



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

September 25, 2018

VIA FIRST CLASS MAIL AND EMAIL (danburyclerk@comcast.net)

David Suckling
Chief of Police
Danbury Police Department
23 High St
Danbury, NH 03230

Re: Bashar Awawdeh. v. Town of Exeter, et al.

Dear Chief Suckling:

Today, the ACLU-NH filed a lawsuit against the Town of Exeter and several of its officers for, in violation of the Fourth Amendment and state law, seizing and detaining our client simply because they believed that he was unlawfully present in the United States. I am informing you of this lawsuit because your Department has prolonged the detention of at least one individual simply due to that person's suspected immigration status. This incident—which violated the Fourth Amendment and state law—is evidenced in the attached *Boakye* case.

It is well settled that a person's presence in the United States in violation of immigration laws, standing alone, is not a crime. The United States Supreme Court has explained that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," and, thus, "[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent." *See Arizona v. United States*, 567 U.S. 387, 407 (2012). The federal administrative process for removing someone from the country "is a civil, not criminal, matter." *Id.* at 396.

Courts have repeatedly held that local law enforcement officers cannot seize and arrest—or prolong the detention of—individuals 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.").

There is similarly no legal basis for the Danbury Police Department to prolong a person's detention due to an ICE detainer. *See Lunn v. Commonwealth*, 78 N.E.3d 1143, 1160 (Mass. 2017) (holding that Massachusetts court officers do not have the authority to arrest someone at the request of Federal immigration authorities pursuant to a civil immigration detainer—and hold them beyond the time that the



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individual would otherwise be entitled to be released from State custody—solely because the Federal authorities believe the person is subject to civil removal).

Following these legal principles is not only consistent with the law, but it also makes Danbury safer. When local police departments detain individuals simply due to their alleged undocumented status, they create an environment where these individuals—including victims of domestic violence—are afraid to call for help or report crimes. This problem is especially evident in the *Boakye* case where your department was arriving to address the public safety ramifications of a vehicle skidding off an icy road. The Danbury Police Department, of course, needs to be accessible to all members of the public, regardless of their legal status, who need law enforcement assistance, whether it be victims or people involved in car accidents.

We request that you end this practice immediately. Thank you for your careful review of this important issue.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Gilles Bissonnette". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

Enclosures

| | | | | | | | | | | | | | | | | | |
|---|--|--------------------------------------|--|--|--|-------------------------------------|--|---|--|--|--|----------------------|--|--|--|---|--|
| LOCAL USE (case number) 18-010018 | | | | STATE OF NEW HAMPSHIRE UNIFORM POLICE | | | |  | | | | M.V. USE ONLY | | | | | |
| Amended Report <input type="checkbox"/> | | Hit and Run <input type="checkbox"/> | | School Bus <input type="checkbox"/> | | Driver Ed. <input type="checkbox"/> | | TRAFFIC ACCIDENT REPORT DSMV159 (Rev.04/00) | | | | No. Date Rec'd | | Supplemental Report <input type="checkbox"/> | | Motor Carrier Report <input type="checkbox"/> | |

| | | | |
|--------------------------------|-------------------------|--------------------------------------|-------------------------|
| DATE OF ACCIDENT 01/06/2018 | DAY OF WEEK Saturday | TIME OF ACCIDENT (Military) 04:00 | CITY/TOWN Danbury NH |
|--------------------------------|-------------------------|--------------------------------------|-------------------------|

| | | | | | | |
|---|--|---|-----------------------|----------------------|-------------------|------------------------------|
| TOTAL KILLED <input type="checkbox"/> 0 | TOTAL INJURED <input type="checkbox"/> 0 | TOTAL VEHICLES <input type="checkbox"/> 1 | POLICE NOTIFIED 04:17 | POLICE ARRIVED 04:34 | AMBULANCE ARRIVED | DEPARTMENT Danbury Police |
|---|--|---|-----------------------|----------------------|-------------------|------------------------------|

ACCIDENT OCCURRED ON:

_____ MILES N E OF _____ INTERSECTING ROAD, BRIDGE, TOWN LINE (not telephone pole, house) POSTED SPEED _____

_____ FEET S W OF _____

AT INTERSECTION WITH _____

ROUTE NO. AND/OR STREET NAME: Route 4 ROUTE NO. AND/OR STREET NAME: Route 4

Complete the first node for accidents at node, complete both for accidents between nodes.

| FIRST NODE | DISTANCE FROM FIRST NODE TOWARD SECOND | SECOND NODE | MILE-MARKER ON INTERSTATE ONLY |
|----------------------|--|----------------------|---|
| <u>10</u> / <u>0</u> | <u>0</u> | <u>10</u> / <u>0</u> | _____ FEET |
| MAP ZONE NODE SUF | | MAP ZONE NODE SUF | N <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/> |

| UNIT NO.: 1 | INFORMATION | UNIT NO.: | INFORMATION |
|-------------------------------------|---|-------------------------------------|---|
| BICYCLE <input type="checkbox"/> | SUMMONED <input type="checkbox"/> ARRESTED <input type="checkbox"/> M.V.R. YES <input type="checkbox"/> | BICYCLE <input type="checkbox"/> | SUMMONED <input type="checkbox"/> ARRESTED <input type="checkbox"/> M.V.R. YES <input type="checkbox"/> |
| PEDESTRIAN <input type="checkbox"/> | CHARGE: 261:40 RECOM <input type="checkbox"/> | PEDESTRIAN <input type="checkbox"/> | CHARGE: RECOM <input type="checkbox"/> |

| | | | | | |
|------------------------------|----------|----------------|--------------------|-------|----------------|
| DRIVER LICENSE NO. S96227164 | STATE MA | CLASSIFICATION | DRIVER LICENSE NO. | STATE | CLASSIFICATION |
| DRIVER'S NAME BOAKYE, Eric | | | DRIVER'S NAME | | |

| | | | | | |
|-------------------|-------|--|--------|-----|--|
| D.O.B. 04/08/1973 | SEX M | RESTRICTIONS / ENDORSEMENTS COMPILED WITH YES <input type="checkbox"/> | D.O.B. | SEX | RESTRICTIONS / ENDORSEMENTS COMPILED WITH YES <input type="checkbox"/> |
|-------------------|-------|--|--------|-----|--|

| | | | |
|--|-----------|------------------------------------|-----------|
| CURRENT ADDRESS, NUMBER AND STREET 201 Vernon St Apt # 2 | PHONE NO. | CURRENT ADDRESS, NUMBER AND STREET | PHONE NO. |
|--|-----------|------------------------------------|-----------|

| | | | | | |
|-------------------------|----------|----------------|-----------|-------|----------|
| CITY/TOWN Worcester, MA | STATE MA | ZIP CODE 03230 | CITY/TOWN | STATE | ZIP CODE |
|-------------------------|----------|----------------|-----------|-------|----------|

| | | | | | | | | | |
|---------------------|------------|----------|---------------|-------|--------------|------------|-------|---------------|-------|
| PLATE NUMBER T36243 | PLATE TYPE | STATE NH | TRAILER PLATE | STATE | PLATE NUMBER | PLATE TYPE | STATE | TRAILER PLATE | STATE |
|---------------------|------------|----------|---------------|-------|--------------|------------|-------|---------------|-------|

| | | | | | | | |
|-------------------|-----------|--|--|--------|------|--|--|
| MAKE Freightliner | YEAR 2011 | COMMERCIAL VEHICLE ACCIDENT <input type="checkbox"/> | HAZARDOUS MATERIALS <input type="checkbox"/> | MAKE | YEAR | COMMERCIAL VEHICLE ACCIDENT <input type="checkbox"/> | HAZARDOUS MATERIALS <input type="checkbox"/> |
| V.I.N. | | | | V.I.N. | | | |

| | | | | | |
|---|------------|--------------------|---|------------|--------------------|
| SAME AS DRIVER <input type="checkbox"/> | OWNER NAME | LAST, FIRST MIDDLE | SAME AS DRIVER <input type="checkbox"/> | OWNER NAME | LAST, FIRST MIDDLE |
|---|------------|--------------------|---|------------|--------------------|

| | | | |
|------------------------------------|-----------|------------------------------------|-----------|
| CURRENT ADDRESS, NUMBER AND STREET | PHONE NO. | CURRENT ADDRESS, NUMBER AND STREET | PHONE NO. |
|------------------------------------|-----------|------------------------------------|-----------|

| | | | | | |
|-----------|-------|----------|-----------|-------|----------|
| CITY/TOWN | STATE | ZIP CODE | CITY/TOWN | STATE | ZIP CODE |
|-----------|-------|----------|-----------|-------|----------|

| | | | | | |
|--------------------------|----|--|--------------------------|----|--|
| INSURANCE CO. & POLICY # | OR | DSMV 385 ISSUED <input type="checkbox"/> | INSURANCE CO. & POLICY # | OR | DSMV 385 ISSUED <input type="checkbox"/> |
|--------------------------|----|--|--------------------------|----|--|

| | | | | | |
|---|---------------|-------------|--|-----|-----|
| VEHICLE TOWED <input checked="" type="checkbox"/> | BY: DC Towing | TO: DC YARD | VEHICLE TOWED <input type="checkbox"/> | BY: | TO: |
|---|---------------|-------------|--|-----|-----|

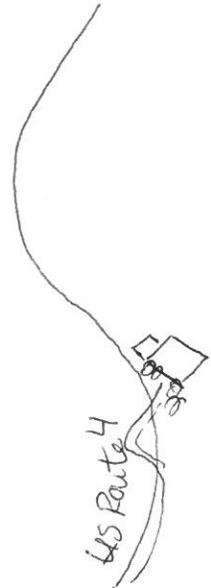
| REF. | 26 | 27 | 28 | 29 | NAME(S) OF OCCUPANTS OR WITNESSES ADDRESS/PHONE | 30 | 31 | 32 | 33 |
|------|----|----|----|----|---|----|----|----|----|
| 1 | 1 | | | 44 | Boakye, Eric-201 Vernon St Worcester, MA | | | | M |
| 2 | | | | | | | | | |
| 3 | | | | | | | | | |
| 4 | | | | | | | | | |
| 5 | | | | | | | | | |
| 6 | | | | | | | | | |



| | | | | | | | | | | | | | | |
|--|--|--------------------------------|----------------------------------|----------|--------------|----------|---------------------|---------------------|---------------------|---------------------------------|---------------------------------|--------------------------------|----------------------------------|---|
| UNIT NO: <u>1</u> <input type="checkbox"/> INDICATE PROBABLE POINT OF IMPACT 16. Undercarriage 17. Rollover 18. Fire/Explosion 19. Total Circle numbers indicating areas damaged | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Rear</td> <td style="width: 25%;">Passing</td> <td style="width: 25%;">Lt. Turn</td> <td style="width: 25%;">Intersection</td> </tr> <tr> <td style="text-align: center;">1 g g</td> <td style="text-align: center;">2 g^g</td> <td style="text-align: center;">3 g^l</td> <td style="text-align: center;">4 g^j</td> </tr> <tr> <td style="text-align: center;">5 Rt. Turn g^k</td> <td style="text-align: center;">6 Rt. Turn k^f</td> <td style="text-align: center;">7 Head-On g^f</td> <td style="text-align: center;">8 Sideswipe g^f</td> </tr> </table> Indicate Vehicle Numbers on Arrows Above | Rear | Passing | Lt. Turn | Intersection | 1 g g | 2 g ^g | 3 g ^l | 4 g ^j | 5 Rt. Turn g ^k | 6 Rt. Turn k ^f | 7 Head-On g ^f | 8 Sideswipe g ^f | UNIT NO: _____ <input type="checkbox"/> INDICATE PROBABLE POINT OF IMPACT 16. Undercarriage 17. Rollover 18. Fire/Explosion 19. Total Circle numbers indicating areas damaged |
| Rear | Passing | Lt. Turn | Intersection | | | | | | | | | | | |
| 1 g g | 2 g ^g | 3 g ^l | 4 g ^j | | | | | | | | | | | |
| 5 Rt. Turn g ^k | 6 Rt. Turn k ^f | 7 Head-On g ^f | 8 Sideswipe g ^f | | | | | | | | | | | |

ACCIDENT SKETCH
Indicate North


 By Arrow



Not to scale

GIST OF ACCIDENT

See Attached Narrative

| | | |
|--|---|-------------|
| SIGNATURE OF INVESTIGATING OFFICER David Suckling | DATE OF REPORT 01/16/2018 | REVIEWED BY |
| DEPARTMENT / DIVISION / TROOP Danbury Police Department | PHOTOS TAKEN YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> BY: <u>David Suckling</u> | |



| | | | | | | |
|--------------------------------------|-------------------------|---|-------------|---|-------------------------|--|
| LOCAL USE (case number) 18-010018 | | STATE OF NEW HAMPSHIRE TRAFFIC ACCIDENT REPORT SUPPLEMENTAL INFORMATION | |  | M.V. USE ONLY | |
| Please Print or Type | | | | | No. Date Rec'd | Amended Report <input type="checkbox"/> Hit and Run <input type="checkbox"/> |
| DATE OF ACCIDENT 01/06/2018 | DAY OF WEEK Saturday | TIME (Military) } 04:00 | OF ACCIDENT | | CITY/TOWN Danbury NH | |

NARRATIVE

MV accident on US route 4 towards Grafton

On January 6, 2018 at 4:17 AM I was called at home by Franklin Dispatch for report of the truck rolled over on US Route 4.

I responded immediately, when I arrived on scene I found a large box truck over the snowbank on its side facing east. It had been snowing the previous day and was extremely windy and the snow was covering the road. The road was exposed to the wind and had become icy overnight.

Looking at the tire tracks from the truck it appeared the vehicle had been east east to west. It appeared the truck and slid out on the corner fishtailed a couple times, nosed into a snowbank turned 180° and rolled over the snowbank.

Chief Austin from the Danbury Fire Department told me that the driver was in the back of the rescue vehicle. I spoke with the driver who had a heavy African accent I invited him to come sit in my warm cruiser because the rescue was clear to leave.

I asked the driver for his license and he gave me a Mass license and identified himself as Eric Periodic. I love talking with him and asked him how fast he was driving he says doing 50 mph. He told me that he was coming around the corner and slid out and ended up having a snowbank. His story coincided with the tire tracks in the evidence on scene.

Spoke with him about his immigration status and asked him if he immigrated he told me he had asked him for his green card and he told me he left it at home. I told him that he was required to carry his green card with him at all times and he told me that he had left it at home. I asked him several of the questions about immigration in the process involved. Having gone through the immigration process myself it was clear to me that he hadn't immigrated or received a green card.

I called Immigration Customs Enforcement and gave them the drivers information. They told me that he was not a legal immigrant and that they would be in route from Derry to take him in custody.

DC Towing arrived on scene shortly after.



| | | | | | | |
|---|-------------------------|--|----------------------|---|----------------------|---|
| LOCAL USE (case number) 18-010018 | | STATE OF NEW HAMPSHIRE TRAFFIC ACCIDENT REPORT SUPPLEMENTAL INFORMATION | |  | M.V. USE ONLY | |
| Please Print or Type | | | | | No. Date Rec'd | Amended Report <input type="checkbox"/> |
| DATE OF ACCIDENT 01/06/2018 | DAY OF WEEK Saturday | TIME (Military) | OF ACCIDENT 04:00 | CITY/TOWN Danbury NH | | |

NARRATIVE

At around 6:18 AM immigration arrived on scene and took the driver and the custody.

I cleared shortly after once the vehicle was back on the road

 Additional Citations for Unit: 1 - BOAKYE, Eric
 Speeding - Unsafe Speed



**DANBURY
POLICE DEPARTMENT**

P.O. BOX 243 - 23 HIGH STREET
DANBURY, NH 03230

Accident Photos

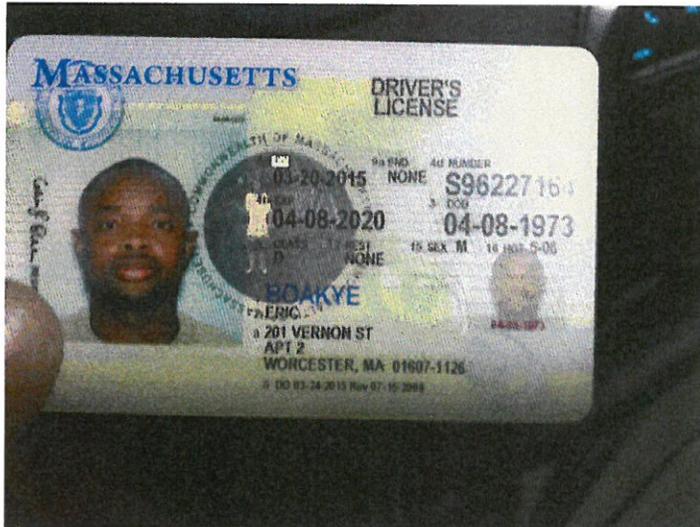
Accident No. **18-010018**



10:28:56



10:29:29



10:29:37



10:29:44



**DANBURY
POLICE DEPARTMENT**

P.O. BOX 243 - 23 HIGH STREET
DANBURY, NH 03230

Accident Photos

Accident No. **18-010018**



10:29:50



10:29:58



10:30:05



10:30:14

