

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

WILLY FERNANDO GODOY-RAMIREZ

Plaintiff,

v.

**TOWN OF MERRIMACK, HALEY ASH,
JOHN DUDASH, and RICHARD
McKENZIE**

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 Willy Fernando Godoy-Ramirez. Defendants Town of Merrimack and Officer Haley Ash, Master Patrolman John Dudash, and Sergeant Richard McKenzie of the Merrimack Police Department, in violation of the Fourth Amendment to the United States Constitution, unlawfully prolonged the seizure and detention of Mr. Godoy-Ramirez, who was a passenger in a car during a motor vehicle stop, on the suspicion that he was illegally in the United States.

INTRODUCTION

On the evening of August 29, 2019, Plaintiff Willy Fernando Godoy-Ramirez and Julio Cesar Ramirez Lopez, who are Guatemalan citizens, were traveling on Daniel Webster Highway in Merrimack in a vehicle. Mr. Godoy-Ramirez was the front passenger, and Mr. Ramirez Lopez was driving the vehicle. The vehicle began experiencing mechanical problems, and Mr. Ramirez Lopez turned on his hazard lights, reduced his speed, and pulled into the breakdown lane on Daniel Webster Highway. Defendant Merrimack Police Department Officer Haley Ash, upon seeing the

vehicle traveling in the breakdown lane, commenced a motor vehicle stop by initiating her blue lights and siren. Officer Ash approached the vehicle and asked Mr. Ramirez Lopez for identification. She also asked Mr. Godoy-Ramirez for identification despite the fact that he was only a passenger and he was not driving or in control of the vehicle. Based on the circumstances, there was no reason to ask for Mr. Godoy-Ramirez's identification. There was no reasonable suspicion or probable cause to believe that Mr. Godoy-Ramirez committed a crime or a motor vehicle violation. There was also no reasonable concern for officer safety. Thus, with this request for identification, the Department immediately began to prolong the detention of Mr. Godoy-Ramirez on its own initiative solely based on the suspicion that he was not documented. Indeed, throughout this encounter, Officer Ash told both Mr. Ramirez Lopez and Mr. Godoy-Ramirez to remain in the vehicle. Ultimately, Defendants Officer Ash, Master Patrolman John Dudash, and Sergeant Richard McKenzie, in violation of the Fourth Amendment, prolonged the detention of Mr. Godoy-Ramirez and held him for approximately 60 to 75 minutes until federal Immigration and Customs Enforcement ("ICE") took him into custody. ICE detained Mr. Godoy-Ramirez for 65 days, which stemmed from this constitutional violation. Mr. Godoy-Ramirez was ultimately freed on bond during the pendency of his immigration case. Mr. Godoy-Ramirez is currently seeking asylum because a criminal narco-trafficking/kidnapping organization in Guatemala threatened and abused him, as well as murdered his father.

The Merrimack Police Department had no legal basis under the Fourth Amendment to prolong the detention and seizure of Mr. Godoy-Ramirez. 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 396.¹ Thus, 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). The Department’s actions in this case also will make the Town of Merrimack less safe. The Department’s actions make it much less likely that undocumented immigrants—or their families, neighbors, and co-workers—will feel safe seeking police protection, reporting crimes, or assisting the Department in criminal investigations.

Accordingly, Mr. Godoy-Ramirez brings this action for damages under 42 U.S.C. § 1983. Mr. Godoy-Ramirez 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. Godoy-Ramirez’s federal causes of action arising under 42 U.S.C. § 1983 *et seq.* This Court has supplemental jurisdiction over Mr. Godoy-Ramirez’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. Godoy-Ramirez’s claims occurred in Merrimack, New Hampshire. 28

¹ Illegal presence without more is only a civil violation that subjects the individual to possible removal. 8 U.S.C. § 1227(a)(1)(B); *see also Arizona*, 567 U.S. at 407; *Melendres v. Arpaio*, 695 F.3d 990, 1000-1001 (9th Cir. 2012) (“[U]nlike illegal entry, mere unauthorized presence in the United States is not a crime.”).

U.S.C. § 1391(b).

PARTIES

4. Plaintiff Willy Fernando Godoy-Ramirez is 22 years old and a citizen of Guatemala. Because a criminal narco-trafficking/kidnapping organization threatened and abused Mr. Godoy-Ramirez, as well as murdered his father, he came from Guatemala to the United States in 2018. When he entered the United States, he had no contact with immigration officials. At the time of this filing, he is residing in New Hampshire.

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

6. Defendant Master Patrolman John Dudash is a police officer employed by the Merrimack Police Department. Patrolman Dudash is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by the Merrimack Police Department. Patrolman Dudash is being sued in his individual capacity. At all times relevant to this lawsuit, Patrolman Dudash was and is a “person” as that term is used by 42 U.S.C. § 1983.

7. Defendant Sergeant Richard McKenzie is a police officer employed by the Merrimack Police Department. Sergeant McKenzie is, or was at all times relevant to this lawsuit, acting under color of state law as a police officer employed by the Merrimack Police Department. Sergeant McKenzie is being sued in his individual capacity. At all times relevant to this lawsuit, Sergeant McKenzie was and is a “person” as that term is used by 42 U.S.C. § 1983.

8. Defendant Town of Merrimack 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 Merrimack was and is a “person” as that term is used by 42 U.S.C. § 1983. Defendant Town of Merrimack is the public employer of the Police Officer Defendants.

FACTS

9. On August 29, 2019, at approximately 6:30 p.m., Plaintiff Willy Fernando Godoy Ramirez and Julio Cesar Ramirez Lopez were traveling on Daniel Webster Highway in Merrimack in a vehicle.

10. Mr. Ramirez Lopez was the operator of the vehicle, and Mr. Godoy Ramirez was the front passenger. Mr. Godoy-Ramirez is Mr. Ramirez Lopez’s nephew.

11. They were leaving work after installing siding that day at WoodSpring Suites and the Gilbert Crossing apartment complex in Merrimack. They were heading back to WoodSpring Suites, where they were staying.

12. The vehicle then began to experience mechanical difficulties. Accordingly, Mr. Ramirez Lopez turned on his hazard lights, reduced his speed, and pulled into the breakdown lane on Daniel Webster Highway.

13. Defendant Merrimack Police Department Officer Haley Ash, upon seeing the vehicle traveling in the breakdown lane, commenced a motor vehicle stop by initiating her blue lights and siren.

14. This stop was initiated at approximately 6:40 p.m. on Pine Street, off Daniel Webster Highway.

15. It was daylight at the time of the stop.

16. Officer Ash commenced the stop almost immediately after the vehicle began experiencing mechanical difficulties.

17. Officer Ash approached the vehicle and asked Mr. Ramirez Lopez for identification.

18. Officer Ash also asked Mr. Godoy-Ramirez for identification despite the fact that he was only a passenger and neither driving nor in control over the vehicle. *See* RSA 265:4, I(a) (requiring a person “driving or in charge of a vehicle” to “give his name, address, date of birth, and the name and address of the owner of such vehicle” when requested by law enforcement).

19. Based on the circumstances, there was no reason to ask for Mr. Godoy-Ramirez’s identification.

20. There was no reasonable suspicion or probable cause to believe that Mr. Godoy-Ramirez committed a crime or motor vehicle violation. Nor was there any reasonable concern for officer safety.

21. Thus, with this request for identification, the Department immediately began to prolong the detention of Mr. Godoy-Ramirez on its own initiative solely based on the suspicion that he was not documented. In other words, Mr. Godoy-Ramirez should have been permitted to leave. Instead, Officer Ash seized him.

22. Both Mr. Ramirez Lopez and Mr. Godoy-Ramirez then provided Officer Ash with identification from Guatemala. Mr. Godoy-Ramirez specifically produced a national identification document from Guatemala.

23. At or around this time, Mr. Ramirez Lopez’s son—Danti Ismael Ramirez Morales—approached Officer Ash and advised her that he was Mr. Ramirez Lopez’s son. He provided Officer Ash with Mr. Ramirez Lopez’s Guatemalan passport.

24. Danti and his brother—Grober Aldael Ramirez Morales—were driving together in another vehicle and had pulled over once they saw Mr. Ramirez Lopez’s vehicle get stopped by Officer Ash.

25. Officer Ash told Danti to return to his vehicle and wait there. At or around this time, Officer Ash called for another unit.

26. Throughout this encounter, Officer Ash told both Mr. Ramirez Lopez and Mr. Godoy-Ramirez to remain in the vehicle. Thus, Officer Ash had continued to seize Mr. Godoy-Ramirez on her own initiative.

27. Mr. Ramirez Lopez called his daughter, who speaks both English and Spanish, to act as an interpreter during the questioning.

28. Between approximately 15 to 20 minutes after the initial stop, another Merrimack Police Department cruiser arrived at the scene with two additional police officers—Defendants Master Patrolman John Dudash and Sergeant Richard McKenzie of the Merrimack Police Department.

29. During this interaction, both Mr. Godoy-Ramirez and Mr. Ramirez Lopez were nervous and confused as to what was happening.

30. Additionally, Mr. Ramirez Lopez began to feel ill and experience chest pain during the encounter. Mr. Ramirez Lopez has heart issues for which he takes regular medicine.

31. Next, either Sergeant McKenzie or Patrolman Dudash assured Mr. Godoy-Ramirez and Mr. Ramirez Lopez that they should not worry and explained that they were waiting for a person with a valid U.S. driver’s license to arrive to the scene in order to drive the vehicle away.

32. Once again, the officers, on their own initiative, told Mr. Godoy-Ramirez and Mr. Ramirez Lopez to “not move and to stay inside” the vehicle. At no point were either of them free

to leave.

33. At or around this time after Sergeant McKenzie or Patrolman Dudash arrived at the scene, Officer Ash contacted federal Immigration and Customs Enforcement (“ICE”).

34. At some point during this interaction, one of the Police Officer Defendants (possibly Master Patrolman Dudash) made contact with the boss of Mr. Godoy-Ramirez and Mr. Ramirez Lopez and told him that Mr. Godoy-Ramirez and Mr. Ramirez Lopez had been pulled over during a motor vehicle stop and that someone with a valid U.S. driver’s license would need to come to the scene to drive the vehicle away. Through Mr. Ramirez Lopez’s daughter acting as an interpreter, one of the officers told Mr. Godoy-Ramirez and Mr. Ramirez Lopez that they would be allowed to leave only when someone came with a U.S. driver’s license to take the vehicle.

35. Between approximately 30 to 35 minutes after the initial stop, the boss of Mr. Godoy-Ramirez and Mr. Ramirez Lopez—who has a valid U.S. driver’s license—arrived at the scene. The boss spoke with the Police Officer Defendants, as well as with Danti Ismael Ramirez Morales and Grober Aldael Ramirez Morales, but did not speak with Mr. Godoy-Ramirez and Mr. Ramirez Lopez. On information and belief, the Police Officer Defendants did not allow the boss to approach Mr. Godoy-Ramirez or Mr. Ramirez Lopez, thus preventing them from leaving with him.

36. ICE Officer Ivan Gonzalez then came to the scene between approximately 7:40 p.m. and 7:55 p.m. Approximately 60 to 75 minutes elapsed between when Mr. Godoy-Ramirez and Mr. Ramirez Lopez were pulled over and when ICE Officer Gonzalez arrived.

37. Prior to ICE Officer Gonzalez’s arrival between 60 and 75 minutes after the initial stop, the Police Officer Defendants prolonged the detention of Mr. Godoy-Ramirez despite the absence of reasonable suspicion of criminal activity and absence of any reasonable concern for

officer safety.

38. The Police Officer Defendants did not cite Mr. Godoy-Ramirez for a crime or motor vehicle offense.

39. To the best of Mr. Godoy-Ramirez's knowledge, the Police Officer Defendants also did not cite Mr. Ramirez Lopez for a crime or motor vehicle offense.

40. Once on the scene, ICE Officer Gonzalez approached the vehicle and asked Mr. Godoy-Ramirez and Mr. Ramirez Lopez in Spanish whether they possessed documentation. Mr. Godoy-Ramirez said that he did not have immigration documents. Officer Gonzalez then concluded that Mr. Godoy-Ramirez was in the United States illegally.

41. ICE Officer Gonzalez then immediately instructed Mr. Godoy-Ramirez and Mr. Ramirez Lopez to exit the vehicle. ICE Officer Gonzalez handcuffed Mr. Godoy-Ramirez and Mr. Ramirez Lopez and placed them in back of his vehicle.

42. After ICE Officer Gonzalez arrested Mr. Godoy-Ramirez and Mr. Ramirez Lopez, the boss left with Danti Ismael Ramirez Morales and Grober Aldael Ramirez Morales.

43. Mr. Godoy-Ramirez and Mr. Ramirez Lopez remained in the back of ICE Officer Gonzalez's vehicle for approximately 25-30 minutes.

44. While in the vehicle, Mr. Ramirez Lopez was experiencing chest pain. Mr. Godoy-Ramirez called out for help, and the Fire Department came to the scene. The Fire Department took Mr. Ramirez Lopez to the hospital.

45. ICE Officer Gonzalez then went to the hospital along with Mr. Godoy-Ramirez. ICE Officer Gonzalez and Mr. Godoy-Ramirez waited in the vehicle outside the hospital for approximately 30 minutes. ICE Officer Gonzalez then transferred Mr. Godoy-Ramirez to another ICE officer's vehicle.

46. That evening, ICE transferred Mr. Godoy-Ramirez to the Strafford County Department of Corrections in Dover, New Hampshire.

47. ICE held Mr. Godoy-Ramirez in this facility overnight.

48. ICE Officer Gonzalez interviewed Mr. Godoy-Ramirez the next day on August 30, 2019. ICE Officer Gonzalez's investigation uncovered no criminal history for Mr. Godoy-Ramirez, and Mr. Godoy-Ramirez reported that he has no gang affiliations. From the interview, ICE Officer Gonzalez concluded that Mr. Godoy-Ramirez was a native of Guatemala and had entered the United States without authorization. ICE Officer Gonzalez then served Mr. Godoy-Ramirez with a Notice to Appear ("NTA"), which commenced immigration removal proceedings.

49. ICE then detained Mr. Godoy-Ramirez for 65 days, which stemmed from the Department's Fourth Amendment violation. ICE held Mr. Godoy-Ramirez at the Strafford Department of Corrections in Dover, New Hampshire from approximately August 29, 2019 to September 24, 2019. On or around September 25, 2019, ICE transferred Mr. Godoy-Ramirez to Plymouth County Correctional Facility in Plymouth, Massachusetts.

50. ICE released Mr. Godoy-Ramirez on or about November 2, 2019 after an October 31, 2019 bond hearing before an Immigration Judge. The Immigration Judge ordered Mr. Godoy-Ramirez released on \$12,000 bond.

51. Mr. Godoy-Ramirez's asylum case, in which he seeks to remain in the United States, is pending. Mr. Godoy-Ramirez is seeking asylum in the United States from Guatemala because a criminal narco-trafficking/kidnapping organization threatened and abused Mr. Godoy-Ramirez in Guatemala, as well as murdered his father.

52. At no time during this approximately 60-75-minute prolonged detention by the Merrimack Police Department on August 29, 2019 was Mr. Godoy-Ramirez free to leave. The

Police Officer Defendants also held Mr. Godoy-Ramirez's Guatemalan national identification document during this time.

53. The Department had no legal basis to prolong the detention and seizure of Mr. Godoy-Ramirez for approximately 60 and 75 minutes until ICE arrived and assumed custody of Mr. Godoy-Ramirez.

54. At no time during the Department's detention did Defendants have either probable cause or reasonable suspicion to believe that Mr. Godoy-Ramirez was involved in criminal activity.

55. 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.

56. Here, the Department prolonged the detention and seizure of Mr. Godoy-Ramirez 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.").

57. The Department does not have a Section 287(g) agreement with the United States.

58. This prolonged detention and seizure caused harm to Mr. Godoy-Ramirez, including the violation of his constitutional rights and improper loss of his liberty.

59. Finally, it is important to note that the Department's actions in this case will make the Town of Merrimack less safe. The Department's actions make it much less likely that undocumented immigrants—or their families, neighbors, and co-workers—will feel safe seeking police protection, reporting crimes, or assisting the Department in criminal investigations. The Department needs to be accessible to all members of the public, regardless of their legal status, for the criminal justice system to be meaningful and effective.

COUNT I

42 U.S.C. § 1983 – VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS UNREASONABLE SEIZURE (AGAINST POLICE OFFICER DEFENDANTS ASH, DUDASH, AND MCKENZIE)

60. All prior paragraphs are incorporated.

61. 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.

62. The Police Officer Defendants prolonged the detention and seizure of Mr. Godoy-Ramirez without any lawful justification and solely on the basis of their belief or suspicion that he was unlawfully present in the United States.

63. The Police Officer Defendants did not have any authority to prolong the detention

of Mr. Godoy-Ramirez. *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).

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

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

66. Mr. Godoy-Ramirez suffered loss of fundamental rights and his liberty as a result of this action by the Police Officer Defendants.

67. Mr. Godoy-Ramirez 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. Godoy-Ramirez’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 MERRIMACK)

68. All prior paragraphs are incorporated.

69. Under 42 U.S.C. § 1983, municipal defendants are “persons” liable for unconstitutional failures to train their law enforcement officers.

70. The Town of Merrimack has failed to train its police officers that they may not seize individuals for civil immigration violations. *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 November 25, 2019 Chapter 91-A request, the Merrimack Police Department disclosed that it does not have any directives, standards, or policies for officers concerning the handling of suspects who a Department officer may believe is in the United States unlawfully. *See Exhibit 1.*

71. The Town of Merrimack 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.

72. The Town of Merrimack's failure to train its officers directly resulted in the violation of Mr. Godoy-Ramirez's Fourth Amendment rights by the Police Officer Defendants.

73. Mr. Godoy-Ramirez suffered loss of fundamental rights and his liberty as a result of this action by the Town of Merrimack.

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

74. All prior paragraphs are incorporated.

75. By detaining, seizing, and arresting Mr. Godoy-Ramirez solely based on a suspected immigration violation, Defendants acted with the intent of confining Mr. Godoy-Ramirez within boundaries that Defendants fixed.

76. Defendants' actions directly and indirectly resulted in Mr. Godoy-Ramirez's confinement.

77. Mr. Godoy-Ramirez was conscious of or harmed by the confinement.

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

79. 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.

80. Mr. Godoy-Ramirez suffered loss of fundamental rights and his liberty as a result of this action by Defendants.

81. Accordingly, Defendants falsely imprisoned Mr. Godoy-Ramirez.

82. 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 Willy Fernando Godoy-Ramirez respectfully requests that this Court:

A. Declare that the actions taken by Defendants in seizing, detaining, and arresting Mr. Godoy-Ramirez solely based on a suspected civil immigration violation violated Mr. Godoy-Ramirez'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. Godoy-Ramirez's constitutional rights;

C. Award compensatory damages against all Defendants for falsely imprisoning Mr. Godoy-Ramirez;

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,

WILLY FERNANDO GODOY-RAMIREZ,

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

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette (N.H. Bar. No. 265393)
Henry R. Klementowicz (N.H. Bar No. 21177)
SangYeob Kim (N.H. Bar No. 266657)
AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE
New Hampshire Immigrants' Rights Project
18 Low Avenue
Concord, NH 03301
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Date: December 16, 2019

EXHIBIT 1



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

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

Devon Chaffee
Executive Director

November 25, 2019

VIA EMAIL (droy@merrimacknh.gov; blevesque@merrimacknh.gov)

Chief Denise Roy
Chief of Police
Merrimack Police Department
31 Baboosic Lake Road
Merrimack, NH 03054

Re: Right-to-Know Request

Dear Chief Roy:

This is a Right-to-Know request to the Merrimack 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 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 directives, standards, or policies—whether formal or informal, and including by email—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



MERRIMACK POLICE DEPARTMENT

31 Baboosic Lake Road • Merrimack, NH 03054
(603) 424-3774 • Fax (603) 424-1760

Denise I Roy
Chief of Police

Brian K. Levesque
Deputy Chief

November 27, 2019

Dear Attorney Bissonnette:

I am receipt of your Right to Know Law request dated November 25, 2019. Please be advised the Merrimack Police Department does not have any directives, standards or policies that would be responsive to your request.

Sincerely;

A handwritten signature in blue ink, appearing to read "B. Levesque", is written over the typed name.

Brian Levesque
Deputy Chief

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
WILLY FERNANDO GODOY-RAMIREZ
(b) County of Residence of First Listed Plaintiff N.H.
(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 MERRIMACK, HALEY ASH, JOHN DUDASH, and RICHARD MCKENZIE
County of Residence of First Listed Defendant Hillsborough
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
PERSONAL INJURY
REAL PROPERTY
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 12/16/2019 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.
 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.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire

WILLY FERNANDO GODOY-RAMIREZ

Plaintiff(s)

v.

TOWN OF MERRIMACK, HALEY ASH, JOHN DUDASH, and RICHARD MCKENZIE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Town of Merrimack
Merrimack Town Hall
6 Baboosic Lake Road
Merrimack, NH 03054

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Gilles Bissonnette, Esq.
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire

WILLY FERNANDO GODOY-RAMIREZ

Plaintiff(s)

v.

TOWN OF MERRIMACK, HALEY ASH, JOHN DUDASH, and RICHARD MCKENZIE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Haley Ash
Merrimack Police Department
31 Baboosic Lake Rd
Merrimack, NH 03054

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Gilles Bissonnette, Esq.
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire

WILLY FERNANDO GODOY-RAMIREZ

Plaintiff(s)

v.

TOWN OF MERRIMACK, HALEY ASH, JOHN DUDASH, and RICHARD MCKENZIE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) John Dudash
Merrimack Police Department
31 Baboosic Lake Rd
Merrimack, NH 03054

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Gilles Bissonnette, Esq.
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire

WILLY FERNANDO GODOY-RAMIREZ

Plaintiff(s)

v.

TOWN OF MERRIMACK, HALEY ASH, JOHN DUDASH, and RICHARD MCKENZIE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Richard McKenzie
Merrimack Police Department
31 Baboosic Lake Rd
Merrimack, NH 03054

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Gilles Bissonnette, Esq.
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: