

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW HAMPSHIRE**

JOHOANI VELASCO PEREA

Plaintiff,

v.

**TOWN OF NORTHWOOD, PATRICK
CREMIN, DANIEL GILON, and JOSEPH
DYRKACZ,**

Defendants.

Case No.: _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Pursuant to 42 U.S.C. § 1983, this is a civil rights action on behalf of Johoani Velasco Perea. Defendants Officer Patrick Cremin, Officer Daniel Gilon, and Officer Joseph Dyrkacz of the Northwood Police Department (collectively, the “Department”) unlawfully seized, detained, and arrested Mr. Velasco Perea on the suspicion that he was in the United States unlawfully. This suspicion was based on Mr. Velasco Perea’s race. Mr. Velasco Perea resides in the United States lawfully.

INTRODUCTION

Late in the evening of Friday, September 21, 2018, the Department detained Mr. Velasco Perea and two other Hispanic men as they were walking towards Harding Metals, Inc. in Northwood, New Hampshire. The Department’s police reports, which are attached as *Exhibit A*, indicate, in part, that the three men were “Hispanic” and “suspicious.” Mr. Velasco Perea and the two men immediately explained to the Department’s officers that they were simply walking back to work at Harding Metals, Inc.—where they were building a carport—after buying food

from a nearby convenience store. Mr. Velasco Perea showed the officers a photograph and a video of their work building a carport inside Harding Metals, Inc.

Rather than release Mr. Velasco Perea (as well as the two men) given the obvious absence of criminal behavior, the Department then continued to detain Mr. Velasco Perea based on the suspicion that he was undocumented. There was no basis for that suspicion other than his perceived Hispanic race. The Department asked Mr. Velasco Perea and the two other men for identification. Mr. Velasco Perea produced a valid North Carolina driver's license to the Department. The two other men—Daniel Ocampo and Augustin Ocampo—produced identification from Mexico. The Department then asked Mr. Velasco Perea and the two men whether they were in the United States unlawfully. Mr. Velasco Perea explained that he was in the United States lawfully. The Department called Immigration and Customs Enforcement (“ICE”), which stated that it did not have any information about Mr. Velasco Perea. The Department nonetheless continued to unlawfully seize, detain, and arrest Mr. Velasco Perea until ICE arrived, though there was no basis to believe that he was in the United States unlawfully.

The Department's police reports allege that ICE agents arrived approximately 45 minutes later at approximately 10:30 p.m. When ICE arrived, two ICE agents, without consent, fingerprinted Mr. Velasco Perea and verified that he and Daniel Ocampo were in the United States lawfully. The Department then released Mr. Velasco Perea and Daniel Ocampo. After ICE completed its “verification” process, the Department transferred custody of Augustin Ocampo to ICE based on the allegation that he was undocumented. ICE's “verification” of the three men lasted approximately 90 minutes, during which time the Department held Mr. Velasco Perea's driver's license so that he could not leave. Thus, the Department unlawfully seized, detained, and arrested Mr. Velasco Perea for a total of at least approximately two hours and 15

minutes.

The Northwood Police Department had no legal basis under the Fourth Amendment to detain, seize, and arrest Mr. Velasco Perea. This is true for at least two independent reasons. First, the Department detained Mr. Velasco Perea on its own initiative based on suspected removability. The law is clear that state and local law enforcement officers may not detain or arrest an individual on their own initiative solely based on known or suspected civil violations of federal immigration law. *See, e.g., Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013). Second, there was no reasonable suspicion or probable cause to believe that Mr. Velasco Perea was in the United States unlawfully, especially given his explanation that he had lawful permission to be in the United States and his valid North Carolina driver's license. *See Morales v. Chadbourne*, 793 F.3d 208, 216-17 (1st Cir. 2015) (holding that it is clearly established that immigration arrests, at a minimum, require probable cause to believe the person is removable).

Mr. Velasco Perea's arrest also violated his right to equal protection under the Fourteenth Amendment because the Department followed him, initiated immigration questions, and seized him to investigate his immigration status based solely on his Hispanic appearance.

Accordingly, Mr. Velasco Perea brings this action for damages under 42 U.S.C. § 1983. Mr. Velasco Perea also brings a state law claim for false imprisonment. He further alleges as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Mr. Velasco Perea's federal causes of action arising under 42 U.S.C. § 1983 *et seq.* This Court has supplemental jurisdiction over Mr. Velasco Perea's state law claim. *See* 28 U.S.C. § 1367.

2. This Court may exercise personal jurisdiction over all Defendants because they reside or do business within the District of New Hampshire.

3. Proper venue lies in the District of New Hampshire because a substantial part of the events giving rise to Mr. Velasco Perea's claims occurred in Northwood, New Hampshire. 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Johoani Velasco Perea is 26 years old. He came from Mexico when he was a boy and he is in the United States lawfully. He is a participant in the Deferred Action for Childhood Arrivals (DACA) program. He currently resides in Mount Airy, North Carolina.

5. Defendant Patrick Cremin is a police officer employed by the Northwood Police Department. Officer Cremin is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by the Northwood Police Department. Officer Cremin is being sued in his individual capacity. At all times relevant to this lawsuit, Officer Cremin was and is a "person" as that term is used by 42 U.S.C. § 1983.

6. Defendant Daniel Gilon is a police officer employed by the Northwood Police Department. Officer Gilon is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by the Northwood Police Department. Officer Gilon is being sued in his individual capacity. At all times relevant to this lawsuit, Officer Gilon was and is a "person" as that term is used by 42 U.S.C. § 1983.

7. Defendant Joseph Dyrkacz is a police sergeant employed by the Northwood Police Department. Officer Dyrkacz is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by the Northwood Police Department. Officer Dyrkacz is being sued in his individual capacity. At all times relevant to this lawsuit, Officer

Dyrkacz was and is a “person” as that term is used by 42 U.S.C. § 1983.

8. Officer Cremin, Officer Gilon, and Officer Dyrkacz together are referred to as the “Police Officer Defendants.”

9. Defendant Town of Northwood is a municipal entity created under the laws of the State of New Hampshire. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. At all times relevant to this lawsuit, Defendant Town of Northwood was and is a “person” as that term is used by 42 U.S.C. § 1983. Defendant Town of Northwood is the public employer of the Police Officer Defendants.

FACTS

10. On the evening of Friday, September 21, 2018, Plaintiff Johoani Velasco Perea was working with two men—Augustin Ocampo and Daniel Ocampo—at Harding Metals, Inc. at 42 Harding Drive in Northwood, New Hampshire, where they were building a carport. Mr. Velasco Perea, who lives in North Carolina, was sent by his North Carolina employer to Northwood to do this job for Harding Metals, Inc.

11. Late that evening, Mr. Velasco Perea and the two other men—who are all Hispanic—briefly left work to visit the nearby Irving Oil gas station’s convenience store (located at 185 1st New Hampshire Turnpike) to get some food because they were hungry. The gas station’s convenience store was an approximate 0.2-mile walk from Harding Metals, Inc. As they arrived, Mr. Velasco Perea noticed a police cruiser in the parking lot. Upon entering the convenience store, they saw two officers in the store.

12. Approximately 15 minutes later, Mr. Velasco Perea and the two men exited the convenience store and began walking back to Harding Metals, Inc. to recommence their work.

Mr. Velasco Perea saw the same police cruiser in the parking lot of the convenience store as he exited. During the walk, Mr. Velasco Perea, who had some soup with him, noticed that this police cruiser had started to follow them slowly as they walked. There was no valid reason for the officers in the cruiser to be following these men.

13. As the three men entered the area where they were working at Harding Metals, Inc., the police cruiser's lights were activated and two Northwood Police Department officers exited the cruiser. These were the same two Northwood Police Department officers who were in the interior of the Irving Oil gas station convenience store. Based on the Department's police reports, these two officers were Defendants Northwood Police Department Officers Patrick Cremin and Daniel Gilon.

14. Defendants Officer Cremin and Officer Gilon then stopped, detained, and seized Mr. Velasco Perea and the two other men. Officer Cremin's police report indicates that this stop occurred on 9:47 p.m. that evening. Officer Gilon's police report indicates that this stop occurred at 9:50 p.m. that evening.

15. As Defendant Officer Patrick Cremin's police report alleges: "Officer Gilon and I were driving past Harding Metals when we observed three suspicious males. We stopped the males." (emphasis added). This report does not state what aroused the officers' initial suspicion and led them to follow the three men. As Defendant Officer Daniel Gilon's police report alleges:

Officer Cremin and I were at the Irving gas station ... when we saw three Hispanic males walking towards Harding Metals, Inc. (Harding metals), next door to the Irving gas station. Officer Cremin and I pulled out of the Irving parking lot towards Harding Metals and saw the three subjects walk down towards the gate of Harding Metals. Harding Metals was not open for business at this time. Officer Cremin and I pulled into the entrance of Harding Metals and spotted the three subjects on the opposing side of the gate. Officer Cremin and I drove towards the gate and made contact with the three subjects.

(emphasis added).

16. Immediately after the stop was initiated, Mr. Velasco Perea and the two men explained that they were simply walking back to work at Harding Metals, Inc., where they were building a carport, after getting food from the Irving Oil gas station. This is confirmed by Defendant Officer Gilon's police report, which states: "Upon talking to the three subjects they told us that they were building a carport for Harding Metals."

17. Indeed, Mr. Velasco Perea showed the two officers a photograph from Augustin Ocampo's phone of the carport construction they were completing at Harding Metals, Inc. Mr. Velasco Perea also showed the two officers a video from his phone depicting this carport construction.

18. However, rather than release Mr. Velasco Perea (and the two other men) given the obvious absence of criminal behavior, the Department then continued to detain Mr. Velasco Perea based on the suspicion that he was undocumented.

19. Defendants Officer Cremin and Officer Gilon immediately demanded that Mr. Velasco Perea and the two other men produce identification. The Officers made this demand despite the fact that there was no reasonable suspicion or probable cause to believe that any of them had committed a crime or committed any immigration violation.

20. Mr. Velasco Perea produced a valid North Carolina driver's license to Defendants Officer Cremin and Officer Gilon. Augustin Ocampo and Daniel Ocampo produced identification from Mexico.

21. According to Defendant Officer Gilon's police report, Defendant Officer Cremin then went back to the police cruiser to "run their information," while Officer Gilon "stayed to watch the three subjects."

22. Officer Cremin's police report states that: "At this time, I contact[ed] the United

States Immigration and Customs Enforcement [ICE] office here in New Hampshire. While speaking with the on call agent, he advised that he and another agent would be responding, due to being unable to locate any information on the males.” Despite ICE’s statement that it had no information about Mr. Velasco Perea, the Department continued to detain him.

23. According to Officer Gilon’s police report, Defendant Officer Joseph Dyrkacz arrived at around this point. According to Defendant Officer Dyrkacz’s police report, he “observed 3 males sitting on a brick wall.”

24. Officer Cremin then left his cruiser and joined Officer Gilon, who was watching over Mr. Velasco Perea and the two other men. Officer Cremin asked Mr. Velasco Perea and the two men whether they were in the United States illegally. According to Officer Gilon’s police report, Officers Cremin, Gilon, and Dyrkacz, “[a]fter attempting to run the subjects’ information,” asked Mr. Velasco Perea and the two men whether “they were here [in the United States] illegally.”

25. Mr. Velasco Perea and the other man—Daniel Ocampo—were in the United States lawfully. Accordingly, in response to this questioning, Mr. Velasco Perea told the officers that he was in the Deferred Action for Childhood Arrivals (DACA) program, which gives immigrants lawful permission to reside and work in the United States. Mr. Velasco Perea also stated that Daniel Ocampo had a visa to be in the United States. Defendants had no indications otherwise. Regardless, Defendants continued to unlawfully seize, detain, and arrest Mr. Velasco Perea and Daniel Ocampo until ICE arrived.

26. As alleged in Defendant Officer Gilon’s police report, one of the men—Augustin Ocampo—allegedly stated in response to this questioning that he was in the United States unlawfully.

27. According to Defendant Officer Dyrkacz's police report, Defendant Officer Gilon—at Defendant Officer Cremin's request—handcuffed Augustin Ocampo. Officer Gilon's police report states that “we were detaining him [Augustin Ocampo] until ICE ... arrived.” Defendant Officer Cremin's police report states that “Officer Gilon placed Augustin in handcuffs” and “Augustin was placed in the rear of the cruiser four to await I.C.E. to arrive.” Defendant Officer Dyrkacz's police report similarly states that Augustin Ocampo was placed in the cruiser until ICE “could properly identif[y] the subject.”

28. During this wait for ICE to arrive, at least one of the officers was watching over the three men at all times. None of the men, including Mr. Velasco Perea, were free to leave. One of the Defendant officers told the three men that “we need to check your status.”

29. Defendant Officer Cremin's police report states that ICE arrived approximately 45 minutes later, at around 10:30 p.m. Two ICE officers responded to the scene—Officers Brian Geary and Timothy Stevens.

30. According to Defendant Officer Dyrkacz's police report, when the two ICE officers arrived, ICE “began the process to identify all three male subjects.” The ICE officers fingerprinted Mr. Velasco Perea and the two men without asking for permission.

31. According to Defendant Officer Cremin's police report, “[i]t was determined that Augustin [Ocampo] was in fact in the country illegally and I.C.E. took him into their custody.”

32. Officer Cremin's police report also states that “[t]he two other males”—Mr. Velasco Perea and Daniel Ocampo—“were found to be in the country legally, and would be allowed to walk away from the encounter.” Defendant Officer Gilon's police report similarly states that they were now “free to leave,” acknowledging that before that point they were not free to leave.

33. While the ICE agents were “verifying” the status of Mr. Velasco Perea and Daniel Ocampo, Mr. Velasco Perea asked whether he could use his phone. One of the ICE agents told him to “shut up” and that, if he did not follow his orders, ICE would take him into custody.

34. The Department’s officers detained Mr. Velasco Perea for approximately 45 minutes until ICE arrived. ICE’s “verification” of the three men lasted approximately 90 minutes, during which time the Department held his driver’s license so that he could not leave the scene. Thus, the Department unlawfully seized, detained, and arrested Mr. Velasco Perea for a total of at least two hours and 15 minutes.

35. At no time during this detention did Mr. Velasco Perea believe that he was free to leave. Defendants’ police reports admit that Mr. Velasco Perea was in their custody until they were released after ICE completed its “verification” process. Moreover, the Northwood Police Department confiscated Mr. Velasco Perea’s driver’s license and did not return the license until after ICE arrived and until his detention was nearly complete.

36. The Defendants’ actions violated the Fourth Amendment for at least two independent reasons.

37. First, the Department detained Mr. Velasco Perea on its own initiative based on suspected removability. Courts have repeatedly held that local law enforcement officers cannot seize and arrest individuals on their own initiative solely based on known or suspected civil immigration violations. *See, e.g., Santos v. Frederick County Bd. of Comm’rs*, 725 F.3d 451, 464-65 (4th Cir. 2013) (“absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law”) (citing cases); *Carrero v. Farrelly*, 270 F. Supp. 3d 851, 872 (D. Md. 2017) (“Officer Farrelly’s prolonged

detention of Plaintiff after the initial stop also violated clearly established law. The facts alleged indicate that Officer Farrelly violated Plaintiff's Fourth Amendment rights by unreasonably prolonging the stop solely to investigate her immigration status."); *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012) ("[T]he Fourth Amendment does not permit a stop or detention based solely on unlawful presence.").

38. Second, the Department did not have probable cause to believe that Mr. Velasco Perea was subject to removal. It had no affirmative indications that he was removable, and multiple indications that he was not, including his explanation that he was a DACA recipient and his valid North Carolina driver's license. *See Morales v. Chadbourne*, 793 F.3d 208, 216-17 (1st Cir. 2015) (holding that it is clearly established that immigration arrests, at a minimum, require probable cause to believe the person is removable). ICE itself confirmed a lack of probable cause when it told the Department that it did not have any information about Mr. Velasco Perea.

39. Moreover, Defendants' suspicion that Mr. Velasco Perea may have committed a non-criminal immigration violation was based solely on the fact that he is Hispanic. As Mr. Velasco Perea disclosed that he was lawfully in the United States and presented a valid North Carolina driver's license, there was no basis to believe that he was undocumented other than based on his perceived "Hispanic" race. Defendant Officer Daniel Gilon's police report specifically mentions the race of Mr. Velasco Perea and the two other men when discussing the facts of the stop.

40. This detention caused harm to Mr. Velasco Perea, including the violation of his constitutional rights and improper loss of his liberty.

COUNT I
42 U.S.C. § 1983 – VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS
UNREASONABLE SEIZURE
(AGAINST POLICE OFFICER DEFENDANTS)

41. All prior paragraphs are incorporated.

42. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her federal rights is liable at law and in equity.

43. The Police Officer Defendants detained Mr. Velasco Perea without any lawful justification and solely on the basis of their belief or suspicion that he was unlawfully present in the United States.

44. The Police Officer Defendants did not have any authority to detain Mr. Velasco Perea based on suspected removability without any request or direction from the federal government. *See, e.g., Santos v. Frederick County Bd. of Comm’rs*, 725 F.3d 451, 464-65 (4th Cir. 2013) (“absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law”) (citing cases).

45. By prolonging the detention of Mr. Velasco Perea based on a suspected immigration violation, the Police Officer Defendants violated Mr. Velasco Perea’s Fourth Amendment right to be free from unreasonable seizures.

46. It was clearly established at the time of Mr. Velasco Perea’s seizure that it was illegal for the Police Officer Defendants to unilaterally seize him for a civil immigration violation.

47. Mr. Velasco Perea’s suffered loss of fundamental rights and his liberty as a result of this action by the Police Officer Defendants.

48. Mr. Velasco Perea is entitled to punitive damages, as the actions of the Police

Officer Defendants were motivated by evil motive or intent and/or involved reckless or callous indifference to Mr. Velasco Perea's rights.

COUNT II
42 U.S.C. § 1983 – VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS
UNREASONABLE SEIZURE
MONELL FAILURE TO TRAIN
(AGAINST DEFENDANT TOWN OF NORTHWOOD)

49. All prior paragraphs are incorporated.

50. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional customs, practices, and policies, and failure to train their law enforcement officers.

51. The Town of Northwood has failed to train its police officers that they may not seize individuals for civil immigration violations absent any request or instruction from the federal government. *See, e.g., Santos v. Frederick County Bd. of Comm’rs*, 725 F.3d 451, 464-65 (4th Cir. 2013). It also has not issued any policies to that effect. Indeed, in response to an October 15, 2018 Chapter 91-A request from the ACLU of New Hampshire, the Northwood Police Department disclosed that it does not have any policies or training materials for officers concerning the handling of suspects who a Department officer may believe is in the United States unlawfully. *See Exhibit B.*

52. The Town of Northwood knew or should have known that such a lack of policies and training would lead to improper conduct by its employee police officers, but nonetheless exhibited deliberate indifference to the illegal conduct that would result.

53. The Town of Northwood's failure to train its officers directly resulted in the violation of Mr. Velasco Perea's Fourth Amendment rights by the Police Officer Defendants.

54. Mr. Velasco Perea suffered loss of fundamental rights and his liberty as a result of

this action by the Town of Northwood.

COUNT III
42 U.S.C. § 1983 – VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS
UNREASONABLE SEIZURE
(AGAINST POLICE OFFICER DEFENDANTS)

55. All prior paragraphs are incorporated.

56. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her federal rights is liable at law and in equity.

57. It was clearly established that law enforcement needs probable cause to arrest and detain individuals based on suspicion that they are removable. *See Morales v. Chadbourne*, 793 F.3d 208, 216-17 (1st Cir. 2015) (holding that it is clearly established that immigration arrests, at a minimum, require probable cause to believe the person is removable).

58. There was no probable cause for the Police Officer Defendants to believe that Mr. Velasco Perea was undocumented or subject to removal.

59. By prolonging the detention of Mr. Velasco Perea without probable cause to believe that he had committed an immigration violation, the Police Officer Defendants violated Mr. Velasco Perea's Fourth Amendment right to be free from unreasonable seizures.

60. Mr. Velasco Perea's suffered loss of fundamental rights and his liberty as a result of this action by the Police Officer Defendants.

61. Mr. Velasco Perea is entitled to punitive damages, as the actions of the Police Officer Defendants were motivated by evil motive or intent and/or involved reckless or callous indifference to Mr. Velasco Perea's rights.

COUNT IV
42 U.S.C. § 1983 – VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS
UNREASONABLE SEIZURE
MONELL FAILURE TO TRAIN
(AGAINST DEFENDANT TOWN OF NORTHWOOD)

62. All prior paragraphs are incorporated.

63. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional customs, practices, and policies, and failure to train their law enforcement officers.

64. The Town of Northwood has failed to train its police officers that probable cause is required to arrest and detain individuals based on suspicion that they are subject to removal. *See Morales v. Chadbourne*, 793 F.3d 208, 216-17 (1st Cir. 2015). It has also failed to train its officers on the substantive standards for what makes a person removable under federal immigration law. Indeed, in response to an October 15, 2018 Chapter 91-A request from the ACLU of New Hampshire, the Northwood Police Department disclosed that it does not have any policies for its officers concerning the handling of suspects who a Department officer may believe is in the United States unlawfully. *See Exhibit B*.

65. The Town of Northwood knew or should have known that such a lack of training and policies would lead to improper immigration arrests by its employee police officers, but nonetheless exhibited deliberate indifference to the illegal conduct that would result.

66. The Town of Northwood’s failure to train its officers and adopt relevant policies directly resulted in the violation of Mr. Velasco Perea’s Fourth Amendment rights by the Police Officer Defendants.

67. Mr. Velasco Perea suffered loss of fundamental rights and his liberty as a result of this action by the Town of Northwood.

COUNT V
42 U.S.C. § 1983 – VIOLATION OF FOURTEENTH AMENDMENT
EQUAL PROTECTION
(AGAINST POLICE OFFICER DEFENDANTS)

68. All prior paragraphs are incorporated.

69. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her federal rights is liable at law and in equity.

70. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees all persons equal protection of the laws.

71. As a person of color identifying as a Hispanic individual, Mr. Velasco Perea is a member of a protected class.

72. The Police Officer Defendants, acting under color of law, in the performance of their official duties, and in concert with one another, engaged in profiling of and discrimination against Mr. Velasco Perea based on his perceived Hispanic race.

73. The Police Officer Defendants profiled and discriminated against Mr. Velasco Perea when they prolonged his detention based on the suspicion that he was undocumented. This suspicion that was based on nothing other than Mr. Velasco Perea's Hispanic race.

74. The Police Officer Defendants acted intentionally and unlawfully in discriminating against Mr. Velasco Perea on account of his perceived race.

75. The Police Officer Defendants acted pretextually with racial motivation, and without reasonable suspicion or probable cause to prolong the detention of Mr. Velasco Perea and question him.

76. The Police Officer Defendants' conduct violated Mr. Velasco Perea's clearly established right to equal protection.

77. Mr. Velasco Perea's suffered loss of fundamental rights and his liberty as a result

of this action by the Police Officer Defendants.

78. Mr. Velasco Perea is entitled to punitive damages, as the actions of the Police Officer Defendants were motivated by evil motive or intent and/or involved reckless or callous indifference to Mr. Velasco Perea's rights.

COUNT VI
STATE LAW FALSE IMPRISONMENT CLAIM
(AGAINST ALL DEFENDANTS)

79. All prior paragraphs are incorporated.

80. By detaining, seizing, and arresting Mr. Velasco Perea solely based on a suspected immigration violation, Defendants acted with the intent of confining Mr. Velasco Perea within boundaries that Defendants fixed.

81. Defendants' actions directly and indirectly resulted in Mr. Velasco Perea's confinement.

82. Mr. Velasco Perea was conscious of or harmed by the confinement.

83. Defendants acted without legal authority in perpetrating this confinement.

84. Defendants could not have reasonably believed, at the time of the acts complained of in this lawsuit, that their conduct was lawful. The actions of Defendants were made in a wanton or reckless manner.

85. Mr. Velasco Perea suffered loss of fundamental rights and his liberty as a result of this action by Defendants.

86. Accordingly, Defendants falsely imprisoned Mr. Velasco Perea.

87. Notice of this state law claim was provided to Defendants.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues triable by jury.

RELIEF REQUESTED

WHEREFORE, Plaintiff Johoani Velasco Perea respectfully requests that this Court:

- A. Declare that the actions taken by Defendants in seizing, detaining, and arresting Mr. Velasco Perea violated Mr. Velasco Perea's rights under the Fourth and Fourteenth Amendments;
- B. Award compensatory damages against all Defendants, and punitive damages against the Police Officer Defendants, for the above violations of Mr. Velasco Perea's constitutional rights;
- C. Award compensatory damages against all Defendants for falsely imprisoning Mr. Velasco Perea;
- D. Award prejudgment interest on any damages to the extent permitted by law;
- E. Award reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable law; and
- F. Grant such other relief as the Court may deem appropriate.

Respectfully submitted,

JOHOANI VELASCO PEREA,

By and through his attorneys affiliated with the
American Civil Liberties Union of New Hampshire
Foundation,

/s/ Gilles R. Bissonnette

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Date: November 14, 2018

EXHIBIT

A



Northwood Police Department

1020 First New Hampshire Turnpike

Northwood, New Hampshire 03261

Telephone: (603) 942-8284

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Glendon L. Drolet
Chief of Police

Gilles Bissonnette
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301

Dear Mr. Bissonnette:

Enclosed please find the information you requested through your RSA 91-A Freedom of Information Act in regards to Augustin Ocampo Ayala on the evening of September 21, 2018. If you require any further information please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Glendon L. Drolet".

Glendon L. Drolet
Chief of Police

Arrest Report

Arrest #: 18NOR-131-AR
Call #: 18-121737

Date/Time Reported: 09/21/2018 @ 2147
Arrest Date/Time: 09/22/2018 @ 2233
Booking Date/Time: 09/22/2018 @ 2233



TN #:

Reporting Officer: PATROL PATRICK 545-CREMIN
Approving Officer: Chief GLEN 540-DROLET

Signature: _____

Signature: _____

#	DEFENDANT (S)	SEX	RACE	AGE	SSN	PHONE
1	OCAMPO, AGUSTIN AYALA MOUNT AIRY NC 27030	M	W	27	NOT AVAIL	
Military Active Duty: N BODY: NOT AVAIL. COMPLEXION: NOT AVAIL. DOB: [REDACTED] PLACE OF BIRTH: NOT AVAIL. LICENSE NUMBER: NOT AVAIL. ETHNICITY: HISPANIC						
[RIGHTS/BOOKING CHECKS]						

PHONE USED: N
ARRESTEE SECURED: N

FINGERPRINTED: N
PHOTOGRAPHED: N
SUICIDE CHECK: Not Performed
PERSONS: State&Federal
NCIC VEHICLE CHECK: Not Performed
INJURY OR ILLNESS: N

#	OFFENSE (S)	ATTEMPTED	TYPE	CLASS
1	Arrest Without a Warrant (Fugitive) 612 14 OCCURRED: 09/21/2018 2147	N	Misdemeanor	A
LOCATION TYPE: Industrial Site Zone: NORTHWOOD HARDING METALS FIRST NH TURNPIKE NORTHWOOD NH 03261				

#	PERSON (S)	PERSON TYPE	SEX	RACE	AGE	SSN	PHONE
1	VELASCO PEREA, JOHOANI E MOUNT AIRY NC 27344 DOB: [REDACTED]	OTHER	M	W	26	NOT AVAIL	

Northwood Police Department
PERSONNEL NARRATIVE FOR PATROL PATRICK 545-CREMIN

Ref: 18NOR-131-AR

Entered: 09/22/2018 @ 0136	Entry ID: 0228
Modified: 10/02/2018 @ 2048	Modified ID: 4786
Approved: 10/11/2018 @ 1337	Approval ID: 9610

On 09/21/2018 at approximately 2147 hours, Officer Gilon and I were driving past Harding Metals when we observed three suspicious males. We stopped and made contact with the males. Only one male spoke english, he was identified as

Johoani Velasco Perea


Mount Airy, NC

by his North Carolina license. While trying to identify the other two males, we were provided with voter cards from Mexico. At this time, I contact the United States Immigration and Customs Enforcement office here in New Hampshire. While speaking with the on call agent, he advised that he and another agent would be responding, due to being unable to locate any information on the males. While waiting for U.S. I.C.E. to arrive, we were provided information from one of the males, identified later as

Agustin Ocampo


Mount Airy, NC

that he was in this country illegally.

At this time, Officer Gilon placed Agustin in handcuffs and patted him down for weapons. Agustin was placed in the rear of cruiser four to await I.C.E. to arrive. At approximately 2233 hours, I.C.E. arrived on scene and began to identify all the males on scene. It was determined that Agustin was in fact in the country illegally and I.C.E. took him into their custody. The other two males were found to be in the country legally, and would be allowed to walk away from the encounter. The third male was advised that he was in the country on an agricultural visa, and that he was not supposed to be working anywhere but the farm listed on his visa. The male appeared to understand this and both parties left the scene. A short time later, all units cleared the area.

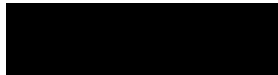
Northwood Police Department
PERSONNEL NARRATIVE FOR PATROL DANIEL 544-GILON

Ref: 18NOR-131-AR

Entered: 09/22/2018 @ 0528	Entry ID: 9492
Modified: 10/11/2018 @ 1341	Modified ID: 9610
Approved: 10/11/2018 @ 1337	Approval ID: 9610

On Friday, September 21, 2018, at approximately 2150, Officer Cremin and I were at the Irving gas station on First NH Turnpike in Northwood, NH when we saw three hispanic males walking towards Harding Metals Inc. (Harding Metals), next door to the Irving gas station. Officer Cremin and I pulled out of the Irving parking lot towards Harding Metals and saw the three subjects walk down towards the gate of Harding Metals. Harding Metals was not open for business at this time. Officer Cremin and I pulled into the entrance of Harding Metals and spotted the three subjects on the opposing side of the gate. Officer Cremin and I drove towards the gate and made contact with the three subjects. Upon talking to the three subjects, they told us that they were building a car port for Harding Metals. After asking for identification of the three subjects, one of them gave us a North Carolina Driver's License and the other two gave Mexico ID's (identification). The subject with the North Carolina Driver's License was identified as VELASCO PEREA, JOHOANI.

Johoani Velasco Perea



Mount Airy, NC

The second subject identified himself as OCAMPO, AGUSTIN.

Agustin Ocampo



Mount Airy, NC

The third subject identified himself as DANIEL.

Officer Cremin went back to the cruiser to run their information while I stayed to watch the three subjects. Officer Joe Dyrkacz arrived at this point. After attempting to run the three subjects' information, we asked if any of the three were here illegally. Mr. Ocampo translated to the other two what Officer Cremin had asked and Mr. Ocampo stated that he was here illegally. I then placed Mr. Ocampo in handcuffs, checking for proper fit and double locking both handcuffs, as we were detaining him until ICE (Immigration and Customs Enforcement) arrived. Upon ICE arriving, we handed Mr. Ocampo over to the ICE agents. The ICE agents then used their fingerprint scanner and went through their set of procedures, verifying that Mr. Ocampo was here illegally from Mexico. Mr. Velasco Perea and DANIEL were here legally and were free to leave.

Northwood Police Department
SUPPLEMENTAL NARRATIVE FOR PATROL JOSEPH 549-DYRKACZ

Ref: 18NOR-131-AR

Entered: 10/02/2018 @ 2006	Entry ID: 0226
Modified: 10/02/2018 @ 2050	Modified ID: 4786
Approved: 10/11/2018 @ 1337	Approval ID: 9610

On 09/21/2018 at approximately 2147 hours I heard Ofc. Cremin and Ofc. Gilon out with some male subjects in the area of Harding Metals. I responded to the location and Met with Ofc. Cremin and Ofc. Gilon at the location. I also observed 3 males sitting on a brick wall.

Officer Cremin advised me that he had a North Carolina license of one of the male subjects. Ofc. Cremin advised that the subject was the only one to speak english and was the only one with identification on him.

The male subject was identified as:

Johoani Velasco Perea

[REDACTED]
Mount Airy, NC
[REDACTED]

Ofc. Cremin advised that he has contacted United States Immigration and Customs Enforcement with the subjects' names and was waiting to hear back from them. Ofc. Cremin advised that while speaking with the agent on call he was advised that they would be en route to our location, as we were unable to identify all the male subjects, as they did not appear to have proper identification at this time.

Ofc. Cremin and Ofc. Gilon were able to get the information from another subject who advised that he was in the country illegally. The male subject was identified as:

Agustin Ocampo

[REDACTED]
Mount Airy, NC
[REDACTED]

Ofc. Cremin advised Ofc. Gilon to place Agustin into restraints, which he did. Ofc. Gilon also patted Agustin down, checking for for any weapons. Ofc. Gilon then placed Agustin in the rear of the cruiser until I.C.E. arrived and could properly identified the subject.

I.C.E. arrived and began the process to identify all three male subjects. It was determined that Agustin was in fact illegally in the country and was taken away by transport van from the Strafford County Sheriff's Department. Custody of Agustin was released to them.

The other two males were allowed to be in the country at this time but were warned by the agents because they were working in places that their paperwork did not say and they were supposed to be at a farm in North Carolina. The agents allowed them to leave but said that they had to not be in this area and were warned not to remain.

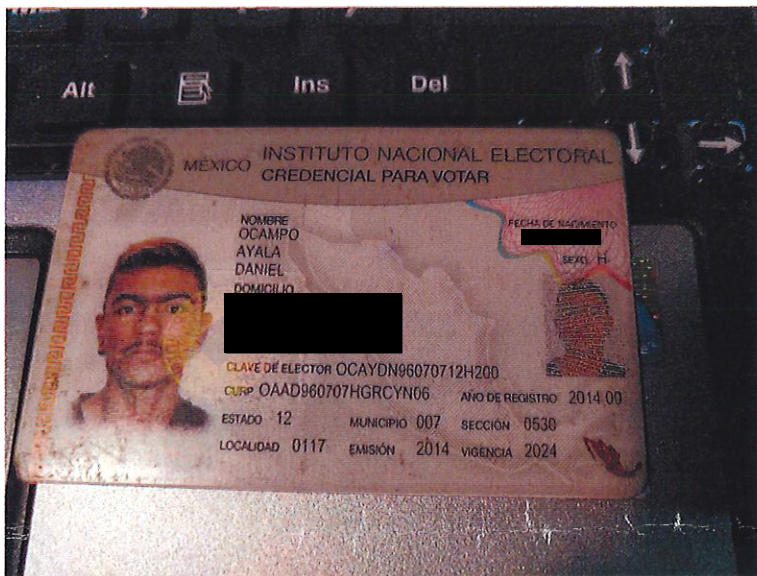
All units cleared from the location.
Nothing further to report at this time.

SUPPLEMENTAL NARRATIVE FOR PATROL JOSEPH 549-DYRKACZ

Ref: 18NOR-131-AR

Entered: 10/02/2018 @ 2006	Entry ID: 0226
Modified: 10/02/2018 @ 2050	Modified ID: 4786
Approved: 10/11/2018 @ 1337	Approval ID: 9610

Northwood Police Department
Images Associated with 18NOR-131-AR



EXHIBIT

B



October 15, 2018

VIA EMAIL (gdrolet@northwoodpolice.org)

Glen Drolet
Chief of Police
Northwood Police Department
1020 First New Hampshire Turnpike
Northwood, NH 03261

Re: Right-to-Know Request

Dear Chief Drolet:

This is a Right-to-Know request to the Northwood Police Department (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

Below is the specific request:

1. Any internal emails, directives, or policies—whether formal or informal—concerning the handling of suspects who a Department officer may believe is in the United States unlawfully.

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld,

or any portion redacted, please specify the specific reasons and statutory exemption relied upon. See RSA 91-A:4, IV (official must “make such record available” or “deny the request in writing *with reasons*”) (emphasis added).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org



Northwood Police Department

1020 First New Hampshire Turnpike

Northwood, New Hampshire 03261

Telephone: (603) 942-8284

Fax: (603) 942-9102



Glendon L. Drolet
Chief of Police

Gilles Bissonnette
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301

Dear Mr. Bissonnette:

In response to your RSA 91-A request received on October 15, 2018 please be advised that I do not have any materials to produce that meet your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Glendon L. Drolet".

Glendon L. Drolet
Chief of Police

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JOHOANI VELASCO PEREA
(b) County of Residence of First Listed Plaintiff Surry County, NC
(c) Attorneys (Firm Name, Address, and Telephone Number)
Gilles Bissonnette
ACLU of New Hampshire
18 Low Avenue, Concord, NH 03301 (603) 227-6678

DEFENDANTS
TOWN OF NORTHWOOD, PATRICK CREMIN, DANIEL GILON, and
JOSEPH DYRKACZ
County of Residence of First Listed Defendant Rockingham County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983
Brief description of cause:
Unlawful detention in violation of the Fourth Amendment

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE DOCKET NUMBER

DATE 11/14/2018
SIGNATURE OF ATTORNEY OF RECORD /s/ Gilles Bissonnette

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.