

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

BASHAR AWAWDEH

Plaintiff,

v.

**TOWN OF EXETER, JUSTIN A.
RANAURO, DEVIN R. WEST, and
JOSEPH M. SALUTO,**

Defendants.

Case No.: _____

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

This is a civil rights action on behalf of Bashar Awawdeh, a Jordanian immigrant who was unlawfully seized, detained, and arrested by Defendants Sergeant Justin A. Ranauro, Officer Devin R. West, and Officer Joseph M. Saluto of the Exeter Police Department (collectively, “Department”). On August 10, 2018, Mr. Awawdeh helped the Department with its investigation of an alleged simple assault by providing translation services that enabled the Department to question—and ultimately arrest—a suspect. The Department rewarded Mr. Awawdeh by unlawfully detaining, seizing, and arresting him on the suspicion that he was in the United States without documentation. The Department seized Mr. Awawdeh on its own initiative, with no prior direction from the federal government. It held him for a significant period of time until federal immigration authorities from Immigration and Customs Enforcement (“ICE”) arrived at the scene.

The Department had no legal basis to seize, detain, and arrest Mr. Awawdeh, as there was

no reasonable suspicion or probable cause to believe that he had committed a crime. 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

Here, the Department seized Mr. Awawdeh solely based on a suspicion that he had committed a non-criminal immigration violation by overstaying his visa, nothing more. A local law enforcement agency cannot engage in such immigration arrests absent a "287(g) agreement" with the federal government that allows the local agency to perform the functions of an immigration officer. *See* 8 U.S.C. § 1357(g)(1). The Department does not have a 287(g) agreement with the United States.

As a result of the Department's actions, Mr. Awawdeh was not only unlawfully seized by the Department for a significant period of time, but he was also jailed at the Strafford County Department of Corrections in Dover, New Hampshire, and then at the Plymouth Correctional Facility in Plymouth, Massachusetts, for a total of 26 days. After a hearing in immigration court, Mr. Awawdeh was released on September 5, 2018 on bond because he is not a danger or flight risk. Mr. Awawdeh's multiple week detention—which was triggered by the Department's unlawful actions—significantly disrupted Mr. Awawdeh's life.

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.").

The Department's policy of enforcing federal immigration law is especially concerning in this case where the Department seized a person who helped the Department investigate an alleged crime. The Department's actions in this case will make Exeter less safe. As a result of the Department's actions, undocumented individuals—including crime victims and witnesses—are less likely to report crimes or assist the Department in criminal investigations. The Department needs to be accessible to all members of the public, regardless of their legal status, for the justice system to be meaningful and effective.

Accordingly, Mr. Awawdeh brings this action for damages under 42 U.S.C. § 1983. Mr. Awawdeh 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. Awawdeh's federal causes of action arising under 42 U.S.C. § 1983 *et seq.* This Court has supplemental jurisdiction over Mr. Awawdeh'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. Awawdeh's claims occurred in Exeter, New Hampshire. 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Bashar Awawdeh is a 25-year-old Jordanian national. He is currently living in Webster, Massachusetts.

5. Defendant Justin A. Ranauro is a police sergeant employed by the Exeter Police Department. Sgt. Ranauro is, or was at all times relevant to this lawsuit, acting under color of

state law as a police officer employed by the Exeter Police Department. Sgt. Ranauro is being sued in his individual capacity. At all times relevant to this lawsuit, Sgt. Ranauro was and is a “person” as that term is used by 42 U.S.C. § 1983.

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

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

8. Sgt. Ranauro, Officer West, and Officer Saluto together are referred to as the “Police Officer Defendants.”

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

FACTS

10. Plaintiff Bashar Awawdeh came to the United States from Jordan on May 17,

2017 on a six-month tourist visa. He is a Muslim. He has a college degree from Jordan and speaks Arabic and English fluently. While in the United States, he fell in love with an American woman who has a three-year-old daughter. He married his wife on June 23, 2018. He considers his wife's daughter as his daughter. As his visa had expired at the time of his marriage, Mr. Awawdeh anticipated obtaining the documentation necessary to stay in the United States in light of his marriage.

11. On approximately August 5, 2018, Mr. Awawdeh traveled from his residence in Webster, Massachusetts to Exeter, New Hampshire to obtain temporary work at the XtraMart convenience store located at the Shell gas station on 72 Main Street in Exeter. While working at XtraMart, Mr. Awawdeh stayed at an apartment behind the gas station.

12. On August 10, 2018 at approximately 8:45 p.m., Mr. Awawdeh, while at the apartment and off duty, received a telephone call from Mohammad Malkawi, who was working as a clerk at XtraMart and is also a Jordanian national. Mr. Malkawi said that he had a problem with a customer and asked Mr. Awawdeh to come to XtraMart to assist. Mr. Awawdeh believed that Mr. Malkawi called him because Mr. Malkawi does not speak English well. Mr. Awawdeh agreed to come to the store to assist.

13. When Mr. Awawdeh arrived at the parking lot outside XtraMart, he noticed a woman crying, along with a girl and another man. He asked the woman whether he could help given that she was crying. The man accompanying the woman explained that a man inside XtraMart—presumably Mr. Malkawi—had touched her inappropriately.

14. At around the time Mr. Awawdeh heard this from the man and was about to enter the gas station to ask Mr. Malkawi about what had happened, four officers from the Exeter Police Department arrived. Police reports show that the responding officers were Defendant Sgt.

Justin A. Ranauro, Defendant Officer Devin R. West, Defendant Joseph M. Saluto, and non-party Exeter police officer Daniel Ryan. According to Sgt. Ranauro's police report, the officers were responding to an allegation that an XtraMart clerk had wrapped his arms around a female customer and kissed her inappropriately.

15. When the officers arrived, one officer—possibly Defendant Sgt. Ranauro—stopped Mr. Awawdeh in XtraMart's parking lot. Simultaneously, at least one of the other arriving officers separately began speaking to the woman. After learning that the alleged perpetrator was inside the store, the officer asked whether Mr. Awawdeh was the manager of XtraMart. Mr. Awawdeh said that he was not the manager. The officer asked Mr. Awawdeh for identification, despite the fact that there was no reasonable suspicion to believe that he had violated the law. Mr. Awawdeh told the officer that he did not have identification on him, but that he did have a passport in the apartment he was staying at. He then wrote his name down on a piece of paper, along with his date of birth, and gave that piece of paper to the officer.

16. This officer then used clear language directing Mr. Awawdeh to sit on the curb, stay there, and not to move. As that officer entered the store, two other officers stood next to Mr. Awawdeh so that he could not leave. Mr. Awawdeh asked one of the officers guarding him whether he could smoke a cigarette while he was sitting down, and the officer said no. Mr. Awawdeh agreed to sit on the curb near XtraMart's entrance, and felt that he was not free to go given the officer's order and the fact that two other officers were accompanying him while he was sitting.

17. The first officer, who again likely was Sgt. Ranauro, returned with Mr. Malkawi, the person whom the woman alleged touched her inappropriately. At this time, Mr. Awawdeh volunteered to call the store manager, Samer Abuirsheid, to help the Department with its

investigation. The officer said Mr. Awawdeh should call him. As Defendant Officer Saluto's police report explains, Sgt. Ranauro "requested Bash[a]r to call the supervisor of the store to assist." Mr. Awawdeh called Mr. Abuirsheid, who is also a Jordanian national, at approximately 9:04 p.m.

18. While waiting for Mr. Abuirsheid to arrive, the officer said that he could not understand Mr. Malkawi when questioning him. Mr. Awawdeh volunteered to translate to help the Department's investigation. The officers—likely Sgt. Ranauro, Officer Joseph M. Saluto, and another officer—then questioned Mr. Malkawi. Mr. Awawdeh facilitated this questioning by providing translation assistance. Mr. Awawdeh performed these translation services in an effort to be helpful as part of the Department's criminal investigation. He felt that it was the right thing to do. As alleged in Sgt. Ranauro's police report, "Mohammad admitted to hugging and kissing" the woman and "demonstrated what he did using Bashar [Awawdeh]." As alleged in Officer Saluto's probable cause affidavit, "Sgt Ranauro and I spoke with Malkawi through his translator: Basher [sic] Awawdeh ... and Malkawi told us that he helped [the woman] bring something heavy to her car and then hugged her from behind and kissed her on the cheek." Officer Devin R. West similarly alleged in his police report: "Malkawi stated that his English was not that well [sic] and that [Bashar] Awawdeh could translate. Through the translation of Awawdeh, Malkawi stated that he hugged [the victim] from behind and then kissed her face."

19. After this questioning of Mr. Malkawi, the officer—again likely Sgt. Ranauro—asked whether Mr. Awawdeh's visa was expired, though this question was irrelevant to the Department's criminal investigation of the alleged assault. Mr. Awawdeh stated that his visa was no longer valid, as he had overstayed. The officer then asked whether Mr. Awawdeh was "illegal or not"—a question that also was irrelevant to the Department's criminal investigation of

the alleged assault. Mr. Awawdeh acknowledged that he did not have current immigration documents. After this question, the officer again told Mr. Awawdeh to stay where he was and to not move. Mr. Awawdeh again sat down near the XtraMart's entrance, along with the Mr. Malkawi and at least three other officers.

20. After Mr. Awawdeh assisted the Department with its criminal investigation, the Department called ICE to pick up Mr. Awawdeh. As explained in Officer West's police report: "After speaking with Malkawi[,] Sgt. Ranauro advised me to call the 24 hour number for Immigration because Awawdeh stated that he had overstayed his tourist Visa and that he was in the United States illegally." As explained in Sgt. Ranauro's police report, "Based on the fact [that] Bashar [Awawdeh] admitted to being in the United States illegally, I asked [Officer Devin] West to call the 24-hour I.C.E. number and advise them of the situation."

21. Mr. Abuirsheid arrived approximately 20 minutes after Mr. Awawdeh called him. After Mr. Abuirsheid arrived, Mr. Abuirsheid escorted some of the officers inside the XtraMart and assisted the officers with reviewing the surveillance footage of the alleged assault. As Officer Saluto alleges in his report, Samer Abuirsheid arrived "and we were able to review the security video for the store. The video confirms the victim's statement: however the location of the assault was located in a blind spot of the store for the rear security camera. Abuirsheid was unable to save the video to a disk." As Sgt. Ranauro similarly stated in his report: "Samer [Abuirsheid] and Ofc. Saluto viewed the video. Ofc. Saluto advised me that the incident occurred outside of [the] camera angle."

22. As Sgt. Ranauro stated in his report: "Throughout the course of this investigation, it was determined that Samer [Abuirsheid] also had overstayed his Visa."

23. The Department then brought Mr. Abuirsheid to sit with Mr. Awawdeh and Mr.

Malkawi. Mr. Awawdeh asked an officer—again, likely Sgt. Ranauro—what was going to happen with him. The officer said that ICE was going to take care of him.

24. Sure enough—approximately 15 minutes after this officer told Mr. Awawdeh that ICE would take care of him, ICE Officer Kevin Williams arrived. According to Officer West’s police report, Officer Williams believed that “Awawdeh and Abuirsheid were in the country illegally and Malkawi was legal but was not allowed to be working on his tourist visa.” Officer West’s report also states that ICE Officer Williams, Officer West, and Officer Ryan escorted Mr. Malkawi to his apartment near XtraMart. During this time, the officers made Mr. Awawdeh and Mr. Abuirsheid sit and wait on the curb next to the XtraMart.

25. Officer Williams came back from the apartment and placed Mr. Awawdeh and Mr. Abuirsheid in handcuffs and said that they were under arrest. According to Officer West’s police report, Officer West transported Mr. Awawdeh and Mr. Abuirsheid to the Exeter Police Department station in his town-issued police cruiser. Officer Williams drove separately to the Exeter Police Department station. Mr. Awawdeh and Mr. Abuirsheid waited at the Exeter Police Department station in separate rooms while being guarded by the Department’s officers, as well as ICE Officer Williams. Mr. Awawdeh and Mr. Abuirsheid waited for about 30 minutes until a Strafford County Sheriff’s Office van came to transport them to the Strafford County Department of Corrections, which houses federal immigration detainees in Dover, New Hampshire.

26. The Exeter Police Department, likely through Officer Saluto, also arrested Mr. Malkawi at the scene for simple assault. Mr. Malkawi was transported to the Exeter Police Department station. The Department charged Mr. Malkawi with two charges of simple assault. These charges did not result in conviction as, on August 23, 2018, the charges were placed on

file without a finding, with the condition that Mr. Malkawi be on good behavior for one year and have no contact with the victim. *See State v. Malkawi* Case Summary, attached as Exhibit A.

27. In total, the Department's officers detained Mr. Awawdeh for approximately 90 minutes until ICE arrived. At no time during this detention did Mr. Awawdeh believe that he was free to leave the scene.

28. Mr. Awawdeh was jailed at the Strafford County Department of Corrections in Dover, New Hampshire, and then at the Plymouth Correctional Facility in Plymouth, Massachusetts, for nearly one month. After a hearing in immigration court, Mr. Awawdeh was released on September 5, 2018 on bond because he is not a danger or flight risk.

29. The Department had no legal basis to detain, seize, and arrest Mr. Awawdeh. At no time during the Department's detention did Defendants have either probable cause or reasonable suspicion to believe that Mr. Awawdeh was involved in criminal activity.

30. 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.

31. Here, the Department and its officers engaged in this seizure solely based on a suspicion that Mr. Awawdeh had committed a non-criminal immigration violation, nothing more. Courts have repeatedly held that local law enforcement officers cannot seize and arrest 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.”).

32. A local law enforcement agency cannot engage in immigration arrests absent a “287(g) agreement” with the federal government that allows the local agency to perform “immigration officer functions,” including the “apprehension [and] detention of aliens in the United States.” 8 U.S.C.S. § 1357(g). The Department does not have a 287(g) agreement with the United States.

33. Indeed, in August 2005, a New Hampshire Circuit Court judge rejected an effort by the Hudson and New Ipswich Police Departments to charge undocumented individuals with criminal trespass for being in the State of New Hampshire. In so doing, the Court opined that “this role for local law enforcement [under Section 287(g)] exists within the federal plan for enforcing immigration violations, which is further indication that *Congress intended to preclude any local efforts which are unauthorized or based on other than federal law.*” See *State v. Barros-Batistele, et al.*, No. 05-cr-1474, 1475, et al. (Jaffrey-Peterborough and Nashua Dist. Cts., Aug. 12, 2005) (Runyon, J.) (emphasis added), attached as *Exhibit B*. On August 15, 2005, the New Hampshire Attorney General’s Office informed all law enforcement officials in New

Hampshire—including the Exeter Police Department—of this decision and the fact that the Attorney General’s Office was not going to appeal. *See* N.H. A.G. Aug. 15, 2005 Memo., attached as Exhibit C. The Memo added that “New Hampshire law enforcement officials should not make future arrests for criminal trespassing based solely on the defendant’s immigration status.” *Id.*

34. The Exeter Police Department has intentionally developed and implemented a policy and practice in which it detains, seizes, and arrests individuals solely based on known or suspected immigration violations, without any reasonable suspicion or probable cause to believe that a crime has been committed. In response to a May 2017 public records request, the Exeter Police Department stated that it “uses” ICE’s mission statement “for any immigration issues our department may encounter.” *See* May 25, 2017 Public Records Request and Exeter Aug. 11, 2017 Response, attached as Exhibit D. Exeter attached ICE’s mission statement to its response, which states that ICE’s mission is “[t]o identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise defy the integrity of our immigration laws and border control efforts” *Id.* The Exeter Police Department further confirmed this policy in response to a public records request filed in August 2018. There, the Department stated on September 4, 2018: “I have attached a copy of your [public records] request and my response from August 11, 2017[.] [F]or your reference, there hasn’t been any changes to our policy” *See* August 31, 2018 Public Records Request and Exeter Sept. 4, 2018 Response, attached as Exhibit E. The Department, thus, has a policy of engaging in civil immigration arrests even though its officers are not certified to do so under a 287(g) agreement.

35. This detention caused harm to Mr. Awawdeh, including the violation of his

constitutional rights, improper loss of his liberty, and emotional distress. Because of the Department's unlawful seizure, Mr. Awawdeh was detained for an additional 26 days until September 5, 2018, during which time he was separated from his wife and her three-year-old child, causing him anxiety and emotional distress.

36. Finally, it is important to note that the Department's actions in this case will make Exeter less safe. Mr. Awawdeh and Mr. Abuirsheid assisted the Department with its investigation into an alleged assault. In response, the Department arrested and detained these individuals for violating federal immigration laws. 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 – UNCONSTITUTIONAL ARREST
(AGAINST POLICE OFFICER DEFENDANTS)

37. All prior paragraphs are incorporated.

38. 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.

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

40. The Police Officer Defendants did not have any authority to detain Mr. Awawdeh based on suspected removability without any request or direction from the federal government.

41. By seizing Mr. Awawdeh for a civil immigration violation, the Police Officer

Defendants violated Mr. Awawdeh's Fourth Amendment right to be free from unreasonable seizures.

42. It was clearly established at the time of Mr. Awawdeh's seizure that it was illegal for the Police Officer Defendants to seize him for civil immigration violations.

43. Mr. Awawdeh suffered loss of fundamental rights and his liberty, as well as emotional distress, as a result of this action by the Police Officer Defendants.

44. Mr. Awawdeh 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. Awawdeh's rights.

COUNT II

42 U.S.C. § 1983 – *MONELL* UNLAWFUL POLICY/PRACTICE & FAILURE TO TRAIN (AGAINST DEFENDANT TOWN OF EXETER)

45. All prior paragraphs are incorporated.

46. 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.

47. Defendant Town of Exeter has intentionally developed and implemented a policy and practice in which it detains, seizes, and arrests individuals solely based on known or suspected civil immigration violations without any reasonable suspicion or probable cause to believe that a crime has been committed.

48. The Police Officer Defendants illegally seized Mr. Awawdeh pursuant to this unlawful policy and practice.

49. This unlawful policy and practice caused the violation of Mr. Awawdeh's Fourth Amendment rights.

50. The Town of Exeter acted with deliberate indifference and willful blindness to the strong likelihood that illegal conduct would result from the implementation of its policy and practice of making civil immigration arrests.

51. The Town of Exeter 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.

52. The Town of Exeter knew or should have known that such a lack of 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 Exeter's failure to train its officers directly resulted in the violation of Mr. Awawdeh's Fourth Amendment rights by the Police Officer Defendants.

54. Mr. Awawdeh suffered loss of fundamental rights and his liberty, as well as emotional distress, as a result of this action by the Town of Exeter.

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

55. All prior paragraphs are incorporated.

56. By detaining, seizing, and arresting Mr. Awawdeh solely based on a suspected immigration violation without any reasonable suspicion or probable cause to believe that Mr. Awawdeh had committed a crime, Defendants acted with the intent of confining Mr. Awawdeh within boundaries that Defendants fixed.

57. Defendants' actions directly and indirectly resulted in Mr. Awawdeh's confinement.

58. Mr. Awawdeh was conscious of or harmed by the confinement.

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

60. 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.

61. Mr. Awawdeh suffered loss of fundamental rights and his liberty, as well as emotional distress, as a result of this action by Defendants.

62. Accordingly, Defendants falsely imprisoned Mr. Awawdeh.

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

DEMAND FOR JURY TRIAL

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

RELIEF REQUESTED

WHEREFORE, Plaintiff Bashar Awawdeh respectfully requests that this Court:

A. Declare that the actions taken by Defendants in seizing, detaining, and arresting Mr. Awawdeh solely based on a suspected civil immigration violation violated Mr. Awawdeh's rights under the Fourth Amendment;

B. Award compensatory damages against all Defendants, and punitive damages against the Police Officer Defendants, for the above violations of Mr. Awawdeh's constitutional rights;

C. Award compensatory damages against all Defendants for falsely imprisoning Mr. Awawdeh;

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,

BASHAR AWAWDEH,

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

/s/ Gilles R. Bissonnette

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Date: September 25, 2018

EXHIBIT

A

CASE SUMMARY

CASE NO. 435-2018-CR-01200

State v. Mohammed Malkawi

§
§
§
§Location: **10th Circuit - District Division
- Brentwood**
Filed on: **08/13/2018**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Criminal
Jurisdiction: Exeter					
1. Simple Assault	631:2-A	MISDA	08/10/2018	Case Status:	08/28/2018 Closed
ChargeID: 1529516C ACN: 007025J181529516001					
Arrest: 08/10/2018					
2. Simple Assault	631:2-A	MISDA	08/10/2018		
ChargeID: 1529517C ACN: 007025J181529517002					
Arrest: 08/10/2018					

Bonds

Cash \$1,000.00
 8/16/2018 Posted
 8/24/2018 Discharged
 Counts: 1, 2

PARTY INFORMATION

Defendant **Malkawi, Mohammed**
7 Tremont St. Apt. #7
Exeter, NH 03833
Unavailable Male
DOB: 03/19/1951 Age: 67

Attorneys
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Retained
 603-778-0526(W)

Arresting Agency **Exeter Police Department**
P.O. Box 127
Exeter, NH 03833

DATE	EVENTS & ORDERS OF THE COURT	INDEX
08/10/2018	Gerstein Affidavit	<i>Index #1</i>
08/13/2018	Complaint As Accepted For Filing	
08/13/2018	Notice of Intent to Seek Class A Penalties	<i>Index #2</i>
08/13/2018	Orders and Conditions of Bail <i>Bail Bondsman</i>	<i>Index #3</i>
08/13/2018	Adult Order of Commitment	<i>Index #5</i>
08/13/2018	Interpreter Request Form <i>For 8-13-18</i>	<i>Index #6</i>
08/13/2018	Video Arraignment/Bail Hearing (Judicial Officer: Burns, David J)	
08/13/2018	Orders and Conditions of Bail (Judicial Officer: Burns, David J)	<i>Index #7</i>
08/16/2018	Bond <i>\$1000.00 CASH</i>	<i>Index #4</i>
08/16/2018	Waiver of Extradition	<i>Index #8</i>
08/22/2018	Interpreter Request Form <i>For 8/23/2018</i>	<i>Index #9</i>

CASE SUMMARY
CASE NO. 435-2018-CR-01200

08/23/2018	Video Arraignment/Bail Hearing	
08/23/2018	Waiver of Speedy Trial (Judicial Officer: LeFrancois, David G) Party: Defendant Malkawi, Mohammed Charges: 1, 2	Index #11
08/23/2018	Plea (Judicial Officer: LeFrancois, David G) 1. Simple Assault No Plea 2. Simple Assault No Plea	
08/23/2018	Disposition (Judicial Officer: LeFrancois, David G) 1. Simple Assault Placed on File w/o Finding 2. Simple Assault Placed on File w/o Finding	
08/23/2018	Sentence (Judicial Officer: LeFrancois, David G) 1. Simple Assault Sentenced Condition - Adult: 1. Good Behavior for One Year, 08/23/2018, Active 08/23/2018 2. No Victim Contact, No Contact w/ L.D. for 2 Years, 08/23/2018, Active 08/23/2018 3. Other, Evidence in This Case to be Returned, Including Passport + Ticket, 08/23/2018, Active 08/23/2018 2. Simple Assault Sentenced Condition - Adult: 1. Good Behavior for One Year, 08/23/2018, Active 08/23/2018 2. No Victim Contact, No Contact w/ L.D. for 2 Years, 08/23/2018, Active 08/23/2018 3. Other, Evidence in This Case to be Returned, Including Passport + Ticket, 08/23/2018, Active 08/23/2018	
08/22/2018	Assignment of Counsel	Index #10

DATE

FINANCIAL INFORMATION

Defendant Malkawi, Mohammed
Criminal Cash Bail Balance as of 9/6/2018

0.00

EXHIBIT

B

THE STATE OF NEW HAMPSHIRE

Cheshire-Hillsborough County

Jaffrey-Peterborough District Court
Nashua District Court

State of New Hampshire

v.

Frederico Barros-Batistele - #05-CR-1474,1475
Wellington Brustolin Da Silva - #05-CR-1479,1480
Luiz De Amorim - #05-CR-1481,1482
Mauro Sergio Farias – 05-CR-1476
Bernarda Gallego - #05-CR-1477,1478
Jorge Mora Ramirez - #05-CR-0736,0737
Sergio Robles-Ruiz - #05-CR-1483,1484
Marcos Vinicius S. Sousa - #05-CR-1486

ORDER ON MOTIONS TO DISMISS AND OBJECTIONS

The defendants in these cases are charged with violation-level criminal trespass by the New Ipswich (Ramirez) and Hudson (Robles-Ruiz, De Amorim, Farias, Da Silva, Gallego, Barros-Batistele and Sousa) Police Departments. All were apparently engaged initially by officers for other reasons, but were then charged with criminal trespass when the officers suspected the defendants were in violation of federal immigration laws.

New Hampshire RSA 635:2 provides that a person is guilty of criminal trespass as a violation “if, knowing that he is not licensed or privileged to do so, he enters or remains in any place.” The police departments’ theory of their charges, which they acknowledge is novel, is that the defendants knew they were not properly documented to be in this country, because they had taken no steps to lawfully enter or remain here, and thus also knew they were not licensed or privileged to remain in the town of New Ipswich or Hudson. The novelty of the charges is that until now, in New Hampshire at least, the “place” referred to in the statute has been a specific parcel or structure of privately-owned real property, rather than any public or private place within the respective town.

Motions to dismiss the criminal trespass complaints have been filed on behalf of defendants Ramirez, Robles-Ruiz, Sousa and Gallego (the “Motions”), claiming that these state law charges violate the Supremacy Clause of the United States Constitution, Art. VI, cl. 2, in that the comprehensive system of federal laws regulating “naturalization” adopted by Congress pursuant to U.S. Constitution, Art. I, §8, preempts any state action attempting to regulate

immigration. They say the underlying basis of this fundamental principle of constitutional law is that if each state could establish its own system of offenses and penalties for immigration violations, it would undermine Congress' power to carry out a uniform national policy in that area.

The police departments' objections to the Motions (the "Objections") acknowledge that federal authority to regulate immigration is exclusive, but argue that the criminal trespass complaints do not constitute regulation of immigration. They reason that because the statute as applied does not establish new conditions for removal of immigrants or for determination of immigration status, these charges are not inconsistent with federal law, but are merely tools to enable local law enforcement to positively identify persons with no record of existence in the available databases. Furthermore, they say these charges are not intended either to facilitate deportation of the defendants or to hassle them with fine payments, but are aimed solely at fulfilling each department's undisputed duty to protect the security of its citizenry.

Fortunately, the resolution of these issues does not require this court to understand much about substantive immigration law. It does, however, involve consideration of the cases where state laws have been charged with violating the Supremacy Clause.

Both the Motions and the Objections acknowledge that the United States Supreme Court's decision in De Canas v. Bica, 424 U.S. 351 (1976) sets forth the criteria for determining whether a state law (or its application in these cases) is an unconstitutional entry into an area preempted by federal law. Those criteria, which have been acknowledged and applied by the New Hampshire Supreme Court in Appeal of Conservation Law Foundation, 147 N.H. 89 (2001), are (1) whether federal law explicitly preempts state regulation in a particular area; (2) whether absent specific preemption, state law infringes on an area where Congress intended federal law to have exclusive jurisdiction, that is, to "occupy the field"; or (3) whether state law actually conflicts with the provisions of federal law.

The decision in De Canas is particularly instructive, not only because the subject matter was also immigration law, but also because it demonstrates how the criteria the Supreme Court established are to be applied to specific circumstances. The issue was whether a California statute was preempted by federal immigration law, where the state law prohibited employers from knowingly hiring illegal aliens if such employment would adversely affect local resident workers. Significantly, the Court stated that although "[p]ower to regulate immigration is unquestionably exclusively a federal power," Id. at 354, it was unable to find "any specific indication in either the wording or the legislative history of the [Immigration and Nationality Act ("INA")] that Congress intended to preclude even harmonious state regulation touching on aliens in general...." Id. at

358. Thus, having resolved the first of its criteria for federal preemption in the negative, the Court moved on to the second.

In determining whether the California law entered an area where federal immigration law was intended by Congress to be exclusive, the Court declared that “[t]he central concern of the INA is with the terms and conditions of admission to the country and the subsequent treatment of aliens lawfully in the country.” Id. at 359. It then found that because Congress had passed other laws giving the states authority over alien employment issues, “the INA should not be taken as legislation by Congress expressing its judgment to have uniform federal regulations in matters affecting employment of illegal aliens, and therefore barring state legislation....” Id. at 362.

Finally, on the last of its criteria, the Supreme Court felt it needed further information from the lower court in order to tell whether the California statute “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the INA.” Id. at 363. Specifically, input was sought on construction of the state statute, from which the Court might determine whether the law “can be enforced without impairing the federal superintendence of the field covered by the INA.” Id. at 363.

Turning to our cases, and considering how De Canas resolved its first criterion, we can safely conclude that there is no explicit prohibition in federal law against all state laws in any way touching on aliens. Thus, the mere fact that RSA 635:2 has been applied to these defendants is not in itself unconstitutional.

Resolution of the second De Canas criterion is not as straightforward, in that it requires a determination as to whether use of our criminal trespass statute in the manner charged enters an area where Congress intended federal law to “occupy the field.” The field is the regulation of immigration, which, in addition to the other statements from De Canas cited above, “is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.” Id. at 355.

The State argues that charging the defendants with criminal trespass is not an effort to deport them for illegally remaining in New Ipswich or Hudson, or to determine whether they may subsequently remain in this country, but is merely intended to identify them as being in violation of federal immigration law, in the interest of protecting the local citizenry from persons essentially of unknown quantity. It further states that these proceedings are not in conflict with federal law, because only the federal standards for determining immigration status are to be applied by the court, not a different set of state guidelines.

The difficulty with this analysis is that the State asks the court not only to use the federal standards to determine the defendants’ immigration status, but then, based on that status, to find them guilty of an additional offense and to

impose additional penalties beyond those the defendants would face under federal immigration law. The provisions of the INA, 8 U.S.C. §1101 et seq., set forth quite a number of offenses, sanctions and penalties for violation of its requirements ranging from civil deportation, to criminal fines and/or imprisonment for such offenses as unauthorized entry into the United States (under §1325), failure to register (under §1306), and reentry by a previously deported alien (under §1326). All in all, this array of offenses, sanctions and penalties constitutes a scheme of federal regulation “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,” which is how our Supreme Court explained the second De Canas test of federal law “occupying the field.” Appeal of Conservation Law Foundation, supra, at 91.

Moreover, the present cases are entirely different than that dealt with in De Canas, where the regulation of employers who hired illegal aliens was found to be “a merely peripheral concern of the federal regulation.” De Canas, supra, at 361. These prosecutions go directly to the subject matter of the sanctions and penalties for immigration violations set forth in the INA, and attempt to add state sanctions in the same area, a result which has never been permitted in any case where federal regulation has been found to “occupy the field.” See Hines v. Davidowitz, 312 U.S. 52, 63 (1941), which seems to be the seminal case for this principle, and which is cited in many other decisions where federal law permeates “the specific field which the States were attempting to regulate....” De Canas, supra, at 362.

There is no need to dwell on the third De Canas criterion for federal preemption, because the current charges clearly conflict with the comprehensive menu of federal immigration offenses, sanctions and penalties by attempting to add a new one to them.

Based on the foregoing, the criminal trespass charges against the defendants are unconstitutional attempts to regulate in the area of enforcement of immigration violations, an area where Congress must be deemed to have regulated with such civil sanctions and criminal penalties as it feels are sufficient.

Before concluding, it should be noted that the federal system of enforcing immigration violations does not preclude all efforts by local law enforcement to participate and assist in that work. As the defendants point out, 8 U.S.C. §1357(g) provides a process for state officers to become authorized to perform “immigration officer functions” as, in effect, deputies of the federal government. The functions permitted by this status include “investigation, apprehension and detention of aliens,” which are primarily the goals the New Ipswich Objection (in paragraph 3) sought to accomplish with its charge, because “an admittedly overburdened ICE Department...does not have the resources to take custody of the defendant directly.” The point, though, is that this role for local law enforcement exists within the federal plan for enforcing immigration violations,

which is further indication that Congress intended to preclude any local efforts which are unauthorized or based on other than federal law.

Finally, this analysis has purposely avoided any determination whether it is proper as a matter of statutory construction for RSA 635:2 to be applied as the police departments have sought to do. The reason is that there is no reliable basis on which this court could undertake that inquiry, as there are no New Hampshire cases dealing with the issue, or legislative history revealing the intent of our lawmakers who passed the statute. The import of the analysis the court has conducted, however, is that even if the police departments have applied the statute in a manner not otherwise unlawful, its application in that manner violates the Supremacy Clause of the United States Constitution, and is thus barred by federal preemption.

Consequently, the Motions are granted, and the criminal trespass complaints against all defendants are dismissed, including those against defendants who did not file such motions. As to the complaints for other charges, the parties are requested to contact the court in order to schedule trial dates, at which time the court will also consider the pending motions to suppress and objections, which require testimony before rulings can be made.

SO ORDERED.

Date: August 12, 2005

L. Phillips Runyon III
Presiding/Acting Justice

EXHIBIT

C

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL

MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL



TO: All New Hampshire Law Enforcement Officials
FROM: Kelly A. Ayotte, Attorney General
DATE: August 15, 2005
RE: *State v. Barros-Batistele, et al.*

On August 12, 2005, the Jaffrey-Peterborough District Court dismissed criminal trespass charges that had been brought by the New Ipswich and Hudson Police Departments against a total of eight defendants. The police departments' theory of their charges was that the defendants had committed criminal trespass by entering and remaining on municipal property knowing that because they were not properly documented to be in the United States, they were therefore not privileged to remain in the Towns of New Ipswich and Hudson. While the Court recognized that these charges reflected a novel approach to address immigration violations at the state level, the Court nevertheless ruled that the criminal trespass charges against the defendants were unconstitutional attempts to regulate in the area of enforcement of immigration violations, a field that is solely governed by federal law. The order of the Jaffrey-Peterborough District Court can be found on the New Hampshire Judicial Branch website under District Courts.

Having carefully examined the Court's decision and the relevant case law, this office has determined that there is an insufficient basis for appeal. Accordingly, New Hampshire law enforcement officials should not make future arrests for criminal trespassing based solely on the defendant's immigration status. If you need further guidance on this issue, please contact this office directly.

#89164

EXHIBIT

D



AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, New Hampshire 03301
603-225-3080
www.ACLU-NH.org

DEVON CHAFFEE
EXECUTIVE DIRECTOR

May 25, 2017

VIA FIRST CLASS MAIL AND EMAIL (wshupe@exeternh.gov)

William Shupe
Chief of Police
Exeter Police Department
20 Court Street
Exeter, NH 03833

Re: Right-to-Know Request Regarding Immigration Enforcement

Dear Chief Shupe:

This is a Right-to-Know request to the Exeter 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 are the specific requests:

1. All records relating to or referencing Immigration and Customs Enforcement (“ICE”), Homeland Security Investigations (“HSI”), or U.S. Customs and Border Protection (CBP a.k.a. Border Patrol), as well as their employees, created from November 1, 2016 to the start of the Department’s search for records.
2. All communications between any member of the Department and any member of ICE, HSI or the CPB from November 1, 2016 to the start of the Department’s search for records.
3. Any emails, communications, policies, or procedures—whether formal or informal—concerning the handling of suspects who a Department officer may believe is in the United States unlawfully.
4. Any memoranda of understanding or agreements—standing or otherwise—with ICE, HSI, or CPB from 2007 to the present.

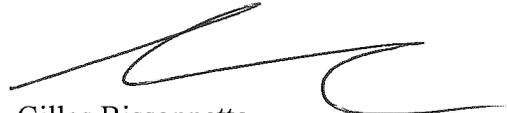
In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155

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,

A handwritten signature in black ink, appearing to read 'Gilles Bissonnette', with a long horizontal flourish extending to the right.

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

Gilles Bissonnette

From: Liz Thibeau <lthibeau@exeternh.gov>
Sent: Friday, August 11, 2017 2:43 PM
To: Gilles Bissonnette
Subject: Re: 91-A
Attachments: us immigration.pdf

Dear Mr. Bissonnette,

I have completed research in response to your May 25, 2017 request for documents pursuant to RSA 91-A. Unfortunately, our records system has no way to search for records fitting the criteria you are requesting, and the Town of Exeter has no General Orders in place regarding Immigration and customs Enforcement. I have attached the Mission Statement we use for any immigration issues our department may encounter.

Respectfully,
Liz Thibeau
Officer Manager
Exeter Police Department

On Wed, Jul 26, 2017 at 3:58 PM, Gilles Bissonnette <gilles@aclu-nh.org> wrote:

> Thanks!

>

> Gilles Bissonnette

> Legal Director

> American Civil Liberties Union of New Hampshire

> 18 Low Avenue

> Concord, NH 03301

> Phone: 603-224-5591 ext. 103

> gilles@aclu-nh.org

> www.aclu-nh.org

>

>

> Because Freedom Can't Protect Itself

>

> -----Original Message-----

> From: Liz Thibeau [mailto:lthibeau@exeternh.gov]

> Sent: Wednesday, July 26, 2017 2:41 PM

> To: Gilles Bissonnette <gilles@aclu-nh.org>

> Subject: Re: 91-A

>

> Hello Mr. Bissonnette,

> We will have to research how many reports we may have regarding your request. I will email you within 10 business days with our findings and the cost.

> Respectfully,

> Liz Thibeau

>

> On Wed, Jul 26, 2017 at 11:58 AM, Gilles Bissonnette <gilles@aclu-nh.org> wrote:

>> We will pay the costs of copying at 50 cents per page. Can you let me know how many pages we are dealing with approximately?

>>
>> Gilles Bissonnette
>> Legal Director
>> American Civil Liberties Union of New Hampshire
>> 18 Low Avenue
>> Concord, NH 03301
>> Phone: 603-224-5591 ext. 103
>> gilles@aclu-nh.org
>> www.aclu-nh.org

>>
>>
>> Because Freedom Can't Protect Itself

>> -----Original Message-----
>> From: Liz Thibeau [mailto:lthibeau@exeternh.gov]
>> Sent: Wednesday, July 26, 2017 11:52 AM
>> To: Gilles Bissonnette <gilles@aclu-nh.org>
>> Subject: Re: 91-A

>>
>> Dear Mr. Bissonnette:
>> I will need to know if you are willing to incur the costs for any releasable reports. As per my response dated May 31, 2017, the Exeter Police Department charges fifty cents per page for 91-A requests. I will need a response from you before going forward with making copies of any releasable reports.
>> Respectfully,
>> Liz

>>
>> On Tue, Jul 25, 2017 at 5:16 PM, Gilles Bissonnette <gilles@aclu-nh.org> wrote:
>>> Can you let me know where Exeter is with our request? Thank you in advance.
>>>

>>> Gilles Bissonnette
>>> Legal Director
>>> American Civil Liberties Union of New Hampshire
>>> 18 Low Avenue
>>> Concord, NH 03301
>>> Phone: 603-224-5591 ext. 103
>>> gilles@aclu-nh.org
>>> www.aclu-nh.org

>>>
>>>
>>> Because Freedom Can't Protect Itself

>>> -----Original Message-----
>>> From: Liz Thibeau [mailto:lthibeau@exeternh.gov]
>>> Sent: Wednesday, May 31, 2017 8:06 AM
>>> To: Gilles Bissonnette <gilles@aclu-nh.org>
>>> Subject: 91-A

>>>
>>> Dear Mr. Bissonnette:
>>>

>>> We are in receipt of your May 25, 2017 request for documents pursuant to RSA 91-A. We are in the process of gathering the documents you requested, and anticipate that we will be able to fully respond within 30 business days.

>>>

>>> The Exeter Police Department charges fifty cents per page for 91-A requests. Please respond within 5 days to let us know if you want us to go forward with filling this request Sincerely,

>>>

>>> --

>>> Liz Thibeau
>>> Office Manager
>>> Exeter Police Department
>>> lthibeau@exeternh.gov

>>>

>>> ***** CONFIDENTIALITY

>>> NOTICE*****

>>>

>>> The information contained in this email may be legally privileged and confidential intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution, or copy of this email is strictly prohibited. If you have received this email in error, please notify by reply email and delete original.

>>> Thank You

>>

>>

>>

>> --

>> Liz Thibeau
>> Office Manager
>> Exeter Police Department
>> lthibeau@exeternh.gov

>>

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>> Thank You

>

>

>

> --

> Liz Thibeau
> Office Manager
> Exeter Police Department
> lthibeau@exeternh.gov

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> Thank You

--

Liz Thibeau
Office Manager
Exeter Police Department
lthibeau@exeternh.gov

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Thank You

U.S. Department of Homeland Security

Enforcement and Removal Operation
275 Chestnut Street
Manchester, New Hampshire 03101



**U.S. Immigration
and Customs
Enforcement**

Enforcement Removal Operations Mission Statement

To identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise defy the integrity of our immigration laws and border control efforts. ERO upholds America's immigration laws at, within and beyond our borders through efficient enforcement and removal operations.

Points of Contact

Manchester Duty Officer Cell 24/7

[Redacted]

Sector Communications 24/7

[Redacted]

Law Enforcement Support Center 24/7

[Redacted]

DHS Suspicious Activity Hot Line
(866) DHS-2-ICE
866-347-2423



Supervisor Timothy T. Stevens

Office: (603)629-2800 x2810

Fax: (603)629-2850

Timothy.T.Stevens@ICE.DHS.GOV

EXHIBIT

E



August 31, 2018

VIA EMAIL (wshupe@exeternh.gov)

William Shupe
Chief of Police
Exeter Police Department
10 Front Street
Exeter, NH 03833

Re: Right-to-Know Request Regarding Immigration Enforcement

Dear Chief Shupe:

This is a Right-to-Know request to the Exeter 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 are the specific requests:

1. All police reports referencing Immigration and Customs Enforcement (“ICE”), Homeland Security Investigations (“HSI”), or U.S. Customs and Border Protection (CBP a.k.a. Border Patrol) created from November 1, 2016 to the start of the Department’s search for records.
2. All communications between any member of the Department and any member of ICE, HSI or the CPB from November 1, 2016 to the start of the Department’s search for records.
3. Any internal emails or directives—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

Gilles Bissonnette

From: Liz Thibeau <lthibeau@exeternh.gov>
Sent: Tuesday, September 4, 2018 2:51 PM
To: Gilles Bissonnette
Subject: Re: Chapter 91-A Request
Attachments: ACLU 91-A.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Gilles,
I received your 91-A request dated August 31, 2018. The Exeter Police Department . I have attached a copy of your 91-A request and my response from August 11, 2017 for your reference, there hasn't been any changes to our policy or system.

Sincerely,
Liz Thibeau
Office Manager
Exeter Police Department

On Fri, Aug 31, 2018 at 4:55 PM, Gilles Bissonnette <gilles@aclu-nh.org> wrote:

Dear Chief Shupe,

Please find the attached 91-A request. If you have any questions, do not hesitate to contact me.

Best,

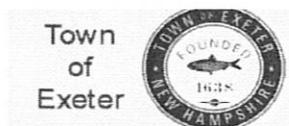
Gilles Bissonnette

ACLU-NH Legal Director

--
Liz Thibeau
Office Manager
Exeter Police Department
lthibeau@exeternh.gov

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Liz Thibeau <lthibeau@exeternh.gov>

RE: 91-A

Gilles Bissonnette <gilles@aclu-nh.org>
To: Liz Thibeau <lthibeau@exeternh.gov>

Mon, Aug 14, 2017 at 12:01 PM

Thank you. If we need anything else, we will let you know. Have a great week.

Gilles Bissonnette
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Phone: 603-224-5591 ext. 103
gilles@aclu-nh.org
www.aclu-nh.org

Because Freedom Can't Protect Itself

-----Original Message-----

From: Liz Thibeau [mailto:lthibeau@exeternh.gov]
Sent: Friday, August 11, 2017 2:43 PM
To: Gilles Bissonnette <gilles@aclu-nh.org>
Subject: Re: 91-A

Dear Mr. Bissonnette,

I have completed research in response to your May 25, 2017 request for documents pursuant to RSA 91-A. Unfortunately, our records system has no way to search for records fitting the criteria you are requesting, and the Town of Exeter has no General Orders in place regarding Immigration and customs Enforcement. I have attached the Mission Statement we use for any immigration issues our department may encounter.

Respectfully,
Liz Thibeau
Officer Manager
Exeter Police Department

On Wed, Jul 26, 2017 at 3:58 PM, Gilles Bissonnette <gilles@aclu-nh.org> wrote:

> Thanks!

>

> Gilles Bissonnette
> Legal Director
> American Civil Liberties Union of New Hampshire
> 18 Low Avenue
> Concord, NH 03301
> Phone: 603-224-5591 ext. 103
> gilles@aclu-nh.org
> www.aclu-nh.org

>

>

> Because Freedom Can't Protect Itself

>

> -----Original Message-----

> From: Liz Thibeau [mailto:lthibeau@exeternh.gov]
> Sent: Wednesday, July 26, 2017 2:41 PM
> To: Gilles Bissonnette <gilles@aclu-nh.org>
> Subject: Re: 91-A

>

> Hello Mr. Bissonnette,



AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

18 Low Avenue
Concord, New Hampshire 03301
603-225-3080
www.ACLU-NH.org

DEVON CHAFFEE
EXECUTIVE DIRECTOR

May 25, 2017

VIA FIRST CLASS MAIL AND EMAIL (wshupe@exeternh.gov)

William Shupe
Chief of Police
Exeter Police Department
20 Court Street
Exeter, NH 03833

Re: Right-to-Know Request Regarding Immigration Enforcement

Dear Chief Shupe:

This is a Right-to-Know request to the Exeter 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 are the specific requests:

1. All records relating to or referencing Immigration and Customs Enforcement (“ICE”), Homeland Security Investigations (“HSI”), or U.S. Customs and Border Protection (CBP a.k.a. Border Patrol), as well as their employees, created from November 1, 2016 to the start of the Department’s search for records.
2. All communications between any member of the Department and any member of ICE, HSI or the CPB from November 1, 2016 to the start of the Department’s search for records.
3. Any emails, communications, policies, or procedures—whether formal or informal—concerning the handling of suspects who a Department officer may believe is in the United States unlawfully.
4. Any memoranda of understanding or agreements—standing or otherwise—with ICE, HSI, or CPB from 2007 to the present.

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,



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

U.S. Department of Homeland Security

Enforcement and Removal Operation
275 Chestnut Street
Manchester, New Hampshire 03101



**U.S. Immigration
and Customs
Enforcement**

Enforcement Removal Operations Mission Statement

To identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise defy the integrity of our immigration laws and border control efforts. ERO upholds America's immigration laws at, within and beyond our borders through efficient enforcement and removal operations.

Points of Contact

Manchester Duty Officer Cell 24/7

[REDACTED]

Sector Communications 24/7

[REDACTED]

Law Enforcement Support Center 24/7
(802) [REDACTED]

DHS Suspicious Activity Hot Line
(866) DHS-2-ICE
866-347-2423



Supervisor Timothy T. Stevens

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