

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

JEFFREY SEYMOUR,

Plaintiff,

vs.

No. D-202-CV-2016-02705

CITY OF ALBUQUERQUE,  
ALEXANDER LEWIS, and  
STATE OF NEW MEXICO

Defendants.

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS AND  
COMMON LAW TORTS AND DECLARATORY RELIEF**

**NATURE OF THE ACTION**

This is a civil action seeking to remedy violations of the free speech clause of Article II, Section 17 of the New Mexico Constitution and seeking relief for the common law torts of false arrest and imprisonment. As set forth herein, Plaintiff Jeffrey Seymour, having lost his job as a truck driver in June 2015, panhandles to make a living. He has been cited or charged multiple times by Albuquerque Police Officers because of his panhandling, but has not been convicted on a *single* citation or criminal charge. Unable to afford bond, he has spent over fourteen days in jail, only to then have the baseless charges dismissed. The City of Albuquerque has waged an unlawful campaign of harassment against Mr. Seymour as a panhandler, infringing upon his right to solicit donations protected by the New Mexico Constitution. In doing so, the City has also relied, in part, on an unconstitutionally vague state law, the “Wrongful Use of Public Property” statute that is codified at NMSA 1978, § 30-14-4 (1969).

## JURISDICTION

1. Jurisdiction is established under the New Mexico Constitution art. VI, § 13, the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15, the New Mexico Tort Claims Act NMSA 1978, §§ 41-4-1 to 41-30, and New Mexico common law. Venue is proper in this Court pursuant to NMSA 1978, § 38-3-1 (1988).
2. All acts complained of occurred in Bernalillo County, New Mexico.

## PARTIES

3. Plaintiff Jeffrey Seymour is a resident of the State of New Mexico, County of Bernalillo.
4. Defendant City is a municipal corporation and is the proper entity to be sued under the New Mexico Constitution and the New Mexico Tort Claims Act.
5. Defendant Alexander Lewis is a law enforcement officer who resides in Bernalillo County, New Mexico. At all times relevant, Defendant Lewis was acting within the scope and in the course of his employment with the City of Albuquerque.
6. Defendant State of New Mexico is the proper entity to be sued for declaratory relief regarding the constitutionality of state statutes.

## ALLEGATIONS OF FACT PERTINENT TO ALL COUNTS

7. Mr. Seymour is a 58 year-old man. He formerly worked for the federal government and then as a truck driver. He has been unemployed since June 2015, and thus has resorted to panhandling to survive.
8. Mr. Seymour is homeless and lives out of his van.
9. Prior to the citations and criminal charges set forth herein, Mr. Seymour had no criminal

history whatsoever.

10. Mr. Seymour engages in lawful, “passive” panhandling within the City of Albuquerque. He stands on sidewalks and medians, holding up signs that solicit donations. If a driver or passenger in a vehicle expresses his or her intent to give money, food, or other donation to Mr. Seymour, he will calmly approach the vehicle and take the donation.

11. Mr. Seymour does not approach cars if the occupants have not expressed an intent to give Mr. Seymour a donation.

12. Mr. Seymour does not yell at cars when panhandling. Rather, he quietly holds his sign soliciting donations.

13. On or about August 12, 2015, Albuquerque Police Department (“APD”) Officer William Jury cited Mr. Seymour for allegedly unlawfully soliciting rides under Albuquerque, N.M., Code of Ordinances § 8-2-7-2 and allegedly obstructing the street under § 8-2-1-33. *City v. Seymour*, Case No. T-4-TR-2015018341 (Bernalillo County). Both citations were subsequently dismissed in the Metropolitan Court of Bernalillo County.

14. On or about September 16, 2015, APD Officer Ralph Rodriguez cited Mr. Seymour for allegedly failing to yield to pedestrians in a crosswalk under NMSA 1978, § 66-7-334. *State v. Seymour*, T-4-TR-2015022765 (Bernalillo County). The citation was subsequently dismissed in the Metropolitan Court of Bernalillo County.

15. On or about October 19, 2015, APD Officer Kevin Durant cited Mr. Seymour for allegedly violating the City’s panhandling ordinance entitled “Safety in Public Places Ordinance,” Albuquerque, N.M., Code of Ordinances § 12-2-28. *State v. Seymour*, T-4-CR-2015014079

(Bernalillo County). The citation was subsequently dismissed in the Metropolitan Court of Bernalillo County.

16. On or about November 24, 2015, APD Officer Amy Sedler cited Mr. Seymour for allegedly violating the City's "Safety in Public Places Ordinance," Albuquerque, N.M., Code of Ordinances § 12-2-28. *State v. Seymour*, T-4-CR-2015015625 (Bernalillo County). The citation was subsequently dismissed in the Metropolitan Court of Bernalillo County.

17. On or about December 29, 2015, APD Officer John Burley cited Mr. Seymour for allegedly obstructing the streets under Albuquerque, N.M., Code of Ordinances § 8-2-1-33. *City v. Seymour*, T-4-TR-2015028773 (Bernalillo County). That case was resolved without conviction by pre-adjudication diversion.

18. On or about January 14, 2016, APD Officer J. Moore cited Mr. Seymour for allegedly violating the city's "Unlawfully Carrying a Deadly Weapon," Section 12-2-8. This charge was made in error, and should have been "Refusing to Obey or Comply with Police Officer." All charges were dismissed on February 22, 2016 after the officer failed to appear. These charges contributed to Mr. Seymour's eventual jailing by complicating his release process. On this occasion, Officer Moore confiscated approximately \$211.00 in Mr. Seymour's property and did not lodge it along with Mr. Seymour's other property upon booking him into the Bernalillo County Metropolitan Detention Center. This property has not been returned to date.

19. On or about January 22, 2016, APD Officer Alexander Lewis arrested and charged Mr. Seymour with Criminal Trespass, NMSA 1978, § 30-14-1, Wrongful Use of Public Property, NMSA 1978, § 30-14-1, and being a Pedestrian on a Roadway, NMSA 1978, §66-7-339. *State v. Seymour*,

No. T-4-CR-2016-000667 (Bernalillo County). Mr. Seymour was incarcerated for over fourteen days on these charges. All charges were subsequently dismissed in the Metropolitan Court of Bernalillo County.

20. During the arrest of Mr. Seymour on January 22, 2016, Officer Lewis stated that an APD Officer could decide on the proper use of use of public property, and that in his “opinion,” Mr. Seymour could not panhandle on a median.

21. At a February 29, 2016 court setting, Officer Lewis stated to Mr. Seymour’s Public Defender that APD had created and implemented a tactical plan to direct officers’ handling of such cases.

22. The City of Albuquerque has established an unconstitutional policy, custom, and practice of harassing panhandlers, including Mr. Seymour.

23. On or about March 2, 2016, Officer Josh Trujillo cited Mr. Seymour for Wrongful Use of Public Property in violation of NMSA 1978, § 30-14-4. *State v. Seymour*, T-4-CR-2016001874 (Bernalillo County). This matter is still pending in the Metropolitan Court.

24. On or about March 9, 2016, APD Officer Richard Rodriguez cited Mr. Seymour for allegedly failing to yield to a pedestrian in a crosswalk in violation of NMSA 1978, § 66-7-334. *State v. Seymour*, T-4-TR-2016006576 (Bernalillo County). This matter is still pending in the Metropolitan Court.

25. On or about April 14, 2016, APD Officer Ladio Canales cited Mr. Seymour for allegedly being a pedestrian in a roadway in violation of NMSA 1978, § 66-7-339, *State v. Seymour*, T-4-TR-2016007782 (Bernalillo County). This matter is still pending in the Metropolitan Court.

26. Over the course of the past year, APD Officers have repeatedly yelled at Mr. Seymour and

threatened to cite him. He has been stopped and detained, while APD Officers run his license for warrants. One officer confiscated his sign which read, "Homeless Hungry Please Help."

27. In February 2016, a person in a vehicle handed Mr. Seymour a Subway sandwich. An APD Officer saw it and told Mr. Seymour, "I can write you a ticket for being in the roadway."

28. APD Officers have cited Mr. Seymour for panhandling in the median, while individuals hired by local businesses to hold advertising signs in the median are left alone by APD.

29. As a result of APD's harassment of Mr. Seymour, he is unable to return to work as a truck driver. His work requires long distance travel lasting as long as one (1) month. Over the last year, he often had multiple pending cases. Requesting that travel restrictions be lifted and that court dates be moved is impractical and pointless, as the harassment continues to result in additional citations. Mr. Seymour cannot, therefore, apply for truck driving jobs in good faith. Because Defendants' actions prevent Mr. Seymour from working in his chosen profession, he is not able to stop panhandling. These events conspire to create a downward spiral, effectively trapping Mr. Seymour in his current status.

COUNT I: VIOLATIONS OF THE NEW MEXICO CONSTITUTION,  
ARTICLE II, § 17  
(DEFENDANT CITY OF ALBUQUERQUE AND LEWIS)

30. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

31. In pertinent part, Article II, § 17 of the New Mexico Constitution provides:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. . . .

32. The right to free speech includes the right to solicit donations by panhandling.

33. Defendants have violated and continue to violate Mr. Seymour's right to solicit donations by panhandling, as protected N.M. Const. art. II, § 17.

34. On its face and as applied to Mr. Seymour, the City of Albuquerque's "Safety in Public Places Ordinance" violates N.M. Const. art. II, § 17.

35. Defendant City has established an unconstitutional policy, custom, and practice of harassing panhandlers, including Mr. Seymour.

36. Defendants' unconstitutional actions have caused Mr. Seymour bodily harm, including unlawful detention, arrest, and imprisonment.

37. Defendants' acts and omissions caused the plaintiff damages, including pecuniary damages as well as pain and suffering.

38. Immunity has been waived for constitutional torts by NMSA 1978, § 41-4-12.

COUNT II: FALSE ARREST AND IMPRISONMENT  
(DEFENDANTS CITY OF ALBUQUERQUE AND LEWIS)

39. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

40. Defendants caused the plaintiff to be arrested and imprisoned without probable cause or any other legal justification to do so.

41. The City of Albuquerque is liable for the acts and omissions of Defendant Lewis committed in the course of and within the scope of his employment.

42. The arrest and imprisonment of the plaintiff was not justified or privileged under state law and constituted a false arrest and imprisonment for which immunity has been waived by NMSA 1978, § 41-4-12.

43. Defendants' acts and omissions caused the plaintiff damages, including pecuniary damages as well as pain and suffering.

**COUNT III: VIOLATIONS OF THE NEW MEXICO CONSTITUTION,**  
**ARTICLE II, § 18**  
**(DEFENDANT STATE OF NEW MEXICO)**

44. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

45. In pertinent part, Article II, § 18 of the New Mexico Constitution provides: "No person shall be deprived of life, liberty or property without due process of law . . . ."

46. The State's Wrongful Use of Public Property law, NMSA 1978, § 30-14-1, is unconstitutionally vague in violation of the due process clause of N.M. Const. art. II, § 18.

47. On its face and as applied to Mr. Seymour, State's Wrongful Use of Public Property law, NMSA 1978, § 30-14-4, violates the due process clause of N.M. Const. art. II, § 18.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court:

A. enter a declaratory judgment that the City's "Safety in Public Places Ordinance," on its face and as applied to Mr. Seymour, violates Article II, §17 of the New Mexico Constitution;

B. enter a declaratory judgment that the City's policy, custom, and practice of harassing panhandlers violates Article II, §17 of the New Mexico Constitution;

C. enter a declaratory judgment that the State's Wrongful Use of Public Property law, NMSA 1978, § 30-14-4 (1969), on its face and as applied to Mr. Seymour, violates Article II, §18 of the New Mexico Constitution;

D. enter an order enjoining the City from engaging in further unconstitutional acts toward Mr.



Seymour in response to his activities engaging in panhandling that are protected under the New Mexico Constitution and by common law;

E. award Mr. Seymour compensatory damages in an amount to be determined at trial;

F. award attorney fees pursuant to the private attorneys general doctrine and the substantial benefit doctrine; and

G. award such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Nick Sitterly

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