

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
SANTA FE COUNTY**

DAMETRIO MALDONADO,

Plaintiff,

v.

No. _____

SONDRE LOBERG, a New Mexico State Police
Officer in his individual and official capacity, and
**THE NEW MEXICO DEPARTMENT OF
PUBLIC SAFETY,**

Defendants.

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS

Plaintiff Dametrio Maldonado, by and through his attorneys, American Civil Liberties Union of New Mexico (Preston Sanchez, María Martínez Sánchez, and Leon Howard) bring these claims for monetary damages and equitable relief for civil rights violations under 42 U.S.C. § 1983, the United States Constitution, the New Mexico State Constitution, and the New Mexico Tort Claims Act, NMSA 1978, § 41-4-12 (1977).

INTRODUCTION

The United States is not a police state where law enforcement make and execute their own rules. Police officers are not imbued with limitless power to be used against the citizenry as they see fit. On the contrary, law enforcement is beholden to the laws that govern our land just as it holds civilians to those same laws. In this case, New Mexico State Police Officer Sondre Loberg, in a shocking display of abuse of power, illegally battered and criminally charged a good Samaritan simply because he had the audacity to smile at the officer.

After witnessing a car crashed on an overpass in the Acoma Pueblo, Dametrio Maldonado and his daughter pulled over to see if they could help. Defendant Loberg arrived shortly after and what followed was a textbook example of a police officer misusing the power entrusted to him by the State and its citizens. Defendant Loberg immediately decided there was something about Mr. Maldonado that he did not like and decided he would use his position of authority to show him who was in charge. What should have been an innocuous interaction between a good Samaritan and a law enforcement officer devolved into an excessive and illegal use of force and a malicious abuse of the criminal legal process. Mr. Maldonado now seeks redress for the violations of law committed against him by State Police Officer Sondre Loberg.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Dametrio Maldonado, is a resident of Cibola County, New Mexico.
2. Defendant Sondre Loberg is a New Mexico State Police officer. He is sued in his individual capacity pursuant to 42 U.S.C. § 1983 and in his official capacity pursuant to the New Mexico Tort Claims Act (“TCA”) and the New Mexico Constitution.
3. Defendant Department of Public Safety (“DPS”) is a governmental entity of New Mexico and operates the New Mexico State Police (“NMSP”).
4. At all times relevant to this Complaint, Defendant Loberg was a state police officer employed by DPS via the NMSP.
5. At all times relevant to this Complaint, Defendant Loberg acted within the scope of his employment and under color of state law.
6. At all times relevant to this Complaint, DPS had supervisory authority over Defendant Loberg.

7. The Court has jurisdiction over the subject matter and parties to this action pursuant to the Court's general jurisdiction and because this cause of action arises, in part, under the New Mexico Tort Claims Act and the New Mexico Constitution.
8. Venue is proper in the First Judicial District as Defendant DPS is headquartered in Santa Fe, New Mexico.

FACTUAL BACKGROUND

9. Plaintiff Dametrio Maldonado is a 57-year-old Native American man from Acoma Pueblo.
10. On May 26, 2019, Mr. Maldonado and his 20-year-old daughter, Ellen, were travelling in their car on their way to do volunteer work in preparation for the Acoma Seed Run, a race that takes place every Memorial Day in Acoma Pueblo.
11. The proceeds from the run go towards preserving and maintaining the customs and traditions of the Acoma people as well as providing school supplies for Acoma Pueblo children.
12. Upon exiting Interstate 40 onto an overpass located on the Acoma Pueblo, they came across a single-car collision.
13. As they pulled up to the crashed vehicle, they encountered a woman sitting in the street who was screaming and visibly distressed.
14. Concerned for her safety, Mr. Maldonado parked on the shoulder of the overpass – directly across the road from the crash – and immediately called 911 to report the accident.
15. While he was on the phone, Mr. Maldonado instructed Ellen to exit the vehicle to see if the woman needed assistance.

16. Shortly thereafter, Acoma Tribal Police arrived, followed by Defendant New Mexico State Police Officer Sondre Loberg.
17. Upon pulling up to the crash scene Defendant Loberg immediately yelled at Mr. Maldonado, “you, leave!” from his patrol unit.
18. Mr. Maldonado informed Defendant Loberg that he was waiting for his daughter, Ellen, who was speaking with the other law enforcement officials that had just arrived.
19. Infuriated that Mr. Maldonado did not immediately move his vehicle, he continued to scream at him.
20. At that point, in a display of deference to the officer, Mr. Maldonado politely smiled at Defendant Loberg and proceeded to drive forward to comply with the officer’s directives.
21. An irate Defendant Loberg immediately turned his patrol unit around and followed Mr. Maldonado’s vehicle until it stopped on the shoulder of the highway off ramp where he intended to wait for his daughter.
22. Defendant Loberg exited his patrol unit and approached Mr. Maldonado’s vehicle. He ordered Mr. Maldonado to produce his driver’s license, registration and insurance, and to exit his vehicle and stand in front of the patrol unit with his hands on the hood.
23. Mr. Maldonado calmly complied and walked the several steps back to the front of Defendant Loberg’s patrol unit.
24. Less than one minute later, and with no warning or explanation, Defendant Loberg walked behind Mr. Maldonado and firmly yanked his left arm behind his back in an attempt to place a pair of handcuffs on him. He continued to jerk Mr. Maldonado’s torso back and forth while trying to twist both of his arms together, causing extreme pain to Mr. Maldonado.

25. At no moment did Mr. Maldonado resist Defendant Loberg's actions.
26. Because of Mr. Maldonado's large stature, the handcuffs did not readily close and he struggled to keep his balance while Defendant Loberg continued to attempt to force his hands into the handcuffs.
27. Defendant Loberg proceeded to ask him, "are you trying to fight me right now?" and "you drinking today, or what?"
28. Defendant Loberg did not conduct any sort of field sobriety test on Mr. Maldonado.
29. He ultimately used two sets of handcuffs on Mr. Maldonado and closed them so tightly that they left marks on Mr. Maldonado's wrists for a week.
30. As Mr. Maldonado politely explained that he was simply waiting for his daughter, Defendant Loberg violently pushed Mr. Maldonado facedown onto the hood of his patrol car.
31. The force of the action broke Mr. Maldonado's cell phone, which was located in his pocket.
32. Defendant Loberg proceeded to walk Mr. Maldonado to his patrol car's rear door and ordered him to sit inside.
33. While Mr. Maldonado was detained inside the vehicle, Defendant Loberg can be heard on the patrol unit's cabin video informing another officer multiple times that his motivation for treating Mr. Maldonado so harshly was due to his displeasure with Mr. Maldonado smiling at him.
34. Mr. Maldonado calmly sat in Defendant's patrol car, handcuffed, for nearly twenty minutes until Defendant Loberg ordered him out of the vehicle.

35. Once out, Defendant Loberg accused Mr. Maldonado of failing to comply with a lawful order and expressed his anger over the fact that Mr. Maldonado had “look[ed] at [him] with a smile.”
36. Moments later, Defendant Loberg again returned to the subject of Mr. Maldonado’s smile and told Mr. Maldonado that he perceived it as “a big F.U.”
37. When Mr. Maldonado tried to calmly explain his understanding of the situation, Defendant Loberg ordered him to stop “running his mouth” and threatened to put him back in handcuffs and arrest him for obstruction.
38. He eventually told him that the only reason he was letting him go was because the Acoma sergeant asked him to and, if not for that request, he would have arrested him and taken him to jail where he would spend Memorial weekend and not see a judge until Tuesday or Wednesday.
39. Defendant Loberg issued Mr. Maldonado a citation for unlawful parking, and followed it up by stating, “if I’m not going to arrest you, I’m going to need to teach you the lesson another way.”
40. He continued his lecture by informing Mr. Maldonado that he was cutting him “a hell of a break” and that it was “Christmas for [him] today.”
41. At that point, Mr. Maldonado was under the impression that the encounter had ended. However, apparently still unsatisfied with the effects of his lecture, Defendant Loberg resumed his harassment, again telling Mr. Maldonado that the only reason he wasn’t going to jail was because of the Acoma sergeant.
42. Defendant Loberg then instructed Mr. Maldonado to go thank the Acoma sergeant for keeping him out of jail and then informed him that he was free to leave.

43. Later that evening, the pain in Mr. Maldonado's wrists, elbows and shoulders caused by Defendant Loberg's use of force was so unbearable that he was forced to go to the emergency room.
44. The medical staff took several x-rays and referred Mr. Maldonado to an imaging center in Albuquerque for further testing.
45. Mr. Maldonado ultimately had to undergo physical therapy to address the injuries sustained as a result of Mr. Loberg's use of excessive force.
46. On May 29th, Mr. Maldonado filed a complaint against Defendant Loberg with the NMSP for utilizing excessive force on him during their May 26th encounter.
47. On July 31, 2019 the court dismissed the citation Defendant Loberg issued to Mr. Maldonado for illegal parking with prejudice.
48. As a result of his injuries, Mr. Maldonado was unable to farm his land during the summer and fall growing seasons, thus, depriving his family and tribal community of the crops that he normally grows and shares with them.
49. He was also unable to chop and gather firewood during the fall months that he typically provides to his family and tribal community in Acoma Pueblo.
50. Further, due to his physical injuries, Mr. Maldonado was unable to practice and participate in culturally significant traditions that take place in Acoma Pueblo year round.

CAUSES OF ACTION

FEDERAL CONSTITUTION

COUNT I

Violation of the Fourth Amendment of the United States Constitution Excessive use of force (Defendant Loberg)

51. Plaintiff incorporates by reference the preceding paragraphs as though they were stated fully herein.
52. Plaintiff has a Fourth Amendment right to be free from excessive force.
53. Defendant Loberg violated that right when he violently placed Plaintiff into handcuffs and slammed his upper body onto the hood of his car.
54. The amount of force used to effectuate the seizure of Plaintiff was unreasonable and excessive under the law.
55. The actions of Defendant were intentional, willful, wanton and in gross and reckless disregard of Mr. Maldonado's rights under the Fourth Amendment to the United States Constitution.

COUNT II

Violation of the First Amendment of the United States Constitution (Defendant Loberg)

56. Plaintiff incorporates by reference the preceding paragraphs as though they were stated fully herein.
57. The First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech.
58. The First Amendment protects nonverbal and symbolic speech.

59. When Plaintiff smiled at Defendant Loberg he was attempting to convey a message of respect and politeness to a law enforcement officer.
60. Defendant Loberg violated Plaintiff's First Amendment rights when he charged Plaintiff with a criminal offense for smiling at him.
61. Defendant Loberg's actions caused Plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that protected speech.
62. Defendant Loberg's actions were substantially motivated as a response to Plaintiff's protected speech.

NEW MEXICO TORT CLAIMS ACT

COUNT III

Violation of the New Mexico Tort Claims Act

Battery

(Defendants Department of Public Safety and Loberg)

63. Plaintiff Maldonado incorporates by reference the preceding paragraphs as though they were stated fully herein.
64. In undertaking the actions described above, Defendants Loberg intended to cause a harmful and offensive contact with Plaintiff Maldonado.
65. In undertaking the actions described above, Defendant Loberg caused an offensive contact with Plaintiff Maldonado to occur.
66. Plaintiff Maldonado suffered pain and injuries as a direct result of Defendant Loberg's actions.
67. The actions of Defendant Loberg as described in the preceding paragraphs, constitute a battery under New Mexico law for which immunity has been waived by NMSA 1978, § 41-4-12 (1977).

68. Because he is a New Mexico State Police officer, Defendant DPS has supervisory authority over Defendant Loberg.
69. Defendant DPS is liable under the Tort Claims Act pursuant to the doctrine of *respondeat superior* because Defendant Loberg was acting within the scope and course of his duties as a New Mexico State Police officer when he committed a battery upon Plaintiff Maldonado.

COUNT IV
Violation of the New Mexico Tort Claims Act for
Malicious Prosecution and Abuse of Process
(Defendant Loberg)

70. Plaintiff Maldonado incorporates by reference the preceding paragraphs as though they were stated fully herein.
71. In undertaking the actions described above, Defendant Loberg improperly used the criminal legal process, without probable cause, merely for the purpose of vexing and injuring Plaintiff Maldonado, and resulting in damage to his personal rights.
72. Defendant Loberg issued a criminal citation to Plaintiff Maldonado, not in an effort to enforce the traffic code, but to bully and intimidate him.
73. The actions of Defendant Loberg as described in the preceding paragraphs, constitute malicious abuse of process under New Mexico law for which immunity has been waived by NMSA 1978, § 41-4-12 (1977).

STATE CONSTITUTION

COUNT V

Violation of the New Mexico Constitution, Article II, Section 10

Excessive use of force

(Defendant Loberg)

74. Plaintiff incorporates by reference the preceding paragraphs as though they were stated fully herein.
75. Plaintiff has a right under N.M. Const. Art II, § 10 to be free from excessive force.
76. New Mexico's state constitutional protections against warrantless searches and seizures have been interpreted more expansively than those of the Fourth Amendment. *State v. Gomez*, 1997-NMSC-006, ¶ 30, 122 N.M. 777, 932 P.2d 1.
77. Defendant Loberg violated that right when he violently placed Plaintiff into handcuffs and slammed his upper body onto the hood of his car.
78. The amount of force used to effectuate the seizure of Plaintiff was unreasonable and excessive under the law.
79. The actions of Defendant were intentional, willful, wanton and in gross and reckless disregard of Mr. Maldonado's rights under N.M. Const. Art II, § 10.

COUNT VI

Violation of the New Mexico Constitution, Article II, Section 17

Freedom of Speech

(Defendant Loberg)

80. Plaintiff incorporates by reference the preceding paragraphs as though they were stated fully herein.
81. Article II, Section 17 of the New Mexico Constitution ("New Mexico's Free Speech Clause") prohibits government officials from retaliating against individuals for engaging

in protected speech and is just as protective of citizen's speech, if not more, than the federal constitution.

82. New Mexico Free Speech Clause protects nonverbal and symbolic speech.
83. When Plaintiff smiled at Defendant Loberg he was attempting to convey a message of respect and politeness to a law enforcement officer.
84. Defendant Loberg violated Plaintiff's free speech rights under the New Mexico Constitution when he detained and charged Plaintiff with a criminal offense in retaliation for smiling at him.
85. Defendant Loberg's actions caused Plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that protected speech.
86. Defendant Loberg's actions were substantially motivated as a response to Plaintiff's protected speech.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. Actual damages;
- B. Compensatory damages;
- C. Punitive damages;
- D. Pre and post-judgment interest at the lawful rate;
- E. Declaratory and injunctive relief;
- F. Attorneys' fees and costs; and
- G. Any further relief that this Court deems just and proper.

Dated: March 3, 2020

Respectfully submitted by:

/s/ Preston Sanchez

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