant to this Complaint, Defendant Sunland Park Police Officer Ismael Rodríguez was an employee of the City of Sunland Park and acting within the scope of his duties. NMSA § 41-4-12. Defendant Rodríguez is sued in his individual capacity.

FACTS

10. On the evening of March 13, 2018, Oscar Gutiérrez Sánchez was driving his truck along Highway 136 (“Domenici Highway”) in Sunland Park, New Mexico.

11. Mr. Gutiérrez Sánchez’ then-five-year-old son was a passenger in his truck.

12. Mr. Gutiérrez Sánchez and his five-year-old son were returning home to Las Cruces, New Mexico.

13. Near the intersection of Domenici Highway and McNutt Road, Defendant Officer Rodríguez of the Sunland Park Police Department stopped Mr. Gutiérrez Sánchez.

14. Defendant Rodríguez accused Mr. Gutiérrez Sánchez of speeding.

15. Defendant Rodríguez asked Mr. Gutiérrez Sánchez for his driver’s license, vehicle registration, and insurance card.

16. Mr. Gutiérrez Sánchez immediately cooperated with Defendant Rodríguez’ requests and provided him with his driver’s license and registration. He showed Defendant Rodríguez a digital copy of his insurance card on his phone.

17. Defendant Rodríguez assured Mr. Gutiérrez Sánchez that he would give him just a warning—not a ticket—for speeding.

18. At this point, Mr. Gutiérrez Sánchez thought that his encounter with Defendant Rodríguez was over.

19. But Defendant Rodríguez kept Mr. Gutiérrez Sánchez’ driver’s license and registration.

20. Then, without reasonable suspicion for his questions, Defendant Rodríguez asked Mr. Gutiérrez Sánchez if he had been drinking or if he had used drugs.

21. Mr. Gutiérrez Sánchez told Defendant Rodríguez that he had not been drinking and had not used drugs.

22. Without reasonable suspicion for his questions, Defendant Rodríguez then asked Mr. Gutiérrez Sánchez numerous questions about whether he was carrying drugs in his truck.

23. Mr. Gutiérrez Sánchez told Defendant Rodríguez that he was not carrying any drugs in his truck.

24. Defendant Rodríguez then asked Mr. Gutiérrez Sánchez if he could search his truck.

25. Mr. Gutiérrez Sánchez did not consent and told Defendant Rodríguez that he did not want him to search his truck.

26. Without reasonable suspicion, Defendant Rodríguez then asked Mr. Gutiérrez Sánchez if he could call Border Patrol to bring a dog to search his vehicle.

27. Mr. Gutiérrez Sánchez did not consent.

28. Without a warrant, consent, or probable cause, Defendant Rodríguez then called Border Patrol to bring a drug-detection dog to search Mr. Gutiérrez Sánchez' truck.

29. Defendant Rodríguez, who was still holding Mr. Gutiérrez Sánchez' driver's license and vehicle registration, placed him under a de facto arrest, forcing Mr. Gutiérrez Sánchez and his five-year-old son wait in the truck on the side of the highway in the dark.

30. Within about 15 minutes of Defendant Rodríguez' calling Border Patrol, a Border Patrol agent arrived with a drug-detection dog.

31. Without a warrant, consent, or probable cause, Defendant Rodríguez, the Border Patrol agent, and the drug-detection dog searched the truck by sniffing around it for about 15 minutes and found nothing.

32. Defendant Rodríguez, the Border Patrol agent, and the drug-detection dog found nothing because Mr. Gutiérrez Sánchez had no drugs in his truck.

33. Finally, after about 45 minutes had passed since he first stopped Mr. Gutiérrez Sánchez, Defendant Rodríguez gave Mr. Gutiérrez Sánchez a traffic warning, alleging only that he had been speeding.

34. Mr. Gutiérrez Sánchez' false arrest and the unlawful search of his vehicle caused him to suffer anxiety about his son's safety.

35. Mr. Gutiérrez Sánchez was humiliated by Defendant Rodríguez' unconstitutional and unlawful conduct towards him in front of his five-year-old son.

36. Defendant Rodríguez subjected Mr. Gutiérrez Sánchez to an unconstitutional de facto arrest and search because he is a person of color.

37. Defendant Rodríguez subjected Mr. Gutiérrez Sánchez to an unconstitutional de facto arrest and search because he is an immigrant.

CLAIMS FOR DECLARATORY RELIEF

COUNT I

Article II, Section 10, of the New Mexico State Constitution Unreasonable Search and Seizure (Against all Defendants)

38. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

39. Defendant Rodríguez stopped Mr. Gutiérrez Sánchez for allegedly speeding.

40. Defendant Rodríguez asked Mr. Gutiérrez Sánchez if he had drugs in his truck—a topic not related to speeding and not supported by articulable reasonable suspicion as required by law.

41. Defendant Rodríguez lacked probable cause to detain and seize Mr. Gutiérrez Sánchez during the traffic stop.

42. Defendant Rodríguez lacked probable cause and exigent circumstances to search Mr. Gutiérrez Sánchez’ truck during the traffic stop.¹

43. Defendant Rodríguez undertook the actions described above within the scope of his employment as a police officer of the City of Sunland Park.

44. Defendant Rodríguez intentionally detained, seized, and arrested Mr. Gutiérrez Sánchez without a warrant and without probable cause.

45. New Mexico law enforcement officers cannot lawfully question drivers or passengers about issues that are not related to the initial purpose of a traffic stop *unless* their questions are supported by reasonable suspicion.²

46. If a police officer stops a driver in New Mexico for allegedly speeding, the officer cannot ask the driver (or the driver’s passenger³) questions about drugs *unless* the officer establishes reasonable suspicion for those questions during the stop.

47. If a police officer stops a driver in New Mexico, the officer cannot search the vehicle without a warrant unless an exception to the warrant requirement applies and there are

¹ *State v. Bomboy*, 2008-NMSC-029, ¶ 17, 144 N.M. 151, 155, 184 P.3d 1045, 1049 (“Under the New Mexico Constitution, we continue to provide greater protection regarding automobile searches than that provided under the United States Constitution. Absent exigent circumstances or some other exception to the warrant requirement, an officer may not search an automobile without a warrant.”).

² The only exception to this rule is if the questions are necessary for officer safety or if the interaction between the officer and the driver or passenger is consensual. *State v. Duran*, 2005-NMSC-034, ¶ 23, 138 N.M. 414, 120 P.3d 836, overruled in part by *State v. Leyva*, 2011-NMSC-009). See also *State v. Portillo*, 2011-NMCA-079, 256 P.3d 466 (extending *Leyva* and *Duran* to passengers).

³ *Portillo*, *id.*

exigent circumstances. Here, there was no exception to the warrant requirement or exigent circumstances.

48. Defendant Rodríguez' seizure of Mr. Gutiérrez Sánchez and search of his truck denied him his personal liberty without his consent and against his will.

49. Defendant Rodríguez' seizure of Mr. Gutiérrez Sánchez and search of his truck violated his state Constitutional rights under Article II, Section 10, of the New Mexico State Constitution to be free from unlawful searches and seizures.

50. Defendant Rodríguez' unlawful conduct proximately caused damages to Mr. Gutiérrez Sánchez in that he deprived him of his liberty, embarrassed him, humiliated him, and caused him pain, suffering, and mental and emotional distress.

COUNT II
Article II, Section 10, of the New Mexico State Constitution
Unlawful De Facto Arrest
(Against all Defendants)

51. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

52. As a result of the traffic stop, Defendant Rodríguez held Mr. Gutiérrez Sánchez and his son in custody for about 45 minutes.

53. Defendant Rodríguez detained Mr. Gutiérrez Sánchez for an unreasonable amount of time, amounting to a de facto arrest.

54. During this period, Defendant Rodríguez retained Mr. Gutiérrez Sánchez' driver's license and vehicle registration.

55. During this arrest, Mr. Gutiérrez Sánchez and his son remained inside their vehicle and they were not free to leave.

56. Defendant Rodríguez lacked probable cause to arrest Mr. Gutiérrez Sánchez.

57. Defendant Rodríguez did not obtain a warrant to arrest Mr. Gutiérrez Sánchez.

58. Defendant Rodríguez deprived Mr. Gutiérrez Sánchez of his right under Article II, Section 10, of the New Mexico State Constitution to be secure in his person.

59. Defendant Rodríguez wrongly arrested Mr. Gutiérrez Sánchez without probable cause and deprived him of his right under Article II, Section 10, of the New Mexico State Constitution to be free from unreasonable seizures.

60. Defendant Rodríguez' unlawful conduct proximately caused damages to Mr. Gutiérrez Sánchez in that he deprived him of his liberty, embarrassed him, humiliated him, and caused him pain, suffering, and mental and emotional distress.

COUNT III
Article II, Section 18, of the New Mexico State Constitution
Equal Protection
(Against all Defendants)

61. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

62. Defendants subjected Mr. Gutiérrez Sánchez to an unlawful and intrusive search of his vehicle and an unlawful de facto arrest without a warrant, probable cause, or his consent, because he is a person of color and an immigrant.

63. In doing so, Defendants unlawfully deprived Mr. Gutiérrez Sánchez of his liberty because of his race and national origin, denying him the equal protection of the laws under Article II, Section 18, of the New Mexico Constitution and Defendants violated NMSA 1978, § 29-21-2, which prohibits law enforcement agencies and officers from relying on race and national origin, among other factors, in conducting routine or spontaneous investigations, such as detentions and traffic stops and searches.

COUNT IV

New Mexico Declaratory Judgment Act, NMSA § 44–6–2
Declaratory Relief
(Against all Defendants)

64. Under the Declaratory Judgment Act, NMSA § 44–6–4, “[i]n cases of actual controversy,” this Court has the “ power to declare rights, status and other legal relations whether or not further relief is or could be claimed.”

65. Here, there are actual controversies about the constitutionality and lawfulness under NMSA 1978, § 29-21-2 of the Sunland Park Police’s practice of subjecting a person of color who is an immigrant to:

- a. Questioning about issues that are not related to the initial purpose of a traffic stop and not supported by probable cause;
- b. A search of the person’s vehicle without a warrant, without probable cause, and without exigent circumstances;
- c. A search of the person’s vehicle with a drug-detection dog without a warrant, without probable cause, and without exigent circumstances

66. The Court should declare that the Sunland Park Police Department has no authority to subject anyone to:

- a. Questioning about issues that are not related to the initial purpose of a traffic stop and not supported by probable cause;
- b. A search of the person’s vehicle without a warrant, without probable cause, and without exigent circumstances;
- c. A search of the person’s vehicle with a drug-detection dog without a warrant, without probable cause, and without exigent circumstances.

CLAIM FOR COMPENSATORY DAMAGES

COUNT V

New Mexico Tort Claims Act, NMSA § 41-4-4

False Arrest / False Imprisonment

(Against all Defendants)

67. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

68. Defendant City of Sunland Park, through Defendant Rodríguez, inflicted personal injury on Mr. Gutiérrez Sánchez by subjecting him to false arrest, imprisonment, and unreasonable seizure.

69. Defendants subjected Mr. Gutiérrez Sánchez to a de facto arrest without a warrant and searched his vehicle without reasonable and probable cause or his consent.

70. Defendants restrained Mr. Gutiérrez Sánchez against his will.

71. Defendants knew or should have known that they had no authority to restrain Mr. Gutiérrez Sánchez because in restraining him, they violated Article II, Section 10, and Article II, Section 18, of the New Mexico Constitution, as well as NMSA 1978, § 29-21-2.

72. Defendants' unlawful conduct caused distress and humiliated Mr. Gutiérrez Sánchez in front of his young son.

WHEREFORE, Plaintiff Oscar Gutiérrez Sánchez respectfully asks that this Court enter judgment in his favor and against Defendants, and:

- (a) Award compensatory damages against all Defendants for the above violations of state law in an amount to be determined at trial;
- (b) Award prejudgment and post-judgment interest on any award of damages to the extent permitted by law;
- (c) Issue declaratory relief against the City of Sunland Park for the above violations of the New Mexico Constitution and state law;

(d) Award any further relief that this Court deems just and proper and any other relief allowed by law.

Respectfully submitted this 7th day of March, 2019,

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