



February 23rd, 2024

Samuel Sinyangwe
MuckRock News DEPT MR116019
263 Huntington Ave.
Boston, MA 02115
116019-31500661@requests.muckrock.com

RE: Request to Inspect Public Records

Dear Mr. Sinyangwe,

We are responding to your public record request on 2/10/2024. You requested:

- *the total number of use of force incidents reported by the police department, separated by year and by type of force used from 2013-2020 (for example, "27 taser incidents in 2019, 3 baton incidents in 2020, etc.)*
- *the total number of civilian complaints alleging any form of law enforcement misconduct that were reported and the total number sustained from 2013-2020, separated by year (for example, 8 complaints in 2016, 2 complaints sustained in 2016, 4 complaints in 2017, 1 complaint sustained in 2017, etc.)*
- *the total number of civilian complaints alleging law enforcement use of excessive force that were reported and the total number sustained from 2013-2020, separated by year.*
- *the total number of civilian complaints alleging biased policing or racial profiling that were reported and the total number sustained from 2013-2020, separated by year.*
- *the total number of civilian complaints alleging criminal conduct that were reported and the total number sustained from 2013-2020, separated by year.*

- *all information reported to the FBI's National Use-of-Force Data Collection program to date.*
- *a list of all officers involved in shootings that were directed at a person from 2013-20 (excluding shootings of animals and accidental discharges that are not directed at a person).*
- *the total amount of money paid out in lawsuits and settlements relating to allegations of police misconduct per year from 2013-20. This includes copies of all reports, lists, databases, or individual documents that detail lawsuits brought against the city's police department and the outcome of lawsuits brought against the city's police department including any financial settlement occurring from 2013-20. It should also include any documents that your department submits to local, state, or federal agencies listing the number and/or status of lawsuits brought against the police department. This request includes any documents compiled quarterly, annually, or in other increments as well as any documents or databases that contain responsive information.*

Attached with this letter is a document titled. This record contains the following:

- **please see attachments**

There is no more city record related to this request. This concludes the City of Sunland Park response to your IPRA. If you have further questions, please contact me.

Sincerely,

Magavi Chávez

Magavi Chávez
Deputy City Clerk

Sunland Park*	FY18	17/18	\$1,050,000	\$5,000	\$20,531
Sunland Park*	FY19	18/19	\$1,050,000	\$5,000	\$18,971
Sunland Park*	FY20	19/20	\$1,050,000	\$5,000	\$18,924
Sunland Park*	FY21	20/21	\$1,050,000	\$5,000	\$9,841
Sunland Park*	FY22	21/22	\$1,050,000	\$5,000	\$9,841
Sunland Park*	FY23	22/23	\$2,000,000	\$5,000	\$78,555
Sunland Park* Total					\$156,663

New Mexico Self Insurers' Fund

Liability Coverage Invoice

Member:	City of Sunland Park	Policy #:	1845L
ATTN:	Daniel Carranco	FY:	L32 7/1/2018 - 6/30/2019
	1000 McNutt Road, Suite A	Invoice Date:	6/29/2018
	Sunland Park, NM 88063		

Coverage Type	Effective Date	Total Annual Premium	Prorate Percentage	Total for Coverage
General Liability	7/1/2018 to 6/30/2019	53,952.00	100.000%	53,952.00
Automobile Liability	7/1/2018 to 6/30/2019			
Auto Liability		26,453.70		
Auto Physical Damage		36,924.65		
		63,378.35		
Premium After 10.0% Discount:		57,040.52	100.000%	57,040.52
Civil Rights	7/1/2018 to 6/30/2019	42,000.00	100.000%	42,000.00
Law Enforcement	7/1/2018 to 6/30/2019	18,971.00	100.000%	18,971.00

Amount Due for Liability Coverage: 171,963.52



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

Policy #: 1845L
Insured: City of Sunland Park
Address: 1000 McNutt Road, Suite A
 Sunland Park, NM 88063
Policy Rating Period: 07/01/2018 to 06/30/2019
Rating Date: July 1st at the Insured's Address

The coverage afforded by this policy is only with respect to the following coverages as are indicated below. The limit of the New Mexico Self-Insurer's Fund's liability against each coverage is as stated here, subject to all of the terms of this policy having reference to the coverage.

LIMITS OF LIABILITY

- \$ 400,000 Per Person Bodily Injury (BI)
- \$ 750,000 Per Occurrence Bodily Injury (BI)
- \$ 100,000 Per Occurrence Fire Legal Liability Damage
- \$ 200,000 Per Legally Described Real Property for Physical Damage or Destruction (PD)
- \$ 750,000 Per Occurrence for Physical Damage (PD) or Destruction to Multiple Real Properties and Related Bodily Injury to Multiple Individuals Arising Out of a Single Occurrence
- \$ 300,000 For All Past Future Medical/Medically-Related Expenses Per Occurrence
- \$ 4,000,000 Annual Aggregate Per Policy

GENERAL LIABILITY

Limits of Liability * : Yes
 Deductible Per Occurrence: \$500

AUTO LIABILITY - See Schedule for Coverages and Deductibles

Limits of Liability * : Yes
 Deductible Per Occurrence: \$0
 Uninsured Motorists * : Yes
 Combined Single Limit Per Occurrence: \$60,000
 Auto Medical Payments * : Yes
 Bodily Injury Limit Per Insured: \$2,000



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

AUTO PHYSICAL DAMAGE - See Schedule for Coverages & Deductibles	Yes
LAW ENFORCEMENT LIABILITY	
Per Occurrence / Aggregate.....	\$1,000,000 / \$2,000,000
Deductible Per Occurrence:	\$5,000
..... Task Forces included:	Yes
PUBLIC OFFICIALS ERRORS OMISSIONS	
Per Occurrence / Aggregate.....	\$1,000,000 / \$2,000,000
Deductible Per Occurrence:	\$5,000
FOREIGN JURISDICTION	
Limits of Liability - Page One	Yes
Deductible Per Occurrence:	Same as General Liability
EMERGENCY MEDICAL MALPRACTICE	
Limits of Liability - Page One.....	Yes
Deductible Per Occurrence:	Same as General Liability

* Coverages applicable if indicated by "Yes".

Fund Representative

July 1, 2018

Date

New Mexico Self Insurers' Fund

Liability Coverage Invoice

Member:	City of Sunland Park	Policy #:	1845L
ATTN:	Raquel Alarcon	FY:	L33 7/1/2019 - 6/30/2020
	1000 McNutt Road, Suite A	Invoice Date:	7/2/2019
	Sunland Park, NM 88063		

Coverage Type	Effective Date	Total Annual Premium	Prorate Percentage	Total for Coverage
General Liability	7/1/2019 to 6/30/2020	60,367.00	100.000%	60,367.00
Automobile Liability	7/1/2019 to 6/30/2020			
Auto Liability		28,488.60		
Auto Physical Damage		41,671.18		
		70,159.78		
Premium After 10.0% Discount:		63,143.80	100.000%	63,143.80
Civil Rights	7/1/2019 to 6/30/2020	44,100.00	100.000%	44,100.00
Law Enforcement	7/1/2019 to 6/30/2020	18,924.00	100.000%	18,924.00

Amount Due for Liability Coverage: 186,534.80



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

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 Sunland Park, NM 88063
Policy Rating Period: 07/01/2019 to 06/30/2020
Rating Date: July 1st at the Insured's Address

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LIMITS OF LIABILITY

- \$ 400,000 Per Person Bodily Injury (BI)
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- \$ 100,000 Per Occurrence Fire Legal Liability Damage
- \$ 200,000 Per Legally Described Real Property for Physical Damage or Destruction (PD)
- \$ 750,000 Per Occurrence for Physical Damage (PD) or Destruction to Multiple Real Properties and Related Bodily Injury to Multiple Individuals Arising Out of a Single Occurrence
- \$ 300,000 For All Past Future Medical/Medically-Related Expenses Per Occurrence
- \$ 4,000,000 Annual Aggregate Per Policy

GENERAL LIABILITY

Limits of Liability * : Yes
 Deductible Per Occurrence: \$500

AUTO LIABILITY - See Schedule for Coverages and Deductibles

Limits of Liability * : Yes
 Deductible Per Occurrence: \$0
 Uninsured Motorists * : Yes
 Combined Single Limit Per Occurrence: \$60,000
 Auto Medical Payments * : Yes
 Bodily Injury Limit Per Insured: \$2,000



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

AUTO PHYSICAL DAMAGE - See Schedule for Coverages & Deductibles	Yes
LAW ENFORCEMENT LIABILITY	
Per Occurrence / Aggregate.....	\$1,000,000 / \$2,000,000
Deductible Per Occurrence:	\$5,000
..... Task Forces included:	Yes
PUBLIC OFFICIALS ERRORS OMISSIONS/CIVIL RIGHTS	
Per Occurrence / Aggregate.....	\$1,000,000 / \$2,000,000
Deductible Per Occurrence:	\$5,000
FOREIGN JURISDICTION	
Limits of Liability - Page One	Yes
Deductible Per Occurrence:	Same as General Liability
EMERGENCY MEDICAL MALPRACTICE	
Limits of Liability - Page One.....	Yes
Deductible Per Occurrence:	Same as General Liability

* Coverages applicable if indicated by "Yes".

Fund Representative

July 1, 2019

Date



New Mexico Self Insurers' Fund Liability Coverage Invoi

Member: City of Sunland Park
ATTN: Raquel Alarcon
 1000 McNutt Road, Suite A
 Sunland Park, NM 88063

Policy #: 1845L
FY: L34 7/1/2020 - 6/30/2021
Invoice Date: 7/9/2020

Coverage Type	Policy Dates	Total Annual Premium	Prorate%	Coverage Total
General Liability	7/1/2020 to 6/30/2021	54,248.00	100.000%	54,248.00

Automobile Liability	7/1/2020 to 6/30/2021			
Auto Liability		26,046.72		
Auto Physical Damage		36,222.91		
		62,269.63		
Premium After 10.0% Discount:		56,042.66	100.000%	56,042.66

Public Officials' E and O /Civil Rights	7/1/2020 to 6/30/2021	45,864.00	100.000%	45,864.00

Law Enforcement	7/1/2020 to 6/30/2021	19,681.00	100.000%	19,681.00

Amount Due for Liability Coverage: 175,835.66



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

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Insured: City of Sunland Park
Address: 1000 McNutt Road, Suite A
 Sunland Park, NM 88063
Policy Rating Period: 07/01/2020 to 06/30/2021
Rating Date: July 1st at the Insured's Address

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- \$ 300,000 For All Past Future Medical/Medically-Related Expenses Per Occurrence
- \$ 4,000,000 Annual Aggregate Per Policy

GENERAL LIABILITY

Limits of Liability * : Yes
 Deductible Per Occurrence: \$500

AUTO LIABILITY - See Schedule for Coverages and Deductibles

Limits of Liability * : Yes
 Deductible Per Occurrence: \$0
 Uninsured Motorists * : Yes
 Combined Single Limit Per Occurrence: \$60,000
 Auto Medical Payments * : Yes
 Bodily Injury Limit Per Insured: \$2,000



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

AUTO PHYSICAL DAMAGE - See Schedule for Coverages & Deductibles Yes

LAW ENFORCEMENT LIABILITY
 Per Occurrence / Aggregate..... \$1,000,000 / \$2,000,000
 Deductible Per Occurrence: \$5,000
 Task Forces included: Yes

PUBLIC OFFICIALS ERRORS OMMISSIONS/CIVIL RIGHTS
 Per Occurrence / Aggregate..... \$1,000,000 / \$2,000,000
 Deductible Per Occurrence: \$5,000

FOREIGN JURISDICTION
 Limits of Liability - Page One Yes
 Deductible Per Occurrence: Same as General Liability

EMERGENCY MEDICAL MALPRACTICE
 Limits of Liability - Page One..... Yes
 Deductible Per Occurrence: Same as General Liability

* Coverages applicable if indicated by "Yes".

Fund Representative

July 1, 2020

Date



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

Policy #: 1845L
Insured: City of Sunland Park
Address: 1000 McNutt Road, Suite A
 Sunland Park, NM 88063
Policy Rating Period: 07/01/2021 to 06/30/2022
Rating Date: July 1st at the Insured's Address

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GENERAL LIABILITY

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 Deductible Per Occurrence: \$500

AUTO LIABILITY - See Schedule for Coverages and Deductibles

Limits of Liability * : Yes
 Deductible Per Occurrence: \$0
 Uninsured Motorists * : Yes
 Combined Single Limit Per Occurrence: \$60,000
 Auto Medical Payments * : Yes
 Bodily Injury Limit Per Insured: \$2,000



NEW MEXICO SELF INSURERS' FUND LIABILITY DECLARATIONS PAGE

AUTO PHYSICAL DAMAGE - See Schedule for Coverages & Deductibles Yes

LAW ENFORCEMENT LIABILITY
 Per Occurrence / Aggregate..... \$1,000,000 / \$2,000,000
 Deductible Per Occurrence: \$5,000
 Task Forces included: Yes

PUBLIC OFFICIALS ERRORS OMISSIONS/CIVIL RIGHTS
 Per Occurrence / Aggregate..... \$1,000,000 / \$2,000,000
 Deductible Per Occurrence: \$5,000

FOREIGN JURISDICTION
 Limits of Liability - Page One Yes
 Deductible Per Occurrence: Same as General Liability

EMERGENCY MEDICAL MALPRACTICE
 Limits of Liability - Page One..... Yes
 Deductible Per Occurrence: Same as General Liability

* Coverages applicable if indicated by "Yes".

Glenda R. Sanchez
Fund Representative

July 1, 2021
Date



New Mexico Self-Insurers' Fund

PO Box 846, Santa Fe, NM 87504-0846

Invoice

Date	Invoice #
7/30/2021	237

Attention: Accounts Payable
Sunland Park 1000 McNutt Road, Suite A Sunland Park, NM 88063

Description	Amount
Liability Renewal Premium for July 1, 2021 through June 30, 2022	\$87,917.66
The Fiscal Year 2022 liability renewal premium reflects the Fiscal Year 2021 total calculated premium (attached), less the same 50% premium reduction applied in Fiscal Year 2021. Fiscal Year 2023 premiums will be based on experience and exposure on rates approved by the New Mexico Self-Insurers' Fund Board.	
DUE IN FULL UPON RECEIPT OF INVOICE	Total \$87,917.66



New Mexico Self Insurers' Fund Liability Dividend Credit

Member: City of Sunland Park
ATTN: Raquel Alarcon
1000 McNutt Road, Suite A
Sunland Park, NM 88063

Policy #: 1845L
FY: L34 7/1/2020 - 6/30/2021

Liability Premium:	175,835.66
Less: Equity Credit	87,918.00
Net Premium Due:	87,917.66



New Mexico Self Insurers' Fund Liability Coverage Invoi

Member: City of Sunland Park
ATTN: Raquel Alarcon
 1000 McNutt Road, Suite A
 Sunland Park, NM 88063

Policy #: 1845L
FY: L34 7/1/2020 - 6/30/2021
Invoice Date: 7/9/2020

Coverage Type	Policy Dates	Total Annual Premium	Prorate%	Coverage Total
General Liability	7/1/2020 to 6/30/2021	54,248.00	100.000%	54,248.00

Automobile Liability	7/1/2020 to 6/30/2021			
Auto Liability		26,046.72		
Auto Physical Damage		36,222.91		
		62,269.63		
Premium After 10.0% Discount:		56,042.66	100.000%	56,042.66

Public Officials' E and O /Civil Rights	7/1/2020 to 6/30/2021	45,864.00	100.000%	45,864.00

Law Enforcement	7/1/2020 to 6/30/2021	19,681.00	100.000%	19,681.00

Amount Due for Liability Coverage: 175,835.66

Banner

FOR

**Unspecified Delivery Type (over 0
pages)**

**08/29/2023
01:41 PM**



MAY 18 5:31PM

May 18, 2018

Via U.S. first-class mail and e-mail to:

Mayor Javier Perea
ATTN: Risk Management
Sunland Park City Hall
1000 McNutt Rd A,
Sunland Park, NM 88063
javier.perea@sunlandpark-nm.gov

Re: Tort Claims Notice

Claimants: Oscar Eduardo Gutiérrez Sánchez and his minor child
Date of Incident: On or about March 15, 2018, or March 16, 2018
Place: Sunland Park, New Mexico

Dear Mayor Perea:

Under the New Mexico Tort Claims Act, NMSA 1978 § 41-4-16, we write to notify you that **Oscar Eduardo Gutiérrez Sánchez and his minor child** are considering pursuing claims for violations of their rights under the New Mexico Constitution and the United States Constitution, as well as state tort claims for false arrest, false imprisonment, and all other violations of their civil rights, against the City of Sunland Park, the Sunland Park Police Department, police officers, law enforcement personnel, supervisors, and other employees of the Sunland Park Police Department, and the City of Sunland Park who were involved in these torts and constitutional violations.

On or about March 15, 2018, or March 16, 2018, the Sunland Park Police Department stopped and detained Mr. Gutiérrez Sánchez, while he was driving in Sunland Park. His minor child was a passenger in his vehicle. The police detained Mr. Gutiérrez Sánchez for a prolonged period and called Border Patrol to search his vehicle with a dog. The police withheld his driver's license, registration, and insurance during the prolonged detention and search.

Sincerely,

Kristin Greer Love
Staff Attorney
ACLU of New Mexico

P.O. Box 566
Albuquerque, NM 87103
T: (505) 266-5915 Ext. 1007
F: (505) 266-5916
klove@aclu-nm.org



Rick Foley Investigations, LLC

6100 4th Street N.W., Suite A-422
Albuquerque, NM 87107

Phone: 505-401-3864
Fax: 505-792-6036
www.rickfoleyPI.com

CONFIDENTIAL INFORMATION/ATTORNEY WORK PRODUCT

Claimant: Oscar Eduardo Gutierrez Sanchez

Attorney: Kristin Greer Love, Esq.

Entity: City of Sunland Park

Adjuster: NMML - Claims Examiner Glenda Sanchez

Claim: Unlawful Search & Seizure

Claim #: 2018024465

Investigator: Rick Foley

Date of Report: June 29, 2018

The information contained herein was obtained at the request and direction of the client pursuant to a contractual agreement; and is intended for the exclusive use of the client. The discovery, reporting and anticipated use of this information has been discussed with the client and as such is an extension of the clients work product. The continued confidentiality of this information by Rick Foley Investigations, LLC, has been assured the client as a condition of employment. Any information obtained by Rick Foley Investigations, LLC in connection to this matter whether directly or collaterally will not be divulged without the written consent of the client. Unless otherwise indicated herein, information obtained from other sources has not been verified and Rick Foley Investigations, LLC does guarantee the accuracy, completeness or timeliness of said information; and Rick Foley Investigations, LLC assumes no liability for any loss or injury resulting from the use of information obtained from sources over which Rick Foley Investigations, LLC has no control.

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INTERNAL INVESTIGATION REPORT 8
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PERSONS INFORMATION:

REF: Oscar Eduardo Gutierrez Sanchez, Claimant (Not Interviewed)

ADD: 1119 Daskalos Dr. N.E.
Albuquerque, New Mexico 87123
DOB: 02/08/84
SSN: 869-23-7203
GEN: Male

REF: Javier Guerra, Chief (Interviewed)

EMP: Sunland Park Police Department

REF: Luis Murga, Sergeant (Interviewed)

EMP: Sunland Park Police Department

REF: Amador Quintana, Sergeant (Interviewed)

EMP: Sunland Park Police Department

REF: Andy Munoz, Officer (Interviewed)

EMP: Sunland Park Police Department

REF: Daniel Perez, Officer (Interviewed)

EMP: Sunland Park Police Department

REF: Lucas Alvarez, Officer (Interviewed)

EMP: Sunland Park Police Department

REF: Ismael Rodriguez, Probationary Officer (Not Interviewed)

EMP: Sunland Park Police Department

It should be noted that Ismael Rodriguez was a Probationary Officer with the Sunland Park Police Department at the time of the incident but has since resigned his employment from the Department.

DOCUMENTS OBTAINED:

CADs Printout
State of New Mexico Uniform Traffic Citation No. 11608478
Video Disk
Audio Disk
Internal Investigation Report
Letter of Resignation – May 30, 2018
Search and Seizure Training Material

SYNOPSIS:

On March 13, 2018, at approximately 8:37 p.m., Ismael Rodriguez, a Probationary Officer with the Sunland Park Police Department, conducted a traffic stop at McNutt and Pete Domenici Road in Sunland Park, New Mexico. Officer Rodriguez approached the driver of the vehicle, identified as Oscar Gutierrez Sanchez, and obtained his driver's license and registration.

During the traffic stop Officer Rodriguez asked Mr. Gutierrez Sanchez if he had any weapons or drugs in the vehicle to which Mr. Gutierrez Sanchez replied that he did not. Officer Rodriguez then asked Mr. Gutierrez Sanchez for consent to search the vehicle and Mr. Gutierrez Sanchez told him that he (Gutierrez Sanchez) was not comfortable with consenting to a search. Also in the vehicle was Mr. Gutierrez Sanchez' minor son. At that time Officer Rodriguez returned to his vehicle and requested a U.S. Customs and Border Protection (hereinafter referred to as CBP) Agents with a K-9 to the traffic stop.

While waiting for the CBP Agents and K-9, Officer Rodriguez kept Mr. Gutierrez Sanchez' driver's license. Approximately thirty-four minutes later a CBP K-9 Unit arrived at the traffic stop and conducted an outer perimeter search of Mr. Gutierrez Sanchez' vehicle. The K-9 did not alert on any narcotic odors coming from Mr. Gutierrez Sanchez' vehicle, at which time the CBP Agents left the scene.

Officer Rodriguez then returned to Mr. Gutierrez Sanchez' vehicle and issued him (Gutierrez Sanchez) a Warning Citation for Speeding. Mr. Gutierrez Sanchez was at that time free to leave.

It was determined that Officer Rodriguez had detained Mr. Gutierrez Sanchez for the traffic stop for approximately forty-six minutes.

Subsequent to the traffic stop of Mr. Gutierrez Sanchez, the Sunland Park Police Department conducted an Internal Investigation during which it was determined that Officer Rodriguez had violated several Department Policies. At the conclusion of the Internal Investigation, it was recommended that Officer Rodriguez be terminated from employment. Officer Rodriguez was, however, given the option to resign his employment from the Sunland Park Police Department in lieu of termination.

On May 30, 2018, Officer Rodriguez submitted his Letter of Resignation resigning his employment from the Sunland Park Police Department.

INVESTIGATION:

Rick Foley Investigations, LLC was assigned by the New Mexico Self Insurer's Fund to conduct an investigation in reference to the Tort Claim Notice filed on behalf of Oscar Eduardo Gutierrez Sanchez. The claim was filed by American Civil Liberties Union (ACLU) Attorney Kristin Greer Love.

I reviewed the Claim and noted that Attorney Greer Love alleges that on March 15, 2018 or March 16, 2018, the Sunland Park Police Department stopped and detained Mr. Gutierrez Sanchez, along with his minor child. Attorney Greer Love alleges that the Police detained Mr. Gutierrez Sanchez for a prolonged period and called Border Patrol to search his vehicle with a dog. During the traffic stop the Police withheld Mr. Gutierrez Sanchez' license, registration, and insurance.

(Refer to the attached copy of Tort Claim Notice for complete details.)

It should be noted that this Investigator sent a letter to Attorney Greer Love requesting to interview Oscar Gutierrez Sanchez, however, as of the date of this Report no response has been received.

Following is synopsis of interviews conducted:

Javier Guerra (Not Recorded)

Javier Guerra is the Chief of Police for the Sunland Park Police Department.

Chief Guerra stated that after receiving the Internal Investigation he became concerned about Officer Rodriguez' actions during the traffic stop and vehicle search of Mr. Gutierrez Sanchez. Chief Guerra stated that he realized that the search was an obvious civil rights violation. Chief Guerra stated that he allowed Officer Rodriguez to resign his employment in lieu of termination.

Luis Murga (Not Recorded)

Luis Murga is a Sergeant with the Sunland Park Police Department.

Sergeant Murga stated that he was Officer Ismael Rodriguez' Supervisor and that he did not have any issues with Officer Rodriguez. Sergeant Murga stated that he was advised by other Officers that there were issues with the way in which Officer Rodriguez spoke to citizens.

Sergeant Murga stated that on March 13, 2018, he heard Officer Rodriguez requesting a CBP K-9 Agent and that he (Murga) started to Officer Rodriguez' traffic stop at that time. Sergeant Murga stated that when he arrived the CBP Agents were already walking back to their unit and left the scene.

Sergeant Murga stated that he asked Officer Rodriguez what had occurred and that Officer Rodriguez told him that the driver had been acting suspiciously so he (Rodriguez) had requested a CBP K-9 Agent to do an open-air sniff search of the vehicle.

Sergeant Murga stated that Officer Rodriguez told him that nothing was found during the search. Sergeant Murga stated that he had heard Officer Rodriguez telling the CBP Agents that he (Rodriguez) was wanting to "catch a big load."

Sergeant Murga stated that he was not aware of what had occurred prior to him arriving at the traffic stop. Sergeant Murga stated that he did not have any contact with the driver or occupants of the vehicle. Sergeant Murga stated that he later learned what had occurred during the stop at which time he had questioned Officer Rodriguez as to why he did not contact him (Murga) earlier. Sergeant Murga stated that Officer Rodriguez did not give a response. Sergeant Murga stated that the Officers normally do not need to obtain permission from a Supervisor to request CBP Agents.

Sergeant Murga stated that Officer Rodriguez was riding on his own even though he (Rodriguez) was still in training and had not gone through the Department of Public Safety Academy.

Amador Quintana (Not Recorded)

Amador Quintana is a Sergeant with the Sunland Park Police Department.

Sergeant Quintana stated that it was he who conducted the Internal Investigation in reference to Officer Rodriguez' traffic stop of Mr. Gutierrez Sanchez. Sergeant Quintana stated that he was assigned to conduct the Internal Investigation when the Department received the Tort Claim Notice by the ACLU regarding the traffic stop. Sergeant Quintana stated that he was assigned to conduct the Internal Investigation on May 21, 2018.

Sergeant Quintana stated that he first viewed Officer Rodriguez' lapel camera video footage from the traffic stop and then interviewed all the Field Training Officers (FTOs) who were assigned to Officer Rodriguez.

Sergeant Quintana stated that he met with Officer Rodriguez on May 21, 2018 and advised him of the Officer's Bill of Rights and *Garrity*. Sergeant Quintana stated that he then conducted an interview with Officer Rodriguez regarding the traffic stop. Sergeant Quintana stated that during the interview Officer Rodriguez had advised that he (Rodriguez) was trained in the proper procedures for search and seizure.

Sergeant Quintana stated that one of the issues with the traffic stop is that Officer Rodriguez should have taken care of the issue regarding the initial traffic stop, which in this case was Speeding, and issued the Warning Citation right away. Sergeant Quintana stated that in this case Officer Rodriguez did not smell any narcotics emitting from Mr. Gutierrez Sanchez' vehicle and had no other reason to detain Mr. Gutierrez Sanchez. Sergeant Quintana stated that in this case Officer Rodriguez did not issue Mr. Gutierrez Sanchez a Citation until after the CBP K-9 did an open-air sniff around the vehicle.

Sergeant Quintana stated that Officer Rodriguez should have, after issuing the Citation right away, was make Mr. Gutierrez Sanchez aware that he (Rodriguez) suspected that

there may be drugs in the vehicle and that he was requesting a CBP K-9 Agent to the traffic stop and that Mr. Gutierrez Sanchez and his passenger were free to leave without the vehicle. Sergeant Quintana stated that Officer Rodriguez did not do so and detained Mr. Gutierrez Sanchez in the vehicle until the CBP Agents arrived and left.

Sergeant Quintana stated that when he interviewed Officer Rodriguez and was discussing the training on the proper search and seizure procedures, Officer Rodriguez made a comment that he (Rodriguez) did not think that he "needed to do it the right way every time."

Sergeant Quintana stated that he concluded the Internal Investigation and determined that Officer Rodriguez violated the following Department Policies: Unbecoming Conduct, Neglect of Duty Policy, and Unsatisfactory Performance-Sworn Officers. Sergeant Quintana stated that he recommended that Officer Rodriguez be terminated.

Andy Munoz (Not Recorded)

Andy Munoz is an Officer with the Sunland Park Police Department.

Officer Munoz stated that he was not present during Officer Rodriguez' traffic stop of Mr. Gutierrez Sanchez. Officer Munoz stated that he had been one of Officer Rodriguez' Field Training Officers noting that it was for approximately three (3) to four (4) weeks. Officer Munoz stated that he (Munoz) trained Officer Rodriguez in how to conduct a proper traffic stop and on search and seizure.

Officer Munoz stated that they never came across a situation similar to this stop where they had to request a CBP K-9 Agent. Officer Munoz stated that on a couple of occasions he talked to Officer Rodriguez about the way he (Rodriguez) talked to citizens and had told him (Rodriguez) that his badge does not give him the authority to talk down to citizens.

Daniel Perez (Not Recorded)

Daniel Perez is an Officer with the Sunland Park Police Department.

Officer Perez stated that he was not present during Officer Rodriguez' traffic stop of Mr. Gutierrez Sanchez but noted that he was one of Officer Rodriguez' Training Officers. Officer Perez stated that Officer Rodriguez rode with him for approximately a week to a week and a half.

Officer Perez stated that he had not observed Officer Rodriguez during any search and seizure incidents noting that at the time that he (Rodriguez) had been riding with him it was on the day shift and that they did not encounter any vehicles with odors of Marijuana emitting from the vehicle. Officer Perez stated that he did notice that Officer Rodriguez had some issues with the way he (Rodriguez) talked to citizens.

Lucas Alvarez (Not Recorded)

Lucas Alvarez is an Officer with the Sunland Park Police Department.

Officer Alvarez stated that he was not present during Officer Rodriguez' traffic stop of Mr. Gutierrez Sanchez. Officer Alvarez stated that he was Officer Rodriguez' first Training Officer and had been for approximately three (3) weeks.

Officer Alvarez stated that when he (Alvarez) was with the Dona Ana County Sheriff's Department he assisted the Sheriff's Department in the training of search and seizure procedures and had material regarding proper procedures and case law.

Officer Alvarez stated that he provided a copy of the search and seizure training material to Officer Rodriguez and that he e-mailed the search and seizure training material to Officer Rodriguez as well.

Officer Alvarez stated that he did not go on patrol with Officer Rodriguez but that he had trained him in administrative procedures inside the office.

Officer Alvarez stated that the other Training Officers had experienced continuing issues with Officer Rodriguez in the way that he (Rodriguez) talked to people.

Summary of Documents Obtained:

CADs Printout

The CADs Printout indicates that Officer Rodriguez conducted the traffic stop at 8:37 p.m. on March 13, 2018. The CADs Printout indicates that the CBP K-9 Agents arrived at 9:13 p.m. Officer Rodriguez cleared the traffic stop at 9:22 p.m.

(Refer to the attached copy of CADs Printout for complete details.)

State of New Mexico Uniform Traffic Citation No. 1160847 8

The Citation was issued to Mr. Gutierrez Sanchez by Officer Rodriguez who issued Mr. Gutierrez Sanchez a Warning Citation for speeding 50 MPH in a 45 MPH zone.

(Refer to the attached copy of Citation for complete details.)

Video Disk

The Video Disk contains the video footage from Officer Rodriguez's lapel camera for the traffic stop of Mr. Gutierrez Sanchez.

The Video starts with at 8:39 p.m. as Officer Rodriguez is already at the driver's side of Mr. Gutierrez Sanchez' vehicle. The Video shows Mr. Gutierrez Sanchez handing Officer Rodriguez' his driver's license and shows Mr. Gutierrez Sanchez apparently looking for his insurance information on his cell phone.

Officer Rodriguez is heard asking Mr. Gutierrez Sanchez if he had various types of narcotics in his vehicle to which Mr. Gutierrez Sanchez replies no. Officer Rodriguez is then heard asking Mr. Gutierrez Sanchez if he has a problem with him (Rodriguez) searching his vehicle. Mr. Gutierrez Sanchez advises Officer Rodriguez that he has to go to work in the morning and that he has never been in that situation before.

Officer Rodriguez is heard advising Mr. Gutierrez Sanchez that he is going to have a CBP K-9 Agent come by and sniff his vehicle. Mr. Gutierrez Sanchez is again heard advising Officer Rodriguez that he has to go to work in the morning at 6:00 a.m.

The Video shows Mr. Gutierrez Sanchez showing Officer Rodriguez his insurance information from his cell phone.

At 6:41 into the Video, Officer Rodriguez is heard advising Mr. Gutierrez Sanchez to just stand by, that he is going to have a K-9 Agent come. Officer Rodriguez then walks back to his Police vehicle and once inside Officer Rodriguez is observed making phone calls and eventually making contact with the CBP and requesting that a K-9 Agent respond to his traffic stop.

The Video shows that while waiting for CBP, Officer Rodriguez makes some kind of shake in his vehicle and then beginning to write out the Warning Citation for Mr. Gutierrez Sanchez.

At approximately 32:42 into the Video, the CBP Agents arrive. Officer Rodriguez is heard advising the CBP Agents that he does the interdictions and may be calling CBP more often in the future.

The Video shows the CBP Agents walking the K-9 around Mr. Gutierrez Sanchez' vehicle and not alerting or giving any indication of drugs on or inside the vehicle.

At one point Officer Rodriguez is heard asking CBP Agents if Mr. Gutierrez Sanchez had gone through a secondary search when he had entered the Santa Theresa Border Crossing.

A 36:56 into the Video Officer Rodriguez is seen approaching Mr. Gutierrez Sanchez' vehicle and issuing him the Warning Citation.

It should be noted that some of the conversations could not be heard due to interference of the wind.

(Refer to the attached Video Disk for complete details.)

Audio Disk

The Audio Disk contains the interviews conducted by Sergeant Amador Quintana during his Internal Investigation. The interviews are consistent with his Internal Investigation Report and this investigator's interviews.

(Refer to the attached copy of Audio Disk for complete details.)

Internal Investigation Report

The Internal Investigation Report was prepared by Sergeant Amador Quintana and is consistent with his interview with this Investigator. The interviews conducted by Sergeant Quintana during the Internal Investigation are consistent with this Investigator's interviews of those Officers.

(Refer to the attached copy of Internal Investigation Report for complete details.)

Letter of Resignation – May 30, 2018

Officer Ismael Rodriguez' Letter of Resignation is dated May 30, 2018. In the Letter Officer Rodriguez advises that he is resigning "effective immediately 05/30/2018" and that he is resigning "due to personal issues."

(Refer to the attached copy of Letter of Resignation for complete details.)

Search and Seizure Training Material

The Search and Seizure Training Material was provided to this Investigator by Sergeant Amador Quintana. In his interview with this Investigator, Sergeant Quintana stated that the Training Material was provided to Officer Rodriguez during his (Rodriguez') training.

The Search and Seizure Training Material includes proper procedures for search and seizure, including current case law.

(Refer to the attached copy of Search and Seizure Training Material for complete details.)

PENDING DOCUMENTS:

1. Performance Evaluations of Officer Rodriguez.

PREVIOUS CLAIMS:

Officer Rodriguez has no previous claims listed with RFI.

SOCIAL MEDIA SEARCH:

I conducted a Social Media search regarding this incident with negative results.

INVESTIGATIVE FINDINGS:

Rick Foley Investigations, LLC conducted an investigation in reference to the Tort Claim Notice filed on behalf of Oscar Eduardo Gutierrez Sanchez, which yielded the following facts:

On March 13, 2018, at approximately 8:37 p.m., Officer Ismael Rodriguez conducted a traffic stop of Oscar Eduardo Gutierrez Sanchez for Speeding. At the time of the traffic stop, Officer Rodriguez was still on probation and had not yet attended the New Mexico Department of Public Safety Academy.

During the traffic stop, Officer Rodriguez asked for permission to search Mr. Gutierrez Sanchez' vehicle but he (Gutierrez Sanchez) declined the search. Officer Rodriguez then advised Mr. Gutierrez Sanchez to wait at the vehicle while he requested a CBP K-9 Agent to conduct an outer perimeter search of the vehicle. During this time Officer Rodriguez kept Mr. Gutierrez Sanchez' driver's license and vehicle registration, thus not allowing Mr. Gutierrez Sanchez to freely leave the traffic stop and vehicle.

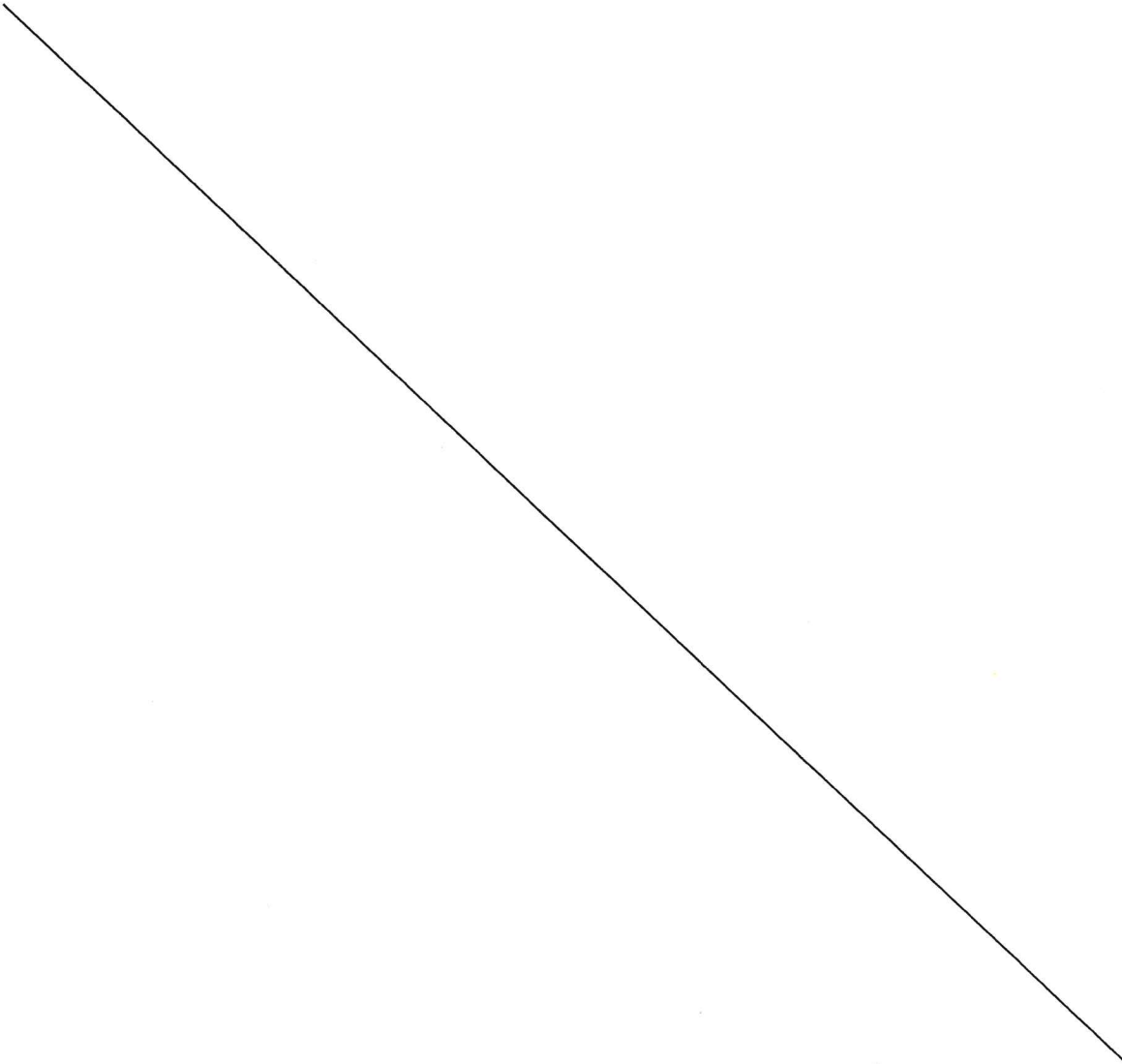
The CBP Agents arrived and conducted an outer perimeter search of Mr. Gutierrez Sanchez' vehicle. The K-9 did not alert on narcotics emitting from Mr. Gutierrez Sanchez' vehicle.

After the CBP Agents left the traffic stop, Officer Rodriguez then returned to Mr. Gutierrez Sanchez' vehicle and issued him a Warning Citation for the Speeding. Mr. Gutierrez Sanchez was then allowed to leave the traffic stop.

Based on the investigation, it appears that Officer Rodriguez violated Mr. Gutierrez Sanchez' civil rights by detaining him for the sole purpose of having a CBP K-9 Agent conduct a search the outer perimeter of the vehicle.

During the wait for the CBP Agents Mr. Gutierrez Sanchez was not allowed to freely leave the vehicle and/or the traffic stop but was detained by Officer Rodriguez. Officer Rodriguez kept Mr. Gutierrez Sanchez' driver's license and registration during this time.

The traffic stop was not conducted in accordance with the Sunland Park Police Department's Search and Seizure Procedures nor in accordance with the New Mexico case law regarding search and seizures of vehicles.



Submitted by:

Rick Foley
Rick Foley Investigations, LLC

No one who participated in any way with the investigating, reporting or supervision of this assignment is a relative, personal friend or acquaintance of any employee involved in the incident investigated.



APR 18 2018

May 18, 2018

Via U.S. first-class mail and e-mail to:

Mayor Javier Perea
ATTN: Risk Management
Sunland Park City Hall
1000 McNutt Rd A,
Sunland Park, NM 88063
javier.perea@sunlandpark-nm.gov

Re: Tort Claims Notice

Claimants: Oscar Eduardo Gutiérrez Sánchez and his minor child
Date of Incident: On or about March 15, 2018, or March 16, 2018
Place: Sunland Park, New Mexico

Dear Mayor Perea:

Under the New Mexico Tort Claims Act, NMSA 1978 § 41-4-16, we write to notify you that **Oscar Eduardo Gutiérrez Sánchez and his minor child** are considering pursuing claims for violations of their rights under the New Mexico Constitution and the United States Constitution, as well as state tort claims for false arrest, false imprisonment, and all other violations of their civil rights, against the City of Sunland Park, the Sunland Park Police Department, police officers, law enforcement personnel, supervisors, and other employees of the Sunland Park Police Department, and the City of Sunland Park who were involved in these torts and constitutional violations.

On or about March 15, 2018, or March 16, 2018, the Sunland Park Police Department stopped and detained Mr. Gutiérrez Sánchez, while he was driving in Sunland Park. His minor child was a passenger in his vehicle. The police detained Mr. Gutiérrez Sánchez for a prolonged period and called Border Patrol to search his vehicle with a dog. The police withheld his driver's license, registration, and insurance during the prolonged detention and search.

Sincerely,

Kristin Greer Love
Staff Attorney
ACLU of New Mexico

AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO

WWW.ACLU-NM.ORG

P. O. BOX 566

ALBUQUERQUE, NM 87103-0566

T / 505.266.5915

F / 505.266.5916

07/26/2018

P.O. Box 566
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klove@aclu-nm.org

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Albuquerque, NM 87107

Phone: 505-401-3864
Fax: 505-792-6036
www.rickfoleyPI.com

May 31, 2018

Kristin Greer Love, Esq.
ACLU of New Mexico
P. O. Box 566
Albuquerque, NM 87103-0566

REF: Oscar Eduardo Gutierrez Sanchez v. Sunland Park Police Tort Claim Notice

Dear Ms. Love,

I have been assigned by the New Mexico Self Insurer's Fund to conduct an investigation on their behalf regarding the Oscar Eduardo Gutierrez Sanchez Claim. I would like an opportunity to interview Mr. Sanchez and collect any documents you wish to be included with my investigation.

I may be reached at (505) 401-3864, email rfoley@rickfoleypi.com or by mail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rick Foley'.

Rick Foley
Rick Foley Investigations, LLC

Cc: Glenda Sanchez, NMML

Call For Service Detail Report - CFS 62

Address	MCNUTT@8			
Common Name				
Custom Layer		Census Tract		
Beat		Quadrant	District	
Caller Name		Caller Phone	Call-Taker	acantu
Create Date	3/13/2018 8:37:29 PM	Clear Date	3/13/2018 9:23:01 PM	Nature Of Call

Agencies

Call Type	Status	Priority	Dispatcher	Created Date
Traffic Stop	In Progress	High	acantu	3/13/2018 8:37:29 PM

Call Narrative

*** 3/13/2018 ***

Time	Description	User	Machine
8:58:11 PM	130 10-23 for cvp their sending a k-9 for consent	ALVAREZ,LORA	NW-CAD-CODES
8:44:55 PM	130 10-4 ****	ALVAREZ,LORA	NW-CAD-CODES

EMD Narrative

Time	Description	User
------	-------------	------

Call Persons

Name	Date of Birth	Contact Phone	Machine
------	---------------	---------------	---------

Call Vehicles

Vehicle Type	Make	Model	Role	Year	License State	License Number
Car/Truck			Plate Inquiry			AAPP53

Call Dispositions

Name	Count
NR	1

Unit Dispositions

Name	Unit Number	Disposition Date
------	-------------	------------------

Call Log

*** 3/13/2018 ***

Time	Action	Description	Name	Machine
9:23:01 PM	Call Cleared	Close Call	ALEJANDRO	NW-CAD-SPRK

9:23:01 PM	Disposition Changed	Added: NR Count 1	CANTU ALEJANDRO CANTU	NW-CAD-SPRK
9:22:57 PM	Unit Status Action	Unit SP130 Available	ALEJANDRO CANTU	NW-CAD-SPRK
8:58:11 PM	Narrative Added	130 10-23 for cvp their sending a k-9 for consent	LORA ALVAREZ	NW-CAD-CODES
8:44:55 PM	Narrative Added	130 10-4 ****	LORA ALVAREZ	NW-CAD-CODES
8:37:29 PM	Unit Location	Unit SP130 Secondary Location: Secondary Location Cleared	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Unit Status Action	Unit SP130 Arrived	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Call Ready for Dispatch	Call marked ready for dispatch	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Incident Created	Added Incident Number, ORI: NM0070600, Number: 2018-00002935	ALEJANDRO CANTU	
8:37:29 PM	Vehicle Added	Quick Call - Plate No: AAPP53, State: ;	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Call Created	New call created. Call Type: Traffic Stop, Location: MCNUTT@8	ALEJANDRO CANTU	NW-CAD-SPRK

Unit Log

*** 3/13/2018 ***

Time	Action	Description	Unit	Status	Name	Machine
9:22:57 PM	Unit Status Change	Available	SP130	Available	ALEJANDRO CANTU	NW-CAD-SPRK
9:22:57 PM	Unit Cleared	Unit Cleared From Call	SP130	Available	ALEJANDRO CANTU	NW-CAD-SPRK
9:21:51 PM	Unit Check In		SP130	Arrived	ALEJANDRO CANTU	NW-CAD-SPRK
9:13:01 PM	User Entry	CBP 10-97*****	SP130	Arrived	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Unit Location	Secondary Location Cleared	SP130	Arrived	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Unit Status Change	Arrived	SP130	Arrived	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Unit Status Change	Dispatched Call Number: 62, SP130 Location: MCNUTT@8, Call Type: Traffic Stop	SP130	Arrived	ALEJANDRO CANTU	NW-CAD-SPRK
8:37:29 PM	Unit Location	MCNUTT@8	SP130	Arrived	ALEJANDRO CANTU	NW-CAD-SPRK

Incidents

Incident Number	ORI	Type
2018-00002935	NM0070600: Sunland Park PD	Traffic Stop



MICROFILM NUMBER, DO NOT PRINT ABOVE THIS LINE

SUNLAND PARK
POLICE DEPARTMENT

COUNTY CODE 07226
AGENCY CODE

1160847 8

STATE OF NEW MEXICO
UNIFORM TRAFFIC CITATION

NAME (LAST) G U T I e r e z

NAME (FIRST) @ S c a r E

PHYSICAL ADDRESS 1119 Daskalos Albuquerque, NM 87123
MAILING ADDRESS CITY STATE ZIP CODE

STATE NM ID PROVIDED N DRIVER LICENSE NUMBER 505933826

DATE OF BIRTH 020884 SEX M HEIGHT 510 WEIGHT 195 EYE COLOR BLO

LICENSE PLATE NUMBER AAP P 53 STATE NM VEH YR 13 COLOR White TYPE / MAKE / MODEL Toyota Truck

CITY Y LICENSE TYPE LP V HAZMAT PL PASS 16 DOT NUMBER

TRAFFIC MD HV WEATHER FG RN SN DS ROAD W I S LIGHT LT DS ACCIDENT DK Y

STATUTE 66-7-301 SPEEDING STATUTE 66-5-229C NO INSURANCE PROOF STATUTE 66-7-372 NO SEAT BELTS
ORDINANCE 12-6-1 50 mph

DATE 0313182100 IDENTIFICATION 130 MILE POST

LOCATION M C M c t t / c e t e D o n e h i c i
OFFICER'S PRINTED NAME OFFICER'S SIGNATURE

ESSENTIAL FACTS E/B 50+45

PENALTY ASSESSMENT: I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of \$.00
OFFICER MAY NOT ACCEPT PAYMENT

TRAFFIC ARRAIGNMENT: You are hereby ordered to appear in METROPOLITAN COURT / MUNICIPAL COURT
on _____, 20____ at _____ AM/PM
My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

COURT APPEARANCE: I acknowledge receipt of this notice and without admitting guilt agree to appear in
● MAGISTRATE ● METRO ● MUNICIPAL or ● TRIBAL court.
Address _____
on (or by) _____, 20____ at _____ AM/PM

WARNING NOTICE: I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.
Signature Only Intention Agree to the above marked determination.

* 07226 1160847 8 *

COURT COPY

**Sunland Park Police
Incident/Situation Report**

COPY



DATE OF INCIDENT: Tuesday, March 13, 2018
TIME OF INCIDENT: 2058 HRS

DATE OF REPORT: May 21st, 2018
TIME OF REPORT: 0800

COMPLAINT: Sergeant
ADDRESS: 1000 McNutt Road Sunland Park N.M 88063

OFFICER (S) EMPLOYEE (S) INVOLVED: Ismael Rodriguez (130)

DETAILS OF INCIDENT:

On May 21st, 2018, at approximately 8:00 a.m., Lieutenant Steve Ramirez (27) brought to my attention that a male complainant by the name of Oscar Eduardo Gutierrez Sanchez, and his minor child were considering pursuing a tort claim for violations of their rights. The tort claims consisted of false arrest, false imprisonment and other violations of their civil rights during a traffic stop that occurred on March 13, 2018, at approximately 8:58 p.m. Body camera footage was located for this traffic stop and it was determined that Officer Ismael Rodriguez had conducted the traffic stop on Mr. Sanchez.

On May 21st, 2018, the body camera footage retrieved from March 13th, 2018, from traffic stop was reviewed in its entirety. The video displayed Officer Rodriguez on a traffic stop with Mr. Sanchez. Mr. Sanchez is seen going thru his cell phone trying to locate his insurance while Officer Rodriguez is questioning him and asking if he has anything illegal in his vehicle, such as guns or drugs. Mr. Rodriguez tells Officer Rodriguez that he does not have anything illegal in his vehicle and advises he is having a hard time obtaining his vehicles insurance. Officer Rodriguez continues to question Mr. Sanchez on illegal narcotics in his vehicle and asks for consent to search his vehicle. Mr. Sanchez refuses for his vehicle to be searched and tells Officer Rodriguez he doesn't feel comfortable with him searching his vehicle. Officer Rodriguez then asks Mr. Sanchez if he can bring a CBP K9 to conduct an air sniff around his vehicle. Mr. Sanchez says ok, but that he was in a hurry because he works early in the morning and he needed to sleep. Officer Rodriguez informs Mr. Sanchez that he is unable to give an arrival time of the CBP K9 and then tells Mr. Sanchez he will be right back. Officer Rodriguez returns to his police unit and contacts CPB and conducts several checks on Mr. Rodriguez vehicle. Officer Rodriguez informs CPB personal that he has a vehicle occupied by a male and his younger son who had crossed into the united states prior to his traffic stop. Officer Rodriguez inquires if Mr. Sanchez vehicle had been sent to secondary when he arrived at the port of entry. Officer Rodriguez is informed that Mr. Rodriguez had

recently crossed into the United States and that he was not sent to the secondary section for a search. Officer Rodriguez requested a K9 to his location for an air sniff of Mr. Rodriguez Vehicle. Officer Rodriguez is seen writing out a traffic citation, utilizing his cell phone and making a pre-workout shake while he waits for the arrival of the CBP K9. Once K9 CBP Officers arrive on scene, Officer Rodriguez informs the CBP Officers that Mr. Sanchez appears very nervous and was having a hard time retrieving his insurance. He mentions that Mr. Sanchez did not consent to a search of his vehicle, so he thinks he may have something illegal. He goes on to say that he cannot extend the length of his traffic stop so he asked Mr. Sanchez many questions. A CBP Officer conducted an air sniff around Mr. Sanchez vehicle with his K9, while a second CBP Officer stayed with Officer Rodriguez. During the sniff Officer Rodriguez tells the CBP Officer that he is going to be calling them out a lot more because he is doing drug interdiction. He mentions that he has gotten some small amounts of narcotics, but he is trying to get the big stuff. Officer Rodriguez said that he has asked for consent to search vehicles many times and has never been told "no". He mentioned that this guy (Mr. Sanchez) did not want to play. CBP officers inform Officer Rodriguez that the K9 did not detect any illegal narcotics during its sniff of Mr. Sanchez' vehicle. Officer Rodriguez thanks the CPB Officers and they depart from the area. Sergeant Luis Murga arrives on scene when the CPB officers are departing. Officer Rodriguez makes contact with Mr. Sanchez and issues him a warning citation for speeding. Mr. Sanchez documents are returned to him and he is allowed to leave.

On May 22nd, 2018, at approximately 9:41 a.m., I spoke to Officer Lucas Alvarez at the Sunland Park Police Station. Officer Lucas was informed of the allegations made against Officer Rodriguez. Officer Lucas informed that he was Officer Rodriguez' Field Training Officer from about August 8 to October 7, 2017. Officer Lucas mentioned that search and seizure was taught to Officer Rodriguez during his time with him. He explained that search and seizure was discussed with him, but he never had hands on training when it came to the topic. Officer Lucas did mention that he was Officer Rodriguez's Acting Sergeant when he had been released from the FTO program. Officer Lucas explained that he noticed that Officer Rodriguez was conducting improper search and seizure techniques during his traffic stops. He advised that he talked with Officer Rodriguez about the correct way of conducting a search and also gave him reading material pertaining to the laws regarding search and seizure. Officer Lucas stated that officer Rodriguez should know the proper way to conduct a search.

On May 22nd, 2018, at approximately 10:13 a.m., I Spoke to Detective Daniel Perez at the Sunland Park Police Station. Detective Perez was informed of the allegations made against Officer Rodriguez. Detective Perez advised he had been Officer Rodriguez' FTO from October 9th -19th, 2017. Detective Perez did not remember if they covered the topic of search and seizure. Detective Perez mentioned he did not have Officer Rodriguez for a long time and could only remember talking about him about how Officer Rodriguez talked to the public. Detective Perez stated that Officer Rodriguez was very badge heavy and talked down to the public.

On May 22nd, 2018, at approximately 3:32 p.m., I spoke to Officer Andres Munoz via cell phone. Officer Munoz was informed of the allegations made against Officer Rodriguez. Officer Munoz was Officer Rodriguez' FTO from October 25th to November 30th, 2017. Officer Munoz informed that he was sure, he had gone over search and seizure procedures and laws with Officer Rodriguez. Officer Munoz did not recall if they had any hands-on training when it came to the topic. Officer Munoz mentioned that he released Officer Rodriguez from the FTO program and felt like he was ready and prepared to be on his own. Officer Munoz explained the only problem he had with Officer Rodriguez was that he talked down to people and that he was very badge heavy. He informed that he talked to Officer Rodriguez about the issue.

On May 23rd, 2018, at approximately 11:40 a.m., I Spoke to Sergeant Luis Murga at the Sunland Park Police Station. Sgt. Murga advised that he recalls arriving at Officer Rodriguez traffic stop and stated that Officer Rodriguez had already cited the driver (Mr. Sanchez). He informed that Officer Rodriguez told him that the driver was being suspicious, so he called for a K9 to do conduct a sniff, but nothing was detected. Sgt. Murga explained that he has talked to Officer Rodriguez prior to this stop regarding his

searches during his traffic stop. He mentioned that Officer Rodriguez was detaining individuals when he was given consent to search a vehicle. He stated that Officer Rodriguez would handcuff and place the individuals in the back of his patrol unit while he conducted his searches. Sgt. Murga corrected Officer Rodriguez on the issue explaining to him the correct way to conduct a search of a vehicle.

On May 25th, 2018, at approximately 8:04 am., I spoke to Officer Ismael Rodriguez at the Sunland Park Police Department. Officer Rodriguez was given his Officer Bill of rights and Garrity Admonition. I informed Officer Rodriguez of the allegations made against him. Officer Rodriguez read over his Bill of Rights and Garrity which he advised he understood and agreed to speak with me. Officer Rodriguez advised he started with the department in September 2017, and informed he did about a 90-day FTO program. He mentioned that his FTO's were Officers Lucas, Munoz, and Detective Perez. Officer Rodriguez stated that he felt like he was prepared to be on his own after completing his FTO program. I asked Officer Rodriguez to explain a traffic stop to include a search. Officer Rodriguez explained the traffic stop the exact way he conducted his traffic stop with Mr. Sanchez. Officer Rodriguez advised he did not have a time frame on a stop and that it all comes down to the totality of the stop. He advised that if he feels there is something in a vehicle, he will wait as long as he needs too. Officer Rodriguez mentioned that Mr. Sanchez consented to a K9 sniff and that he was there on his own free will, that he was not making him do anything against his will. He advised that Mr. Sanchez was free to leave at any time and mentioned that he never asked to leave.

Officer Rodriguez informed that he did not really go over search and seizure during his FTO program and stated that Officer Lucas had given him a packet pertaining to search and seizure. Officer Rodriguez informed that he had gone over the packet and that he understood the content. Officer Rodriguez mentioned that he was corrected by Sgt. Murga in regards to detaining individuals during searches. He explained that for safety reasons that he at times still temporarily detained individuals but keeps them in close proximity in case they refuse consent. I went over the proper way to conduct a search on a vehicle with Officer Rodriguez. I explained to Officer Rodriguez that I had seen several of his body camera videos and he conducts his searches properly at times, I asked him why he chose to change the way he did the search on this particular stop. He advised that he didn't know why but mentioned that he was not targeting anyone and stated that he sometimes does the search properly and sometimes he doesn't, he informs that he didn't know it was wrong. Officer Rodriguez stated that he did not know he had to tell an individual they are free to leave if the stop was going to be lengthy such as waiting for a K9 officer. He figured they should know they are free to leave, especially if they give consent. Officer Rodriguez informed his opinion on the matter was that he felt he did nothing wrong, but now he knows it's supposed to be a certain way. Officer Rodriguez stated that he was trained properly in search and seizures and advised he would not throw his trainers under the bus. Officer Rodriguez advised he did not have any questions for me and stated if he messed up, then he messed up.

Once the interview was concluded, Officer Rodriguez expressed how he was a good officer, and that he worked harder than a lot of the other officers. He stated he was trying to put Sunland Park Police Department on the map. Officer Rodriguez advised that he couldn't believe we were doing this to him. He mentioned that from now on he was only going to stay at the office and not do anything. I informed Officer Rodriguez that I was sorry he felt that way and told him he could leave.

CONCLUSION:

Officer Rodriguez acted irresponsibly and ignored standard operating procedures on multiple accounts. His actions placed a negative public perception on both he and the Department. Officer Rodriguez was trained properly in policy and state law regarding to search and seizure, which he agreed. His blatant disregard for adhering to the standard operating procedure and state law of conducting a search of a vehicle is concerning. Officer Rodriguez also failed to communicate with Sgt. Murga in making decisions that could bring potential liability against him, the Sunland Park Police Department and the City of Sunland Park. After reviewing all information, statements and conducting a taped interview with Officer Rodriguez, I find Officer Rodriguez to be in violation of the Rules of Conduct and Standard Operating Procedures listed below.

+Rule 102 Unbecoming Conduct:

Members of the Police Department shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Unbecoming conduct shall include that which brings the Department into disrepute or reflects discredit upon the individual as a member of the Police Department, or that which impairs the operation or efficiency of the Department of the individual.

Rule 106 Neglect of Duty:

Members of the Police Department shall not commit any acts expressly forbidden or omit any acts that are specifically required by the laws of this State, the ordinances of this City, these Rules of Conduct, or any other orders, policies, procedure or directives of the Police Department. Members shall not engage in any activity or personal business, which could cause them to neglect or be inattentive to duty.

Rule 111 Unsatisfactory Performance-Sworn Officers:

Officers shall maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Officers shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the officer's rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; or absence without leave. In addition to other indicators of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the Department.

RECOMMENDATIONS: Termination from the Sunland Park Police Department. Its recommended Officer Rodriguez be given the chance to resign in leu of termination.

Chief of Police Signature _____

Date _____

Lieutenant Signature _____

Date _____

Employee Signature _____

Date _____

1000 McNutt, Suite C
Sunland Park Nm 88063

ADMINISTRATIVE PROCEEDING RIGHTS/ NOTIFICATION OF CHARGES/ ALLEGATIONS	GIVEN TO ACCUSED DATE: TIME: 05/25/2018 0807HRS
NAME OF OFFICER ISMAEL RODRIGUEZ	RANK OFFICER
BADGE # 130	DIVISION PATROL

GARRITY ADMONITION

1. ALTHOUGH YOU HAVE A RIGHT TO REMAIN SILENT AND NOT TO INCRIMINATE YOURSELF, YOUR SILENCE CAN BE DEEMED INSUBORDINATION AND RESULT IN ADMINISTRATIVE DISCIPLINE IN WHICH YOU'RE DISCHARGE WILL BE SOUGHT.
2. ANY STATEMENT YOU MAKE UNDER COMPULSION OF THE THREAT OF SUCH DISCIPLINE CANNOT BE USED AGAINST YOU IN A LATER CRIMINAL PROCEEDING.
3. YOU HAVE AN OBLIGATION TO TRUTHFULLY ANSWER ALL QUESTIONS PUT TO YOU.
4. YOU HAVE A RIGHT TO COUNSEL OF YOUR CHOOSING TO BE PRESENT WITH YOU AT THIS INTERROGATION. HOWEVER, YOUR COUNSEL MAY NOT INTERFERE IN OR UNDULY DELAY THE INTERROGATION.

CHARGE(S)/ALLEGATION(S)

YOU ARE HEREBY ADVISED THAT THE FOLLOWING VIOLATIONS/
ALLEGATIONS HAVE BEEN ATTRIBUTED TO YOU.

COMPLAINT(S):

FALSE ARREST _____
 FALSE IMPRISONMENT _____
 CIVIL RIGHTS VIOLATIONS _____

VIOLATION(S)/ ALLEGATION(S):

RULE 106-NEGLECT OF DUTY _____
RULE 102 - UNBECOMING CONDUCT _____
RULE 111-UNSATISFACTORY PERFORMANCE-SWORN OFFICERS _____

THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT HE/SHE WAS INFORMED OF THE RIGHTS LISTED ABOVE AND ACKNOWLEDGES RECEIPT IN WRITING OF THE CHARGES OR ALLEGATIONS AGAINST HIM/HER.

SIGNATURE [Signature] WITNESSES: [Signature]

INTERNAL CASE # CPSII-18-006
 CITIZEN COMPLAINT: C.C.-2017-00000
 SPPD COMPLAINT: SPC-2017-00000



COPY

May 18, 2018

Via U.S. first-class mail and e-mail to:

Mayor Javier Perea
ATTN: Risk Management
Sunland Park City Hall
1000 McNutt Rd A,
Sunland Park, NM 88063
javier.perea@sunlandpark-nm.gov

Re: Tort Claims Notice

Claimants: Oscar Eduardo Gutiérrez Sánchez and his minor child
Date of Incident: On or about March 15, 2018, or March 16, 2018
Place: Sunland Park, New Mexico

Dear Mayor Perea:

Under the New Mexico Tort Claims Act, NMSA 1978 § 41-4-16, we write to notify you that **Oscar Eduardo Gutiérrez Sánchez and his minor child** are considering pursuing claims for violations of their rights under the New Mexico Constitution and the United States Constitution, as well as state tort claims for false arrest, false imprisonment, and all other violations of their civil rights, against the City of Sunland Park, the Sunland Park Police Department, police officers, law enforcement personnel, supervisors, and other employees of the Sunland Park Police Department, and the City of Sunland Park who were involved in these torts and constitutional violations.

On or about March 15, 2018, or March 16, 2018, the Sunland Park Police Department stopped and detained Mr. Gutiérrez Sánchez, while he was driving in Sunland Park. His minor child was a passenger in his vehicle. The police detained Mr. Gutiérrez Sánchez for a prolonged period and called Border Patrol to search his vehicle with a dog. The police withheld his driver's license, registration, and insurance during the prolonged detention and search.

Sincerely,

Kristin Greer Love
Staff Attorney
ACLU of New Mexico

STATE OF NEW MEXICO
PEACE OFFICER'S
EMPLOYER-EMPLOYEE RELATIONS
29-14-1

29-14-3 Definition.

As used in the Peace Officer's Employer-Employee Relations Act [29-14-1 to 29-14-11 NMSA 1978], "peace officer" means any employee of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state who is responsible for the "prevention" and "detection" of crime and the "enforcement of the penal", traffic or highway laws of the state. (effective July 1, 1991)

29-14-4 Investigation of Peace Officer; Requirements.

When any peace officer is under investigation by his employer for alleged actions that could result in administrative sanctions being levied against the officer, the following requirements shall be adhered to:

- A. Any interrogation of an officer shall be conducted when the officer is on duty or during normal waking hours, unless the urgency of the investigation requires otherwise;
- B. Any interrogation of an officer shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise;
- C. Prior to commencement of any interrogation session:
 - (1) An officer shall be informed of the name and rank of the person in charge of the interrogation;
 - (2) An officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief administrator of the officer's employer determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because the disclosure would jeopardize or compromise the integrity or security of the investigation; and
 - (3) A reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation;

- D. During any interrogation session, the following requirements shall be adhered to:
- (1) Each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;
 - (2) There shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one-hour rest period between sessions;
 - (3) The combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise;
 - (4) There shall not be more than two interrogators at any given time;
 - (5) An officer shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and
 - (6) An officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session;
- E. Any interrogation of an officer shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript; provided that any recesses called during the interrogation shall noted in the transcript; and
- F. An accurate copy of the transcript or tape shall be provided to the officer, upon his written request, no later than fifteen working days after the investigation has been completed.

29-14-5 Polygraph Examinations.

After reviewing all the information collected in the course of an investigation of a peace officer, the chief administrator of the officer's employer may order the officer to submit to a polygraph examination by a licensed polygraph examiner, provided that:

- A. all other reasonable investigative means have been exhausted; and
- B. The officer has been advised of the administrator's reasons for ordering the polygraph examination.

29-14-6 Investigation of Administrative Matters.

When any peace officer is under investigation for an administrative matter, the officer shall be permitted to produce any relevant documents, witness or other evidence to support his case and he may cross-examine any adverse witnesses during any grievance process or appeal involving disciplinary action.

29-14-7 Personnel Files.

A. No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file if:

- (1) The officer's refusal to sign is noted on the document by the chief administrator of the officer's employer; and
- (2) The notation regarding the officer's refusal to sign is witnessed by a third party.

B. A peace officer may file a written response to any document containing adverse comments entered into his personnel file and the response shall be filed with the officer's employer within thirty days after the document was entered into the officer's personnel file. A peace officer's written response shall be attached to the document.

29-14-8 Constitutional Rights; Notification.

When any peace officer is under investigation and a determination is made to commence a criminal investigation, he shall be immediately notified of the investigation and shall be afforded all the protection set forth in the bill of rights of the United States and New Mexico constitutions.

29-14-9 Forced Disclosure of Financial Status Prohibited.

A peace officer shall not be required by his police or sheriff's department employer to disclose information regarding his financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

29-14-10 Political Activity.

- A. A peace officer shall not be prohibited by his police or sheriff's department employer from engaging in any political activity when the officer is off duty, except as otherwise required by law.
- B. Notwithstanding the provisions of Subsection A of this section, any peace officer employed by the New Mexico State Police Department shall be governed by the provisions of regulations adopted by the department regarding political activity.

29-14-11 Exercise of Rights.

A peace officer shall not be subjected to any retaliation by his employer due to the officer's lawful exercise of this rights under the Peace Officer's Employer-Employee Relations Act [29-14-1 to 29-14-11 NMSA 1978].

COPY

**Sunland Park Police
Department**



1000 McNutt Road Suite C
Sunland Park, NM 88063
(575) 589-2225
(575) 589-0169 Fax

May 30th 2018,

To the City of Sunland Park and/or whom it may concern,

I Ismael Rodriguez an employee of the Sunland Park Police Department am officially resigning effective immediately 05/30/2018. I am resigning due to personnel issues. I have turned in all my issues equipment and credentials to LT. Ramirez and DC Lopez on 05/30/2018.

Thank you,
Ismael Rodriguez

A handwritten signature in black ink, appearing to read "Ismael Rodriguez", is written over a horizontal line.

VEHICLE STOPS

Vehicles are the most common way to transport drugs in New Mexico and drugs are often found on a routine traffic stop. Some of the issues we will look at include:

- Limits on questions to Drivers
- Limits on questions to Passengers
- Consent & Juveniles
- Pretext stops
- Seeing contraband in the vehicle
- Vehicle stops and guns

Why is there so much case law regarding drugs?

Lawyers often file a motion to suppress drugs prior to trial. If the evidence (drugs) is suppressed, the prosecutor is unable to proceed and the case is dismissed.

What is the main difference between trafficking and distribution?

Distribution refers to distributing or possession with intent to distribute a controlled substance except a controlled substance listed in Schedule 1 or Schedule 2 that is a narcotic drug. NMSA 1978, Section 30-31-22.

What is the main difference between trafficking and distribution?

Trafficking is the most serious violation of the Controlled Substance Act. It refers to distribution or possession with the intent to distribute any controlled substance noted in Schedule 1 or Schedule 2 that is a narcotic drug. NMSA 1978, Section 30-31-20.

Stop and Frisk (Underclothing)

To do an under-clothing search, an officer has to have a particularized reasonable suspicion an arrestee is concealing a weapon or contraband under his or her clothing. Supreme Court held the search was justified. State v. Williams.

Note:

Only in special situations should an officer do an under-clothing search. In this case, based upon reasonable suspicion, the officer limited the search to where a weapon or contraband could be found.

Stop and Frisk (Underclothing)

On a traffic stop, an Albuquerque police officer observed defendant appear to be “fumbling around” with an object. When defendant got out of his vehicle, his pants were unzipped and his belt unbuckled. He was arrested.

Upon arrest, an officer can do a search incident to arrest. But this officer did more. Believing he was hiding something, he pulled the waistband of suspect’s pants and underpants outward six to eight inches. Looking down, he saw, among other things, a plastic baggie.

Stop and Frisk (Plain Touch)

By continuing to touch and feel the object, the officer went beyond the scope of a pat down. Court of Appeals held the crack pipe was inadmissible. State v. Johnson.

Note:

A pat down is to look for weapons only. If an officer touches something and it is immediately apparent that it's contraband, the contraband will be admissible.

Stop and Frisk (Plain Touch)

An officer in Bloomfield, New Mexico (near Farmington) felt a hard object in a defendant's pocket but was uncertain what the object was. After more feeling or touching, he was able to determine the object was a crack pipe.

If an officer feels an object and it is immediately apparent the object is contraband, the object will be admissible. If, however, the officer knows or should know the object is not a weapon, and it is not Immediately apparent that the object is contraband, the officer cannot continue exploring or manipulating to determine if the object is contraband or not.

Stop and Frisk (Non violent Crimes)

Note:

Be sure to articulate in the complaint or statement of probable cause your reasons-your justification-for doing a pat down. Remember to do two things:

- (1) Justify the stop.
- (2) Justify the pat down

Stop and Frisk (Non violent Crimes)

Answer:

Good pat down because the officer did articulate why he felt the person was armed and dangerous:

(1) Very intoxicated.

(2) Evasive movement, possibly reaching for a weapon.

(3) Past reputation for violence.

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Stop and Frisk (Non violent Crimes)

It was a good stop.

Was it a good pat down?

Stop and Frisk (Non violent Crimes)

An officer was dispatched to a convenience store. The clerk was visibly upset. A very intoxicated male did not have enough money to pay for the items he wanted. He cursed and harassed the clerk and walked away. The officer stopped the subject.

The officer knew the subject and his reputation for past violence. The man became evasive, moving around. The officer, unsure what he was going to do, did a pat down and found a pistol. Court of Appeals upheld conviction for felon in possession of a firearm. State v. Haddenham.

Stop and Frisk (Violent Crimes)

- Answer:

Yes. The stop was good because the officer was dispatched there. The pat down was good because there was reasonable suspicion that offenders had committed the type of crime for which an offender would likely to be armed.

Stop and Frisk (Violent Crimes)

Radio dispatched a Hobbs police officer to a possible burglary in progress. Dispatcher advised two men were repeatedly going to the rear door of the residence and then returning to their vehicle. Officer saw two men in a vehicle, and stopped them. Officer did a frisk on one subject and found a syringe and cocaine. State v. Cobbs.

Was this a good pat down?

Recommendation

Many courts feel the phrase “officer safety” is a condition and means little. Recommend, instead, articulating in the criminal complaint or statement of probable cause the reasons you felt the person was armed and dangerous or a threat to you.

Stop and Frisk (Officer Safety)

Court of appeals held the second pat down was illegal. It was felt the pat down was not because the person was armed or dangerous but to look for drugs. Evidence was suppressed. State v. Pierce (2003).

- Reasonable suspicion that a person is armed and dangerous is needed to do a pat down.

Stop and Frisk (Officer Safety)

Officer in Hobbs, New Mexico stopped defendant for speeding (41/25). As the officer approached the vehicle, he smelled marijuana. Defendant gave officer permission to search the vehicle. He also agreed to a pat down. The pat down was done but the officer did not find anything. He waited for back up to do a vehicle search.

When the second officer arrived, the first officer searched the vehicle but found nothing. He told the second officer to pat the defendant down again for officer safety. There was a bulge in the defendant's sock and the second officer found meth.

Recommendation

There are situations where a person is not armed and dangerous but an officer may want to pat the person down.

There are two ways to do this:

- (1) Look for visual signs that would justify a pat down.
- (2) Ask for consent to do a pat down.

Stop and Frisk (Gangs)

- This case failed because the stop (detention) wasn't justified.
- A stop of a person must be based upon reasonable suspicion.
- It must be a particularized suspicion that the person stopped has committed a particular crime.
- The officers had generalized suspicions about gang members committing crimes.
- Gang membership, standing alone, is not sufficient to support reasonable suspicion.
- The officers did not have anything connecting this individual defendant to a particular crime. Evidence was suppressed.

Stop and Frisk (Gangs)

Court of Appeals held that that neither the stop (detention) nor the search was justified. Evidence was suppressed. State v. Jones.

Note:

- There are two questions for stop & frisk:
 - (1) was the stop good?
 - (2) was the search (pat down) good?

Stop and Frisk (Gangs)

Facts:

Albuquerque Police Gang Unit officers were patrolling an area known for gangs, drugs and violence. On a city sidewalk, less than a block away, they saw three males walking towards them. One male was a known gang member and drug dealer.

In the past, the routine was to stop and frisk him. When they stopped him, he raised his arms and locked his fingers behind his back, awaiting the frisk. A second male, defendant, believed to be a gang member, was also searched. Cocaine was found.

STOPPING INDIVIDUALS

Stop and Frisk

Introduction

An officer may “frisk” or feel the outer clothing of an individual for the sole purpose of detecting a weapon. Drugs, however, are often found. To be admissible, much depends upon how officers articulate the justification for the stop and the search.

A review of legal cases will give an indication of what is needed for a good stop and frisk.

Implication # 1

Many officers support the policy because a camera will back up their version of events.

Implication # 2

It can, however, be an administrative headache as defense attorneys begin to demand copies of videos. The news media also has a right to the video.

Implication # 3

In Albuquerque, the camera must be on when an officer is seeking consent for a vehicle search or doing a pat down. There will be a lot of interest at motion hearing to see that officers follow case law.

This means, more than ever, officers need to be aware of recent case law. One of the purposes of this outline is to help you do just that.

A dramatic new trend: Field Officers and Cameras

A number of police departments have been using cameras on their vehicles for years. Albuquerque Police Department has gone one step further: each uniformed officer is required (May 2012) to carry a pen or label camera on their person.

News item: APD's to Expand Use of Cameras

APD's cameras will be rolling almost every time an officer encounters a citizen. Police Chief Ray Schultz said the change was recommended by the Police Oversight Commission.

Each officer has been issued a camera and may face disciplinary action for failing to use it.

Many officers in the field, concerned about the harmful impact of drugs, are frustrated. Court decisions (federal and state) often restrict what officers can do. Failure to comply with the restrictions, and many can be quite technical, can lead to suppression of evidence.

To make matters worse, NM courts tend to put more restrictions on officers than federal courts do.

The NM court decisions (which look out for the rights of individuals) are not designed to hinder law enforcement. But they do have an impact. It is our obligation to meet those standards.

We look at two primary areas: stopping individuals and stopping vehicles.

What this class hopes to accomplish

- Our goal is to assist field officers to reduce illegal drugs in New Mexico.
- We will use case law to help officers work more effectively within constitutional guidelines.
- The training will tell us what we can't do. But more importantly, it will help us understand what we can do.

New item: The Mexican Drug war.

According to the Federal Attorney General of Mexico, over the past five years nearly 48,000 people have been killed in drug-related violence. Nearly 13,000 were killed in the first nine months of 2011. CNN News.com, January 20, 2012.

The motive for much of the drug related violence in Mexico and other countries is to control trafficking to the United States. New Mexico is a major route to introduce drugs to the rest of the United States.

This class provides suggestions for field officers confronting illegal drugs. Other topics include seizing drug money and forfeiture.

NEW MEXICO IS # 1

- News item: New Mexico number one for overdose deaths

According to a Center for Disease Control and Prevention report, New Mexico leads the nation per capital in drug overdose deaths. KOB News, November 1, 2011.

And the trend for drug overdose is not looking good...

New Mexico Department of Health statistics, as noted in the Albuquerque Journal, January 5, 2011.

Drug Overdose Deaths (deaths per 100,000 population)

2000 – 15.6 2009 – 20.7

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INTRODUCTION

- This class is about field police officers and the War on Drugs.
- Additional outlines (Search & Seizure, Search Warrants), useful for police officers and investigators, can be found at www.dps.nm.org/training.

How's that War on Drugs working out for you?

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NEW MEXICO POLICE OFFICER'S GUIDE

TO THE WAR ON DRUGS

Limits on questions to Drivers

When it comes to the type of questions an officer can ask at a traffic stop, New Mexico is more restrictive than federal law or other jurisdictions.

Are the questions related to the original purpose of the stop? In New Mexico, contrary to federal law, an officer has to articulate-justify-the reasons additional questions are asked.

Limits on questions to Drivers

Is there a limit to questions an officer can ask on a traffic stop?

Yes. An officer may ask questions at a routine traffic stop that leads to the seizure of contraband. But it may be “one question too many” which means the evidence will be suppressed.

Vehicle stops (Questions)

An officer in San Juan County stopped defendant's vehicle for littering. While doing a warrants check, he asked the defendant if he had any guns, alcohol, or illegal drugs in the vehicle. It was a routine question: the officer did not have any reason to believe defendant had contraband in his vehicle.

Vehicle stops (Questions)

Defendant said no but gave consent to search his vehicle. In a cigarette package the officer found several rocks of crack cocaine.

Court of Appeals held the additional questions (even though they did not prolong the stop) were unrelated to the original purpose of the stop which was littering. Evidence suppressed. State v. Taylor.

Vehicle stops (Questions)

A Quay County (Tucumcari) Deputy stopped defendant for driving without a seatbelt. It was a routine traffic stop. When defendant handed his driver's license to him, his hands were shaking. He was extremely nervous and did not make eye contact with the deputy, even at the beginning of the stop. The deputy asked some questions, did a pat down, and found drugs.

Vehicle stops (Questions)

Note:

On a federal level and in many states, an officer can ask any question as long as it doesn't unreasonably prolong the vehicle stop.

New Mexico is more restrictive: an officer has to articulate or justify reasons for asking unrelated questions on a routine traffic stop.

Vehicle stops (Questions)

Court of Appeals upheld the deputy's action and the evidence was admissible. The deputy noted the reasons for doing a pat down (extreme nervousness, hands shaking, and no eye contact) in the complaint. These reasons justified the pat down and additional questions. State v. Chapman.

Vehicle stop (Scope)

A state police officer stopped a car on the Deming-Hatch bypass for improper display of a temporary tag. He noticed several things: a cell phone, a two ton car jack, an overnight bag, and the order of gasoline. Driver was very nervous.

Driver and passenger had conflicting stories of where they had been and where they were going. Officer asked if there were any drugs in the car. Consent was given and numerous bags of marijuana (in the gas tank) were found.

Vehicle stop (Scope)

Were these questions appropriate?

(Yes, appropriate because the officer noted all the observations he has had prior to asking for consent to search). State v. Duran.

Lesson learned:

To ask for consent to search a vehicle, officers need to articulate (write in the complaint or statement of probable cause) what led them to ask for consent to search.

Vehicle stop (Questions)

A Ruidoso Downs police officer stopped a vehicle involved in a possible forgery. A passenger in the front seat was the suspect. He was asked to get out of the vehicle. While being questioned, the officer found drugs on him, and he was arrested.

It's what happened next-two questions-that attracted the attention of the Supreme Court. The officer asked the driver if there was anything in the vehicle he needed to know about. Driver said no. the officer then asked for consent to search the vehicle. Defendant agreed and the officer found meth.

Vehicle stop (Questions)

Supreme Court held the additional questions (about drugs) were appropriate. From drugs found on the passenger, one could infer there were more drugs in the vehicle. State v. Funderburg.

Lesson learned:

In New Mexico, an officer needs to articulate or justify the reasons for asking additional questions about drugs in a vehicle.

Vehicle stop

When unrelated questions are permitted.

Just prior to stopping defendant for speeding, a Mesilla Deputy Marshal (near Las Cruces) observed defendant lean to the right, as if to hide something. Defendant had a suspended license. Officer said, “Before I turn this vehicle over to someone else, is there anything in it I need to know about? Any knives, needles, guns, or drugs?”

When unrelated questions are permitted.

Upon getting consent to search, the deputy found marijuana and meth. Federal courts permit any questions as long as they don't prolong the stop. New Mexico has a more restrictive standard; questions must be related to the initial reason for the stop.

When unrelated questions are permitted.

There are exceptions: Unrelated questions are permitted when:

- (1) Supported by independent reasonable suspicion.
- (2) Officer safety.
- (3) If the interaction becomes a consensual encounter.

These questions were appropriate; the officer had reasonable suspicion (furtive movements) that defendant hid something. State v. Leyva.

When unrelated questions are permitted.

Note:

Note #3: if the interaction becomes a consensual encounter.

An officer issues a citation and tells the driver he or she is free to go. In other words, the person is not being detained. Because of the actions of the officer, a consensual encounter now exists.

When unrelated questions are permitted.

To make sure it's a consensual encounter, the officer might add, "Sir, you're free to go. May I ask you some questions? May I search your car?"

Caution:

Even in-"Sir, you're free to go"-situations there can be difficulties.

In Dona Ana County, a driver was stopped for speeding. The driver was told he was free to go and gave consent to search his vehicle. Drugs were found which belonged to his passenger.

When unrelated questions are permitted.

Court of Appeals noted passenger was detained (without reasonable suspicion) because he wasn't told he was free to go. State v. Portillo.

Lesson learned:

A state court can give more (but not less) rights to its citizens. New Mexico courts have a tendency, especially in search and seizure cases, to follow this principle.

In other states or on federal lands, an officer on a traffic stop can ask any questions as long as it doesn't prolong the traffic stop.

Vehicle stop (Passenger)

Limits on questions to passengers on a vehicle stop.

Are there guidelines about asking passenger for ID on a vehicle stop? The following cases will help us on this question.

Limits on questions to passengers on a vehicle stop

Shortly after midnight in Chaves County (Roswell), an officer stopped a vehicle for a faulty license plate light. Asking ID from the driver was proper but what about the passenger?

There was no suspicion the passenger was involved in criminal activity (or armed or dangerous) but the officer, noting officer safety, asked passenger for ID. After doing a warrants check, he learned the passenger had a warrant. During the pat down meth was found.

Limits on questions to passengers on a vehicle stop

In a consensual police-citizen encounter, where a citizen is free to leave, an officer can ask for ID. But this was more than a consensual police-citizen encounter; it was an investigatory detention. Even though the officer was pleasant and the passenger voluntarily provided information, the passenger was still being detained.

Limits on questions to passengers on a vehicle stop

A generalized suspicion about officer safety is not enough. With no suspicion, much less reasonable suspicion, regarding criminal activity by the passenger, the officer had no legitimate basis to ask for ID. Court of Appeals suppressed evidence. State v. Affsprung.

Note:

In federal and other jurisdictions, officers can ask passengers for ID to check for warrants. Not New Mexico. Unusual behavior by the passenger, however, may justify additional questions or asking for ID.

Limits on questions to passengers on a vehicle stop

Facts:

Late at night a Ruidoso police officer saw a car go into a parking lot of a closed business. There were four occupants, including, Patterson who was in the front passenger seat.

There had been several burglaries in the neighborhood. The officer asked for ID of all occupants to see “who he was dealing with” and to assist him if there were burglaries later that evening. As Patterson was getting out of the car, he was observed hiding drugs.

Limits on questions to passengers on a vehicle stop

Court of Appeals held rationale to ask for passenger ID was improper and ordered the drugs suppressed. State v. Patterson.

Limits on ID request of a person in a parked vehicle

Facts:

In San Juan County (Farmington) an officer observed a car pulled into a parking lot about 150 yards before a DWI roadblock. There were three occupants in the car, including Swanson who was in the front passenger seat.

Each passenger was asked for ID and patted down. On passenger Swanson the officer found drugs and paraphernalia. Court of Appeals held asking passenger ID was improper and evidence was suppressed. State v. Swanson.

Limits on ID request of a person in a parked vehicle

The following shows what happens when asking questions or ID of someone who is being detained without reasonable suspicion:

An officer in Lovington, New Mexico was looking for Mr. Contreras who had outstanding felony warrants. Arriving at his residence, the officer saw a vehicle parked in front, with a man in the front passenger's seat. The man was talking to a lady who was leaning from the passenger side into the vehicle. It was about 10:00 p.m.

Limits on ID request of a person in a parked vehicle

He pulled behind the vehicle. No emergency lights were used. He approached the vehicle and realized, based upon previous encounters, that it wasn't Mr. Contreras. Instead, it was Mr. Williams, the defendant. He requested ID and found that defendant had a warrant. Upon arrest, and search of the vehicle, drugs were found.

Court of Appeals held the detention was unlawful and ordered the evidence (drugs) suppressed. State v. Williams.

Limits on ID request of a person in a parked vehicle

Lesson to be learned:

- Police officers need reasonable suspicion to stop and detain citizens.
- If officers stop someone to ask for ID, without reasonable suspicion, the stop will be invalid and anything found from the stop will be inadmissible.

Fruits of a Poisonous Tree

Consent & Juveniles

Facts:

Farmington Police officer stopped a vehicle for a traffic violation. Upon making contact with a juvenile, he noticed a strong odor of marijuana. After getting consent to search, he found bags of marijuana.

Should an officer be required to advise juveniles (something they don't have to do for adults) that they can refuse to give consent.

Consent & Juveniles

(No), Under the Fifth Amendment (interrogation), a juvenile does have more rights. But the Court of Appeals declined to give more rights under the Fourth Amendment to juveniles. State v. Carlos A.

Pretext stops

Facts:

An agent of the Pecos Valley Drug Task Force saw the driver of a vehicle leaving a drug trafficking residence with no seat belt on. He asked a uniformed officer to stop the vehicle in order to ID the driver and inquire about activities at the residence. Once stopped, drugs were found and the driver was arrested. State v. Ochoa.

Pretext stops

- Can a police officer use a valid traffic stop as a pretext (excuse) to get ID from an occupant of that vehicle?

Answer:

(Yes), according to the United States Supreme Court. But the New Mexico Court of Appeals, citing the state constitution, said no. they noted the purpose of a pretext stop is to conduct a criminal investigation unrelated to driving.

Pretext stops

While there may have been reasonable suspicion for the stop (seatbelts), there was only a “hunch”-less than reasonable suspicion-to investigate the real reason for the stop, drug trafficking.

Some permissive actions during a vehicle stop

1. The driver may be removed from the vehicle.
2. The passengers may be removed from the vehicle.
3. The passengers may be ordered to remain in the vehicle.

Seeing Contraband in a Vehicle

Vehicle search-exigent

Farmington police officers stopped defendant for a traffic violation. One officer noticed a plastic baggie in the gap between the two front seats and immediately recognized contraband (meth).

Can the officer seize it?

Seeing Contraband in a Vehicle

Unless there is consent or a warrant, probable cause and exigent circumstances are needed to search a vehicle. Supreme Court of New Mexico held, under the facts of this case, exigent circumstances existed. The contraband was properly seized. State v. Bomboy.

Note:

Federal officers and many states follow the Carroll Doctrine. Not only can contraband in a vehicle be seized (on probable cause alone) but the rest of the vehicle (unlike New Mexico) can be searched as well.

Seeing Contraband in a Vehicle

A person is allowed to carry a concealed loaded firearm in their residence, on their property, and also in a private automobile. NMSA 1978, Section 30-7-2.

Generally, the courts have been favorable to the rights of gun owners in NM. In 2011, however, the Supreme Court had to consider the right of gun owners and the safety to police officer.

Vehicle Stop-Guns

It was a routine traffic stop and an officer walked up to a vehicle. A quick glance revealed a handgun on the back seat floorboard. It could be anywhere but this was in Hobbs, New Mexico.

The driver and passenger were requested to step out of the vehicle. Neither was handcuffed or restrained. The firearm was seized and ammunition unloaded.

Only one issue: did the officer have a right to seize the firearm?

COPY

Vehicle Stop-Guns

Supreme Court held an officer can **temporarily** remove a visible gun from a vehicle to prevent immediate access to it by an occupant during the short duration of a traffic stop. Such seizures, balanced against officer safety, are minimal intrusions that do not interfere with any legitimate use of a firearm. State v. Keteleson.

Note:

Recommend (unless there are other factors) not running a firearm or expanding the traffic stop into an investigation.

How long for an investigative detention

Clovis police were contacted by an informant who gave his name but asked to be anonymous. The informant advised that defendant would be delivering meth in a pickup truck that had a personalized license plate to a named address. Information was proved accurate when defendant was stopped just prior to reaching the address.

How long for an investigative detention

Defendant refused to give permission to search her truck. A drug dog was called and she was told she was free to leave which she did. The dog, arriving 35-45 minutes later, alerted to the truck. A search warrant was obtained and meth found in her purse and truck. Was waiting for the dog too long? State v. Robbs.

How long for an investigative detention

Answer:

The wait was considered reasonable. There isn't a set amount of time to do an investigative detention. That's because a detention can vary depending upon the circumstances. But officers are not to go on "fishing expeditions"; in other words, a person should be released if there isn't enough reasonable suspicion to hold him.

Forfeiture

Introduction:

One nice way to make an impact on drug dealers and the cartels is to take their money. But to win we got to do it right. You stop a vehicle and the driver has over \$100,000 in cash.

What do you do?

Forfeiture-Money

Tucumcari police stopped a vehicle for speeding. After receiving conflicting answers, the officer asked for consent to search. He found \$104,999 in the truck.

The seizure of money was based upon NMSA 1978, Section 30-31-34 which allows for forfeiture of money related to the commission of drug offenses. Since that couldn't be proven here, the Court of Appeals ordered the money returned to defendant. State v. \$104,999.

COPY

Forfeiture-Money

Reminder:

- It's not illegal to carry large amounts of cash.
- To seize large amounts of cash, need to show a connection with illegal drugs. (Some exceptions: recent bank robbery, etc.)

One never knows how a traffic stop will end...

COPY

- People in the United States do not normally carry large amounts of cash. It may be legal but we certainly can ask a lot of questions.
- If a driver claims ownership, we need to establish the money is related to drugs. If so, the money can be seized.
- If a driver denies ownership or knowledge of the money, it can be seized as abandoned property. (Thank you Sir! Have a nice day!!)
- An officer may want to contact a federal agency: DEA, IRS, etc.

What to do if money is seized

Forfeiture laws in New Mexico

When the state wants to seize money, it's called forfeiture. Guidance for what to do in forfeiture cases is found in Chapter 31, Article 27. some statutes on forfeiture include:

Within thirty days of making a seizure, the state shall file a complaint of forfeiture or return the property to person from whom it was seized. NMSA 1978, Section 31-27-5.

What to do if money is seized

The district courts have jurisdiction over the forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter. MSA 1978, Section 31-27-6.

Seized currency alleged to be subject to forfeiture shall be deposited with the clerk of the district court in an interest-bearing account. NMSA 1978, Section 31-27-8.

Reminder:

- Don't simply keep the money in the evidence room. It's important to follow the rules of forfeiture...

APD & BCSO lose lawsuits regarding forfeiture

COPY

News item: Judge Rules against Bernalillo County

A state district court judge said Bernalillo County Sheriff's Office did an end-run around state law by using more lenient federal forfeiture procedures to seize money, especially at traffic stops. The deputies were part of an interagency task force that included federal and state officers.

The City of Albuquerque settled a similar lawsuit for \$882,00 in 2009. A hearing will decide damages against the County of Bernalillo. September, 2010.

APD & BCSO lose lawsuits regarding forfeiture

COPY

News item: County to pay \$3 million

A state judge has ordered Bernalillo County to pay more than \$3 million in damages to individuals whose cash was seized by law enforcement officers.

Cash seizures were referred to federal court, which has less stringent forfeiture requirements than the state courts. In many cases, charges were never filed. March, 2011.

APD & BCSO lose lawsuits regarding forfeiture

COPY

Lessons to be learned:

- If forfeiture charges are not filed, the money must be returned to the suspect. If it is a large amount of money, it is recommended IRS be notified.
- If there is a federal-state task force, need to be careful of giving the appearance of using less-lenient federal forfeiture laws to circumvent state forfeiture laws.

APD & BCSO lose lawsuits regarding forfeiture

Note:

- The forfeiture cases lost in Albuquerque should not deter law enforcement from seizing money when it is appropriate. The important thing is to follow legal procedures. The Attorney General's Task Force on Money Laundering can be helpful.

Forfeiture Law Reform

Many believe it's time to reform New Mexico forfeiture laws.

THE NEED FOR A STRATEGY

A time for sharing ideas

○ Polls indicate a majority of American people are frustrated with the War on Drugs and what change. Our country is now consuming nearly half the illegal drugs in the world.

○ Some people believe legalizations or a more secure border might be the answer. Legalization may happen but it's not likely in the near future and probably would be limited to marijuana or prescription drugs. A secure border is possible but also not likely in the near future.

THE NEED FOR A STRATEGY

For us, in New Mexico, it means one of the highest drug overdose rates in the country. An area in northern New Mexico, just north of Santa Fe, has had one of the highest heroin overdose rates in the country for nearly a generations. New ideas are needed.

Calling it the War on Drugs may be too dramatic. But whatever it is, there has to be a strategy. Any strategy has to have at least the following:

Conclusion

Drug trafficking and drug abuse is a major challenge that needs to be addressed effectively by law enforcement. Doing the same thing-the status quo-is not enough. What ideas do you have? Share them with us.

Editorial

Note:

Need to make sure you detention center notifies ICE. A number of drug dealers have been deported. If they return, they face felony charges.

Editorial

Expressed fears of driving crime victims underground or deporting family members pulled over for minor traffic infractions are unfounded in this system. And treating immigrants and natives alike is respectful and immigrant friendly.

Santa Fe should quit setting up road blocks and let ICE do it's job."

Editorial

News item: Santa Fe Should Treat all Inmates the Same

“The solution for the Santa Fe detention center is no big mystery. In fact, there’s one just a short drive south, in Albuquerque.

In Albuquerque, the immigration status of anyone arrested is checked by ICE, regardless of race or surname. The computerized identification is quick and thorough, and an inmate’s immigration status is completely in the hands of federal officers, as it should be.

Immigration Reform

Drug dealers or couriers who are here illegally need to be referred to ICE. The ideal situation is for a detention center (not the officer) to make inquiries as to a person's immigration status. According to ICE, in 2012, only one detention center in NM was not cooperative: Santa Fe.

[An editorial about the Santa Fe situation offers guidance](#)

Immigration Reform

News item: Immigration eases up on traffic offenses

Immigration officials say they will no longer immediately detain suspected illegal immigrants who are arrested only on minor traffic violations and have no criminal history.

Immigrations agents will now consider detaining people arrested on minor traffic offenses-provided they have no criminal history-only if convicted of these offenses. April 2012.

Immigration Reform

There are a few occasions where additional investigation is necessary and permissible: the person has previously been deported, the offense has cross-border implications, may need a translator and ICE is nearby, or there is an identity issue.

But on a traffic stop, even when someone is in the country illegally, ICE may still choose not to get involved:

Immigration Reform

Introduction:

Since most illegal drugs are from South of the Border, it follows that some of the people involved will be illegal immigrants. In encountering illegal immigrants, some guidelines may be useful.

Suggestions for police officers and undocumented immigrants

Police officers in New Mexico who come in contact with people who appear to be illegal immigrants should not detain people on that basis alone. To detain someone, there must be reasonable suspicion a person is involved in a crime.

Civil actions against motels

New item: Zoning Crackdown may Cost City \$1.7 million

Code enforcement officers would red-tag a room for a drug violation, evicting people without a court order. In response to a class action lawsuit, Albuquerque has agreed to pay \$1.7 million dollars. One policy change would require the city to provide a hearing before evicting people. April 2012.

Lesson learned:

Code enforcement is a valuable civil tool for law enforcement but legal procedures must be followed.

Civil actions against motels

A number of motels showed little concern about dealers selling drugs from their rooms. That is, until the City of Albuquerque successfully went after dozens of motels and shut them down. The operation was a great success.

Caution: Even with the best of ideas, guidelines need to be followed:

Operation Focus and Follow Through

Note:

It was a simple idea, not really a great idea, but it was a new idea: go after the drug dealers where ever they are. And the idea worked. The dealers were taken off the streets of Albuquerque. But then they moved to the motels...

Operation Focus and Follow Through

A number of years ago, Albuquerque had a problem with drug dealers working the streets, boldly selling drugs in broad daylight. When police had an operation, drug dealers would quickly learn of this and move to another part of town.

In this operation, for nearly two months, the police went after the drug dealers where ever they were. Over three hundred dealers were arrested. The DA's office prosecuted each one as a felony. The National Guard lent a helping hand, tracking what happened to each case. The operation was a success.

Don't forget legal training

Officers need a good, easy way to keep up with legal training. Officers are encouraged to look at the award winning NMDPS legal website found at www.dps.nm.org/training.

Some new things that have been tried in Albuquerque

For discussion purposes, let's look at some of the efforts tried in Albuquerque.

Coordination with numerous agencies

State, local and federal cooperation is needed to bring together new talent and new ideas. The US Attorney's Office and the NM Attorney's Office have been very helpful.

SUPPLEMENT INVESTIGATION:

On July 19, 2018, I received the Performance Evaluations for Officer Rodriguez and reviewed them.

Th evaluations were dated from September 2017 to November 2017. Officer Rodriguez scored Minimum to Not Acceptable with the majority of them Not Acceptable.

The only evaluation regarding Search & Seizure was one dated November 16, 2017. The evaluation was conducted by Officer Munoz. Officer Munoz noted that Officer Rodriguez began questioning a suspect about found narcotics without giving him his Miranda first.

(Refer to attached copies of evaluations for details.)

INVESTIGATIVE FINDINGS:

After a review of the evaluation it was noted that the initial findings do not change.

Submitted by:

Rick Foley
Rick Foley Investigations, LLC

No one who participated in any way with the investigating, reporting or supervision of this assignment is a relative, personal friend or acquaintance of any employee involved in the incident investigated.



Rick Foley Investigations, LLC

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Albuquerque, NM 87107

Phone: 505-401-3864

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www.rickfoleyPI.com

September 27, 2018

Kristin Greer Love, Esq.
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103-0566

REF: Oscar Eduardo Gutierrez Sanchez v. Sunland Park Police Tort Claim Notice

Dear Ms. Love,

The assigned adjuster of the New Mexico Self-Insurer's Fund, Ms. Glenda Sanchez, has asked that I contact you and ask for a Demand Letter from you for a possible settlement. The New Mexico Self Insurer's Fund is not admitting to any liability, but merely asking for an amount for damages.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Foley", written over the word "Sincerely,".

Rick Foley, Investigator
Rick Foley Investigations, LLC

Cc: Glenda Sanchez, NMML



September 27, 2018

Kristin Greer Love, Esq.
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103-0566

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Rick Foley, Investigator
Rick Foley Investigations, LLC

Cc: Glenda Sanchez, NMML

THIRD JUDICIAL DISTRICT COURT
COUNTY OF DOÑA ANA
STATE OF NEW MEXICO

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
3/8/2019 11:43 AM
DAVID S. BORUNDA
CLERK OF THE COURT
Claudine Bernal

OSCAR GUTIÉRREZ SÁNCHEZ,

Plaintiff,

Cause No. D-307-CV-2019-00748

vs.

Martin, James T.

CITY OF SUNLAND PARK, a governmental
entity of the State of New Mexico, and Officer
ISMAEL RODRÍGUEZ of the Sunland Park
Police Department, individually,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO STATE CONSTITUTION
AND THE NEW MEXICO TORT CLAIMS ACT**

PRELIMINARY STATEMENT

1. This case arises from the Sunland Park Police Department's unlawful detention of Oscar Gutiérrez Sánchez, a resident of Las Cruces, a person of color, and an immigrant. On the night of March 13, 2018, Sunland Park Police Officer Ismael Rodríguez wrongly detained and falsely arrested Mr. Oscar Gutiérrez Sánchez, who was driving home with his five-year-old son. During the course of a pretextual traffic stop that night, Officer Rodríguez, without consent, without probable cause, and without exigent circumstances, unlawfully searched Mr. Gutiérrez Sánchez' vehicle using a drug-detection dog. In conducting this unlawful search, Officer Rodríguez forced Mr. Gutiérrez Sánchez and his young child to wait in their truck on the side of the highway for nearly 45 minutes.

2. Ultimately, Officer Rodríguez and the drug detection dog found no contraband in Mr. Gutiérrez Sánchez' vehicle because he did not have any. Plaintiff Oscar Gutiérrez Sánchez

now seeks, through his counsel, the ACLU OF NEW MEXICO, declaratory relief and damages for the civil rights violations Defendants committed under Article II, Sections 10 and 18, of the New Mexico Constitution, and the New Mexico Tort Claims Act.

JURISDICTION AND VENUE

3. Mr. Gutiérrez Sánchez brings his claims in this Complaint under Article II, Sections 10 and 18, of the New Mexico Constitution, and the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-12 (waiver of immunity for torts committed by law enforcement officers) and 41-4-4 (indemnity).

4. This Court has jurisdiction over this action under NMSA §§ 41-4-18 and 44-6-4.

5. This Court is the proper venue for Mr. Gutiérrez Sánchez' claims because the Defendants violated his rights in Doña Ana County. NMSA § 38-3-1.

6. On May 18, 2018, Mr. Gutiérrez Sánchez timely filed a Tort Claims Notice with Mayor Javier Perea of the City of Sunland Park.

PARTIES

7. Plaintiff Oscar Gutiérrez Sánchez is a 35-year-old resident of Las Cruces, New Mexico, and a lawful permanent resident of the United States.

8. Defendant City of Sunland Park is a municipality formed under the laws of New Mexico. It is responsible for overseeing and operating the Sunland Park Police Department and for employing, training, and overseeing Sunland Park police officers, including Officer Rodríguez, who was an employee of Sunland Park at the time that the events in this Complaint occurred. The City of Sunland Park is a governmental entity subject to suit under state law.

9. At all times relevant to this Complaint, Defendant Sunland Park Police Officer Ismael Rodríguez was an employee of the City of Sunland Park and acting within the scope of his duties. NMSA § 41-4-12. Defendant Rodríguez is sued in his individual capacity.

FACTS

10. On the evening of March 13, 2018, Oscar Gutiérrez Sánchez was driving his truck along Highway 136 (“Domenici Highway”) in Sunland Park, New Mexico.

11. Mr. Gutiérrez Sánchez’ then-five-year-old son was a passenger in his truck.

12. Mr. Gutiérrez Sánchez and his five-year-old son were returning home to Las Cruces, New Mexico.

13. Near the intersection of Domenici Highway and McNutt Road, Defendant Officer Rodríguez of the Sunland Park Police Department stopped Mr. Gutiérrez Sánchez.

14. Defendant Rodríguez accused Mr. Gutiérrez Sánchez of speeding.

15. Defendant Rodríguez asked Mr. Gutiérrez Sánchez for his driver’s license, vehicle registration, and insurance card.

16. Mr. Gutiérrez Sánchez immediately cooperated with Defendant Rodríguez’ requests and provided him with his driver’s license and registration. He showed Defendant Rodríguez a digital copy of his insurance card on his phone.

17. Defendant Rodríguez assured Mr. Gutiérrez Sánchez that he would give him just a warning—not a ticket—for speeding.

18. At this point, Mr. Gutiérrez Sánchez thought that his encounter with Defendant Rodríguez was over.

19. But Defendant Rodríguez kept Mr. Gutiérrez Sánchez’ driver’s license and registration.

20. Then, without reasonable suspicion for his questions, Defendant Rodríguez asked Mr. Gutiérrez Sánchez if he had been drinking or if he had used drugs.

21. Mr. Gutiérrez Sánchez told Defendant Rodríguez that he had not been drinking and had not used drugs.

22. Without reasonable suspicion for his questions, Defendant Rodríguez then asked Mr. Gutiérrez Sánchez numerous questions about whether he was carrying drugs in his truck.

23. Mr. Gutiérrez Sánchez told Defendant Rodríguez that he was not carrying any drugs in his truck.

24. Defendant Rodríguez then asked Mr. Gutiérrez Sánchez if he could search his truck.

25. Mr. Gutiérrez Sánchez did not consent and told Defendant Rodríguez that he did not want him to search his truck.

26. Without reasonable suspicion, Defendant Rodríguez then asked Mr. Gutiérrez Sánchez if he could call Border Patrol to bring a dog to search his vehicle.

27. Mr. Gutiérrez Sánchez did not consent.

28. Without a warrant, consent, or probable cause, Defendant Rodríguez then called Border Patrol to bring a drug-detection dog to search Mr. Gutiérrez Sánchez' truck.

29. Defendant Rodríguez, who was still holding Mr. Gutiérrez Sánchez' driver's license and vehicle registration, placed him under a de facto arrest, forcing Mr. Gutiérrez Sánchez and his five-year-old son wait in the truck on the side of the highway in the dark.

30. Within about 15 minutes of Defendant Rodríguez' calling Border Patrol, a Border Patrol agent arrived with a drug-detection dog.

31. Without a warrant, consent, or probable cause, Defendant Rodríguez, the Border Patrol agent, and the drug-detection dog searched the truck by sniffing around it for about 15 minutes and found nothing.

32. Defendant Rodríguez, the Border Patrol agent, and the drug-detection dog found nothing because Mr. Gutiérrez Sánchez had no drugs in his truck.

33. Finally, after about 45 minutes had passed since he first stopped Mr. Gutiérrez Sánchez, Defendant Rodríguez gave Mr. Gutiérrez Sánchez a traffic warning, alleging only that he had been speeding.

34. Mr. Gutiérrez Sánchez' false arrest and the unlawful search of his vehicle caused him to suffer anxiety about his son's safety.

35. Mr. Gutiérrez Sánchez was humiliated by Defendant Rodríguez' unconstitutional and unlawful conduct towards him in front of his five-year-old son.

36. Defendant Rodríguez subjected Mr. Gutiérrez Sánchez to an unconstitutional de facto arrest and search because he is a person of color.

37. Defendant Rodríguez subjected Mr. Gutiérrez Sánchez to an unconstitutional de facto arrest and search because he is an immigrant.

CLAIMS FOR DECLARATORY RELIEF

COUNT I

Article II, Section 10, of the New Mexico State Constitution Unreasonable Search and Seizure (Against all Defendants)

38. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

39. Defendant Rodríguez stopped Mr. Gutiérrez Sánchez for allegedly speeding.

40. Defendant Rodríguez asked Mr. Gutiérrez Sánchez if he had drugs in his truck—a topic not related to speeding and not supported by articulable reasonable suspicion as required by law.

41. Defendant Rodríguez lacked probable cause to detain and seize Mr. Gutiérrez Sánchez during the traffic stop.

42. Defendant Rodríguez lacked probable cause and exigent circumstances to search Mr. Gutiérrez Sánchez' truck during the traffic stop.¹

43. Defendant Rodríguez undertook the actions described above within the scope of his employment as a police officer of the City of Sunland Park.

44. Defendant Rodríguez intentionally detained, seized, and arrested Mr. Gutiérrez Sánchez without a warrant and without probable cause.

45. New Mexico law enforcement officers cannot lawfully question drivers or passengers about issues that are not related to the initial purpose of a traffic stop *unless* their questions are supported by reasonable suspicion.²

46. If a police officer stops a driver in New Mexico for allegedly speeding, the officer cannot ask the driver (or the driver's passenger³) questions about drugs *unless* the officer establishes reasonable suspicion for those questions during the stop.

47. If a police officer stops a driver in New Mexico, the officer cannot search the vehicle without a warrant unless an exception to the warrant requirement applies and there are

¹ *State v. Bomboy*, 2008-NMSC-029, ¶ 17, 144 N.M. 151, 155, 184 P.3d 1045, 1049 (“Under the New Mexico Constitution, we continue to provide greater protection regarding automobile searches than that provided under the United States Constitution. Absent exigent circumstances or some other exception to the warrant requirement, an officer may not search an automobile without a warrant.”).

² The only exception to this rule is if the questions are necessary for officer safety or if the interaction between the officer and the driver or passenger is consensual. *State v. Duran*, 2005-NMSC-034, ¶ 23, 138 N.M. 414, 120 P.3d 836, overruled in part by *State v. Leyva*, 2011-NMSC-009). See also *State v. Portillo*, 2011-NMCA-079, 256 P.3d 466 (extending *Leyva* and *Duran* to passengers).

³ *Portillo*, *id.*

exigent circumstances. Here, there was no exception to the warrant requirement or exigent circumstances.

48. Defendant Rodríguez' seizure of Mr. Gutiérrez Sánchez and search of his truck denied him his personal liberty without his consent and against his will.

49. Defendant Rodríguez' seizure of Mr. Gutiérrez Sánchez and search of his truck violated his state Constitutional rights under Article II, Section 10, of the New Mexico State Constitution to be free from unlawful searches and seizures.

50. Defendant Rodríguez' unlawful conduct proximately caused damages to Mr. Gutiérrez Sánchez in that he deprived him of his liberty, embarrassed him, humiliated him, and caused him pain, suffering, and mental and emotional distress.

COUNT II
Article II, Section 10, of the New Mexico State Constitution
Unlawful De Facto Arrest
(Against all Defendants)

51. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

52. As a result of the traffic stop, Defendant Rodríguez held Mr. Gutiérrez Sánchez and his son in custody for about 45 minutes.

53. Defendant Rodríguez detained Mr. Gutiérrez Sánchez for an unreasonable amount of time, amounting to a de facto arrest.

54. During this period, Defendant Rodríguez retained Mr. Gutiérrez Sánchez' driver's license and vehicle registration.

55. During this arrest, Mr. Gutiérrez Sánchez and his son remained inside their vehicle and they were not free to leave.

56. Defendant Rodríguez lacked probable cause to arrest Mr. Gutiérrez Sánchez.

57. Defendant Rodríguez did not obtain a warrant to arrest Mr. Gutiérrez Sánchez.

58. Defendant Rodríguez deprived Mr. Gutiérrez Sánchez of his right under Article II, Section 10, of the New Mexico State Constitution to be secure in his person.

59. Defendant Rodríguez wrongly arrested Mr. Gutiérrez Sánchez without probable cause and deprived him of his right under Article II, Section 10, of the New Mexico State Constitution to be free from unreasonable seizures.

60. Defendant Rodríguez' unlawful conduct proximately caused damages to Mr. Gutiérrez Sánchez in that he deprived him of his liberty, embarrassed him, humiliated him, and caused him pain, suffering, and mental and emotional distress.

COUNT III
Article II, Section 18, of the New Mexico State Constitution
Equal Protection
(Against all Defendants)

61. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

62. Defendants subjected Mr. Gutiérrez Sánchez to an unlawful and intrusive search of his vehicle and an unlawful de facto arrest without a warrant, probable cause, or his consent, because he is a person of color and an immigrant.

63. In doing so, Defendants unlawfully deprived Mr. Gutiérrez Sánchez of his liberty because of his race and national origin, denying him the equal protection of the laws under Article II, Section 18, of the New Mexico Constitution and Defendants violated NMSA 1978, § 29-21-2, which prohibits law enforcement agencies and officers from relying on race and national origin, among other factors, in conducting routine or spontaneous investigations, such as detentions and traffic stops and searches.

COUNT IV

New Mexico Declaratory Judgment Act, NMSA § 44-6-2
Declaratory Relief
(Against all Defendants)

64. Under the Declaratory Judgment Act, NMSA § 44-6-4, “[i]n cases of actual controversy,” this Court has the “ power to declare rights, status and other legal relations whether or not further relief is or could be claimed.”

65. Here, there are actual controversies about the constitutionality and lawfulness under NMSA 1978, § 29-21-2 of the Sunland Park Police’s practice of subjecting a person of color who is an immigrant to:

- a. Questioning about issues that are not related to the initial purpose of a traffic stop and not supported by probable cause;
- b. A search of the person’s vehicle without a warrant, without probable cause, and without exigent circumstances;
- c. A search of the person’s vehicle with a drug-detection dog without a warrant, without probable cause, and without exigent circumstances

66. The Court should declare that the Sunland Park Police Department has no authority to subject anyone to:

- a. Questioning about issues that are not related to the initial purpose of a traffic stop and not supported by probable cause;
- b. A search of the person’s vehicle without a warrant, without probable cause, and without exigent circumstances;
- c. A search of the person’s vehicle with a drug-detection dog without a warrant, without probable cause, and without exigent circumstances.

CLAIM FOR COMPENSATORY DAMAGES

COUNT V

New Mexico Tort Claims Act, NMSA § 41-4-4

False Arrest / False Imprisonment

(Against all Defendants)

67. Mr. Gutiérrez Sánchez realleges and incorporates the preceding paragraphs.

68. Defendant City of Sunland Park, through Defendant Rodríguez, inflicted personal injury on Mr. Gutiérrez Sánchez by subjecting him to false arrest, imprisonment, and unreasonable seizure.

69. Defendants subjected Mr. Gutiérrez Sánchez to a de facto arrest without a warrant and searched his vehicle without reasonable and probable cause or his consent.

70. Defendants restrained Mr. Gutiérrez Sánchez against his will.

71. Defendants knew or should have known that they had no authority to restrain Mr. Gutiérrez Sánchez because in restraining him, they violated Article II, Section 10, and Article II, Section 18, of the New Mexico Constitution, as well as NMSA 1978, § 29-21-2.

72. Defendants' unlawful conduct caused distress and humiliated Mr. Gutiérrez Sánchez in front of his young son.

WHEREFORE, Plaintiff Oscar Gutiérrez Sánchez respectfully asks that this Court enter judgment in his favor and against Defendants, and:

- (a) Award compensatory damages against all Defendants for the above violations of state law in an amount to be determined at trial;
- (b) Award prejudgment and post-judgment interest on any award of damages to the extent permitted by law;
- (c) Issue declaratory relief against the City of Sunland Park for the above violations of the New Mexico Constitution and state law;

(d) Award any further relief that this Court deems just and proper and any other relief allowed by law.

Respectfully submitted this 8th day of March, 2019,

Leon Howard
María Martínez Sánchez
Kristin Greer Love
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF NEW MEXICO
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220 Ninth Street NW
Albuquerque, NM 87102
Office: (505) 243-4541
Fax: (505) 242-2716

SUMMONS

District Court: Third Judicial Dona Ana County, New Mexico Court Address: 201 W. Picacho Ave. Las Cruces, NM 88005 Court Telephone Number: (575) 523-8200	Civil Case Number: D-307-CV-2019-00748 Judge: Honorable James T. Martin
OSCAR GUTIÉRREZ SÁNCHEZ, Plaintiff, vs. CITY OF SUNLAND PARK, a governmental entity of the State of New Mexico, and Officer ISMAEL RODRÍGUEZ of the Sunland Park Police Department, individually, Defendants.	To Defendant: CITY OF SUNLAND PARK c/o City Clerk Daniel Carranco 1000 McNutt Rd Suite A Sunland Park, New Mexico 88063

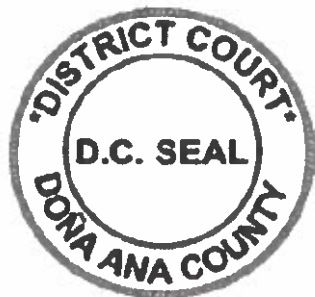
TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

Dated at Las Cruces, New Mexico, this 11th day of March, 2019.

David S. Borunda
CLERK OF COURT

By: Nosie Stewart
Deputy



Attorneys for Plaintiffs

Leon Howard
María Martínez Sánchez
Kristin Greer Love

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NEW MEXICO**

P.O. Box 566

Albuquerque, NM 87103

lhoward@aclu-nm.org

msanchez@aclu-nm.org

klove@aclu-nm.org

Phone: (505) 266-5915 x 1008

Fax: (505) 266-5916

Mark Fine

FINE LAW FIRM

220 Ninth Street NW

Albuquerque, NM 87102

Office: (505) 243-4541

Fax: (505) 242-2716

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 NMRA OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn to before me this _____ day of _____, _____.2

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]



New Mexico

March 12, 2019

Via U.S. certified mail to:

City of Sunland Park
c/o City Clerk Daniel Carranco
1000 McNutt Rd Suite A
Sunland Park, New Mexico 88063
U.S. certified tracking #: 70100780000105689358

Re: Oscar Gutierrez Sanchez v. City of Sunland Park and Officer Ismael Rodriguez, D-307-CV-2019-00748

Dear Mr. Carranco:

Please see enclosed the following items:

- One **Summons** and corresponding attached **Complaint for Violations of the New Mexico State Constitution and the New Mexico Tort Claims Act** filed against the City of Sunland Park on March 8, 2019; and
- One **Order Requiring Scheduling Reports, a Discovery Plan, Expert Witness Disclosure, and Limiting Stipulations to Enlarge Time for Responsive Pleadings** filed on March 11, 2019.

Sincerely,

Tiffany McCree
Paralegal
American Civil Liberties Union of New Mexico
T: (505) 266 - 5915 ext. 1014
F: (505) 266 - 5916
tmccree@aclu-nm.org

Enclosures as stated

AMERICAN CIVIL LIBERTIES UNION
OF NEW MEXICO

P. O. BOX 566
WWW.ACLU-NM.ORG
ALBUQUERQUE, NM 87103-0566

T / 505.266.5915
F / 505.266.5916



HINKLE SHANOR LLP

ATTORNEYS AT LAW
400 PENN PLAZA, SUITE 640
PO BOX 10
ROSWELL, NEW MEXICO 88202
575-622-6510 (FAX) 575-623-9332

WRITER:

STEPHEN S. SHANOR, PARTNER
ssshanor@hinklelawfirm.com

May 3, 2019

Glenda Sanchez
gsanchez@nmml.org

RE: ***Oscar Gutierrez Sanchez v City of Sunland Park and Office Ismael Rodriguez
Cause No. D-307-CV-2019-00748***

Dear Ms. Sanchez:

On behalf of our firm, Hinkle Shanor, LLP, we gratefully acknowledge receipt of the assignment from you requesting us to represent your insured, Officer Ismael Rodriguez in the defense of the above referenced matter. I along with my partner, Chelsea R. Green, will be the principal attorneys responsible for the handling of this matter and communicating with you during the progress of the case. This letter will confirm that this matter will be handled in the manner established by the customary practices of our other representations of your insureds and in accordance with any specific written instructions received from you.

Thank you for your confidence in our firm and lawyers evidenced by this assignment.

Very truly yours,

HINKLE SHANOR LLP


Stephen S. Shanor, Esq.

SSS/nrs



PAYMENT REQUEST FORM

PAYEE: ACLU of NM Foundation

ADDRESS: PO Box 566

City Albuquerque State NM Zip 87103

PAYMENT CODE: 067

AMOUNT: \$18,650

PAYMENT NARRATIVE: full and final settlement

DATES: FROM: 3/15/18 TO 3/15/18

CLAIM #: 2018024465

CLAIMANT: Oscar Sanchez

IF NO PAYMENT NARRATIVE, PLEASE GIVE BRIEF EXPLANATION OF PAYMENT:

EXAMINER INITIALS: GS Date: 10/4/2019

Mail to:

Hinkle Shanor LLP
Attn: Stephen Shanor
P.O. Box 10
Roswell, New Mexico 88202-0010

**W-9 submitted via email

P. O. Box 846
Santa Fe, New Mexico 87504
(800) 432-2036 Toll Free
(505) 820-0670 Fax



PAYMENT REQUEST FORM

PAYEE: ACLU of NM Foundation

ADDRESS: PO Box 566

City Albuquerque State NM Zip 87103

PAYMENT CODE: 067

AMOUNT: \$18,650

PAYMENT NARRATIVE: full and final settlement

DATES: FROM: 3/15/18 TO 3/15/18

CLAIM #: 2018024465

CLAIMANT: Oscar Sanchez

IF NO PAYMENT NARRATIVE, PLEASE GIVE BRIEF EXPLANATION OF PAYMENT:

EXAMINER INITIALS: GS Date: 10/4/2019

Mail to:

Hinkle Shanor LLP
Attn: Stephen Shanor
P.O. Box 10
Roswell, New Mexico 88202-0010

**W-9 submitted via email

P. O. Box 846
Santa Fe, New Mexico 87504
(800) 432-2036 Toll Free
(505) 820-0670 Fax



PAYMENT REQUEST FORM

PAYEE: ACLU of NM Foundation

ADDRESS: PO Box 566

City Albuquerque State NM Zip 87103

PAYMENT CODE: 067

AMOUNT: \$18,650

PAYMENT NARRATIVE: full and final settlement

DATES: FROM: 3/15/18 TO 3/15/18

CLAIM #: 2018024465

CLAIMANT: Oscar Sanchez

IF NO PAYMENT NARRATIVE, PLEASE GIVE BRIEF EXPLANATION OF PAYMENT:

ym 10/4/19

EXAMINER INITIALS: GS Date: 10/4/2019

Mail to:

Hinkle Shanor LLP
Attn: Stephen Shanor
P.O. Box 10
Roswell, New Mexico 88202-0010

**W-9 submitted via email

P. O. Box 846
Santa Fe, New Mexico 87504
(800) 432-2036 Toll Free
(505) 820-0670 Fax

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FLORES | TAWNEY | ACOSTA P.C.
Injury & Employment Attorneys

El Paso Office:
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El Paso, TX 79902
Phone: (915) 308-1000
Facsimile: (915) 300-0283

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<https://ftalawfirm.com>

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Las Cruces, NM 88001
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Facsimile: (575) 652-4752

**Principal Office*

All attorneys licensed to practice law in New Mexico and Texas.

Carlsbad Office:
102 W. Hagerman St., Suite D
Carlsbad, NM 88220
Phone: (575) 222-1000
Facsimile: (575) 652-4752

August 5, 2020

Mr. Javier Guerra
Chief of Police
Sunland Park Police Department
1000 McNutt Suite C
Sunland Park, NM 88063

Certified Mail, Return Receipt Requested

RE: *Gerardo Aguirre, Individually and on Behalf of the Estate of Danielle Perez & Minors vs. New Mexico State Police, Sunland Park Police Department, Dona Ana County, New Mexico State Highway Department, and City of Sunland Park; for injuries and death that occurred on May 9th, 2020; Location: Intersection of State Highway 273 (McNutt Rd) and State Highway 136 (Pete V Domenici Hwy) in Sunland Park, New Mexico.*

Dear Mr. Guerra:

In accordance with the New Mexico Tort Claims Act and Section 41-4-1 of the New Mexico Statutes Annotated, formal notice is hereby made for the damages suffered by Gerardo Aguirre & Minors.

On May 9, 2020, around 10:45 pm or 10:50 pm, Gerardo Aguirre and his wife, Danielle Perez were headed to their new home located in East El Paso, Texas. Mr. Aguirre was in one vehicle while his wife and children were in another. Mr. Aguirre stopped at the light on the McNutt Road and Pete V Domenici Highway intersection located in Sunland Park, New Mexico—with his wife and children following—and waited for the light to turn green. Once a green arrow appeared, Mr. Aguirre made a left turn. After turning, Mr. Aguirre heard a commotion behind him and could no longer see his wife's car; however, he saw a Sunland Park PD patrol car with its lights turned on. Before the collision, Sunland Park PD and New Mexico State Police were pursuing a maroon-colored pickup truck driven by Eric Solis. Not only was Mr. Solis traveling north on McNutt Road at over 90 miles per hour, but he also was traveling on the wrong side of the roadway. Mr. Solis

then collided with multiple vehicles, including the vehicle driven by Danielle Perez. Consequently, Danielle Perez sustained fatal injuries and was pronounced deceased on the scene on Sunday, May 10, 2020 at 1:50 am. Further, the children suffered severe injuries and were transported to University Medical Center in El Paso, Texas. In particular, Alyzae Aguirre (16) sustained a right femur fracture, small right wrist fracture, small laceration to her left foot, a blood clot, and a left carotid dissection as a result of the collision. Gysel Aguirre (14) sustained fractures on both femurs, lacerations to the abdomen, and multiple lacerations as a result of the collision. Lastly, Kingsten Aguirre (2) sustained nerve damage, spinal displacement fractures, and contusions to his spine as a result of the collision. Later investigation revealed Mr. Solis was fleeing from law enforcement and drove the wrong way to try and attempt to get away from law enforcement. Sunland Park PD and New Mexico State Police were negligent in the operation of their motor vehicles by engaging in a high-speed pursuit that put the public at risk. Such negligence caused substantial injuries to Alyzae Aguirre, Gysel Aguirre, and Kingsten Aguirre, as well as the death of Danielle Perez. In the alternative, Sunland Park PD and New Mexico State Police breached their statutory duty to enforce the criminal law when it did not enforce traffic laws against Mr. Solis, whose truck was speeding and collided with three other vehicles, thereby killing Danielle Perez and injuring her children.

Pursuant to Section 41-4-1(A) of the New Mexico Statutes Annotated:

"(A) Every person who claims damages from the state or any local public body under the Tort Claims Act [41-4-1 NMSA 1978] shall cause to be presented to the risk management division for claims against the state, the mayor of the municipality for claims against the municipality, the superintendent of the school district for claims against the school district, the county clerk of a county for claims against the county, or to the administrative head of any other local public body for claims against such local public body, within ninety days after an occurrence giving rise to a claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place and circumstances of the loss or injury." NM Stat. § 41-4-16 (A).

Section NMSA 41-4-5 of the New Mexico Statutes Annotated further provides that:

"The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft."

Section NMSA 41-4-12 of the New Mexico Statutes Annotated further provides that:

"The immunity granted pursuant Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, failure to

comply with duties established pursuant to statute or law or deprivation of any right, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties. For the purposes of this section, "law enforcement officer" means a public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes."

In keeping with the requirements of the laws of the State of New Mexico, this letter shall serve as official notice of damages caused by a governmental entity for a claim for which immunity has been waived under the Tort Claims Act.

On this 5th day of August 2020, Gerardo Aguirre, Individually and on Behalf of the Danielle Perez & Minors has put Sunland Park PD on notice of his claim in compliance with New Mexico law. We have outlined as much information as is available at this time, according to the circumstances surrounding the injuries and death as required. Said notice is hereby incorporated in its entirety by direct reference thereto for its literal tenor, reading and effect.

Gerardo Aguirre, Individually and on Behalf of Danielle Perez & Minors hereby petitions for redress, satisfaction, compensation and relief for their damages to compensate for their loss, injuries, hedonic damage, emotional distress, incapacity, impairment, loss of consortium, disfigurement, medical bills, and other damages sustained in the past, sustained up to the present time and which will be sustained in the future as a result of their loss and injuries.

Very truly yours,



ALEJANDRO ACOSTA, III
Attorney for Plaintiffs

AA/xd
Enclosures (as stated).

INVESTIGATION REVIEW:

Rick Foley investigations, LLC was assigned by the New Mexico Self Insurer's Fund to review findings from the Lyle Adjustment Company. I reviewed the report and Sunland Park Police Report No. 2020-00003589 and concluded the following:

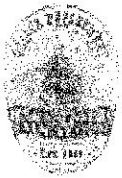
In this case Officer Duran observed a traffic violation that based on the speed alone would have caused a reasonable person to believe that the public's safety was at risk. Officer Duran made a U-turn with the decision to initiate a legal traffic stop. According to Officer Duran he did not activate any emergency lights and siren and was trying to catch up to the vehicle. Officer Duran stated that he only activated his emergency lights after he saw that a motor vehicle accident occurred. Because claimant Aguirre's actions were already in motion and was not as a result of an attempted traffic stop and Officer Duran was within the national standards for law enforcement pursuit, I concur that there is no negligence or liability in this claim.

Submitted by:

R. Foley

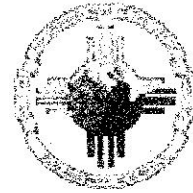
Rick Foley
Rick Foley Investigations, LLC

No one who participated in any way with the investigating, reporting or supervision of this assignment is a relative, personal friend or acquaintance of any employee involved in the incident investigated.



Sunland Park Police Case Report

Summary



Print Date/Time: 02/22/2021 13:15
 Login ID: mgalvan
 Case Number: 2020-00003589

SPPD
 ORI Number: NM0070600

Case

<p>Case Number: 2020-00003589 Location: MCNUTT RD / PETE V DOMENICI INTL BLVD SUNLAND PARK, NM 88008 Reporting Officer ID: SP128 - DURAN</p>	<p>Incident Type: Assist Police Occurred From: 05/09/2020 22:48 Occurred Thru: 05/09/2020 22:48 Disposition: Disposition Date: Reported Date: 05/09/2020 22:49 Saturday</p>
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Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
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Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
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Arrests

Arrest No.	Name	Address	Date/Time	Type	Age
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Property

Date	Code	Type	Make	Model	Description	Tag No. Item No.
------	------	------	------	-------	-------------	------------------

Vehicles

No.	Role	Vehicle Type	Year	Make	Model	Color	License Plate	State
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On 05/09/2020 at 2248 hours while on patrol for the City of Sunland Park, County of Dona Ana, State of New Mexico, I, Officer A. Duran was traveling south bound on McNutt Rd, near 5650 McNutt Rd, when I observed a red in color pickup truck, traveling north bound on McNutt Rd at 95mph on a posted 50mph zone.

I immediately turned my marked patrol vehicle around and attempted to catch up to the pickup truck, but as I turned my marked unit, the red pickup truck was out of sight. I continued to travel north bound on McNutt Rd, without my emergency lights turned on. When I reached McNutt Rd and Britain Dr., the red pickup truck was near Comerciantes Blvd. From the distance, it appeared that the pickup truck was traveling on the opposite lane of travel. I continued to travel north bound and as I was passing near Comerciantes Blvd, I observed the pickup truck crash into several vehicles. Once I observed the crash, I immediately notified central dispatch of a motor vehicle crash, and requested extra response.

As I began scanning through the crash, I observed a female driver in a small dark in color SUV who appeared to be out of conscious. I observed that the female driver did have visible injuries. The female driver appeared to have blood on her face and arm. I continued to the other vehicle involved, which was a light blue or gray in color SUV and I observed a female exit the vehicle. Due to the driver exiting the vehicle, I did not observe additional passengers in the vehicle. I then observed the same red pickup truck, and a male individual exit the driver side door, and lay himself on the ground near his vehicle. The last vehicle I observed was a dark in color sedan, who a made that was on scene, stated that his family was inside the vehicle. The individual did state that there was a small child in the back seat of the vehicle. At that point, I grabbed my knife, used the window breaking tool, and broke to window to make contact with the child. The male individual was able to get the child out of the back seat, in which the child was breathing and conscious at that time. I also observed a female that was sitting in the front right seat, who was conscious and also breathing, but did have visible injuries. I continued to make contact with a female driver, who appeared to be trapped in between her seat and the steering wheel. The driver did appear to be unconscious, so I checked for a pulse, but was not able to locate one. As I was attending to the driver, I observed another female that was laying down in the floor of the back seat. I asked the male individual, who claimed that it was his family, who was the female on the floor and he stated it was his daughter. I did break the rear left window and made contact with the female. The female did have visible injuries to her body, to include her right leg. I began to ask the female if she could tell me her age and she did state that she was fourteen years old.

I then observed a medic and advised him that I was not able to locate a pulse on the driver of the vehicle. He then immediately took action and began attending to the female. After several minutes, the Sunland Park Fire Department was able to open the door, and I assisted them on extracting the fourteen year old female out of the vehicle, and properly secure her on a medical bed.

Once I observed that New Mexico State Police arrived on scene, I advised them of what I had observed. New Mexico State Police did gather all my information, and took over the scene.

Video camera is available. No further information, end of report.

Lyle Adjustment Co.

P.O. Box 5
Las Cruces, New Mexico 88004

Office: (575) 524-8001
Email: lyleadj@aol.com

April 13, 2021

Adam Aldaz
NMML
aaldaz@nmml.org

RE: Claim# : 2020027434
Insured : Sunland Park Police
Claimant : Gerardo Aguirre
D/Loss : 05/09/2020
Our File : L 31572

Dear Adam:

I received this assignment by email from your office on September 1st, 2020.

This loss involves wrongful death of the claimant's wife during an auto accident.

My investigation revealed on May 9th, 2020, the claimant was in one vehicle and the claimant's wife was in another vehicle with his children when they approached an intersection of McNutt and Pete Dominici Highway. The claimant started to turn left first, then next thing he knew he heard a bunch of noise behind him and did not see his wife's vehicle. Then the next thing he knew there was a big accident and police vehicles arriving on scene. The claimant has an attorney and was notified shortly after I received the claim that I am investigating. I have not heard anything from them since they stated they would send me information they had.

I did not have any information from Sunland Park on this claim for many months during because of the covid pandemic. It took a long time to get someone from Sunland Park City Hall to respond back to my emails. I finally received response back from Daniel Corranco of City Clerk's Office. He did inform me he would get as much info as he could. He had Nelly of the Police Department email me all the reports on the accident they had. I reviewed Officer Duran's statement of what he witnessed as he was the closest officer in pursuit.

I recently was able to speak to a Lt. of the Sunland Park Police Department. I was trying to speak to Officer Duran, but he is in Albuquerque for training and will not be back until after April 20th. Lt. and Sgt. both called me about the accident. They advised me there is dash cam video of the pursuit and will have that ready for me to review. They also stated we were not on the scene exactly when the accident happened like the claimant stated in his attorney's letter. Once Officer Duran is back in Sunland Park, I will set up a time and get his statement and review dash cam video of his pursuit.

Enclosed is Officer Duran's written statement on what he observed and saw during his pursuit.

Sincerely,

Terik S. Gohrick
Claims Adjuster

TSG

Enclosures: Sunland Park Reports from Police Department

Lyle Adjustment Co.

P.O. Box 5
Las Cruces, New Mexico 88004

Office: (575) 524-8001
Email: lyleadj@aol.com

May 4, 2021

Adam Aldaz
NMML
aaldaz@nmml.org

RE: Claim# : 2020027434
Insured : Sunland Park Police
Claimant : Gerardo Aguirre
D/Loss : 05/09/2020
Our File : L 31572

Dear Adam:

I was able to travel to Sunland Park and to speak with Officer Duran of the Sunland Park Police Department. Enclosed is a recorded statement regarding what he witnessed during the night of the accident.

To summarize Officer Duran's statement, he stated that night a vehicle heading northbound on McNutt was speeding 95mph in a 50mph zone as Officer Duran was traveling southbound on McNutt. Officer Duran turned around to follow the vehicle. Once he turned around the vehicle was out of sight. Officer Duran did not engage his emergency lights. Once he traveled around the curve he notice the vehicle was on the opposite lane of traffic heading northbound on McNutt and crashed in the intersection of McNutt and Pete Domenici Highway causing a 4 car accident. The vehicle was about a half mile from where the officer could see him after the curve ended on McNutt. Officer Duran immediately called for assistance and was the first on the scene. I do have a copy of the body camera after the accident happened if that is needed.

It is my opinion after speaking with Officer Duran and other Sunland Park Police officers briefly there was no negligence on the Sunland Park Police. Officer Duran was a half mile behind the vehicle that caused the accident. Officer Duran did not turn on his emergency lights to pursue as he turned around and started following when he lost sight. By the time he saw the vehicle again it crashed into the intersection in the wrong side of the traffic. The vehicle that caused the accident is the one at fault, no other party.

Based on this investigation I recommend denying the claimant for wrongful death for his wife.

Sincerely,

Terik S. Gohrick
Claims Adjuster

TSG

Enclosures: Recorded Statement from Officer Armando Duran

Claim Number : 2020027434
Interviewing : Officer Duran

Our File #: L 31572
Insurance Company: NMML

This is Terik Gohrick on April 27th, 2021. I am interviewing Officer Armando Duran.

Q: Is this statement being made with your full knowledge and consent?

A: Yes

Q: Please state your full name

A: Officer Armando Duran with Sunland Police Department

Q: Your date of birth?

A: August 8, 1992

Q: Your telephone number?

A: Area code (915)549-2219 and my office number at the station is (575)589-2225.

Q: You work for the Sunland Police Department?

A: Yes, that is correct.

Q: How long have you been employed with Sunland Police?

A: About three (3) years and 9 months now. Four (4) years in July.

Q: What is the address of Sunland Park Department?

A: 4000 McNutt Rd, Sunland Park, NM 88063

Q: Your position at the police dept?

A: Patrol Officer

Q: On the night of May 9, 2020, where you working that night?

A: I was working that night.

Q: What were you doing that night?

A: I was working patrol shift that night and responding to calls.

Q: Where you driving in your vehicle?

A: Yes, my work vehicle.

Q: Anything unusual that evening while you were patrolling?

A: Yes as far as the incident we were discussing that I can recall.

Q: Were you travelling on McNutt Road?

A: That's correct.

Q: Which direction were you travelling when this vehicle was going by?

A: I was traveling on McNutt Road southbound. Near Fire Station which on or near 5600 block on McNutt. I was going southbound on McNutt Road when I observe a vehicle traveling at a high rate of speed. I confirmed my radar and it was displaying 95 mph. So at that point, by the time I did the U-turn, I attempt to catch up with the vehicle and my lights off. Were turned off but the vehicle was out of sight. Just due to McNutt going Northbound McNutt curves so about the time I was able to complete the U-turn, the vehicle was already passed that curve. It was out of sight. I started approaching Northbound on McNutt, I cleared the curve I was able to see the same pickup truck with rear lights traveling Northbound but in the Southbound lane approaching Comerciantes Blvd. He was traveling opposite of travel.

Q: What time did this occur? Was it around 10 pm?

A: Yes, around there or so.

Q: Was it dark?

A: Yes it was dark.

Q: Was traffic busy?

A: It was some traffic. A little bit of traffic.

Q: When you were coming around the curve and did you see the vehicle enter the intersection? What happened?

A: Will, as I was behind him, he was in the opposite of lane of travel, but my lights were still not on until he passed Comerciantes and the next thing you know, I heard and saw a crash. As soon as I saw the crash that's when I turned on my lights and approach the intersection and requested a (unintangible)over the radio of a vehicle accident with a and requested extra response. Reason being why I requested extra response, just by the looks of it. I knew it was going to be bad. From there when I came to realize that at first, I believe there was only (3) three vehicles and happened to be a fourth one also which was in a distance.

Q: What type of vehicle went by you when a high rate of speed?

A: It was a....at that point, as soon as I saw it, I knew it was a big truck, a dark color truck, pickup truck, which I confirmed it whenever it crashed which was a red color Ford F250.

Q: When you turned around to follow the vehicle, how far behind it were you when it the intersection?

A: When it hit the intersection, I would have to say at least, quarter mile to a half a mile distance from where it actually hit and my location.

Q: You were not right behind the vehicle?

A: I was not right behind it.

Q: You were behind trying to get closer

A: Right

Q: By then the vehicle was at the intersection and caused the accident.

A: Right.

Q: And when you got to the intersection, what did you find out?

A: As soon as I got to the intersection, the way I position my vehicle, was right underneath one of the lights and I did that to block the traffic. As I got out, what I saw what was Nissan the first vehicle. I saw a female was inside. Who was clearly I saw the vehicle from the rear end was completely smashed in. Ah, I remember seeing a female driver there with. A female driver, my first sight, okay she is, I believe she was deceased at that point. I notified my dispatcher there was one deceased but she was not conscious. At that point, I move on to the next vehicle. I observed a female getting out and ask her if there was any more passengers? She responded, no there is not. I saw the red pickup truck. As I was approaching the red pickup truck, I observed a male driver exit the driver side and take a few steps and laid himself on the ground. At that point, I was going to render aide to him. Another individual approach me, and advised me, his family was inside the car. He pointed towards a distance that's where it was a Nissan, a small compact vehicle where the victim was inside that vehicle along with his wife and children.

Q: Did anyone else arrive at the scene?

A: Everyone arrived at the scene. Officer Dominquez was there. Ramirez was there and Delgado was there. Medical staff arrived. Fire Engines showed up.

Q: Any other Law enforcement came to your aide?

A: New Mexico State Police and Dona Ana Sheriff. Border Patrol on the scene. At the scene, it was turned over to the New Mexico State Police.

Q: What did you do next?

A: I assisted in anything I could. I was assisting the Nissan and a 13 year old who was injured. I was talking to her to make sure to keep her awake and alert. Helping doing that. Getting a two year old medical attention and assisting with whatever I could.

Q: How was the road condition and the weather condition?

A: It was clear and dry. The road were nice.

Q: The road was dry and weather was clear.

A: Yes sir.

Q: Have you understood all the questions?

A: Yes

Q: Have your answers have been to the best of your knowledge?

A: Yes

Q: Do I have your permission to take this statement?

A: Yes sir.

Q: Do I have your permission to turn off the recorder?

A: Yes

Claim Number : 2020027434
Interviewing : Officer Duran

Our File #: L 31572
Insurance Company: NMML

THIRD JUDICIAL DISTRICT
STATE OF NEW MEXICO
DONA ANA COUNTY, NEW MEXICO

GERARDO AGUIRRE, Individually, and
as Personal Representative of the Wrongful Death
Estate of DANIELLE PEREZ, deceased, and on
Behalf of MINORS, A.A., G.A., and K.A.

Plaintiffs,

vs.

Cause No: D-307-CV-2021-01759

Martin, James T.

THE CITY OF SUNLAND PARK, NEW MEXICO,
SUNLAND PARK POLICE DEPARTMENT
ARMANDO DURAN, and ERIC SOLIS

Defendants,

**PLAINTIFFS' COMPLAINT FOR NEGLIGENCE RESULTING IN WRONGFUL
DEATH, PERSONAL INJURY, LOSS OF CONSORTIUM, AND OTHER DAMAGES
UNDER THE NEW MEXICO TORT CLAIMS ACT, THE NEW MEXICO
WRONGFUL DEATH ACT, AND NEW MEXICO COMMON LAW**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW PLAINTIFFS GERARDO AGUIRRE, Individually, and as Personal Representative of the Wrongful Death Estate of DANIELLE PEREZ, deceased, and on Behalf of MINORS, A.A., G.A., and K.A., (hereinafter referred to as "Plaintiffs"), by and through their counsel of record, Alejandro Acosta, III of Flores, Tawney & Acosta P.C., complaining of THE CITY OF SUNLAND PARK, NEW MEXICO, SUNLAND PARK POLICE DEPARTMENT, ARMANDO DURAN, and ERIC SOLIS (hereinafter collectively referred to as "Defendants") and for his cause of action would show the Court as follows:

I. PARTIES, VENUE, JURISDICTION

1. Plaintiff GERARDO AGUIRRE is a resident of El Paso County, Texas and the widower of DANIELLE PEREZ, the deceased. He has been duly appointed as Personal

Representative by Court Order dated March 16, 2016, Case Number D-307-Cv-2021-00526. Plaintiff AGUIRRE is also the parent of MINORS, A.A., G.A., and K.A., the surviving children of PEREZ, deceased.

2. Defendant SUNLAND PARK POLICE DEPARTMENT is a municipality and “governmental entity” as defined by the New Mexico Tort Claims Act NMSA § 41-4-3(B) (2019) and may be served with process pursuant to N.M. R. Civ. P. Dist. Ct. 1-004 H.(1)(b) (2020) by serving Police Chief Javier Guerra at the Sunland Park Police Department located at 1000 McNutt Suite C Sunland Park, New Mexico, 88063 and by serving the New Mexico Attorney General, Hector Balderas at 201 N. Church St. Suite 315 Las Cruces, New Mexico 88001.

3. Defendant THE CITY OF SUNLAND PARK, NEW MEXICO is a “governmental entity” as defined by the New Mexico Tort Claims Act NMSA § 41-4-3(B) (2019) and may be served with process pursuant to N.M. R. Civ. P. Dist. Ct. 1-004 H.(1)(a) (2020) by serving its Mayor, Javier Perea, Office of the Mayor, 1000 McNutt Road Suite A Sunland Park, New Mexico 88063-9200 or wherever he may be found and by serving the New Mexico Attorney General, Hector Balderas at 201 N. Church St. Suite 315 Las Cruces, New Mexico 88001.

4. Defendant OFFICER ARMANDO DURAN is a “law enforcement officer” and “public employee” as defined by the New Mexico Tort Claims Act NMSA § 41-4-3(D), (F) (2019) and may be served with process pursuant N.M. R. Civ. P. Dist. Ct. 1-004 H.(1)(c) (2020) by serving him at the Sunland Park Police Department located at 1000 McNutt Suite C Sunland Park, New Mexico, 88063 or wherever he may be found and by serving the New Mexico Attorney General, Hector Balderas at 201 N. Church St. Suite 315 Las Cruces, New Mexico 88001.

5. Defendant ERIC SOLIS, on information and belief, is a resident of Dona Ana County, New Mexico and may be served at his residence 825 North Fourth Street Apartment 28

Anthony, New Mexico 88021-8273 or The Dona Ana County Detention Center located at 1850 Copper Loop Las Cruces, New Mexico 88005 or wherever he may be found.

6. Venue is proper in this Court pursuant to New Mexico Tort Claims Act NMSA § 41-4-18(B) (2019) and NMSA § 38-3-1 (2019).

7. This Court has jurisdiction over the parties and subject matter of this action pursuant to New Mexico Tort Claims Act NMSA § 41-4-18(A) (2019).

8. Plaintiffs have complied with all prerequisite notice of claim provisions as set forth in the New Mexico Tort Claims Act NMSA § 41-4-16 (2019).

II. FACTUAL ALLEGATIONS

9. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

10. On or about May 9, 2020, around 10:45 p.m. or 10:50 p.m., Plaintiffs were in the process of leaving Sunland Park, New Mexico to head to their new home located in East El Paso, Texas. Plaintiff AGUIRRE was driving one vehicle while Plaintiff PEREZ was driving a separate vehicle with MINORS as occupants.

11. Plaintiff AGUIRRE stopped at the light at the intersection of State Road 273 (McNutt Road) and State Highway 136 (Pete V Domenici International Highway) in Sunland Park, New Mexico—with Plaintiffs PEREZ and MINORS following—and waited for the light to turn green.

12. Once a green arrow appeared, signaling that Plaintiff AGUIRRE had the right of way, he made a left turn. After turning, Plaintiff heard a commotion behind him and could no longer see the vehicle that PEREZ and MINORS were traveling in.

13. Defendant SOLIS was driving a maroon-colored pickup truck while intoxicated or under the influence of intoxicating liquor, fleeing from law enforcement. Not only was Defendant SOLIS traveling north on McNutt Road at over 90 miles per hour, but he also was traveling on the wrong side of the roadway as an attempt to get away from law enforcement. Defendant SOLIS ran a red light at said intersection and collided with multiple vehicles, including the vehicle driven by Plaintiff PEREZ.

14. Defendant DURAN, a law enforcement officer and public employee with Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK, was pursuing Defendant Solis with his emergency signals on at high speed. At that time, Defendant DURAN was “on duty” and in the course and scope of his employment with Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK. He was operating a motor vehicle, a police unit, owned and entrusted to him by Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK. Accordingly, said Defendants are vicariously liable for the acts and omissions of Defendant DURAN.

15. As a result of the collision, Plaintiff MINORS sustained serious injuries to their bodies and were transported to University Medical Center in El Paso, Texas. In particular, Plaintiff A.A. sustained a right femur fracture, small right wrist fracture, a small laceration to her left foot, a blood clot, and a left carotid dissection. Plaintiff G.A. sustained fractures on both femurs, lacerations to the abdomen, and multiple lacerations. Plaintiff K.A. sustained nerve damage, spinal displacement fractures, and contusions to her spine. Plaintiff PEREZ sustained fatal injuries and was pronounced deceased on the scene on Sunday, May 10, 2020, at 1:50 a.m.

III. NEW MEXICO WRONGFUL DEATH ACT

16. The New Mexico Wrongful Death Act provides that when the death of an individual is “caused by the wrongful act, neglect, or default of another,” a personal representative of the deceased may bring suit within three years of the death to recover damages. NMSA §§ 41-2-1, 41-2-2, 41-2-3 (2021).

17. These statutes are applicable in this case, and a personal representative has been duly appointed by Court Order dated March 16, 2016, Case Number D-307-Cv-2021-00526.

IV. NEW MEXICO TORT CLAIMS ACT

18. The New Mexico Tort Claims Act grants governmental entities overarching immunity from tort liability. NMSA § 41-4-4 (2021). However, the Act provides certain exceptions to this immunity, which, if met, allow not only governmental entities, but also their employees acting within the course and scope of their business, to be held liable for their tortious acts. *Id.*

19. NMSA § 41-4-5 provides that governmental immunity is waived when a public employee acting the course and scope of his duties negligently operates a motor vehicle causing injuries or death to an individual.

20. Similarly, NMSA § 41-4-12 provides that governmental immunity is waived when a law enforcement officer acting within the course and scope of his duties violates his duties under statute or law or when his conduct causes battery or assault resulting in injuries or death to an individual.

21. Both of these exceptions to governmental immunity apply in this case.

V. NEGLIGENCE OF DEFENDANT DURAN

22. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

23. At all times material hereto, Defendant DURAN owed a reasonable degree of care to DANIELLE PEREZ and MINORS, as well as other motorists, to exercise reasonable care in the operation of the motor vehicle, a police unit, he was driving. *See* NMSA §§ 66-7-6(D), 66-7-332(C) (2019); *see also* *Cross v. City of Clovis*, 1988-NMSC-045, 108 N.M. 251, 755 P.2d 589.

24. Defendant DURAN was negligent in the operation of his motor vehicle by engaging in a high-speed pursuit that put the public at risk and in unreasonable danger. *See* NMSA § 41-4-5 (NMTCA); *see also* NMSA § 29-20-4 (2014) (“Law Enforcement Safe Pursuit Act”). In particular, Section 29-20-4(C)(2) of the Law Enforcement Safe Pursuit Act requires police departments to enforce, and thereby law enforcement officers to abide by, the following policy:

A law enforcement officer shall not initiate or continue a high speed pursuit when the immediate danger to the officer and the public created by the high speed pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large.
NMSA § 29-20-4 (2019).

25. Defendant DURAN was negligent in the operation of his motor vehicle by initiating and continuing a high-speed pursuit when the immediate danger to the public created by the high-speed pursuit exceeded the immediate danger to the public if the occupants of the motor vehicle (Defendant SOLIS) being pursued remained at large, thereby violating the aforementioned policy. *See* NMSA § 29-20-4 (2019).

26. A law enforcement officer has a duty to the motoring public and pedestrians to avoid collisions with other vehicles, avoid placing the citizens of Sunland Park in unreasonable

danger while pursuing suspects, and Defendant DURAN failed in his duty on May 9, 2020, in his pursuit of Defendant SOLIS.

27. Defendant DURAN failed to detain and arrest an intoxicated driver, Defendant SOLIS, before the situation escalated to a high-speed pursuit, who then acted with the requisite level of intent to commit assault and battery while driving intoxicated. *See Blea v. City of Espanola*, 1994-NMCA-008, 117 N.M. 217, 870 P.2d 755, cert. denied, 117 N.M. 328, 871 P.2d 984; *see also* NMSA § 41-4-12 (2019). Defendant DURAN's negligence caused a third party, Defendant SOLIS, to drive while intoxicated and kill DANIELLE PEREZ and severely injure MINORS.

28. Defendant DURAN breached his statutory duty to enforce the criminal law when he did not enforce traffic laws against Defendant SOLIS, whose truck was speeding, ran a red light, and collided with three other vehicles, thereby killing Plaintiff PEREZ and severely injuring MINORS. *See* NMSA §§ 41-4-12, 4-37-4 (2019).

29. Additionally, Defendant DURAN failed to maintain his duty to drive with due regard for the safety of all persons. *See* NMSA 66-7-6(D) and 66-7-332(C) (2019).

30. One or more of the foregoing negligent acts and omissions, whether taken singularly or in any combination, was a direct and proximate cause of Plaintiffs' injuries, damages, and death.

VI. NEGLIGENCE, TRAINING, SUPERVISION & RETENTION

31. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

32. Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK were negligent in hiring, training, supervision, and retention of Defendant DURAN.

33. Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK's negligence includes but is not limited to:

- a. Inadequate screening of Defendant DURAN as a prospective employee;
- b. Inadequate management, training, and enforcement of policies regarding vehicle operation and high-speed police pursuits, namely Section 29-20-4(C)(2) of the Law Enforcement Safe Pursuit Act;
- c. Failure to teach, educate, and train its employees on the operation of an emergency vehicle;
- d. Placement or retention of Defendant DURAN as police officer; and
- e. Inadequate supervision of Defendant DURAN.

34. One or more of the foregoing negligent acts and omissions, whether taken singularly or in any combination, was a direct and proximate cause of Plaintiffs' injuries, damages, and death.

35. Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK are vicariously liable for the acts or omissions of Defendant DURAN under the doctrine of respondeat superior.

VII. RESPONDEAT SUPERIOR

36. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

37. Defendant DURAN, at all times material hereto, was an employee of Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK.

38. Defendant DURAN, at all times material hereto, was acting within the course and scope of his employment with Defendants SUNLAND PARK POLICE DEPARTMENT and THE

CITY OF SUNLAND PARK and was working under the control of Defendants and in furtherance of the legitimate business activities of Defendants.

VIII. NEGLIGENT ENTRUSTMENT

39. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

40. Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK were the owners of the vehicle driven by Defendant DURAN. They entrusted the motor vehicle to Defendant DURAN on or about May 9, 2020.

41. At all times material hereto, Defendant SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK owed a duty to DANIELLE PEREZ and MINORS, as well as others, to exercise reasonable care in the operation or entrustment of a vehicle to Defendant DURAN. Further, they knew and were aware of the risk that entrusting a motor vehicle to a negligently trained and supervised employee posed to the general public.

42. Defendants SUNLAND PARK POLICE DEPARTMENT and THE CITY OF SUNLAND PARK failed to exercise reasonable care under the circumstances, which resulted in the multiple-vehicle collision, which directly and proximately caused severe personal injuries to MINORS and the death of DANIELLE PEREZ.

IX. NEGLIGENCE OF DEFENDANT SOLIS

43. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

44. At all times material hereto, Defendant SOLIS owed a reasonable degree of care to DANIELLE PEREZ and MINORS, as well as other motorists, to exercise reasonable care in the operation of the maroon-colored pickup truck he was driving.

45. Defendant SOLIS failed to exercise reasonable care under the circumstances in the manner or method of his driving, which resulted in the multiple vehicle collision.

46. As a direct and proximate result of Defendant SOLIS's breach of duty owed to Plaintiffs and others, Defendant SOLIS caused, in whole or in part, the collision which resulted in damages to Plaintiffs, including but not limited to compensatory damages pursuant to the Wrongful Death Act.

X. ASSAULT AND BATTERY—DEFENDANT SOLIS

47. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

48. On or about May 9, 2020, Defendant SOLIS intentionally assaulted and battered DANIELLE PEREZ and MINORS by violently striking the vehicle in which they were traveling in with Defendant SOLIS's maroon-colored pickup truck.

49. Defendant SOLIS's intentional intoxication and subsequent decision to drive is sufficient intent for assault and battery because Defendant SOLIS was substantially certain that a particular result would occur. *See Cal. First Bank v. State*, 111 N.M. 64, 73-74 n.6, 801 P.2d 646, 955-56 n. 6 (1990) ("The decision to drive [while intoxicated or under the influence] constitutes an intent to engage in unlawful conduct that invades the protected interests of others, and this intent provides sufficient grounds to treat the conduct as an intentional tort."); *see also Blea v. City of Espanola*, 1994-NMCA-008, 117 N.M. 217, 870 P.2d 755, cert. denied, 117 N.M. 328, 871 P.2d 984.

50. As a direct and proximate result of the assault and battery as described above, DANIELLE PEREZ and MINORS was seriously, painfully, and permanently injured.

XI. DANIELLE PEREZ'S ESTATE DAMAGES

51. Plaintiffs would show that as a direct result of Defendants' acts and omissions, DANIELLE PEREZ sustained personal injuries, which led to her eventual death, and her estate was severely damaged. DANIELLE PEREZ suffered damages, including but not limited to:

- a. Hedonic damages i.e., the value of the deceased's life apart from her earning capacity;
- b. Conscious pain, suffering, mental anguish, emotional distress and excruciating physical agony prior to her death;
- c. Medical, hospital, and nursing expenses;
- d. Funeral and burial expenses;
- e. Impairment;
- f. Disfigurement; and
- g. Punitive damages.

DANIELLE PEREZ sustained bodily injuries and died.

XII. OTHER DAMAGES

52. Plaintiffs would show that as a direct result of Defendants' acts and omissions, MINORS sustained severe personal injuries. Plaintiffs AGUIRRE and MINORS suffered damages, including but not limited to:

- a. Medical, hospital, and nursing expenses;
- b. Conscious pain, suffering, mental anguish, emotional distress and excruciating physical agony;
- c. Loss of consortium and for all other damages resulting from the termination of their parent-child relationships and husband-wife relationship, including the loss of the love, comfort, and companionship, and society;
- d. Loss of support, inheritance, and contributions;
- e. Loss of care, maintenance, support, services, advice, counsel, and all other reasonable contributions having a pecuniary value;
- f. Future pain and suffering;
- g. Impairment;
- h. Disfigurement; and
- i. Punitive damages.

JURY DEMAND

53. Plaintiff respectfully requests a trial by jury on these issues in this case and will submit a separate jury demand with this Complaint.

54. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be cited to appear and answer, and that upon final trial, Plaintiffs have judgment against Defendants for all relief requested, for costs, pre-judgment and post judgment interest and for such other relief, general and special, at law or in equity, to which Plaintiffs are entitled.

Respectfully submitted,

FLORES, TAWNEY & ACOSTA P.C.



ALEJANDRO ACOSTA, III

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1485 N. Main St., Suite B

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THIRD JUDICIAL DISTRICT
STATE OF NEW MEXICO
DONA ANA COUNTY, NEW MEXICO

GERARDO AGUIRRE, Individually, and
as Personal Representative of the Wrongful Death
Estate of DANIELLE PEREZ, deceased, and on
Behalf of MINORS, A.A., G.A., and K.A.

Plaintiffs,

vs.

Cause No: D-307-CV-2021-01759

Martin, James T.

THE CITY OF SUNLAND PARK, NEW MEXICO,
SUNLAND PARK POLICE DEPARTMENT,
ARMANDO DURAN, and ERIC SOLIS

Defendants,

JURY REQUEST

On this the 28th day of July, 2021, Plaintiff respectfully requests a trial by a six (6) panel
jury.

Respectfully submitted,

FLORES, TAWNEY & ACOSTA P.C.



ALEJANDRO ACOSTA, III

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Attorney for Plaintiff

THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA
STATE OF NEW MEXICO

GERARDO AGUIRRE, Individually, and
as Personal Representative of the Wrongful Death
Estate of DANIELLE PEREZ, deceased, and on
behalf of MINORS, A.A., G.A. and K.A.,

Plaintiffs,

vs.

No. D-307-CV-2021-01759

THE CITY OF SUNLAND PARK, NEW MEXICO,
SUNLAND PARK POLICE DEPARTMENT,
ARMANDO DURAN and ERIC SOLIS,

Defendants.

JURY DEMAND

The City of Sunland Park, New Mexico, including Sunland Park Police Department, which is not a separate suable entity, and Armando Duran hereby demand a trial by jury of six (6) additional persons, for a total of twelve (12), on all issues triable by right.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

Electronically Filed

By /s/ Patricia G. Williams

Patricia G. Williams

Attorneys for The City of Sunland Park, NM;
Sunland Park Police Dept.; and Armando Duran
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Albuquerque, New Mexico 87103-1308
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pwilliams@wwlaw.us

We hereby certify that a copy of the foregoing
was submitted for service upon all counsel of record
through the Court's efile and serve system
on this 3rd day of September, 2021.

WIGGINS, WILLIAMS & WIGGINS, P.C.

By /s/ Patricia G. Williams
Patricia G. Williams

THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA
STATE OF NEW MEXICO

GERARDO AGUIRRE, Individually, and
as Personal Representative of the Wrongful Death
Estate of DANIELLE PEREZ, deceased, and on
behalf of MINORS, A.A., G.A. and K.A.,

Plaintiffs,

vs.

No. D-307-CV-2021-01759

THE CITY OF SUNLAND PARK, NEW MEXICO,
SUNLAND PARK POLICE DEPARTMENT,
ARMANDO DURAN and ERIC SOLIS,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT

The City of Sunland Park, New Mexico, including Sunland Park Police Department (“SPPD”) which is not a separate suable entity, and Armando Duran (collectively “these Defendants”) respond to Plaintiffs’ Complaint for Negligence Resulting in Wrongful Death, Personal Injury, Loss of Consortium, and Other Damages under the New Mexico Tort Claims Act, the New Mexico Wrongful Death Act, and New Mexico Common Law, filed July 28, 2021 (the “Complaint”) and affirmatively defend as follows:

1. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint and therefore deny them.
2. These Defendants deny the allegations in Paragraph 2 of the Complaint and state SPPD is not a proper party because it is not a separate suable entity under New Mexico law.
3. The allegations in Paragraph 3 and 4 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

4. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint and therefore deny them.

5. The allegations in Paragraph 6 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

6. These Defendants admit the allegations in Paragraph 7 of the Complaint.

7. The allegations in Paragraph 8 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

8. These Defendants incorporate by reference their responses to the allegations in the Complaint in response to Paragraph 9 of the Complaint.

9. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 10 through 12 of the Complaint and therefore deny them.

10. These Defendants deny the allegations in Paragraph 13 of the Complaint.

11. These Defendants deny the allegations in the first sentence of Paragraph 14 of the Complaint. These Defendants admit the allegations in the second sentence of Paragraph 14 of the Complaint. The allegations in the last sentence of Paragraph 14 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

12. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint and therefore deny them.

13. The allegations in Paragraphs 16 through 21 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

14. These Defendants incorporate by reference their responses to the allegations in the Complaint in response to Paragraph 22 of the Complaint.

15. The allegations in Paragraph 23 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

16. These Defendants deny the allegations in Paragraphs 24 and 25 of the Complaint.

17. The allegations in Paragraph 26 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

18. These Defendants deny the allegations in Paragraphs 27 through 30 of the Complaint.

19. These Defendants incorporate by reference their responses to the allegations in the Complaint in response to Paragraph 31 of the Complaint.

20. These Defendants deny the allegations in Paragraphs 32 through 35 of the Complaint.

21. These Defendants incorporate by reference their responses to the allegations in the Complaint in response to Paragraph 36 of the Complaint.

22. These Defendants deny the allegations in Paragraph 37 of the Complaint, but affirmatively state that Mr. Duran is an employee of the City of Sunland Park.

23. These Defendants deny the allegations in Paragraph 38 of the Complaint.

24. These Defendants incorporate by reference their responses to the allegations in the Complaint in response to Paragraph 39 of the Complaint.

25. These Defendants deny the allegations in Paragraph 40 of the Complaint and affirmatively state that the vehicle driven by Mr. Duran is owned by the City of Sunland Park.

26. The allegations in Paragraph 41 of the Complaint are legal conclusions which therefore require no response. If response is required, these Defendants deny the allegations.

27. These Defendants deny the allegations in Paragraph 42 of the Complaint.

28. Because the allegations made in Paragraphs 43 through 50 (Counts IX and X) of the Complaint are not directed toward these Defendants, no response is provided. If a response is required, these Defendants deny the allegations.

29. These Defendants deny the allegations in Paragraphs 51 and 52 of the Complaint.

30. These Defendants deny that Plaintiffs are entitled to seek any remedy as requested in the Wherefore Paragraph 54 of the Complaint.

31. Any allegations made in the Complaint not responded to are hereby specifically denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted against these Defendants.

SECOND AFFIRMATIVE DEFENSE

To the extent the Complaint states, on its face, any valid federal claims against these Defendants, which is denied, these Defendants affirmatively state that their actions were objectively reasonable under the circumstances and were done in good faith and Mr. Duran is entitled to qualified immunity.

THIRD AFFIRMATIVE DEFENSE

Immunity for these Defendants under the New Mexico Tort Claims Act is not subject to any waiver of sovereign immunity.

FOURTH AFFIRMATIVE DEFENSE

The alleged conduct of these Defendants does not rise to the level of a constitutional violation.

FIFTH AFFIRMATIVE DEFENSE

These Defendants were not negligent.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have not complied with the provisions of the New Mexico Tort Claims Act.

SEVENTH AFFIRMATIVE DEFENSE

The actions of these Defendants did not violate any of Plaintiffs' rights.

EIGHTH AFFIRMATIVE DEFENSE

Defendant Duran exercised due care in the execution or enforcement of the law as a police officer and in the operation of the police unit he was driving.

NINTH AFFIRMATIVE DEFENSE

These Defendants, at all times material to the allegations in the Complaint, acted in good faith, without malice, and within the scope of their lawful duties.

TENTH AFFIRMATIVE DEFENSE

The actions of these Defendants, at all times material to the allegations made in the Complaint, were reasonable, proper and legal.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were due to an independent intervening cause rather than due to any fault on the part of these Defendants.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' injuries or losses, if any, were proximately caused by the negligence, intentional misconduct or other fault of the Plaintiffs and/or third persons for whom these Defendants are not liable.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant Duran is not liable for any injury resulting from his acts or omissions, where the acts or omissions were the result of the exercise of the discretion vested in him as a police officer.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise ordinary care and such failure proximately caused the injury and damages caused by Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' state law claims are subject to the provisions of the New Mexico Tort Claims Act and all of its limitations and immunities.

SIXTEENTH AFFIRMATIVE DEFENSE

These Defendants did not batter Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

These Defendants did not assault Plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant Duran was not engaged in a high-speed chase and was not in violation of the Law Enforcement Pursuit Act at the time of the incident which is the subject of the Complaint.

NINETEENTH AFFIRMATIVE DEFENSE

These Defendants breached no duty owed to Plaintiffs.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages, if such damages were in fact incurred.

TWENTY-FIRST AFFIRMATIVE DEFENSE

If these Defendants were negligent, which is specifically denied, decedent was contributorily or comparatively negligent, which affects recovery.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Decedent failed to exercise ordinary care by failing to keep a proper lookout which was the proximate cause of the accident at issue in this Complaint.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages pursuant to the New Mexico Tort Claims Act.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs did not suffer any detriment or damages in any amount whatsoever due to the actions of these Defendants.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

DPS is entitled to an allocation of fault to and/or indemnification from those third parties and/or agencies whose conduct proximately caused or contributed to cause injuries allegedly sustained by Plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to attorneys' fees, litigation expenses or costs from these Defendants under the facts of this case.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to pre- or post-judgment interest from these Defendants under the facts of this case.



Robert Caswell Investigations
5901 Wyoming Blvd NE, Suite J 332
Albuquerque, NM 87109
505-797-5661
rci@rcipi.com

CONFIDENTIAL INFORMATION / ATTORNEY WORK PRODUCT

The information contained herein was obtained at the request and direction of the client pursuant to a contractual agreement; and is intended for the exclusive use of the client. The discovery, reporting and anticipated use of this information has been discussed with the client and as such is an extension of the clients work product. The continued confidentiality of this information by Robert Caswell Investigations has been assured the client as a condition of employment. Any information obtained by Robert Caswell Investigations in connection to this matter whether directly or collaterally will not be divulged without the written consent of the client. Unless otherwise indicated herein, information obtained from other sources has not been verified and Robert Caswell Investigations does not guarantee the accuracy, completeness or timeliness of said information; and Robert Caswell Investigations assumes no liability for any loss or injury resulting from the use of information obtained from sources over which Robert Caswell Investigations has no control.

LOCATE REPORT

Ref: 2020027434

Prepared for: New Mexico Self Insurers' Fund

Date: March 17, 2022



Locate Report

Name: GERARDO L AGUIRRE
Name: GERARDO G AGUIRRE
Name: GERARDO L AGUIRRE III
Name: GERARDO GERARDO
Name: AGUIERRE JERRY III

Date of Birth: **01/04/1981** Born 41 Years Ago
Gender: **Male**
SSN: **462-61-0971**, issued in TEXAS in 1983

Locate Report Summary

Bankruptcies: **None found**
Possible Phones: **19 found**
Driver's License: **3 found**
Address(es) found: **9 found**
Possible Criminal Records: **Yes**

Driver's License:

DL#: **24985434**
Issuing State: TX
GERARDO AGUIRRE
10739 PESCADOR DR, EL PASO, TX 79935-2618 (EL PASO COUNTY)
DOB: 01/04/1981
Issued: 09/13/2006
First Issued: 09/13/2006

Possible Employers

Business Name: **VISTA VENTANA APT (01/28/2014 to 06/28/2021)**
Phone: **(915) 204-6407 (MT) VISTA VENTANA APT**
Address: **10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY)**

Business Name: **DIVERSIFIED INFORMATION TECH (09/14/2019)**
Phone: **(917) 766-4147 (ET) DIVERSIFIED INFORMATION TECH**
Address: **10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY)**

Business Name: **INTEGRITY ASSET MANAGEMENT (11/30/2015 to 01/12/2017)**
Phone: **(915) 315-5960 (MT) INTEGRITY ASSET MANAGEMENT**
Address: **10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY)**

Business Name: **INTEGRITY ASSET MANAGEMENT (11/30/2015)**
Phone: **(915) 772-5170 (MT) INTEGRITY ASSET MANAGEMENT**
Address: **8201 LOCKHEED DR, EL PASO, TX 79925 (EL PASO COUNTY)**

Business Name: **VISTA VENTANA (01/28/2014 to 10/09/2015)**
Phone: **(915) 760-6767 (MT) VISTA VENTANA**
Address: **10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY)**

Business Name: **INTEGRITY ASSET MANAGMENT (06/04/2012)**
Phone: **(915) 999-5625 (MT) INTEGRITY ASSET MANAGMENT**
Address: **10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY)**

Addresses to mail:

12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY) (02/1999 to 03/17/2022)
10739 PESCADOR DR, EL PASO, TX 79935-2618 (EL PASO COUNTY) (02/1999 to 03/02/2022)
1695 ODYSSEY CT, CASTLE ROCK, CO 80109-3658 (DOUGLAS COUNTY) (04/2020)
5151 CHROMITE ST APT 2-7, EL PASO, TX 79932-1646 (EL PASO COUNTY) (08/31/2018 to 02/25/2020)
7133 N MESA ST APT 163, EL PASO, TX 79912-3602 (EL PASO COUNTY) (02/28/2018 to 09/09/2019)
10891 EDGEMERE BLVD APT B5, EL PASO, TX 79935-1338 (EL PASO COUNTY) (07/31/2018)
5453 RIDGE ST, EL PASO, TX 79932-1477 (EL PASO COUNTY) (11/12/2011 to 04/28/2018)
12948 COZY COVE AVE # 1, EL PASO, TX 79938-1212 (EL PASO COUNTY) (01/06/2022)
5151 CHROMITE ST, EL PASO, TX 79932-1690 (EL PASO COUNTY) (09/11/2019)

CONFIDENTIAL INFORMATION/ATTORNEY WORK PRODUCT

**Possible Email Addresses:**

ajerry56@yahoo.com (100%)
ajerry56@yahoo.com (100%)
gerardoa@icloud.com (70%)
gerardo.aguirre@ameritrade.com (45%)
aguirre458@yahoo.com (40%)
adanielle5656@yahoo.com (40%)
daguirre@episd.org (40%)
wuben68@gmail.com (40%)
wuben6@gmail.com (40%)
joeag1986@gmail.com (0%)

Phone Numbers:

(915) 745-9448 (MT) Mobile (86%)
(915) 595-1453 (MT) Land Line (78%)
(915) 584-2064 (MT) Land Line (66%)
(915) 315-5220 (MT) Mobile (66%)
(915) 342-7874 (MT) Mobile (66%)
(915) 595-2744 (MT) Land Line (66%)
(915) 595-0237 (MT) Land Line (66%)
(315) 345-3458 (ET) Mobile (34%)
(915) 315-3458 (MT) Mobile (28%)
(915) 565-3177 (MT) Land Line (13%)
(915) 412-2980 (MT) Mobile (12%)
(915) 667-6416 (MT) Mobile (3%)
(915) 408-1189 (MT) Mobile (3%)
(915) 599-1308 (MT) Land Line (3%)
(915) 667-6190 (MT) Mobile (3%)
(915) 227-7476 (MT) Mobile (3%)
(915) 858-6776 (MT) Land Line (3%)
(915) 856-3353 (MT) Land Line (3%)
(745) 944-9448

Commercial Numbers found at subject's addresses:

(915) 584-6464 (MT)
THE DONIPHAN
5151 CHROMITE ST APT 2-7, EL PASO, TX 79932-1646 (EL PASO COUNTY) (08/31/2018 to 02/25/2020)

(915) 584-6464 (MT)
THE DONIPHAN
5151 CHROMITE ST, EL PASO, TX 79932-1690 (EL PASO COUNTY) (09/11/2019)

(866) 704-2656
DEL SOL COLORES
7133 N MESA ST APT 163, EL PASO, TX 79912-3602 (EL PASO COUNTY) (02/28/2018 to 09/09/2019)

(915) 584-8844 (MT)
DEL SOL APTS OFFICE COLORES
7133 N MESA ST APT 163, EL PASO, TX 79912-3602 (EL PASO COUNTY) (02/28/2018 to 09/09/2019)

(915) 204-6407 (MT)
VISTA VENTANA APT
10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY) (01/28/2014 to 06/28/2021)

(917) 766-4147 (ET)
DIVERSIFIED INFORMATION TECH
10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY) (09/14/2019)

(915) 315-5960 (MT)
INTEGRITY ASSET MANAGEMENT
10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY) (11/30/2015 to 01/12/2017)

(915) 772-5170 (MT)
INTEGRITY ASSET MANAGEMENT
8201 LOCKHEED DR, EL PASO, TX 79925 (EL PASO COUNTY) (11/30/2015)

(915) 760-6767 (MT)
VISTA VENTANA



10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY) (01/28/2014 to 10/09/2015)

(915) 999-5625 (MT)

INTEGRITY ASSET MANAGMENT

10739 PESCADOR DR, EL PASO, TX 79935 (EL PASO COUNTY) (06/04/2012)

1st Degree Relatives:

LARRY LEE AGUIRRE Age: 38

(915) 626-4638 (MT) (86%)

ANTONIO GARCIA AGUIRRE SR Age: 56

(915) 208-0374 (MT) (86%)

ARMANDO AGUIRRE Age: 63

(915) 328-3775 (MT) (86%)

(915) 630-4860 (MT) (86%)

(915) 920-0566 (MT) (86%)

IRMA E AGUIRRE Age: 47

(216) 536-1945 (ET) (86%)

(915) 433-2627 (MT) (86%)

(915) 859-3021 (MT) (86%)

(915) 999-4179 (MT) (86%)

SERGIO J AGUIRRE-GARCIA Age: 49

(915) 355-6787 (MT) (86%)

(915) 219-7807 (MT) (68%)

PATRICIA G AGUIRRE Age: 39

(915) 858-6776 (MT) (100%)

(915) 633-9131 (MT) (86%)

(915) 803-9972 (MT) (86%)

CRISTINA D AGUIRRE Age: 48

(915) 858-6776 (MT) (88%)

(915) 803-9972 (MT) (86%)

MARIA ANTONIA DOMINGUEZ Age: 39

(915) 243-8591 (MT) (86%)

(915) 244-0824 (MT) (86%)

SANDRA AGUIRRE Age: 46

(915) 875-9466 (MT) (86%)

(915) 249-6861 (MT) (66%)

FRANCISCO AGUIRRE Age: 72

(915) 858-6776 (MT) (100%)

(915) 633-9131 (MT) (86%)

(915) 858-0755 (MT) (86%)

RUBEN AGUIRRE Age: 51

(623) 313-1361 (MT) (86%)

(623) 777-4300 (MT) (86%)

(915) 329-5330 (MT) (86%)

VANESSA LIZETTE DIAZ Age: 32

(915) 222-4471 (MT) (86%)

DANIEL AGUIRRE Age: 49

(915) 222-3598 (MT) (86%)

(915) 329-5330 (MT) (86%)

MA DELROSARIO AGUIRRE Age: 53

(915) 355-6787 (MT) (86%)

(915) 219-7807 (MT) (68%)

JOSE L AGUIRRE Age: 41

(915) 858-6776 (MT) (100%)

(915) 373-7482 (MT) (86%)

(915) 633-9131 (MT) (86%)

(915) 803-7741 (MT) (86%)



JOSE MANUEL AGUIRRE Age: 35
(915) 764-8613 (MT) (86%)

LOURDES PENA AGUIRRE Age: 62
(915) 222-2845 (MT) (86%)

EDUARDO D AGUIRRE Age: 21
(915) 858-6776 (MT) (100%)
(915) 228-6730 (MT) (86%)
(915) 633-9131 (MT) (86%)

GERRARDO AGUIRRE
(915) 745-9448 (MT) (86%)

2nd Degree Relatives:

ROSA B VALLADARES Age: 53
(262) 456-0542 (CT) (86%)
(262) 595-5369 (CT) (86%)

VIVIAN HERRERA AGUIRRE Age: 43
(915) 219-3846 (MT) (88%)
(915) 691-2823 (MT) (86%)
(915) 772-3020 (MT) (86%)
(915) 307-4566 (MT) (66%)

VERONICA D DIAZ Age: 36
(254) 813-5790 (CT) (88%)
(915) 803-3894 (MT) (86%)

RAMON HERIBERTO AGUIRRE Age: 63
(915) 857-1201 (MT) (89%)
(915) 255-5532 (MT) (86%)

VICTOR MANUEL AGUIRRE II Age: 49
(915) 691-6931 (MT) (100%)
(915) 851-3636 (MT) (90%)

DAVID AGUIRRE Age: 43
(915) 565-2228 (MT) (88%)
(915) 603-6626 (MT) (86%)

CYNTHIA C AGUIRRE Age: 42
(915) 208-7744 (MT) (86%)

BELINDA AGUIRRE Age: 51
(915) 261-4106 (MT) (86%)
(915) 422-4806 (MT) (86%)
(915) 588-2790 (MT) (86%)

ALMA CASTRO Age: 40
(210) 879-2465 (CT) (86%)
(915) 887-1417 (MT) (86%)

ANA LAURA WILLIAMS Age: 51
(915) 637-5320 (MT) (86%)

ENRIQUE AGUIRRE Age: 43
(915) 422-1979 (MT) (86%)

ENRIQUE AGUIRRE Age: 40
(915) 588-1072 (MT) (86%)
(915) 873-6420 (MT) (86%)

LUIS ROBERTO AGUIRRE Age: 49
(720) 410-1654 (MT) (86%)

CECILIA A GONZALEZ Age: 44
(480) 364-8425 (MT) (86%)

ALBERTO A AGUIRRE Age: 32
(915) 251-4339 (MT) (86%)



BLANCA ESTELA AGUIRRE Age: 45
(623) 414-3192 (MT) (88%)
(480) 393-6077 (MT) (86%)

LUCIANO DIAS DIAZ FLORES Age: 61
(915) 346-3865 (MT) (86%)

ROSAMARIA AGUIRRE Age: 69
(575) 233-4566 (MT) (86%)
(575) 449-0880 (MT) (86%)

CARMELO ALEXANDER JUAREZ Age: 50
(915) 603-2516 (MT) (86%)
(915) 852-1463 (MT) (86%)

RICARDO J AGUIRRE Age: 49
(915) 288-7557 (MT) (86%)
(915) 974-7203 (MT) (66%)

CARLOS C MENDEZ Age: 54
(915) 401-2156 (MT) (86%)
(915) 288-4649 (MT) (66%)

SONIA WELLS Age: 55
(254) 462-4148 (CT) (86%)

MICHAEL A AGUIRRE Age: 41
(915) 356-6731 (MT) (86%)

MIRNA ARACELY CABALLERO Age: 48
(720) 514-0652 (MT) (86%)

OFELIA AGUIRRE Age: 47
(915) 857-3133 (MT) (90%)
(915) 244-9135 (MT) (86%)
(915) 253-4041 (MT) (86%)
(915) 851-3043 (MT) (86%)

SYLVIA CARLOS AGUIRRE Age: 68
(303) 777-7005 (MT) (86%)

VERONICA AGUIRRE Age: 31
(915) 216-7087 (MT) (86%)
(915) 216-7577 (MT) (86%)

RUBY MARTINEZ TUECKMANTEL Age: 52
(915) 276-8429 (MT) (86%)

HECTOR C AGUIRRE Age: 39
(303) 777-7005 (MT) (86%)

SYLVIA CARLOS DURAN Age: 47
(915) 305-1573 (MT) (86%)

SHANNA MARIE AGUIRRE Age: 44
(210) 902-6118 (CT) (86%)

EDUARDO ANTONIO AGUIRRE Age: 62
(915) 565-0307 (MT) (86%)
(915) 565-3177 (MT) (86%)

LIDIA NIETO AGUIRRE Age: 59
(915) 630-4860 (MT) (86%)

FERNANDO DIAZ-MARQUEZ Age: 34
(915) 694-6136 (MT) (86%)

FRANCIE ANGELINE JUAREZ Age: 48
(915) 867-6475 (MT) (88%)
(915) 820-1397 (MT) (86%)
(915) 920-1722 (MT) (86%)

JUAN CARLOS AGUIRRE Age: 51
(915) 851-5043 (MT) (86%)



MONICA PATRICIA AGUIRRE Age: 35
(915) 538-8030 (MT) (86%)
(915) 857-9030 (MT) (86%)

NATALIE AGUIRRE Age: 26
(915) 401-2037 (MT) (86%)

ANTHONY DAVID JUAREZ Age: 46
(915) 858-0755 (MT) (86%)

DANESKA MAYDENE AGUIRRE Age: 30
(915) 780-8553 (MT) (86%)

CARLOS E AGUIRRE Age: 43
(915) 217-4860 (MT) (86%)
(915) 849-7765 (MT) (86%)
(915) 855-0542 (MT) (86%)

NOE G DIAZ Age: 32
(915) 801-7657 (MT) (86%)

JESSICA RENEE AGUIRRE Age: 35
(915) 234-2661 (MT) (86%)
(915) 249-6628 (MT) (86%)
(915) 333-0328 (MT) (86%)
(915) 704-4306 (MT) (86%)
(915) 600-5681 (MT) (66%)

DELFINA RODRIGUIZ Age: 58
(775) 409-4486 (PT) (66%)

GRACIELA ANA AGUIRRE Age: 52
(915) 331-3296 (MT) (86%)

GERARDO J AGUIRRE Age: 41
(915) 875-7345 (MT) (86%)

CATALINA R PORTILLO Age: 50
(720) 435-6100 (MT) (86%)
(720) 609-5169 (MT) (86%)

MONICA CASTILLO Age: 48
(915) 203-2837 (MT) (88%)
(915) 504-1651 (MT) (88%)
(915) 929-8659 (MT) (86%)

DELORES AGUIRRE
(915) 565-3177 (MT) (86%)
(915) 772-9241 (MT) (86%)

MONICA AGUIRRE LOPEZ Age: 36
(915) 274-9349 (MT) (86%)
(915) 304-2273 (MT) (66%)

RUBEN ELROY AGUIRRE SR Age: 27
(915) 691-1424 (MT) (89%)
(623) 296-9839 (MT) (86%)

GLADIS ARACELI DIAZ Age: 33
(915) 841-7438 (MT) (86%)

CRISTAL VIRIDIANA AGUIRRE Age: 28
(915) 256-2736 (MT) (86%)

JOEL DIAZ Age: 34
(915) 834-9557 (MT) (86%)

DELFINA GUERRA-AGUIRRE Age: 64
(915) 855-7141 (MT) (86%)

MARLENE MELISSA CISNEROS Age: 45
(915) 478-1131 (MT) (100%)



HILDA AGUIRRE ODELL Age: 45
(573) 228-0272 (CT) (86%)

BRENDA AGUIRRE Age: 28
(915) 857-9030 (MT) (86%)

JORGE A AGUIRRE Age: 62
(915) 261-7839 (MT) (66%)

ANGEL A AGUIRRE Age: 53
(915) 479-2213 (MT) (86%)
(915) 851-5043 (MT) (86%)

SERGIO AGUIRRE Age: 49
(915) 591-5154 (MT) (86%)
(915) 875-7759 (MT) (86%)
(915) 219-7807 (MT) (68%)

MICHAEL ANTHONY JUAREZ Age: 28
(915) 251-2751 (MT) (86%)

MELISSA IRAYSS OLVERA Age: 26
(915) 216-0512 (MT) (86%)

CASSANDRA AGUIRRE Age: 25
(915) 801-9738 (MT) (86%)

NAYELI A AGUIRRE Age: 24
(915) 843-1290 (MT) (86%)

VALERIE L AGUIRRE Age: 26
(915) 329-7143 (MT) (86%)
(915) 867-5602 (MT) (86%)

JASMINE AGUIRRE Age: 25
(915) 857-9030 (MT) (86%)
(915) 873-9138 (MT) (86%)

MITZY AGUIRRE Age: 21
(915) 407-0694 (MT) (86%)

CLAUDIA ESTELLA AGUIRRE Age: 45
(915) 356-6731 (MT) (86%)

GERARDO AGUIRRE-LOPEZ Age: 33
(915) 261-4205 (MT) (86%)
(915) 373-5406 (MT) (86%)

3rd Degree Relatives:

VIVIAN R AGUIRRE Age: 69
(325) 704-1188 (CT) (86%)
(559) 875-8758 (PT) (86%)
(559) 917-8030 (PT) (86%)

VERONICA DIAZ Age: 43
(915) 731-5944 (MT) (86%)

CHANTAL DEANNE MARQUEZ Age: 51
(720) 490-5657 (MT) (86%)

ROSA HERMILA JUAREZ Age: 47
(915) 852-8284 (MT) (86%)

BEATRICE VIRGINA MARQUEZ Age: 75
(619) 530-1397 (PT) (86%)
(940) 269-3021 (CT) (68%)

NICOLE E JUAREZ Age: 32
(915) 867-6915 (MT) (86%)
(575) 824-4002 (MT) (66%)

SAMUEL ORTIZ Age: 44



(915) 283-1627 (MT) (86%)

LORENA DINORAH CORRAL Age: 60
(915) 588-1521 (MT) (86%)

CELESTE AGUIRRE CRUZ Age: 50
(559) 313-1168 (PT) (86%)
(559) 451-1415 (PT) (86%)
(559) 876-3816 (PT) (86%)

KASHALA NICOLE SHUPE Age: 38
(325) 518-7794 (CT) (86%)
(325) 704-1188 (CT) (86%)

JOHN SOLOMON MARQUEZ Age: 36
(720) 605-6599 (MT) (86%)

EDUARDO AGUIRRE GARCIA Age: 57
(915) 355-0366 (MT) (86%)

MARIA ESTHER DOMINGUEZ Age: 44
(915) 694-0354 (MT) (86%)

CLAUDIA CHICO AGUIRRE Age: 45
(915) 301-1347 (MT) (66%)

ROBERTO AGUIRRE Age: 49
(915) 706-8256 (MT) (86%)
(915) 851-5043 (MT) (86%)

CIELO ESTRELLA RODRIGUEZ Age: 33
(775) 379-6517 (PT) (86%)

CARMEN MENDOZA JUAREZ Age: 71
(915) 852-3559 (MT) (86%)

ESPERANZA AGUIRRE Age: 72
(575) 233-3399 (MT) (86%)

CLAUDIA N JUAREZ Age: 42
(303) 596-6313 (MT) (88%)
(816) 882-8658 (CT) (86%)

RAYMUNDO A AGUIRRE-CANCHOLA Age: 77
(915) 851-9524 (MT) (90%)
(915) 407-9556 (MT) (88%)
(915) 271-8161 (MT) (86%)
(915) 691-7767 (MT) (86%)
(915) 851-5043 (MT) (86%)

RAYMUNDO AGUIRRE Age: 66
(956) 729-0996 (CT) (86%)

MARIA AGUIRRE Age: 100
(915) 778-3805 (MT) (86%)

ARTHUR HILARIO MARQUEZ Age: 48
(720) 309-8091 (MT) (100%)
(720) 917-6002 (MT) (88%)

GABRIEL DIAZ Age: 52
(915) 314-1026 (MT) (86%)
(915) 314-8202 (MT) (86%)
(915) 613-7028 (MT) (86%)

CHRIS AARON MARQUEZ Age: 35
(512) 632-5028 (CT) (86%)
(682) 346-3241 (CT) (86%)

JESSICA A AGUIRRE Age: 39
(775) 400-8124 (PT) (86%)

MARISELA HARPER Age: 44
(915) 222-8105 (MT) (86%)



(915) 307-4101 (MT) (86%)
(915) 494-1752 (MT) (86%)
(915) 494-4689 (MT) (86%)

EDUARDO M AGUIRRE Age: 52

(615) 497-9936 (CT) (86%)
(615) 883-9105 (CT) (86%)

NORMA ELISA OLVERA Age: 43

(915) 300-7090 (MT) (86%)

JOSE DEJESUS RODRIGUEZ Age: 48

(208) 649-8271 (MT) (86%)
(775) 473-4449 (PT) (86%)
(775) 772-7949 (PT) (86%)

FRANCIE JUAREZ Age: 50

(915) 867-6475 (MT) (88%)
(915) 820-1397 (MT) (86%)
(915) 920-1722 (MT) (86%)

MARIANELLA MEDINA ACOSTA Age: 53

(615) 601-4747 (CT) (86%)
(615) 883-9105 (CT) (86%)
(615) 920-5419 (CT) (86%)

NORMA AGUARDIOLA GUARDIOLA DE OLVERA Age: 55

(714) 716-3405 (PT) (86%)
(915) 667-6138 (MT) (86%)

NORMA ISEL ESPARZA-DEAGUIRRE Age: 49

(915) 253-1124 (MT) (86%)

RAFAEL OLVERA Age: 30

(915) 850-3211 (MT) (88%)
(915) 920-6565 (MT) (86%)

MARIA INES RIVERA DE AGUIRRE Age: 47

(915) 859-1040 (MT) (86%)

DAVID AGUIRRE GONZALEZ Age: 62

(915) 565-2228 (MT) (88%)

ANGELICA AGUIRRE Age: 35

(720) 380-5971 (MT) (86%)

ALISHA MARIE SANDOVAL Age: 42

(559) 824-3238 (PT) (88%)
(559) 618-2193 (PT) (86%)

MANUELA CALDERA Age: 59

(915) 926-0924 (MT) (90%)
(915) 259-7420 (MT) (86%)

OFELIA AGUIRRE

(915) 799-9266 (MT) (88%)
(915) 851-5043 (MT) (86%)

MIGUEL ANGEL AGUIRRE ALVAREZ SR Age: 45

(303) 755-2788 (MT) (86%)

VERONICA D CRUZ Age: 54

(915) 820-0727 (MT) (86%)
(915) 842-0369 (MT) (86%)

GLORIA ESTHER DIAZ Age: 67

(915) 383-6945 (MT) (86%)
(915) 845-4074 (MT) (86%)

JUAN MANUEL BAEZA Age: 33

(915) 346-8923 (MT) (86%)

CONSUELO IVETTE AGUIRRE Age: 45

(915) 262-0148 (MT) (86%)



(915) 288-7844 (MT) (86%)

GILBERT G AGUIRRE Age: 35
(325) 518-7736 (CT) (86%)

ROBERTO I AGUIRRE Age: 61
(915) 240-6707 (MT) (86%)

GUADALUPE AGUIRRE Age: 40
(915) 276-3537 (MT) (86%)

FRANCISCO JAVIER AGUIRRE Age: 43
(915) 244-5255 (MT) (86%)
(915) 260-9932 (MT) (66%)

FAVIOLA L OLVERA Age: 32
(915) 630-7053 (MT) (100%)

EDUARDO AGUIRRE Age: 39
(915) 303-4919 (MT) (86%)

DAVID GUION AGUIRRE Age: 78
(915) 565-2228 (MT) (100%)
(915) 256-1556 (MT) (86%)

SYLVIA AGUIRRE Age: 34
(719) 778-3162 (MT) (86%)

SALVADOR RODRIGUEZ MONTELONGO Age: 70
(775) 323-9943 (PT) (86%)
(775) 473-4449 (PT) (86%)

CASSIDY ALEXIS AGUIRRE Age: 22
(915) 288-7447 (MT) (86%)

GABRIEL ALVAREZ AGUIRRE Age: 50
(915) 271-7453 (MT) (86%)

ANGEL GABRIEL AGUIRRE Age: 24
(915) 274-1976 (MT) (86%)

KARINA ALEXANDRA AGUIRRE MEDINA Age: 25
(615) 491-8850 (CT) (86%)

RICARDO AGUIRRE III Age: 23
(915) 288-7946 (MT) (86%)
(915) 974-7203 (MT) (66%)

ANDREA AGUIRRE Age: 24
(915) 240-6707 (MT) (86%)

PASCUAL SENDRA MARQUEZ Age: 25
(832) 775-6482 (CT) (86%)

MELYSSA AGUIRRE Age: 19
(615) 414-6328 (CT) (86%)

MIGUEL AGUIRRE Age: 19
(915) 274-0589 (MT) (100%)

NORMA ARACELI AGUIRRE Age: 43
(915) 288-7557 (MT) (86%)

ANNETTE LOZANO AGUIRRE Age: 30
(720) 839-5907 (MT) (88%)
(303) 638-5520 (MT) (86%)

PABLO ANTONIO ALAMO Age: 23
(915) 526-6120 (MT) (86%)

MARIO JAQUEZ-AGUIRRE Age: 45
(915) 222-2957 (MT) (86%)



Likely Associates:

DANIELLE PEREZ Age: 34
(915) 745-9448 (MT) (86%)

DANIEL JACOB PEREZ Age: 32
(575) 997-5552 (MT) (86%)
(915) 244-3033 (MT) (86%)
(915) 479-7668 (MT) (86%)

ALEX PEREZ Age: 30
(915) 740-1103 (MT) (86%)

ISABELLA PEREZ Age: 60
(915) 276-5669 (MT) (86%)

JOE ANTHONY MORALES Age: 44
(915) 226-4865 (MT) (86%)

LUIS GERARDO RODRIGUEZ-HERNANDEZ Age: 63
(915) 314-8957 (MT) (86%)

RAQUEL AGUIRRE MORALES Age: 68
(915) 219-3682 (MT) (86%)
(915) 219-8253 (MT) (66%)
(915) 271-8131 (MT) (66%)

Possible Associates:

LA QUAN CARPENTER Age: 44
(915) 702-0268 (MT) (66%)

MARIA ROSA MARTINEZ Age: 68
(915) 585-8343 (MT) (78%)

CARMEN FLORES MANUCY Age: 78
(915) 833-6502 (MT) (100%)

Neighbors Listed Land Line Phone Numbers:

Neighbors of 12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY)
None Found

Neighbors of 10739 PESCADOR DR, EL PASO, TX 79935-2618 (EL PASO COUNTY)

(915) 592-5595 (MT) (100%)
REBECCA DOMINGUEZ Age: 67
10741 PESCADOR DR

(915) 307-3139 (MT) (100%)
JOSE A MORALES Age: 50
10745 PESCADOR DR

(915) 219-9984 (MT) (67%)
MELISSA A ALVAREZ Age: 50
10733 PESCADOR DR

(915) 219-9984 (MT) (66%)
HERMINIA ALVAREZ Age: 70
10733 PESCADOR DR

(915) 219-9984 (MT) (66%)
ENRIQUE J ALVAREZ Age: 72
10733 PESCADOR DR

(915) 592-5344 (MT) (86%)
REYNA SANCHEZ Age: 70
10757 PESCADOR DR

(915) 500-4635 (MT) (66%)
ALEJANDRA MONGE Age: 46
10709 PESCADOR DR



(915) 313-5393 (MT) (78%)
MELISSA F ARELLANO
10701 PESCADOR DR

(915) 313-5393 (MT) (67%)
ADRIAN ARELLANO Age: 35
10701 PESCADOR DR

(915) 594-7985 (MT) (86%)
MARIA T VILLANUEVA Age: 56
10633 PESCADOR DR

(915) 307-5238 (MT) (86%)
ALONSO FALCON Age: 51
10631 PESCADOR DR

Neighbors of 1695 ODYSSEY CT, CASTLE ROCK, CO 80109-3658 (DOUGLAS COUNTY)

(303) 997-7919 (MT) (86%)
BRIAN MILENDER Age: 39
1689 ODYSSEY CT

(303) 660-6293 (MT) (86%)
JAMES FEENEY Age: 56
1710 ODYSSEY CT

Neighbors of 5151 CHROMITE ST APT 2-7, EL PASO, TX 79932-1646 (EL PASO COUNTY)

(915) 307-5393 (MT) (78%)
SHIRLEY STARR Age: 70
5151 CHROMITE ST

(915) 307-5122 (MT) (86%)
MARTHA GARCIA Age: 54
5151 CHROMITE ST

(915) 209-3522 (MT) (1%)
KAISER SOZE
5151 CHROMITE ST

(915) 307-6157 (MT) (78%)
JUAN VACA
5151 CHROMITE ST APT 7-8

(915) 219-7984 (MT) (67%)
JAIME SORIANO Age: 47
5151 CHROMITE ST

(915) 201-2711 (MT) (1%)
GREGORY WILSON
5151 CHROMITE ST APT 1-2

(915) 842-0371 (MT) (70%)
GABRIEL RONQUILLO Age: 49
5151 CHROMITE ST

(915) 585-3467 (MT) (1%)
ESPERANZA ALVA
5151 CHROMITE ST APT 5-7

(915) 581-8489 (MT) (78%)
ELVA JARAMILLO Age: 68
5151 CHROMITE ST

(915) 260-5773 (MT) (66%)
CESAR HERRERA Age: 30
5151 CHROMITE ST

Neighbors of 7133 N MESA ST APT 163, EL PASO, TX 79912-3602 (EL PASO COUNTY)

(915) 833-3782 (MT) (86%)
SERGIO CORDOVA Age: 38
7133 N MESA ST APT 194



(915) 307-4412 (MT) (66%)
ALMA SILVA Age: 45
7133 N MESA ST APT 34

(915) 500-3096 (MT) (66%)
VANESSA DELGADO Age: 39
7133 N MESA ST

(915) 307-7881 (MT) (1%)
SUBLASKY PATRICK
7133 N MESA ST

(915) 845-4965 (MT) (1%)
SARA STRAUSS
7133 N MESA ST

(915) 584-5394 (MT) (67%)
MATTHEW CHITWOOD Age: 41
7133 N MESA ST

(915) 500-1464 (MT) (66%)
MARY CARDENAS Age: 66
7133 N MESA ST

(915) 760-8287 (MT) (66%)
MARTIN RIVERA Age: 30
7133 N MESA ST

(915) 585-7726 (MT) (86%)
MARK WORLEY Age: 74
7133 N MESA ST

(915) 585-8783 (MT) (86%)
MARIA L CAMPOS Age: 74
7133 N MESA ST

(915) 587-7660 (MT) (100%)
MARCIA LIGO Age: 74
7133 N MESA ST

(915) 581-0883 (MT) (78%)
LENITA VALDEZ Age: 52
7133 N MESA ST

(915) 881-4527 (MT) (78%)
JOSEPH BROTHERS Age: 65
7133 N MESA ST

(915) 500-5691 (MT) (66%)
JOEL FIGUEROA Age: 39
7133 N MESA ST

(915) 307-4376 (MT) (1%)
EDUARDO CARRRERA
7133 N MESA ST

(915) 307-6341 (MT) (66%)
COREY YOUNG Age: 43
7133 N MESA ST

Neighbors of **10891 EDGEMERE BLVD APT B5, EL PASO, TX 79935-1338 (EL PASO COUNTY)**

(915) 595-0722 (MT) (78%)
ZSA ZSA DAY Age: 58
10891 EDGEMERE BLVD

(915) 261-7570 (MT) (66%)
MARIA B RIVERA Age: 54
10891 EDGEMERE BLVD

(915) 261-7570 (MT) (66%)
JUAN RIVERA Age: 49
10891 EDGEMERE BLVD



(915) 591-1425 (MT) (66%)
JUAN RIVERA Age: 49
10891 EDGEMERE BLVD

(915) 500-5440 (MT) (78%)
JESSICA WENDORFF Age: 33
10891 EDGEMERE BLVD

(915) 629-9135 (MT) (66%)
ELVIRA MELENDEZ Age: 61
10891 EDGEMERE BLVD APT C7

(915) 593-5739 (MT) (88%)
ELFRIEDE BANKS
10891 EDGEMERE BLVD

(915) 594-1533 (MT) (78%)
DAVID CASTRO Age: 63
10891 EDGEMERE BLVD

(915) 500-4161 (MT) (86%)
BERTHA BELLMAN Age: 60
10891 EDGEMERE BLVD

(915) 271-9426 (MT) (66%)
BERTA LOPEZ Age: 66
10891 EDGEMERE BLVD APT D8

Neighbors of **5453 RIDGE ST, EL PASO, TX 79932-1477 (EL PASO COUNTY)**

(915) 219-7563 (MT) (86%)
ROSA D ALVAREZ Age: 75
5453 RIDGE ST

(915) 304-1477 (MT) (66%)
ROBERT BELLMAN Age: 29
5453 RIDGE ST APT D1

(915) 881-4145 (MT) (68%)
NANCY TORRES Age: 40
5453 RIDGE ST

(915) 260-5390 (MT) (66%)
LIDIA SERRANO Age: 65
5453 RIDGE ST

(915) 270-9291 (MT) (66%)
LIDIA SERRANO Age: 65
5453 RIDGE ST

(915) 760-8867 (MT) (66%)
KARLA COBOS Age: 46
5453 RIDGE ST

(915) 584-1045 (MT) (72%)
JULIAN MACIAS Age: 25
5453 RIDGE ST

(915) 881-4145 (MT) (66%)
JOSE TORRES Age: 46
5453 RIDGE ST

(915) 270-9804 (MT) (88%)
ISAAC REYES Age: 46
5453 RIDGE ST APT F6

(915) 231-6492 (MT) (66%)
HILDA MORA Age: 44
5453 RIDGE ST APT I2

(915) 881-4525 (MT) (86%)
CRISTAL HERNANDEZ Age: 35
5453 RIDGE ST



(915) 585-8457 (MT) (100%)
CAROLINA R FREDERICKS Age: 93
5453 RIDGE ST

(915) 249-6063 (MT) (66%)
BELINDA DOMINGUEZ Age: 46
5453 RIDGE ST

(915) 217-1204 (MT) (86%)
ANGIE CARLOS Age: 49
5453 RIDGE ST

(915) 875-0470 (MT) (72%)
ANGEL DOMINGUEZ Age: 55
5453 RIDGE ST

(915) 585-7538 (MT) (86%)
ANA MARIA CHAIREZ Age: 83
5453 RIDGE ST

Neighbors of 12948 COZY COVE AVE # 1, EL PASO, TX 79938-1212 (EL PASO COUNTY)
None Found

Neighbors of 5151 CHROMITE ST, EL PASO, TX 79932-1690 (EL PASO COUNTY)

(915) 307-5393 (MT) (78%)
SHIRLEY STARR Age: 70
5151 CHROMITE ST

(915) 307-5122 (MT) (86%)
MARTHA GARCIA Age: 54
5151 CHROMITE ST

(915) 209-3522 (MT) (1%)
KAISER SOZE
5151 CHROMITE ST

(915) 307-6157 (MT) (78%)
JUAN VACA
5151 CHROMITE ST APT 7-8

(915) 219-7984 (MT) (67%)
JAIME SORIANO Age: 47
5151 CHROMITE ST

(915) 201-2711 (MT) (1%)
GREGORY WILSON
5151 CHROMITE ST APT 1-2

(915) 842-0371 (MT) (70%)
GABRIEL RONQUILLO Age: 49
5151 CHROMITE ST

(915) 585-3467 (MT) (1%)
ESPERANZA ALVA
5151 CHROMITE ST APT 5-7

(915) 581-8489 (MT) (78%)
ELVA JARAMILLO Age: 68
5151 CHROMITE ST

(915) 260-5773 (MT) (66%)
CESAR HERRERA Age: 30
5151 CHROMITE ST

Current Vehicles:

None Found



Current Property Deeds:

Purchase Date: 03/24/2020

12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY)
12948 COZY CV, EL PASO, TX 79938-1212 (EL PASO COUNTY)
APN: **V639-999-0100-3300**
APN Sequence Number: **001**
Date Subject First Seen as Owner: **09/06/2013**
Date Subject Last Seen as Owner: **2021**
Subdivision Name: **VENTANAS #3**
Legal Description: **BLK 10 VENTANAS #3 LOT 33**
Building Square Feet: **2,502**
Living Square Feet: **2,062**
Land Square Feet: **5,432**
Year Built: **2013**

Latest Tax Roll/Assessment Information

Tax Year: **2021**
Tax Amount: **\$6,390.07**
Assessed Year: **2021**
Assessed Value: **\$203,036**
Sale Date: **03/24/2020**
Sale Amount: **\$178,506**
Document Number: **24684**
Total Value: **\$203,036**
Land Value: **\$32,755**
Improvement Value: **\$170,281**
Bedrooms: **4**
Baths: **3**

Most Current Ownership Information - 03/24/2020

Owner: **GERARDO AGUIRRE**
Owner: **DANIELLE PEREZ**
Mailing Address: **12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY)**
Seller: **LAQUAN N CARPENTER**
12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY)
Sale Date: **03/24/2020**
Sale Code: **Empty or Estimated**
Sale Amount: **\$178,506**
Absentee Indicator: **Owner Occupied**
Universal Land Use: **Single Family Residence**
Property Indicator: **Single Family Residence**
Residential Model Indicator: **Property is Residential**

Mortgage Information not available

Previous Ownership Information - 09/06/2013

Owner: **LAQUAN N CARPENTER**
Mailing Address: **12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY)**
Seller: **SARATOGA HOMES INC**
12948 COZY CV, EL PASO, TX 79938-1212 (EL PASO COUNTY)
12948 COZY COVE AVE, EL PASO, TX 79938-1212 (EL PASO COUNTY)
Owner Relationship Type: **Single Woman**
Sale Date: **09/06/2013**
Sale Code: **Estimated**
Sale Amount: **\$175,136**
Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Owner Occupied**
Deed Sec Cat: **New Structure Sale, Mortgaged Purchase, Residential (Modeled)**
Universal Land Use: **Residential Lot**
Property Indicator: **Single Family Residence/Townhouse**
Resale New Construction: **New Construction**
Residential Model Indicator: **Based On Zip Code and Value Property is Residential**

Mortgage

Lender: **VETERANS UNITED HM LNS** Mortgage Amount: **\$178,711**
Mortgage Loan Type: **VA(Veterans Affairs)**
Mortgage Deed Type: **Deed of Trust**
Mortgage Term: **30 Years**
Mortgage Date: **09/06/2013**
Mortgage Due Date: **10/01/2043**
Mtg Sec Cat: **VA, Fixed**

Previous Ownership Information - 08/17/2012



Owner: **JNC DEV INC**
Mailing Address: **12300 MONTWOOD DR, EL PASO, TX 79928-5653 (EL PASO COUNTY)**
Seller: **GFA LP**
12948 COZY CV, EL PASO, TX 79938-1212 (EL PASO COUNTY)
Owner Ownership Rights: **Company/Corporation**
Business Name: **JNC DEV INC**
Sale Date: **08/17/2012**
Sale Code: **Estimated**
Sale Amount: **\$1,337,343**
Deed Sec Cat: **Resale, Mortgaged Purchase**
Universal Land Use: **Residential Lot**
Property Indicator: **Vacant**
Resale New Construction: **Resale**
Residential Model Indicator: **Based On Zip Code and Value Property is Not Residential**

Mortgage

Lender: **PIONEER BK** Mortgage Amount: **\$1,069,875**
Mortgage Loan Type: **Conventional**
Mortgage Deed Type: **Deed of Trust**
Mortgage Date: **08/10/2012**
Mtg Sec Cat: **CNV, Adjustable, Non Conforming**
Mortgage Interest Rate Type: **Adjustable**

Past Property Deeds:

None Found

Business Associations:

None Found

Corporations:

None Found

Liens:

None Found

Judgments:

None Found

Bankruptcy Records (None Found)

PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY/CLIENT PRIVILEGE

TO: Adam Aldaz
FROM: Patricia G. Williams
Wiggins, Williams & Wiggins, P.C.
DATE: May 2, 2022
RE: Aguirre v. Sunland Park, Claim #2020027434

INITIAL RISK ANALYSIS

1. What do you see as the significant legal or factual issues in the case?

This case involves what was alleged to be a high speed chase. According to the officer, there was no high speed chase. This is the major fact that will be at issue. With regard to legal issues, the interpretation of the New Mexico Law Enforcement Safe Pursuit Act, NM Stat. 29-20-2 and the Tort Claims act are at issue and the interplay between those Acts.

2. In what way might the issues be resolved, assuming the facts as stated? Negotiation is always possible, but there are so many damages due to the facts that the mother died and the three children were substantially injured to reach any settlement will likely cost a lot of money when Defendants are not at fault. The only one at fault is the intoxicated speeder.

3. If litigation is undertaken, what you envision in terms of: The lawsuit has already been filed. There are no preliminary motions because the case comes down to the testimony of the police officer.

A. Any steps that should be taken immediately (e.g., to prevent the running of a statutory deadline or to preserve evidence); N/A

B. Legal research and factual investigation; The facts are established through the officer's videos and police report.

C. Possible pleadings (including cross-complaints), motions, and discovery the parties are likely to undertake; The only person at fault was the driver who is presumably judgment proof, making it pointless to file a claim against him.

D. The litigation's likely duration and expense; Depending on how quickly the case is sent for mediation and the other attorney's knowledge and acceptance of the facts it could take a relatively short time to resolve the case, potentially within 6 months to 1 year.

E. The range of recovery or exposure for the client (if reasonably based on the information provided in the first interview and known to you).

The limit is contained in the Tort Claims Act, "B. The total liability for all claims pursuant to Paragraphs (1) and (3) of Subsection A of this section that arise out of a single occurrence shall not exceed seven hundred fifty thousand dollars (\$750,000)." NM Stat. 41-4-19 Maximum liability (New Mexico Statutes (2022 Edition)). The minor children also have medical bills and those are added to maximum liability.

4. The possibility of early settlement and the feasibility of a minimal cost approach to the litigation. Depends on if the case is referred to mediation and how soon mediation can occur. If Defendants are not interested in mediation, it will take more time to proceed to trial.

THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA
STATE OF NEW MEXICO

GERARDO AGUIRRE, Individually, and
as Personal Representative of the Wrongful Death
Estate of DANIELLE PEREZ, deceased, and on
behalf of MINORS, A.A., G.A. and K.A.,

Plaintiffs,

vs.

No. D-307-CV-2021-01759

THE CITY OF SUNLAND PARK, NEW MEXICO,
SUNLAND PARK POLICE DEPARTMENT,
ARMANDO DURAN and ERIC SOLIS,

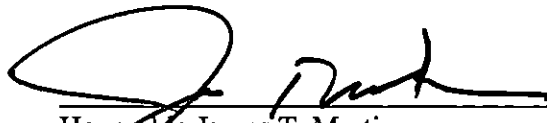
Defendants.

**ORDER GRANTING JOINT MOTION TO VACATE ALL REMAINING DEADLINES
INCLUDING JURY TRIAL SETTING**

THIS MATTER having come before the Court on the Joint Motion to Vacate All
Remaining Deadlines Including Jury Trial Setting.

THE COURT FINDS the Joint Motion is well taken and should be granted.

IT IS THEREFORE ORDERED that this case shall be removed from the May 15,
2023 Jury Trial Docket trailing docket and the Court will await for the Parties to request a
scheduling conference.



Honorable James T. Martin
District Court Judge, Division VI

Submitted by:

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By /s/ Patricia G. Williams

Patricia G. Williams
1803 Rio Grande Blvd., N.W. (87104)
P.O. Box 1308
Albuquerque, New Mexico 87103-1308
(505) 764-8400
pwilliams@wwwlaw.us

Attorneys for The City of Sunland Park, NM;
Sunland Park Police Dept.; and Armando Duran

Approved by:

FLORES, TAWNEY & ACOSTA P.C.

/s/ Alejandro Acosta, III, approved via email 12-13-2022

ALEJANDRO ACOSTA, III

New Mexico Bar No. 142516

DAISY CHAPARRO

New Mexico Bar No. 148958

1485 N. Main St., Suite B

Las Cruces, NM 88001

(575)222-1000 – Phone

(575)652-4752 - Facsimile

aacosta@ftalawfirm.com

Attorneys for Plaintiffs

PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY/CLIENT PRIVILEGE

TO: Adam Aldaz
FROM: Patricia G. Williams
Wiggins, Williams & Wiggins, P.C.
DATE: April 13, 2023
RE: Aguirre v. Sunland Park, Claim #2020027434

LITIGATION RISK ANALYSIS

a. **What is the relationship/status of the parties?** (Note: Please do not merely refer to the parties as the plaintiff/defendant; include more descriptive terms to identify the relationship/status at issue, e.g., supervisor/employee. Plaintiffs are the Estate of Danielle Perez, deceased as a result of the accident that is the subject of this lawsuit, and her three minor children who were injured in the accident. Officer Armando Duran is a City of Sunland Park Police Department employee. Eric Solis was driving the car that struck the Ms. Perez' car at high speed.

b. **Procedural Facts:**

- What happened before the parties entered the judicial system? There was no meaningful interaction between Officer Duran or the City of Sunland Park and Plaintiffs' representatives before the lawsuit was filed.

c. **Substantive Facts:** This lawsuit arises out of a two car accident that occurred on May 9, 2020. One car was driven by Danielle Perez, who died in the accident. Alyzae Aguirre, Gysel Aguirre and Kingston Aguirre were children who were passengers in Ms. Perez' car. All three children were badly injured in the accident. The other car was driven by Eric Solis. His car hit Ms. Perez' car head-on at a high rate of speed. Plaintiffs allege that Solis was attempting to evade Officer Duran, who was engaged in a high-speed pursuit. Officer Duran denies he was in pursuit of Solis and he was not operating his lights and siren. However, there is video evidence that refutes Officer Duran.

- **What is the cause of action?** Negligence, including negligent entrustment, negligent hiring, training, supervision and retention and respondeat superior against the City and Officer Duran. Negligence, assault and battery against Eric Solis, who is not our client.

- **What is the relief requested?** Medical, hospital, and nursing expenses, hedonic damages, conscious pain, suffering, mental anguish, emotional distress and excruciating physical agony, loss of consortium, funeral and burial expenses and for all other damages resulting from the termination of parent-child relationships and husband-wife relationship, including the loss of the love, comfort, and companionship, and society, loss of support, inheritance, and contributions, loss of care, maintenance, support, services, advice, counsel, and

all other reasonable contributions having a pecuniary value, future pain and suffering, impairment, disfigurement; and punitive damages.

- **What points of law are in dispute (Please identify applicable statutes, rules, regulations)** The interpretation of the New Mexico Law Enforcement Safe Pursuit Act, NMSA 29-20-2 and the New Mexico Tort Claims Act are at issue and the interplay between those Acts.

d. Please provide a summary of any significant legal issues.

- **What are the key facts relating to each point of law in dispute (legally relevant facts)?**

Section 41-4-12 of the Tort Claims Act provides that law enforcement officers' immunity is waived for:

liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties.

Section 29-20-4 (2) of the New Mexico Law Enforcement Safe Pursuit Act, provides "a law enforcement officer shall not initiate or continue a high-speed pursuit when the immediate danger to the officer and the public created by the high speed pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large." Officer Duran states he was not running code and it is undisputed he did not call in a pursuit. However, he states he saw Solis speeding and turned his unit around to try to catch him and was following Solis when the accident occurred. Solis is charged with First Degree Murder (Depraved Mind) and five counts of Great Bodily Injury by Vehicle (Reckless Driving) related to the accident. We cannot depose Solis before his criminal trial to learn if he knew Officer Duran was behind him or not.

The limit to liability is contained in the Tort Claims Act, "B. The total liability for all claims pursuant to Paragraphs (1) and (3) of Subsection A of this section that arise out of a single occurrence shall not exceed seven hundred fifty thousand dollars (\$750,000)." NMSA 41-4-19(B).

NMSA 41-4-19 (A) (2) provides "the sum of three hundred thousand dollars (\$300,000) for all past and future medical and medically related expenses arising out of a single occurrence." The minor children also have medical bills and those are added to maximum liability, which brings the cap to \$1,050,000.00. Plaintiffs' settlement demand is for this amount, the maximum they can expect to recover at trial.

While they make a claim for punitive damages the Tort Claims Act explicitly excludes an award of punitive damages and prejudgment interest. NMSA 41-4-19(B) provides "no judgment

against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act shall include an award for exemplary or punitive damages or for interest prior to judgment.”

- **What are the Defenses?** We raised twenty-seven affirmative defenses: The Complaint fails to state a claim upon which relief may be granted against these Defendants. To the extent the Complaint states, on its face, any valid federal claims against these Defendants, which is denied, these Defendants affirmatively state that their actions were objectively reasonable under the circumstances and were done in good faith and Mr. Duran is entitled to qualified immunity. Immunity for these Defendants under the New Mexico Tort Claims Act is not subject to any waiver of sovereign immunity. The alleged conduct of these Defendants does not rise to the level of a constitutional violation. These Defendants were not negligent. Plaintiffs have not complied with the provisions of the New Mexico Tort Claims Act. The actions of these Defendants did not violate any of Plaintiffs’ rights. Officer Duran exercised due care in the execution or enforcement of the law as a police officer and in the operation of the police unit he was driving. These Defendants, at all times material to the allegations in the Complaint, acted in good faith, without malice, and within the scope of their lawful duties. The actions of these Defendants, at all times material to the allegations made in the Complaint, were reasonable, proper and legal. Plaintiffs’ damages, if any, were due to an independent intervening cause rather than due to any fault on the part of these Defendants. Plaintiffs’ injuries or losses, if any, were proximately caused by the negligence, intentional misconduct or other fault of the Plaintiffs and/or third persons for whom these Defendants are not liable. Officer Duran is not liable for any injury resulting from his acts or omissions, where the acts or omissions were the result of the exercise of the discretion vested in him as a police officer. Plaintiffs failed to exercise ordinary care and such failure proximately caused the injury and damages caused by Plaintiffs. Plaintiffs’ state law claims are subject to the provisions of the New Mexico Tort Claims Act and all of its limitations and immunities. These Defendants did not batter Plaintiffs. These Defendants did not assault Plaintiffs. Officer Duran was not engaged in a high-speed chase and was not in violation of the Law Enforcement Pursuit Act at the time of the incident which is the subject of the Complaint. These Defendants breached no duty owed to Plaintiffs. Plaintiffs failed to mitigate their damages, if such damages were in fact incurred. If these Defendants were negligent, which is specifically denied, decedent was contributorily or comparatively negligent, which affects recovery. Decedent failed to exercise ordinary care by failing to keep a proper lookout which was the proximate cause of the accident at issue in this Complaint. Plaintiff is not entitled to punitive damages pursuant to the New Mexico Tort Claims Act. Plaintiffs did not suffer any detriment or damages in any amount whatsoever due to the actions of these Defendants. These Defendants are entitled to an allocation of fault to and/or indemnification from those third parties and/or agencies whose conduct proximately caused or contributed to cause injuries allegedly sustained by Plaintiff. Plaintiffs are not entitled to attorneys’ fees, litigation expenses or costs from these Defendants under the facts of this case. Plaintiffs are not entitled to pre- or post-judgment interest from these Defendants under the facts of this case.

- **Please discuss prior holdings or relevant dicta in similar cases.**

“Generally, the Tort Claims Act provides governmental entities and public employees acting in their official capacities with immunity from tort suits unless the [TCA] sets out a specific waiver

of that immunity.” *Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep’t*, 1996-NMSC-021, ¶ 6, 121 N.M. 646, 916 P.2d 1313.

In *Torrance Cnty. Mental Health Program v. N.M. Health & Env’t Dep’t*, 1992-NMSC-026, ¶ 1, 113 N.M. 593, 830 P.2d 145, the New Mexico Supreme Court recognized that government liability for punitive damages would deter the abuse of governmental power and promote accountability among government officials. 1992-NMSC-026, ¶ 25. It nevertheless found that “the countervailing policies we believe must prevail are the necessity to protect public revenues unless their diversion is specifically authorized by statute, coupled with the function of punitive damages to visit punishment on one against whom they are assessed.” *Id.* ¶ 27.

When personal injury results from a violation by subordinate officers of rights secured by the constitution or laws of the United States or New Mexico or from commission of certain torts specified in this section, then the Tort Claims Act waives immunity for negligent supervision or training by superior law enforcement officers that proximately causes the violation. However, that immunity is not waived for negligent training and supervision standing alone; such negligence must cause a tort specified in this section or violation of rights. *McDermitt v. Corrections Corp. of Am.*, 1991-NMCA-034, 112 N.M. 247, 814 P.2d 115.

- **Is there risk of an adverse precedent in this case? Benefit to an adverse precedent?** Yes. At present punitive damages are not recoverable under the Tort Claims Act. The current court may reassess whether punitive damage are awardable under the Tort Claims Act.

e. **What is your assessment of the strengths and weaknesses of your factual and legal position?** Please include such factors as the substance and impact of the evidence, the availability and quality of witnesses, the sympathy or not of the adversary, the friendliness or hostility of the tribunal, and the competence and experience of opposing counsel. The only person at fault was the driver who is presumably judgment proof, making it pointless to file a claim against him.

f. **What are the possible results and probabilities?** Please provide an assessment of damages, including possible results. The person primarily at fault is Solis, the intoxicated speeder. However, the amount of damages is very high, since the mother was killed and the three children were substantially injured and have significant medical bills. Given the video and the testimony of the investigating New Mexico State Police Officer, it is likely that Sunland Park and Officer Duran will have some fault apportioned to them. Even a 10% apportionment of a likely award of over 10 million dollars in damages will exceed the cap. An apportionment of 10% is likely.

g. **What is your strategy in this matter?**

- Is Alternative Dispute Resolution Feasible? Yes. A court ordered mediation will be scheduled.

- Are there any other settlement alternatives?

- Please provide a discovery plan including the scope of discovery and timeline for implementation of the discovery in order to support the legal theories and remedies. Two of the Plaintiffs' depositions are scheduled for May 30, 2023. We will learn at the time whether the other Plaintiffs can testify: one was only two years old at the time of the accident.

- **Please provide a draft scheduling order.** Per the Court's December 14, 2022 Order attached, the prior scheduling order deadlines were vacated and the Court will await for the parties to request a scheduling conference.

h. What is the anticipated legal budget? \$50,000.00 to 150,000.00 to take the case through trial.

i. Additional Comments/Personal Impressions: As we immediately reported to you, Officer Barron's testimony is compelling and damning because it is supported by physical evidence that directly contradicts Officer Duran.

j. Conclusion and Recommendation: Examples may include early efforts to settle or mediate the dispute, targeted discovery with an eye towards settlement, or full litigation. This is a cap case.

NMSIF Liability Settlement Authority Request

Due 48 hours before Claims Review Discussion

FACTS OF CLAIM

Claimant: Gerardo Aguirre Claim#: 2020027434
Member: Sunland Park DOI: 5/09/2020
Current Expense Paid: \$ 9290.00 Current Incurred Reserves: \$ 1,100,000.00
Excess Reportable: Yes No Date Reported to Reinsurer: 1/3/2023
Defense Atty: Patty Williams Plaintiff Atty: Alejandro Acosta, III
Other Defendants: Armando Duran and Eric Solis
Trial Date: N/A Trial Judge: James T. Martin
Total Litigation Costs Including Trial and Discovery: \$ 150K Jury: 6 Person Jury
Initial Legal Analysis Report Date: 4/13/2023 Current Legal Analysis Report Date: 4/13/2023
Mediation: Mediator Name & Date: 7/11/2022 Court Ordered Mediation: Yes No
Settlement Authority Request Amount: \$ 1,050,000.00 Plaintiff's Settlement Demand: \$ 1,050,000.00

EXPLANATION OF LOSS AND CAUSE OF INJURY

This lawsuit is a two car accident that occurred on May 9, 2020. One car was driven by Danielle Perez who died in the accident. Alyzae Aguirre, Gysel Aguirre, and Kingston Aguirre who were badly injured. Eric Solis is the driver of the other vehicle that was fleeing from police. He hit Danielle and the kids head on at a very high rate of speed. Plaintiffs allege that Solis was attempting to evade Officer Duran, who was engaged in a high speed pursuit. Officer Duran denies that he was running code.

LEGAL STATUS/UPDATE

There is video evidence that reflects that Eric Solis was running code. He was not truthful in his statement. State Police Officer Barron who used to be a police officer at Sunland Park states that Officer Duran violated SOP's and should have never been chasing someone that fast in a residential area. Officer Barron was going to be our expert witness, but he told us that he could not be an expert witness as he would have to tell the truth that Officer Duran violated the SOP's and should have known better. We have struck Officer Barron as an expert witness as his testimony will damage us rather than help us. This was a horrific accident that should not have happened. Sunland Park shares liability with Eric Solis, we are not the only ones involved in this matter. Granted the plaintiffs will not get anything out of Eric Solis as he is in prison at this time. We could use the empty chair defense to mitigate damages. but even a small percentage of liability will be more that the 1,050,000.00. My recommendation is to pay the caps.

SETTLEMENT RATIONALE (CASE STRENGTHS & WEAKNESSES)

Strengths:

Eric Solis is the proximate cause of the loss
The Complaint fails to state a claim.
Duran is entitled to Qualified Immunity in this case.

Weaknesses:

Duran lied that he was running code.
State Police officer Barron stated that Duran Violated SOP's he stated he could not be our expert.
Death of Danielle Perez and bodily injury to children.
Video of Officer Duran chasing Eric Solis with lights and sirens on.
Possible negative publicity of Sunland Park and their Police force.

APPROVED BY:

\$1 - \$30K Examiner: Adam Aldaz Date: 5/3/2023
 \$30,001 - \$150K Risk Services Director: *[Signature]* Date: 05/09/23
 \$150,001 - \$400K Executive Director: *[Signature]* Date: 5-1-23

Unspecified Delivery Type

Job Name: Distribution Assembly
Batch(DD) Name:

Documents: 15
Pages: 63

Mailing Instructions

Packages

Mailed By:

Date:

Banner

FOR

**Unspecified Delivery Type (over 0
pages)**

**08/29/2023
01:55 PM**

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

v.

No.: D-307-CV-2022-01982
Fitch, Casey B.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

COMPLAINT FOR PERSONAL INJURY AND DAMAGES

Plaintiff, for his complaint against Defendants, states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of Dona Ana County, State of New Mexico.
2. Defendant City of Sunland Park operates the Sunland Park Police Department (SPPD), and is a governmental entity defined by the New Mexico Tort Claims Act (“the TCA”) See § 41-4-3(B).
3. Defendant Andy Morales, Defendant Amador Quintana and Defendant Alejandro Valencia (hereinafter “Defendant Officers”) were, at all pertinent times, law enforcement officers employed by the SPPD, acting within the course and scope of their employment as defined by the TCA pursuant to § 41-4-3(D).
4. A notice of Plaintiff’s claims was provided to Defendant City of Sunland Park, including the SPPD Police Chief, on November 12, 2020, in satisfaction of the TCA’s notice requirement.
5. The actions and omissions described herein occurred in the State of New Mexico.
6. This Court has jurisdiction over the parties and subject matter herein, and venue is proper in this district.

BACKGROUND FACTS

7. On October 20, 2020, Plaintiff was observing a fire burning in Sunland Park, New Mexico, when Defendant Officers apprehended Plaintiff.

8. Defendant Officers were directing people to move away from the area when Defendant Valencia pushed Plaintiff. Defendant Quintana then pushed Plaintiff.

9. At that time, Defendant Morales arrived, and Defendant Valencia grabbed Plaintiff's arm and leg-swept Plaintiff.

10. Plaintiff hit the pavement, face first, causing severe cuts, scrapes, bruises and swelling to his forehead, face, nose and mouth. Defendant Valencia then proceeded to tase Plaintiff twice.

COUNT I

CLAIM FOR ASSAULT AND BATTERY AS TO DEFENDANTS MORALES, QUINTANA, AND VALENCIA

11. The facts set forth above establish that Defendant Officers committed a civil assault against Plaintiff by engaging in threats or menacing conduct that caused Plaintiff to reasonably believe that he is in danger of receiving an immediate battery. See § 30-3-1 NMSA 1978.

12. Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner. § 30-3-4 NMSA 1978; see also *Selmeczki v. N.M. Dept. of Corr.*, 2006-NMCA-024, ¶ 29, 139 N.M. 122 (discussing civil battery; holding “[i]t is black-letter law that causing an offensive touching, even indirectly to another's clothing and not resulting in injury, is the tort of battery”); *Fisher v. Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627, 630 (Tex.1967) (“Personal dignity is the essence of an action for [civil] battery.”).

13. The individual Defendant Officers acted without provocation or resistance, and battered Plaintiff by forcefully grabbing Plaintiff's arm and performing a leg-sweep on Plaintiff, slamming

him down to the pavement face first, causing severe cuts, scrapes, bruises and swelling to his forehead, face, nose and mouth. Defendant Valencia then proceeded to tase Plaintiff twice.

COUNT II

CLAIM FOR VIOLATION OF THE NEW MEXICO CONSTITUTION'S GUARANTEE AGAINST UNREASONABLE SEIZURES AS AGAINST DEFENDANTS MORALES, QUINTANA, AND VALENCIA

14. The New Mexico Constitution states that:

The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.

New Mexico Constitution at Art. II, Sec. 10.

Similar to the Fourth Amendment to the United States Constitution, “[t]he right to be free from excessive force is a clearly established right under the Fourth Amendment's prohibition against unreasonable seizures of the person[.]” *Benavidez v. Shutiva*, 2015-NMCA-065, ¶ 33, 350 P.3d 1234.

15. The individual Defendant Officers failed to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of New Mexico and acted contrary to law when, without provocation or resistance, and battered Plaintiff by forcefully grabbing Plaintiff’s arm and leg-sweeping Plaintiff, slamming him down to the pavement face first, causing severe cuts, scrapes, bruises and swelling to his forehead, face, nose and mouth. Defendant Valencia then proceeded to tase Plaintiff twice.

16. Acts during arrest “constitute excessive force if a plaintiff alleges: (1) some actual, non-*de minimis* injury, whether physical or emotional, and (2) that the officer ignored the timely protestations of the Plaintiff. *Griffin v. Penn*, 2009–NMCA–066, ¶ 18, 146 N.M. 610 (considering a case in which handcuffs were allegedly impermissibly tight).

17. As a direct and proximate result of Defendant Officers' actions and omissions set forth herein, Plaintiff has suffered severe and permanent injuries including, without limitation, personal injuries, medical bills, pain, suffering, mental anguish, permanent disability and impairment, lost earnings, disfigurement, scarring, and loss of enjoyment of life.

COUNT III

CLAIM FOR LIABILITY AGAINST DEFENDANT CITY OF SUNLAND PARK, POLICE DEPARTMENT, PURSUANT TO THE DOCTRINE OF RESPONDEAT SUPERIOR

18. At all relevant times, the individual Defendant Officers were employees of the SPPD, of the Defendant City of Sunland Park, and were acting in the course and scope of their employment, and acting pursuant to the training, management and supervision of Defendant SPPD.

19. Defendant City of Sunland Park, via SPPD, is therefore liable to Plaintiff for the wrongful actions and omissions of Defendant Officers pursuant to the doctrine of *respondeat superior* to the same extent and for the same damages as Defendants are liable.

PRAYER FOR JUDGMENT

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, awarding the following relief:

- A. Compensatory damages;
- B. Pre-judgment interest at the highest statutory rate;
- C. Post-judgment interest at the highest statutory rate; and
- D. All other relief and compensation permitted under any rule or statute, as well as Plaintiff's court costs and such other relief as the Court deems proper.

ELIAS LAW P.C.

By: /s/Michael C. Ross
MICHAEL C. ROSS
111 Isleta Blvd. SW, Suite A
Albuquerque, New Mexico 87105
(505) 221-6000
Attorneys for Plaintiff



December 31, 2020

*Adam Aldaz
New Mexico Self Insured Fund
P.O. Box 846
Santa Fe, NM 87504*

INVESTIGATION REPORT

Entity: Sunland Park Police Department

NMSIF #: 2021027720

Complainant: Jesus Ibarra

Type: Tort Claim – Excessive Force

Date of Incident: October 20, 2020

Assigned Date: December 4, 2020

Investigator: Carl J. Christiansen, Universal Investigation Services

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ASSIGNMENT

The New Mexico Self Insurer's Fund (NMSIF) assigned Universal Investigation Services (UIS) to investigate a Tort Claim filed against the City of Sunland Park, NM and the Sunland Park Police Department (SPPD) by Mr. Jesus Ibarra. The claim developed from Mr. Ibarra being at the site of a structure fire in the City of Sunland Park, NM, on October 20, 2020. SPPD officers were on scene assisting the Sunland Park Fire Department. Mr. Ibarra was considered disorderly and aggressive, and the Sunland Park Police Department subsequently arrested him.

TCN ALLEGATIONS

On November 10, 2020, the City of Sunland Park, NM, received a Tort Claim Notice from Attorney David Elias Idinopulos on behalf of Jesus Ibarra. The claim stated Mr. Ibarra was arrested and then served for Disorderly Conduct and Resisting or Obstructing for a future unknown date by the courts. The TCN alleged that officer Alejandro Valencia was the aggressor in the altercation resulting in Mr. Ibarra being injured during the apprehension.

SUNLAND PARK POLICE DEPARTMENT EMPLOYEES

- Lt. Amador Quintana, Sunland Park Police Dept., responding officer
 - Lt. Andres Morales, Sunland Park Police Dept., responding officer
 - Officer Alejandro Valencia, Sunland Park Police Dept., arresting officer
 - Agent Reyes, Sunland Park Police Dept., follow up interviews
-

DOCUMENTATION

1. Tort Claim Notice from David Elias Idinopulos
2. Sunland Park Police Department Report 2020-00008918 and all supplementals
3. Use of Force Form- A. Valencia
4. Taser Use Report
5. Use of Force- A. Quintana
6. Memo of the Event

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7. Supporting Document- Field notes by Agent Reyes with D. Mendez
 8. Body Cam Video (X2)- G. Reyes
 9. Witness Video (X1)
 10. Audio Interview with on-scene witness- Kuehne
 11. Body Cam Video, Booking Area
-

SYNOPSIS

On Tuesday, October 20, 2020, Officers Valencia, Morales, and Quintana of the Sunland Park Police Department responded to assist the Sunland Park Fire Department at a structure fire in the Riverside community. Upon arrival, they assisted with hooking up the main water lines and conducting crowd control. While moving the crowd further away from the scene for safety precautions, they encountered Jesus Ybarra, who would not comply with their request. Mr. Ybarra was refusing their commands and instigating the crowd, so he was placed under arrest. During the apprehension, he was taken to the ground and suffered a head laceration. He continued to resist, and Officer Valencia applied his Taser with direct contact (drive stun) for compliance. Once in custody, Mr. Ybarra was given medical treatment at the scene.

INVESTIGATION DETAILS

On December 04, 2020, the New Mexico Self Insurer's Fund hired Universal Investigation Services to investigate the circumstances surrounding the Tort Claim against the City of Sunland Park Police Department, initiated by attorney David Elias Idinopulos. The Tort Claim was reviewed upon receipt, in which it indicated Sunland Park Police Department was at fault for excessive force during the arrest of Mr. Jesus Ibarra. The tort claim also indicates Mr. Ybarra had to be transported to a hospital for treatment of his injuries sustained during his arrest. The Sunland Park Police Department did not initially charge Mr. Ibarra with any crimes but instead filed them later. The claim also alleges Mr. Ybarra suffered injuries due to the unprofessionalism of Officer Valencia.

I sent two emails to Mr. David Elias Idinopulos asking to speak with his client to get his version of the incident. As of the date of this report, Mr. Idinopulos has not responded.

I requested, received, and reviewed copies of the reports prepared by SPPD Officers, the body cam video, and booking video footage. Detective Reyes's body camera shows Mr. Ibarra using profanity and arguing with Lt. Quintana and Officer Valencia as Reyes approaches. In the video, Lt. Quintana is grabbing Mr. Ibarra's right arm while Ofc. Valencia is holding his right arm, and then Mr. Ibarra is taken to the ground. While on the ground, Mr. Ibarra is still refusing to comply

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with the officers' verbal orders and is subsequently tased and then handcuffed. Video obtained by a witness, Mr. Mendez, was provided. It shows Mr. Ibarra using profanity directly at the officers on scene and refusing to listen to their repeated request to move back. The video shows the verbal altercation and the physical apprehension of Mr. Ibarra. During the situation, before it escalates, Mr. Ybarra tells the video operator to continue recording. Each of the Officers' reports indicates their roles and responses to the initial scene and the incident involving Mr. Jesus Ibarra.

On Friday the 18th of December, I traveled to the Sunland Park Police Department located at 1000 McNutt Drive, Sunland Park, NM, to interview the officers involved. Each officer was read their Garrity warning, which they signed and stated they understood. The following is a synopsis of the interviews.

Interview – Lt. Amador Quintana

Lieutenant Amador Quintana said he responded to the scene at 111 Elm Street for a structure fire. He assisted the Sunland Park Fire Department, which is a common task due to under-manning within the fire department at the current time. After helping to drag hoses to the fire hydrant, he overheard an argument between an officer and someone in the crowd. He walked in that direction to assist. Upon arriving at the location, he observed Officer Valencia was telling an individual to move back for safety precautions. The instructions were given because the initial cordon had to be increased due to the fire hose location. The crowd complied with the request except for one male individual, who was identified later as Mr. Jesus Ibarra.

Lt. Quintana saw officer Valencia lightly pushing Mr. Ibarra back to gain compliance. Lt. Quintana placed himself between the two of them. Mr. Ibarra was irate and had stated he wanted to make a complaint against Officer Valencia. He told Mr. Ybarra he could make the complaint after the incident. Still, he needed to move back for his safety. Mr. Ibarra walked towards Lt. Quintana stating, "I know my fucking rights," followed by numerous other profanities. He was told he would be placed under arrest if he did not comply with the orders. Mr. Ibarra continued to yell at the officers and placed his hands out in front of him, yelling, "arrest me." Mr. Ybarra then told the crowd to record what was happening. Lt. Quintana advised Mr. Ibarra that he would give him one more chance to move back. Mr. Ibarra did not comply and kept moving towards Lt. Quintana. At that point, Lt. Quintana grabbed Mr. Ibarra's left wrist and advised him he was under arrest. Mr. Ibarra continued to resist, so officer Valencia assisted with an arm-bar takedown. Once on the ground, Mr. Ybarra would not surrender his arms to be handcuffed.

Officer Valencia utilized his department-issued Taser and applied two drive stuns (direct contact, no cartridge deployment) until Mr. Ibarra complied. When Mr. Ibarra stood up, he noted an injury to his forehead. He was immediately escorted to an ambulance for medical care. Lt. Quintana estimated the ambulance to be less than one hundred yards from the incident location. Mr. Ibarra refused medical treatment on scene and was transported to the Sunland Park Police Department for booking. Lt. Quintana was notified later by Officer Valencia that Mr. Ibarra complained of injuries, so medical personnel responded to the police department. Mr. Ibarra was released on his own reconnaissance with approval from a magistrate judge, and then he was transported to a hospital for treatment. This concluded my interview with Lieutenant Quintana.

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Interview – Lt. Andres Morales

Lieutenant Andres Morales said he responded to a fire call in the riverside community of Sunland Park, NM. He arrived at Elm Court, which is a cul-de-sac. After positioning his vehicle to block the cul-de-sac, he assisted the fire department with securing hoses. While doing so, he heard a commotion and observed Lt. Quintana and Officer Valencia struggling with an individual on the ground, later identified as Jesus Ybarra. He ran to assist and noted Mr. Ybarra was actively resisting the officers and failing to remove his arms from underneath his body so he could be handcuffed. Lt. Morales said that Officer Valencia deployed his Taser on Mr. Ybarra, which seemed to have no effect. After a short struggle, he was handcuffed. Mr. Ybarra had a laceration to his forehead, which appeared to have been caused by him actively resisting. Mr. Ibarra was complaining of head pain and dizziness. Lt. Morales and Detective Reyes escorted Mr. Ibarra to the ambulance that was already at the scene. Mr. Ybarra continued to cuss and instigate the crowd as he was being escorted. He refused medical treatment, so he was released back to Sunland Park Police for transport and booking.

As Lt. Morales was walking back to his unit, he observed a man who identified himself as Erwin Kuehne. Mr. Kuehne stated he witnessed the entire incident between Mr. Ybarra and the officers, and he would be happy to give a statement if need be. Lt. Morales arrange to interview Mr. Kuehne at the Sunland Park Police Department later that day. Mr. Kuehne arrived at SPPD at approximately 2:15 p.m. and provided a recorded statement (See the summary of the statement below). This concluded my interview with Lieutenant Morales.

Interview – Officer Alejandro Valencia

Officer Alejandro Valencia told me that he was having lunch when firefighters approached him from the Sunland Park Fire Department. They informed him they were on their way to a fire in the Riverside community of Sunland Park, NM, and they asked for assistance. Upon arriving on the scene, he started moving a crowd that gathered to a safe distance from the fire. During this time, he was told by Lt. Quintana that the crowd would need to be moved further back due to an issue with the fire hydrant, which might erupt. He did not have any crime scene tape, so he began giving verbal commands for the crowd to move further back. Everyone complied except a male individual, later identified as Mr. Jesus Ibarra. He observed that Mr. Ybarra had his cellular phone out filming the fire. Mr. Ibarra refused to move back, stating he had every right to record. Officer Valencia told him that was fine, but he had to move back for his safety. Mr. Ibarra became verbally abusive, stating, "who the fuck was I to tell him anything." After refusing to comply with the verbal commands, Officer Valencia placed his hand on Mr. Ibarra's upper chest area and attempted to move him back. Mr. Ibarra stated, "Don't fucking touch me." While Officer Valencia tried to push him backward, Lt. Quintana arrived and stood between the two trying to de-escalate the situation. Lt. Quintana told Mr. Ibarra he understood he had the right to record the fire and asked him to

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please move back in a friendly voice. Mr. Ibarra continued to use foul language at Lt. Quintana and Officer Valencia. Mr. Ibarra was informed if he did not comply, he would be arrested. Mr. Ibarra stated that he knew his rights and continued to disobey orders given to him. At that point, Lt. Quintana told him he was under arrest, and he was taken to the ground by both officers. While on the ground, Mr. Ibarra continued to resist by keeping his arms under his body and not surrendering them to be handcuffed. After numerous verbal commands to release his arms, Officer Valencia opted to use his department-issued Taser to gain Mr. Ybarra's compliance. He shouted the preparatory commands, "Taser, Taser," and performed a drive stun. Mr. Ibarra submitted to the Taser, and he was taken into custody. When he was assisted to his feet, it was noted he had an injury to his forehead. American Medical Response medics offered him treatment, but he refused. Mr. Ybarra was then released to the officers.

At approximately 12:09 p.m. Officer Valencia contacted Magistrate Judge Linda Flores and explained that Mr. Ibarra could not be booked because he complained of injuries. Judge Flores approved that Mr. Ibarra could be released on his own recognizance and be summoned later. Mr. Ybarra was subsequently issued a summon for the charges of Disorderly Conduct and Resisting Arrest. Officer Valencia explained this to Mr. Ibarra, and then he was released to the care of American Medical Response for transport to a medical facility of Mr. Ibarra's choosing. Officer Valencia indicated that the incident was captured on his body cam, Guard Cam sp115.

Officer Valencia also contacted a neighbor named Mr. Mendez, who said he witnessed the events. Officer Valencia obtained Mr. Mendez' contact information and advised someone would contact him later for a statement. This concluded my interview with Officer Valencia.

As noted above, Lt. Morales obtained a recorded interview from Erwin Kuehne at the Sunland Park Police Department on October 20, 2020. The following is a summary of that recorded interview.

Lt. Morales interview with Mr. Kuehne

Mr. Kuehne stated that he was a "stinger," a freelance journalist with Loudlabs News based out of California. He explained a stinger is a photographer or videographer who contributes reports, photos, or videos to a news outlet on an ongoing basis but is paid individually for each piece of content. Mr. Kuehne said that he was on scene to film the structure fire when he was approached by Mr. Ibarra and asked if he had been closer to the fire. He told Mr. Ibarra he was, but he was moved back by the police. Mr. Kuehne stated that Mr. Ibarra told him he was going to move closer regardless of what the police said and proceeded to do so. The police met Mr. Ibarra, who told him to move back, but he started to argue with the officers. Mr. Kuehne said it appeared that Mr. Ibarra rushed the officers and was taken to the ground, where more officers assisted. Mr. Kuehne believed that it was Mr. Ibarra's fault for failing to comply with the officer's orders.

The information provided by Mr. Kuehne is consistent with the account of the events given by Officer Valencia and Lt. Quintana.

(For more details, refer to the interview recording.)

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October 21, 2020 at 8:45 a.m. Detective Reyes contacted Mr. Mendez at his residence on 107 Elm Ct., Sunland Park, NM, to follow up with a witness statement. Mr. Mendez recorded the situation from the previous day on his cell phone. It happened in front of his residence. Detective Reyes filmed the entire interview on his body camera (please refer to the video). The following is a synopsis of that interview.

Detective Reyes Interview with Mr. Mendez

Mr. Mendez stated that during the entirety of the situation, the officers remained polite to Mr. Ibarra. Still, he kept escalating the event by cussing at the officers and telling them he knew his rights and they couldn't tell him what to do. He remembers the officers telling Mr. Ibarra at least five times to move back and staying calm, but Mr. Ibarra became more and more belligerent, asking for a supervisor, and his tax dollars paid their salary. Mr. Mendez said after not complying, the officers told him he would be arrested. They then put him on the ground, and while handcuffing him, he kept resisting. Mr. Mendez said the officers tased him, and he kept telling Mr. Ibarra to surrender. Mr. Ibarra told him to keep recording. When Mr. Ibarra helped up from the ground, he had a cut to his forehead. He looked and told Mr. Mendez and reemphasized him to keep recording the event. The officers walked him to an ambulance down the road.

The information provided by Mr. Mendez is consistent with the account of the events given by Officer Valencia and Lt. Quintana.

(For more details, refer to the interview recording.)

This concludes the investigation into this matter.

INVESTIGATIVE SUMMARY

Officers from the Sunland Park Police Department arrived at a residential fire in Sunland Park's Riverside community to assist the Sunland Park Fire Department. While on the scene, officers were tasked with expanding the cordon. While doing so, one individual refused to obey the officers' verbal instructions and became verbally abusive. By witness statements tried to incite the crowd. The individual, Mr. Jesus Ibarra, was taken into custody for disorderly conduct and resisting arrest. During the arrest, he suffered an injury to his forehead. He was treated on scene and at the police station, released on his own recognizance by the authority Magistrate Judge Flores with a notification that he would be summoned later for the charges.

CONFIDENTIAL REPORT

UNIVERSAL INVESTIGATION SERVICES – YBARRA v SUNLAND PARK – NMML #2021027720

CONCLUSION

A review of all documents, videos, and witness statements clearly indicate that Mr. Ibarra instigated the confrontation between himself and the Sunland Park Police Department's Officers on the morning of October 20, 2020.

Based on a review of Sunland Park Police Department Policies, the officers conducted themselves in a professional manner. The officers only utilized physical force as a last resort and the force used was within their policies. The one caveat is that no photographs were taken of Mr. Ibarra or his injuries following the deployment of the Taser, which policy dictates. However, during the video at the Police Station, the injury can be seen and treated.

– End of Report –

Submitted By:

*Carl J. Christiansen, Investigator
Universal Investigation Services, LLC
Date: December 31, 2020*

CONFIDENTIAL REPORT

UNIVERSAL INVESTIGATION SERVICES – YBARRA v SUNLAND PARK – NMML #2021027720

Page 8 of 8



January 18, 2021

*David Elias Idinopulos
111 Isleta Blvd. SW, Suite A
Albuquerque, New Mexico 87105*

*Re: Jesus Ibarra TCN vs. Sunland Park
NMML Claim #2021027720*

Mr. Idinopulos,

The letter is being sent on behalf of the New Mexico Self Insurer's Fund. Our firm was assigned to investigate the allegations you made in your Tort Claim Notice dated November 10, 2020 on behalf of Jesus Ibara. The New Mexico Self Insurer's Fund has reviewed our report and they have asked me to inform you the Tort Claim is being denied.

Sincerely,

Carl Christiansen

**Carl Christiansen – Investigator
Universal Investigation Services
6300 Riverside Plaza Lane NW, Suite 100
Albuquerque, NM 87120**

CC: NMSIF – Adam Aldaz
UIS File

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
10/19/2022 10:02 AM
DAVID S. BORUNDA
CLERK OF THE COURT
Joseph Martinez

JESUS IBARRA-PONCE,

Plaintiff,

V.

No.: D-307-CV-2022-01982

CITY OF SUNLAND PARK ANDY MORALES, AMADOR
QUINTANA and ALEJANDRO VALENCIA

Judge Fitch

Defendants.

ORDER REQUIRING SCHEDULING REPORTS,
A DISCOVERY PLAN, EXPERT WITNESS DISCLOSURE,
AND LIMITING STIPULATIONS TO ENLARGE TIME
FOR RESPONSIVE PLEADINGS

IT IS SO ORDERED:

- A. Plaintiff shall serve a copy of this order on each defendant with the summons and complaint and file a certificate of such service. Parties other than plaintiffs who assert claims against others who have not been served with this order shall serve a copy of this order on those against whom they assert claims with the pleading asserting such claims and shall file a certificate of such service.
- B. Within sixty (60) calendar days after the initial pleading is filed, parties of record shall file a scheduling report with copies to opposing parties and the assigned judge. Parties shall confer and are encouraged to file a Joint Scheduling Report, LR3-Form 2.12 NMRA for Track A or LR3-Form 2.13 for Tracks Band C, or, if they cannot agree, file an individual Scheduling Report, LR3-Form 2.13 NMRA. *See* copies of forms attached hereto.
- C. Any party who enters an appearance in the case more than sixty (60) calendar days after the filing of the initial pleading shall file a scheduling report within ten (10) business days and deliver a copy to the assigned judge.

- D. If all parties are not of record within sixty (60) calendar days of the filing of the initial pleading, the party making claims against the absent parties (*Plaintiff for Defendants, Third-Party Plaintiffs for Third-Party Defendants, etc.*) shall, within five (5) business days after the sixtieth (60th) day, file and serve parties of record and deliver to the assigned judge, a written explanation why the case is not at issue and how much time is needed before the case will be at issue. The notice shall be titled "Delay in Putting the Matter at Issue."
- E. Counsel or parties who do not have attorneys may not stipulate to an enlargement of time greater than fourteen (14) calendar days for the filing of a responsive pleading without a motion and order. The motion shall state with particularity the reason(s) an enlargement is in the best interests of the parties. A copy of the motion and stipulation shall be delivered to all parties as well as counsel. The enlargement requested shall be for a specified time.
- F. When all parties have been joined and the case is at issue, the parties shall immediately notify in writing the assigned judge and the alternative dispute resolution coordinator.
- G. If appropriate, the court will refer this matter to settlement facilitation under Part VI of the Local Rules of the Third Judicial District Court.
- H. Within seventy-five (75) calendar days from the date the initial pleading is filed, or fifteen (15) calendar days after the parties alert the Court that the case is at issue, the parties shall either:
- (1) stipulate to a discovery plan and file the stipulation with the court, or
 - (2) request a hearing to establish a discovery plan pursuant to Paragraph F of Rule 1-026 NMRA.
 - (3) In the absence of a stipulated discovery plan or a timely request from a party for a hearing to establish a discovery plan, the following plan shall go into effect:
Within one hundred (100) calendar days after the initial pleading was filed or fifteen (15) calendar days after a party has entered the suit, whichever is the later date, each party shall provide to all other parties:
 - a. The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed issues raised by the pleadings, identifying the subjects of the information;

- b. A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues raised by the pleadings;
- c. A computation of any category of damages claimed by the disclosing party, providing copies or making available for inspection and copying the documents or other evidentiary materials and medical records and opinions, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered;
- d. For inspection and copying, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;
- e. If the medical condition of a party is at issue, such party shall give a medical release authorization to opposing parties. The parties shall confer regarding the nature and extent of the release and stipulate, if possible. If the parties cannot agree, each party shall file a memorandum with a proposed medical release authorization advocating that party's proposed form to the court. A copy of the memorandum and proposed form shall be delivered to the assigned judge. Rule 1-007.1 NIMRA shall apply.

I. Pursuant to Rule 1-026(E) NMRA, parties shall reasonably supplement discovery required in Subparagraphs (3)(a) through (e) of Paragraph Hof this Order.

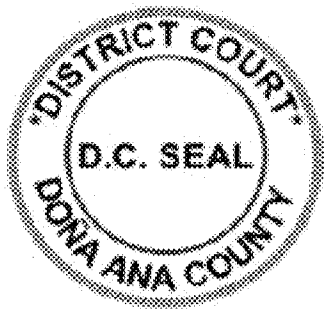
J. Intent to Call Expert Witness - Disclosure. All parties shall exchange a "Notice of Intent to Call Expert Witness(es)" listing the names, addresses and phone numbers for all anticipated experts, including a brief summary of the subject matter of each witness' testimony. If an expert has not yet been identified by a party, the parties must list the specialized area(s) in which an expert is anticipated to be retained and a brief summary of the areas or issues on which the expert is expected to testify.

With respect to each expert listed, all parties are to observe their continuing duty to timely supplement discovery and shall further abide by the requirements of Section 8 of the attachment to the Rule 16(B) Scheduling Order.


DISTRICT COURT JUDGE

Delivered to Plaintiff on May 20, 2021

David S. Borunda
Clerk of the District Court



/s/ Anna Secrest

Deputy – Anna Secrest

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

Plaintiff

vs.

NO.: D-307-CV
Judge:

Defendant

JOINT SCHEDULING REPORT STIPULATING TO TRACK A

Come now all the parties to this case, (by their counsel of record) and stipulate as follows:

- 1 The court has subject matter and personal jurisdiction, and venue is proper.
- 2 This case is appropriate for assignment to Track A
- 3 The parties do not intend to amend the pleadings or file dispositive motions
- 4 All parties will be ready for trial by _____ (*no more than six (6) months from filing of complaint*)
- 5 Witness lists will be exchanged and filed forty-five (45) days before trial
- 6 Discovery limited to interrogatories, requests for production and admission and no more than two (2) depositions per party.
- 7 All parties and counsel will either (a) select a facilitator by agreement of the parties, or (b) request the court's ADR coordinator to select a facilitator and will engage in a settlement conference within ninety (90) days from the date of the filing of the complaint. The parties may move for enlargement of time for the settlement conference for good cause shown. The parties shall share the facilitator's fee, if any, equally.

8. Exhibits: exchanged at least fifteen (15) days before trial.

This Jury ___ 6 ___ 12 nonjury ___) matter will take _____ hours to try.

9. Conflicting court hearings (or other conflicts which show good cause for not setting trial)

for two (2) months following the date the matter is ready for trial:

10. Other: _____

SUBMITTED BY:

Name of party: _____
Attorney: _____
Address: _____
Telephone Number _____

Name of party: _____
Attorney: _____
Address: _____
Telephone Number _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the ___ day of _____, 20 ___ -

Signature

LR3-Form 2.13. (_____ 's) Goint) scheduling report.

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

, Plaintiff

vs.

NO.: D-307-CV

Judge:

, Defendant

(_____ 'S) (JOINT) SCHEDULING REPORT

1. This case should be assigned to Track _____
2. Jurisdiction and Venue: _____ Stipulated; _____ Disputed;
Why: _____
3. _____ NonJury; _____ 6-personjury; _____ 12-person jury.
4. Significant legal issues, if any: _____

5. Trial witnesses presently known (defendant's, plaintiffs, etc.): _____
State expert type: _____
6. Settlement
 _____ [I] [We] have sufficient information to evaluate the case. .
 _____ [I] [We] have provided sufficient information for opposing parties to evaluate the case.
 _____ [I] [We] need the following information from _____ to evaluate the case: _____
 _____ [I] [We] need the following discovery to obtain information sufficient to evaluate the case:
 Explain why such information cannot be obtained informally without formal discovery:

 _____ [I] [We] have scheduled a settlement conference on _____, 20__ _ with _____ (facilitator) or have requested the court's ADR coordinator to refer to facilitation.
 Or
 _____ [I] [We] request that this not be referred to facilitation because:

 The possibility of settlement is _ _ good _ _ fair, _____ poor.

7. Discovery:

[I] [We] estimate it will take _____ months to complete discovery. (*Attach discovery plan if stipulated, or request for setting a discovery conference if wanted*) If any party requests a discovery conference, answer the following:

The party submitting this scheduling report intends to do the following discovery:

(*If this is a joint scheduling report, each party shall answer this question.*)

[Plaintiff] [Defendant] intends to do the following discovery:

8. [I] [We] estimate that trial will take _____ court days to try-

9. Dates counsel will not be available for trial due to the following conflicting court settings (*beginning with the date immediately following the time you estimate discovery will be completed*). _____

10. Stipulations: _____

11. Other:

SUBMITTED BY:

Name of party: _____

Attorney: _____

Address: _____

Telephone Number _____

Name of party: _____

Attorney: _____

Address: _____

Telephone Number _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the ___ day of _____ 20___ _

Signature

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

No.: D-307-CV-2022-01982

v.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

**DEFENDANT ALEJANDRO VALENCIA'S RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW Defendant Alejandro Valencia, by and through his attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, for his Responses to Plaintiff's First Set of Request for Production of Documents, states:

OBJECTION TO "DEFINITIONS"

Defendant Alejandro Valencia objects to and does not consider himself bound by the "Definitions" contained in Plaintiff's First Set of Request for Production of Documents to the extent those definitions and instructions attempt to impose duties upon this Defendant beyond those required by the New Mexico Rules of Civil Procedure and, in particular, to the extent the definitions and instructions attempt to require this Defendant to provide more information or produce more material than is referenced in the individual request.

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents which you have reviewed or relied upon in preparation of your response to Interrogatory No. 2 or which otherwise relate to your answer to said Interrogatory.

RESPONSE: See documents produced herein.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents which you have reviewed or relied upon in preparation of your response to Interrogatory No. 3 or which otherwise relate to your answer to said Interrogatory.

RESPONSE: This Defendant has no responsive documents.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of all documents describing or relating to all of the matters contained in your response to the Interrogatory above.

RESPONSE: Please see documents produced herein.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents which you have reviewed or relied upon in preparation of your response to the Interrogatory above, or which relate to said Interrogatory.

RESPONSE: See documents produced herein.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents which you have reviewed or relied in preparation of your answers to the two Interrogatories above or which relate to said Interrogatories.

OBJECTION: This request is duplicative of RFP #4.

ANSWER: See Response to RFP #4.

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of all of documents evidencing, describing, containing, or setting forth your training materials, policies, customs, and procedures when involved in an incident as described in Plaintiff's complaint, while employed with the City of Sunland Park.

RESPONSE: This Defendant has no responsive documents.

REQUEST FOR PRODUCTION NO. 7: Please provide all statements, whether oral, written, signed or unsigned, evidencing, describing, or relating to the incident and any statements of witnesses to the incident.

RESPONSE: This Defendant has no responsive documents.

REQUEST FOR PRODUCTION NO. 8: Please provide all photographs, body worn camera/video and dashboard camera/video footage, slides, motion pictures, videotapes, drawings or other depictions of the Plaintiff, any individual involved in the incident including the scene where the incident occurred.

RESPONSE: This Defendant has no responsive documents.

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of all documents contained in any and all files maintained by Defendants relating to or regarding the incident.

RESPONSE: This Defendant does not maintain such documents and therefore has no responsive documents.

REQUEST FOR PRODUCTION NO. 10: Please produce a complete copy of the employee files of yourself, including, without limitation, a copy of all written reprimands, complaints, warnings, and notices of inadequate or improper work or performance within the past ten (10) years.

RESPONSE: This Defendant does not maintain such documents and therefore has no responsive documents.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendant Valencia

**CONSENT TO RELEASE CONFIDENTIAL INFORMATION FOR
CELLULAR PHONE RECORDS**

I, Alejandro Valencia, hereby authorize and request my cellular phone carrier: _____
to release confidential information of my cellular phone records for Account Name(s):
_____ use of cell phone number: _____ during the period of time from
10:00 a.m. to 2:00 p.m. on October 20, 2020. This confidential information is to be released to:

**MICHAEL C. ROSS
ELIAS LAW P.C.
111 ISLETA BOULEVARD SW, SUITE A
ALBUQUERQUE, NM 87105
(505) 221-6000**

Use of this information shall be limited to the following purpose(s): Litigation

I understand that any cancellation or modifications of this authorization must be in writing, and that I have a right to receive a copy of this authorization and any documents produced in response to any request using this authorization. A photocopy of this authorization shall be as effective and valid as the original. This authorization shall remain valid until: **One year from the date of my signature below.**

I furthermore release all parties stated herein from any legal liability resulting from the release of this information, with the understanding that all parties involved will exercise appropriate safeguards while using this information.

DATED _____

SIGNATURE

PRINT NAME

**STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT**

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
5/3/2023 11:24 AM
DAVID S. BORUNDA
CLERK OF THE COURT
Alexandra Klein

JESUS IBARRA-PONCE,

Plaintiff,

v.

No. D-307-CV-2022-01982

**CITY OF SUNLAND PARK; ANDY MORALES;
AMADOR QUINTANA; and ALEJANDRO
VALENCIA,**

Defendants.

STIPULATED ORDER OF NON-DISCLOSURE AND CONFIDENTIALITY.

WHEREAS the parties in this case stipulate that certain discovery and evidentiary material is and should be treated as confidential, IT IS ORDERED that:

1. Document production will include certain information that is private and confidential, and may contain medical and mental health information, employment files, statements and interviews or documents that may be or are subject to the terms of HIPAA and other privacy laws.
2. Any individually identifiable health information or other confidential information that is disclosed to any party or lawful representative of a party in the course of this proceeding, or in the course of any subsequent related administrative or judicial appeal, shall remain confidential;
3. The Party producing confidential information shall designate information as confidential by so indicating on the face of the writing or by such other reasonable manner appropriate to the form in which the confidential information is produced or disclosed

provided;

4. Individually identifiable health information or other confidential information that is disclosed to any party or lawful representative of a party in the course of this proceeding and any subsequent related appeal, may not be used, re-released or disclosed for any purpose other than preparing for or conducting this case or a related appeal;
5. The parties and their lawful representatives in this matter shall make reasonable efforts to prevent unauthorized disclosure of individually identifiable health information or otherwise confidential information in this proceeding and all subsequent related appeals;
6. This Stipulated Confidentiality Order shall apply to all the parties, their attorneys, attorneys in fact, representatives, and any witnesses and experts retained by the parties;
7. The duty of non-disclosure shall further extend to any persons to whom the information is disclosed, and any such recipient shall be informed of said duty of non-disclosure at the time of disclosure, unless previously informed;
8. The duty of non-disclosure shall not expire; and
9. Consistent with Federal HIPAA regulations at 45 C.F.R. 164.512, all protected health information that is received by a party in this case from a covered entity must be either destroyed or returned to the covered entity at the end of this administrative proceeding or any subsequent related appeal.
10. Within thirty (30) days after the conclusion of the Lawsuit, all Confidential Information and all copies thereof, shall be returned to counsel providing the Confidential Information.



HONORABLE CASEY FITCH

DISTRICT COURT JUDGE

AGREED AND STIPULATED:

Electronically Approved on 05/02/23

Matthew J. Malleis, Esq.

Michael C. Ross, Esq.

Elias Law, P.C.

111 Isleta Blvd., S.W., Suite A

Albuquerque, NM 87105

(505) 221-6000

Attorneys for Plaintiff

Electronically Submitted on 05/02/23

Bryan Evans, Esq.

Jacqueline Miller, Esq.

Atwood, Malone, Turner & Sabin, P.A.

P.O. Drawer 700

(575) 622-6221

Attorneys for Defendants

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

No.: D-307-CV-2022-01982

v.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

**DEFENDANT ANDY MORALES' ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

COMES NOW Defendant Andy Morales, by and through his attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, for his Answers to Plaintiff's First Set of Interrogatories, states:

OBJECTION TO "DEFINITIONS"

Defendant Andy Morales objects to and does not consider himself bound by the "Definitions" contained in Plaintiff's First Set of Interrogatories to the extent those definitions and instructions attempt to impose duties upon this Defendant beyond those required by the New Mexico Rules of Civil Procedure and, in particular, to the extent the definitions and instructions attempt to require this Defendant to provide more information or produce more material than is referenced in the individual interrogatory.

INTERROGATORY NO. 1: Please state the full name, address, and job title of each person answering and/or assisting in answering these Interrogatories on your behalf and state the number of the Interrogatory or Request for Production (or part thereof) on which assistance was obtained by each person for each Interrogatory or Request for Production.

ANSWER:

**Andres Morales, with assistance of counsel
Lt. in charge of Patrol Division
c/o Atwood, Malone, Turner & Sabin, PA
P.O. Drawer 700
Roswell, NM 88201**

INTERROGATORY NO. 2: Please identify each person, including job title, address, and phone number, known by you to have knowledge of any facts or any discoverable matter concerning the incident, including knowledge of your claimed defenses, and state in detail and with particularity the substance of the information or knowledge of the facts held by each such person.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the relevant police report produced herein.

INTERROGATORY NO. 3: Describe fully any and all investigations of the incident, including the identity of any person or entity that conducted any investigation, when the investigation was conducted, and the results, findings, or conclusions of said investigation.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states there was a review concerning use of force. Please see relevant documentation regarding that review produced herein.

INTERROGATORY NO. 4: Please describe your complete employment history for the past ten (10) years, including, each place of employment, dates employed, job title and duties, rate of pay and reason for leaving.

ANSWER:

Sunland Park PD since 2017, currently serving as a lieutenant.

City of Anthony, NM Police Department, Patrol Officer, 2014-2017

INTERROGATORY NO. 5: Please describe your complete education and training history, including law enforcement training and education, including dates, place, and the diploma or certificate earned.

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers to training-related documents produced herein.

INTERROGATORY NO. 6: Please describe all prior grievances, citations, reprimands, punishments, terminations or any other adverse or negative employment action taken against you, in the past ten (10) years, including a brief description of such action, the date of such action, and the issuing agency or entity.

OBJECTION: Defendant objects to this interrogatory on the ground that it is unduly burdensome and overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence, generally, and in particular insofar as it seeks such information for such a lengthy period of time.

ANSWER: Subject to and without waiving the foregoing objection, Defendant states:

Terminated from Dona Ana County Sherriff's office in 2014 for unauthorized overtime.

INTERROGATORY NO. 7: Identify each person or entity who has ever sued you or has ever written or caused to be written any letter making a claim against you in the past ten (10) years, in connection with a claim of excessive or unreasonable force, or otherwise causing physical injury, in the course of making an arrest, and include therewith:

- a) a description of the suit or claim threatened suit
- b) the name of any attorney who represented the claimant
- c) the final disposition of the suit or claim
- d) in the event a suit was filed, please state the caption, case number, and court of each such suit.

ANSWER: None, to Defendant's knowledge.

INTERROGATORY NO. 8: With respect to your denial of any allegation in Plaintiff's Complaint, (a) specify in detail the facts that relate to or provide the basis for your denial of each allegation; (b) identify all documents relating to or on which you intend to rely in defense of each allegation; and (c) identify all oral communications relating to or on which your defenses are based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states: Defendant contends that the incident in question did not occur as described in Plaintiff's Complaint. Defendant does not recall any oral communications relating to his defenses other than with counsel. Defendant refers Plaintiff to all documents produced herein and the relevant police report.

INTERROGATORY NO. 9: With respect to each of the defenses contained in your answer to the complaint: (a) specify in detail the facts that relate to or provide the basis for each defense; (b) identify all documents relating to or on which you intend to rely on to prove each defense; and (c) identify all oral or written communications relating to or on which each defense is based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendants states:

Defendant believes he acted appropriately. Defendant further believes that there were actions Plaintiff could have taken that might have eliminated or reduced his damages. Discovery is ongoing and Defendant reserves the right to supplement this answer.

INTERROGATORY NO. 10: State in detail and with particularity all training, procedures, and policies which you were trained when involved in an incident as described in Plaintiff's complaint, while employed with the City of Sunland Park.

ANSWER: Defendant refers Plaintiff to relevant police department policies and training documents.

INTERROGATORY NO. 11: Please list all employees in the entire chain of command above yourself on the day of the incident, including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by the City of Sunland Park, and if not, the person's current employer.

ANSWER:

Lt. Morales

Deputy Chief Eric Lopez

Chief Javier Guerra

INTERROGATORY NO. 12: Please list all employees, officers or other agents of the City of Sunland Park that responded to the scene of the incident or who made a report, statement or investigation of the incident including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by City of Sunland Park, and if not, the person's current employer.

ANSWER: Defendant refers Plaintiff to the police report, the witness interviewed, and fire department personnel that were on the scene.

INTERROGATORY NO. 13:

Please identify with specificity the cell phone service provider you had at the time of the accident. Include with your answer the following information:

- a. Name of the carrier.
- b. Full name of the account holder.
- c. Account number and any other identifying information for the account.

OBJECTION: Defendant objects to this interrogatory on the ground that it is harassing, unduly burdensome and overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Defendant also objects on the ground that the interrogatory is improperly invasive of Defendant's reasonable expectations of privacy.

ANSWER: See objection.

INTERROGATORY NO. 14: Do you agree to sign an authorization for Plaintiff's Counsel to obtain your cellphone records for a one-hour prior to the incident herein through three-hours after the incident? If so, please find authorization attached.

OBJECTION: Defendant objects to this interrogatory on the ground that it is harassing, overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Defendant also objects on the ground that the interrogatory is improperly invasive of Defendant's reasonable expectations of privacy.

ANSWER: See objection. No, Defendant does not so agree.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendant Morales

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

No.: D-307-CV-2022-01982

v.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

**DEFENDANT CITY OF SUNLAND PARK'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

COMES NOW Defendant City of Sunland Park, by and through its attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, for its Answers to Plaintiff's First Set of Interrogatories, states:

OBJECTION TO "DEFINITIONS"

Defendant City of Sunland Park objects to and does not consider itself bound by the "Definitions" contained in Plaintiff's First Set of Interrogatories to the extent those definitions and instructions attempt to impose duties upon this Defendant beyond those required by the New Mexico Rules of Civil Procedure and, in particular, to the extent the definitions and instructions attempt to require this Defendant to provide more information or produce more material than is referenced in the individual interrogatory.

INTERROGATORY NO. 1: Please state the full name, address, and job title of each person answering and/or assisting in answering these Interrogatories on your behalf and state the number of the Interrogatory or Request for Production (or part thereof) on which assistance was obtained by each person for each Interrogatory or Request for Production.

ANSWER:

**Eric James Lopez, with assistance of counsel
Chief of Police
c/o Atwood, Malone, Turner & Sabin, PA
P.O. Drawer 700
Roswell, NM 88201**

INTERROGATORY NO. 2: Please identify each person, including job title, address, and phone number, known by you to have knowledge of any facts or any discoverable matter concerning the incident, including knowledge of your claimed defenses, and state in detail and with particularity the substance of the information or knowledge of the facts held by each such person.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers to individuals named in the police report, produced herein.

INTERROGATORY NO. 3: Describe fully any and all investigations of the incident, including the identity of any person or entity that conducted any investigation, when the investigation was conducted, and the results, findings, or conclusions of said investigation.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states there was a use of force review.

INTERROGATORY NO. 4: Please describe each Defendant Officer's complete employment history for the past ten (10) years, including, each place of employment, dates employed, job title and duties, rate of pay and reason for leaving.

OBJECTION: Defendant objects to this interrogatory on the ground that it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the documents produced herein, as well as to each individual officer's interrogatory answers.

INTERROGATORY NO. 5: Please describe each Defendant Officer's complete education and training history, including law enforcement training and education, including dates, place, and the diploma or certificate earned.

OBJECTION: Defendant objects to this interrogatory on the ground that it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the documents produced herein, as well as to each individual officer's interrogatory answers.

INTERROGATORY NO. 6: Please describe all prior grievances, citations, reprimands, punishments, terminations or any other adverse or negative employment action taken against each Defendant Officer, in the past ten (10) years, including a brief description of such action, the date of such action, and the issuing agency or entity.

OBJECTION: Defendant objects to this interrogatory on the ground that it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the documents produced herein, as well as to each individual officer's interrogatory answers.

INTERROGATORY NO. 7: Identify each person or entity who has ever sued each Defendant Officer or has ever written or caused to be written any letter making a claim against him, in the past ten (10) years, in connection with an incident, and include therewith:

- a) a description of the suit or claim threatened suit
- b) the name of any attorney who represented the claimant
- c) the final disposition of the suit or claim
- d) in the event a suit was filed, please state the caption, case number, and court of each such suit.

ANSWER: Defendant refers Plaintiff to the documents produced herein, as well as to each individual officer's interrogatory answers.

INTERROGATORY NO. 8: With respect to your denial of any allegation in Plaintiff's Complaint, (a) specify in detail the facts that relate to or provide the basis for your denial of each allegation; (b) identify all documents relating to or on which you intend to rely in defense of each allegation; and (c) identify all oral communications relating to or on which your defenses are based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the documents produced herein. As discovery is ongoing, Defendant reserves the right to supplement this response later.

INTERROGATORY NO. 9: With respect to each of the defenses contained in your answer to the complaint: (a) specify in detail the facts that relate to or provide the basis for each defense; (b) identify all documents relating to or on which you intend to rely on to prove each defense; and (c) identify all oral or written communications relating to or on which each defense is based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent that it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states its belief that its officers acted appropriately, and refers Plaintiff to the documents produced herein. Discovery is ongoing and Defendant reserves the right to supplement this response.

INTERROGATORY NO. 10: State in detail and with particularity all training, procedures, and policies which you implemented in order to train each Defendant Officer in connection with being involved in an incident as described in Plaintiff's Complaint, while employed with the City of Sunland Park.

ANSWER: Defendant refers Plaintiff to the training records and policies produced herein, as well as to each individual officer's interrogatory answers.

INTERROGATORY NO. 11: Please list all employees in the entire chain of command above each Individual Defendant on the day of the incident, including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by the City of Sunland Park, and if not, the person's current employer.

ANSWER:

See each individual officer's interrogatory answers.

INTERROGATORY NO. 12: Please list all employees, officers or other agents of the City of Sunland Park that responded to the scene of the incident or who made a report, statement or investigation of the incident including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by City of Sunland Park, and if not, the person's current employer.

ANSWER: Defendant refers Plaintiff to the police report. Defendant further states that fire department personnel were also on scene.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendant City of Sunland Park

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

No.: D-307-CV-2022-01982

v.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

**DEFENDANT ANDY MORALES' RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW Defendant Andy Morales, by and through his attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, for his Responses to Plaintiff's First Set of Request for Production of Documents, states:

OBJECTION TO "DEFINITIONS"

Defendant Andy Morales objects to and does not consider himself bound by the "Definitions" contained in Plaintiff's First Set of Request for Production of Documents to the extent those definitions and instructions attempt to impose duties upon this Defendant beyond those required by the New Mexico Rules of Civil Procedure and, in particular, to the extent the definitions and instructions attempt to require this Defendant to provide more information or produce more material than is referenced in the individual request.

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents which you have reviewed or relied upon in preparation of your response to Interrogatory No. 2 or which otherwise relate to your answer to said Interrogatory.

RESPONSE: Documents related to training produced herein.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents which you have reviewed or relied upon in preparation of your response to Interrogatory No. 3 or which otherwise relate to your answer to said Interrogatory.

RESPONSE: Please see documents produced herein.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of all documents describing or relating to all of the matters contained in your response to the Interrogatory above.

RESPONSE: Please see documents produced herein.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents which you have reviewed or relied upon in preparation of your response to the Interrogatory above, or which relate to said Interrogatory.

RESPONSE: Please see documents produced herein.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents which you have reviewed or relied in preparation of your answers to the two Interrogatories above or which relate to said Interrogatories.

OBJECTION: This request is duplicative of RFP #4.

ANSWER: See Response to RFP #4.

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of all of documents evidencing, describing, containing, or setting forth your training materials, policies, customs, and procedures when involved in an incident as described in Plaintiff's complaint, while employed with the City of Sunland Park.

RESPONSE: Please see relevant training certificates and policies, produced herein.

REQUEST FOR PRODUCTION NO. 7: Please provide all statements, whether oral, written, signed or unsigned, evidencing, describing, or relating to the incident and any statements of witnesses to the incident.

RESPONSE: This Defendant has no responsive documents.

REQUEST FOR PRODUCTION NO. 8: Please provide all photographs, body worn camera/video and dashboard camera/video footage, slides, motion pictures, videotapes, drawings or other depictions of the Plaintiff, any individual involved in the incident including the scene where the incident occurred.

RESPONSE: This Defendant has no responsive documents.

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of all documents contained in any and all files maintained by Defendants relating to or regarding the incident.

RESPONSE: Defendant does not maintain such documents and therefore has no responsive documents.

REQUEST FOR PRODUCTION NO. 10: Please produce a complete copy of the employee files of yourself, including, without limitation, a copy of all written reprimands, complaints, warnings, and notices of inadequate or improper work or performance within the past ten (10) years.

RESPONSE: Defendant does not maintain such documents and therefore has no responsive documents.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendant Morales

**CONSENT TO RELEASE CONFIDENTIAL INFORMATION FOR
CELLULAR PHONE RECORDS**

I, ANDY MORALES, hereby authorize and request my cellular phone carrier: _____
to release confidential information of my cellular phone records for Account Name(s):
_____ use of cell phone number: _____ during the period of time from
11:45 a.m. to 12:45 p.m. on October 20, 2020. This confidential information is to be released to:

**MICHAEL C. ROSS
ELIAS LAW P.C.
111 ISLETA BOULEVARD SW, SUITE A
ALBUQUERQUE, NM 87105
(505) 221-6000**

Use of this information shall be limited to the following purpose(s): Litigation

I understand that any cancellation or modifications of this authorization must be in writing, and that I have a right to receive a copy of this authorization and any documents produced in response to any request using this authorization. A photocopy of this authorization shall be as effective and valid as the original. This authorization shall remain valid until: **One year from the date of my signature below.**

I furthermore release all parties stated herein from any legal liability resulting from the release of this information, with the understanding that all parties involved will exercise appropriate safeguards while using this information.

DATED _____

SIGNATURE

PRINT NAME

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

No.: D-307-CV-2022-01982

v.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

**DEFENDANT AMADOR QUINTANA'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

COMES NOW Defendant Amador Quintana, by and through his attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, for his Answers to Plaintiff's First Set of Interrogatories, states:

OBJECTION TO "DEFINITIONS"

Defendant Amador Quintana objects to and does not consider himself bound by the "Definitions" contained in Plaintiff's First Set of Interrogatories to the extent those definitions and instructions attempt to impose duties upon this Defendant beyond those required by the New Mexico Rules of Civil Procedure and, in particular, to the extent the definitions and instructions attempt to require this Defendant to provide more information or produce more material than is referenced in the individual interrogatory.

INTERROGATORY NO. 1: Please state the full name, address, and job title of each person answering and/or assisting in answering these Interrogatories on your behalf and state the number of the Interrogatory or Request for Production (or part thereof) on which assistance was obtained by each person for each Interrogatory or Request for Production.

ANSWER:

**Amador Quintana, with assistance of counsel
Interim Deputy Chief
c/o Atwood, Malone, Turner & Sabin, PA
P.O. Drawer 700
Roswell, NM 88201**

INTERROGATORY NO. 2: Please identify each person, including job title, address, and phone number, known by you to have knowledge of any facts or any discoverable matter concerning the incident, including knowledge of your claimed defenses, and state in detail and with particularity the substance of the information or knowledge of the facts held by each such person.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the relevant police report. Defendant further states that there were fire department personnel also present on scene.

INTERROGATORY NO. 3: Describe fully any and all investigations of the incident, including the identity of any person or entity that conducted any investigation, when the investigation was conducted, and the results, findings, or conclusions of said investigation.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states there was a use of force investigation conducted, which determined that there was no violation of use of force policy.

INTERROGATORY NO. 4: Please describe your complete employment history for the past ten (10) years, including, each place of employment, dates employed, job title and duties, rate of pay and reason for leaving.

OBJECTION: Defendant objects to this interrogatory on the ground that it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant states:

Sunland Park Police Department for over ten years (2008-present)

INTERROGATORY NO. 5: Please describe your complete education and training history, including law enforcement training and education, including dates, place, and the diploma or certificate earned.

ANSWER: Subject to and without waiving the foregoing objection, Defendant states:

Canutillo High School 1997, El Paso, TX

Defendant also refers Plaintiff to the relevant training documents produced.

INTERROGATORY NO. 6: Please describe all prior grievances, citations, reprimands, punishments, terminations or any other adverse or negative employment action taken against you, in the past ten (10) years, including a brief description of such action, the date of such action, and the issuing agency or entity.

OBJECTION: Defendant objects to this interrogatory on the ground that it is unduly burdensome and overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant received a written warning related to an incident he witnessed, see memorandum dated July 9, 2020.

INTERROGATORY NO. 7: Identify each person or entity who has ever sued you or has ever written or caused to be written any letter making a claim against you in the past ten (10) years, in connection with a claim of excessive or unreasonable force, or otherwise causing physical injury, in the course of making an arrest, and include therewith:

- a) a description of the suit or claim threatened suit
- b) the name of any attorney who represented the claimant
- c) the final disposition of the suit or claim
- d) in the event a suit was filed, please state the caption, case number, and court of each such suit.

ANSWER: To Defendant's knowledge, none.

INTERROGATORY NO. 8: With respect to your denial of any allegation in Plaintiff's Complaint, (a) specify in detail the facts that relate to or provide the basis for your denial of each allegation; (b) identify all documents relating to or on which you intend to rely in defense of each allegation; and (c) identify all oral communications relating to or on which your defenses are based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states that he does not believe the subject incident occurred as stated in Plaintiff's Complaint. Defendant refers Plaintiff to the relevant documents produced herein. As discovery is ongoing, Defendant reserves the right to supplement this answer.

INTERROGATORY NO. 9: With respect to each of the defenses contained in your answer to the complaint: (a) specify in detail the facts that relate to or provide the basis for each defense; (b) identify all documents relating to or on which you intend to rely on to prove each defense; and (c) identify all oral or written communications relating to or on which each defense is based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendants states that he believes he acted appropriately. Defendant further believes that there were actions Plaintiff took, or failed to take, that might have lessened or eliminated his damages. Discovery is ongoing and Defendant reserves the right to supplement this response.

INTERROGATORY NO. 10: State in detail and with particularity all training, procedures, and policies which you were trained when involved in an incident as described in Plaintiff's complaint, while employed with the City of Sunland Park.

ANSWER: Defendant refers Plaintiff to relevant policies Sunland Park Police Department policies and training materials.

INTERROGATORY NO. 11: Please list all employees in the entire chain of command above yourself on the day of the incident, including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by the City of Sunland Park, and if not, the person's current employer.

ANSWER:

Deputy Chief Eric Lopez

Chief Javier Guerra

INTERROGATORY NO. 12: Please list all employees, officers or other agents of the City of Sunland Park that responded to the scene of the incident or who made a report, statement or investigation of the incident including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by City of Sunland Park, and if not, the person's current employer.

ANSWER: Please see relevant reports.

INTERROGATORY NO. 13:

Please identify with specificity the cell phone service provider you had at the time of the accident. Include with your answer the following information:

- a. Name of the carrier.
- b. Full name of the account holder.
- c. Account number and any other identifying information for the account.

OBJECTION: Defendant objects to this interrogatory on the ground that it is harassing, overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Defendant also objects on the ground that the interrogatory is improperly invasive of Defendant's reasonable expectations of privacy.

ANSWER: See objection.

INTERROGATORY NO. 14: Do you agree to sign an authorization for Plaintiff's Counsel to obtain your cellphone records for a one-hour prior to the incident herein through three-hours after the incident? If so, please find authorization attached.

OBJECTION: Defendant objects to this interrogatory on the ground that it is harassing, overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Defendant also objects on the ground that the interrogatory is improperly invasive of Defendant's reasonable expectations of privacy.

ANSWER: See objection. No.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendant Quintana

VERIFICATION

STATE OF NEW MEXICO)

)

COUNTY OF _____)

I, **Amador Quintana**, being first duly sworn, state that I have read the foregoing Answers to Plaintiff's First Set of Interrogatories and that the contents thereof are true and complete to the best of my knowledge information and belief.

AMADOR QUINTANA

SUBSCRIBED AND SWORN TO BEFORE ME this ____ day of _____, 2023, by **Amador Quintana**.

My Commission Expires:

Notary Public

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

JESUS IBARRA-PONCE,

Plaintiff,

No.: D-307-CV-2022-01982

v.

CITY OF SUNLAND PARK, ANDY MORALES,
AMADOR QUINTANA and ALEJANDRO VALENCIA,

Defendants.

**DEFENDANT ALEJANDRO VALENCIA'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

COMES NOW Defendant Alejandro Valencia, by and through his attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, for his Answers to Plaintiff's First Set of Interrogatories, states:

OBJECTION TO "DEFINITIONS"

Defendant Alejandro Valencia objects to and does not consider himself bound by the "Definitions" contained in Plaintiff's First Set of Interrogatories to the extent those definitions and instructions attempt to impose duties upon this Defendant beyond those required by the New Mexico Rules of Civil Procedure and, in particular, to the extent the definitions and instructions attempt to require this Defendant to provide more information or produce more material than is referenced in the individual interrogatory.

INTERROGATORY NO. 1: Please state the full name, address, and job title of each person answering and/or assisting in answering these Interrogatories on your behalf and state the number of the Interrogatory or Request for Production (or part thereof) on which assistance was obtained by each person for each Interrogatory or Request for Production.

ANSWER:

**Alejandro Valencia, with assistance of counsel
Police Officer
c/o Atwood, Malone, Turner & Sabin, PA
P.O. Drawer 700
Roswell, NM 88201**

INTERROGATORY NO. 2: Please identify each person, including job title, address, and phone number, known by you to have knowledge of any facts or any discoverable matter concerning the incident, including knowledge of your claimed defenses, and state in detail and with particularity the substance of the information or knowledge of the facts held by each such person.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the relevant police report.

INTERROGATORY NO. 3: Describe fully any and all investigations of the incident, including the identity of any person or entity that conducted any investigation, when the investigation was conducted, and the results, findings, or conclusions of said investigation.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states there was a use of force evaluation.

INTERROGATORY NO. 4: Please describe your complete employment history for the past ten (10) years, including, each place of employment, dates employed, job title and duties, rate of pay and reason for leaving.

OBJECTION: Defendant objects to this interrogatory on the ground that it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant states:

Police Officer, Sunland Park Police Department: November 2015-present

Independent cab driver: 2012-2015

Reserve officer in state of TX, Clint Police Department, Clint, TX: 2013-2015

INTERROGATORY NO. 5: Please describe your complete education and training history, including law enforcement training and education, including dates, place, and the diploma or certificate earned.

OBJECTION: Defendant objects to this interrogatory on the ground it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant refers Plaintiff to the relevant department policies and training documents.

INTERROGATORY NO. 6: Please describe all prior grievances, citations, reprimands, punishments, terminations or any other adverse or negative employment action taken against you, in the past ten (10) years, including a brief description of such action, the date of such action, and the issuing agency or entity.

OBJECTION: Defendant objects to this interrogatory on the ground that it is overly broad and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence.

ANSWER: Subject to and without waiving the foregoing objection, Defendant states:

Car accident in unit, July 2019, Sunland Park PD: written notice regarding unsatisfactory performance - violations of policy.

Missed defensive driving training, Sunland Park PD, can't recall date, written notice of unsatisfactory performance.

INTERROGATORY NO. 7: Identify each person or entity who has ever sued you or has ever written or caused to be written any letter making a claim against you in the past ten (10) years, in connection with a claim of excessive or unreasonable force, or otherwise causing physical injury, in the course of making an arrest, and include therewith:

- a) a description of the suit or claim threatened suit
- b) the name of any attorney who represented the claimant
- c) the final disposition of the suit or claim
- d) in the event a suit was filed, please state the caption, case number, and court of each such suit.

ANSWER: None, to his knowledge.

INTERROGATORY NO. 8: With respect to your denial of any allegation in Plaintiff's Complaint, (a) specify in detail the facts that relate to or provide the basis for your denial of each allegation; (b) identify all documents relating to or on which you intend to rely in defense of each allegation; and (c) identify all oral communications relating to or on which your defenses are based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendant states that the incident did not occur as it is described in Plaintiff's Complaint. Defendant refers Plaintiff to the relevant documents produced herein. As discovery is ongoing, Defendant reserves the right to supplement this answer.

INTERROGATORY NO. 9: With respect to each of the defenses contained in your answer to the complaint: (a) specify in detail the facts that relate to or provide the basis for each defense; (b) identify all documents relating to or on which you intend to rely on to prove each defense; and (c) identify all oral or written communications relating to or on which each defense is based, including the identity of each party to such communication and the date of such communication.

OBJECTION: Defendant objects to this Interrogatory to the extent it seeks information privileged from discovery pursuant to the work product doctrine, and attorney-client privilege. Defendant further objects pursuant to Rule 1-026(b)(5).

ANSWER: Subject to and without waiving the foregoing objection, Defendants states that he believes that he acted appropriately. Defendant further believes that there were actions Plaintiff took or could have taken that may have eliminated or lessened his damages. Discovery is ongoing and Defendant reserves the right to supplement this response.

INTERROGATORY NO. 10: State in detail and with particularity all training, procedures, and policies which you were trained when involved in an incident as described in Plaintiff's complaint, while employed with the City of Sunland Park.

ANSWER: Defendant refers Plaintiff to relevant police department policies and training documents.

INTERROGATORY NO. 11: Please list all employees in the entire chain of command above yourself on the day of the incident, including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by the City of Sunland Park, and if not, the person's current employer.

ANSWER:

Sgt. Murga

Lt. Morales

Lt. Quintana

Deputy Chief Eric Lopez

Chief Javier Guerra

INTERROGATORY NO. 12: Please list all employees, officers or other agents of the City of Sunland Park that responded to the scene of the incident or who made a report, statement or investigation of the incident including, with respect to each person, the person's name, address, job title and duties, and whether such person is still employed by City of Sunland Park, and if not, the person's current employer.

ANSWER: Defendant refers Plaintiff to the relevant police report. There were fire department personnel also present.

INTERROGATORY NO. 13:

Please identify with specificity the cell phone service provider you had at the time of the accident. Include with your answer the following information:

- a. Name of the carrier.
- b. Full name of the account holder.
- c. Account number and any other identifying information for the account.

OBJECTION: Defendant objects to this interrogatory on the ground that it is harassing, overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Defendant also objects on the ground that the interrogatory is improperly invasive of Defendant's reasonable expectations of privacy.

ANSWER: See objection.

INTERROGATORY NO. 14: Do you agree to sign an authorization for Plaintiff's Counsel to obtain your cellphone records for a one-hour prior to the incident herein through three-hours after the incident? If so, please find authorization attached.

OBJECTION: Defendant objects to this interrogatory on the ground that it is harassing, overly broad, and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Defendant also objects on the ground that the interrogatory is improperly invasive of Defendant's reasonable expectations of privacy.

ANSWER: See objection. No.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendant Valencia

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

JESUS IBARRA-PONCE,

Plaintiff,

v.

No. D-307-CV-2022-01982

CITY OF SUNLAND PARK; ANDY MORALES;
AMADOR QUINTANA; and ALEJANDRO
VALENCIA,

Defendants.

DEFENDANT'S NOTICE OF INTENT TO CALL EXPERT WITNESSES

COME NOW Defendants, by and through their attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, pursuant to the Court's Scheduling Order, hereby provide their notice of intent to call expert witnesses at trial:

1. Defendants may call one or more expert witnesses, in the following fields of expertise:
 - Police practices
These expert(s) may offer testimony as to any of the opinions expressed in their expert report and deposition (if taken) and would be expected to address the subject matter and opinions raised by other experts, including any opinions offered by Plaintiff's expert witnesses, if any. These expert(s) would also be expected to testify regarding their qualifications and the basis of their opinions, including their education, experience, and training.
 - Medical – possible IME
These expert(s) may offer testimony as to any of the opinions expressed in their expert report and deposition (if taken) and would be expected to address the subject matter and opinions

raised by other experts, including any opinions offered by Plaintiff's expert witnesses, if any. These expert(s) would also be expected to testify regarding their qualifications and the basis of their opinions, including their education, experience, and training.

2. Defendants reserve the right to supplement this list as discovery continues.
3. There may be other individuals construed as experts and so listed by any other party to this litigation, including but not limited to Plaintiff's treating physician(s), any or all of whom Defendants reserve the right to call as an expert witness in this litigation, or witnesses that may become identified through any subsequent reports or through any of the subsequent investigations conducted by the parties.
4. At the trial of this matter, Defendants may elicit expert testimony from any expert witness designated by any other party to this lawsuit, some of whose names may not be available to Defendants at the time of filing this designation. This designation also includes witnesses previously designated by Plaintiff.
5. Defendants reserve the right to elicit, by way of cross-examination, opinion testimony from experts designated and called by any other party to this suit. Defendants express their intention to possibly call, as witnesses associated with adverse parties, any of Plaintiff's experts.
6. Defendants reserve the right to read from any depositions taken, or to be taken, in this case.

ATWOOD, MALONE, TURNER & SABIN, P.A.

By Electronically Filed /s/ Bryan Evans

Bryan Evan
Barbara Evans
Jacqueline Miller
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Attorneys for Defendants

I HEREBY CERTIFY that on May 8, 2023, I filed the foregoing instrument Electronically through the Court's Mandatory Electronic Filing system which caused all parties of record to be served by electronic means, as more fully reflected on the emailed Notice of Electronic Filing received from the Court.

Electronically Filed /s/ Bryan Evans
Bryan Evans

**STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT**

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
5/8/2023 2:07 PM
DAVID S. BORUNDA
CLERK OF THE COURT
Josephina Gomez

JESUS IBARRA-PONCE,

Plaintiff,

v.

No. D-307-CV-2022-01982

**CITY OF SUNLAND PARK; ANDY MORALES;
AMADOR QUINTANA; and ALEJANDRO
VALENCIA,**

Defendants.

DEFENDANTS' POTENTIAL TRIAL FACT WITNESS LIST

COMES NOW Defendants, by and through their attorneys of record, Atwood, Malone, Turner & Sabin, P.A., by Bryan Evans, Barbara Evans and Jacqueline Miller and, pursuant to the Court's Scheduling Order, hereby disclose those potential trial fact witnesses they may call at trial, to-wit:

Plaintiff Jesus Ibarra-Ponce
c/o Matthew J. Malleis, Esquire
Michael C. Ross, Esquire
Elias Law, P.C.
111 Isleta Blvd., S.W., Suite A
Albuquerque, NM 87105
(505) 221-6000

Expected to testify concerning the events giving rise to this litigation, as well as his injuries and damages.

Defendant Andy Morales
c/o Atwood, Malone, Turner & Sabin, P.A.
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Expected to testify concerning the events giving rise to this litigation.

Defendant Amador Quintana
c/o Atwood, Malone, Turner & Sabin, P.A.
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Expected to testify concerning the events giving rise to this litigation.

Defendant Alejandro Valencia
c/o Atwood, Malone, Turner & Sabin, P.A.
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Expected to testify concerning the events giving rise to this litigation.

Detective Reyes, Sunland Park Police
c/o Atwood, Malone, Turner & Sabin, P.A.
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Expected to testify concerning the events giving rise to this litigation.

Deputy Chief Lopez, Sunland Park Police
c/o Atwood, Malone, Turner & Sabin, P.A.
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Expected to testify concerning the events giving rise to this litigation.

Officer Valenzuela
c/o Atwood, Malone, Turner & Sabin, P.A.
P.O. Drawer 700
Roswell, NM 88202-0700
(575) 622-6221

Expected to testify concerning the events giving rise to this litigation.

Daniel Mendez
107 Elm Court
Sunland Park, NM 88063

Expected to testify concerning the events giving rise to this litigation.

Erwin Kuehne
Address Unknown

Expected to testify concerning the events giving rise to this litigation.

Representatives of Sunland Park Fire Department, including but not limited to Raul Apodaca, Christian Calderon, Jose Lozano, Joseph Mayorga, Daniel Medrano, Rigo Mejia and Ramiro Rios.

Expected to testify concerning the events giving rise to this litigation.

Any other persons who may have witnessed the events in question, including but not limited to Rojelio Carrasco and Juan Porras.

Any witness identified by any other party

Any witness identified in any form of discovery

Any witness necessary to lay a foundation for admission of exhibits

Any of Plaintiff's past or present employers, or representatives of any such employers

Any of Plaintiff's healthcare providers, including but not limited to EMTs and/or those who may have treated, evaluated or examined him either before or after the incident giving rise to this lawsuit.

There may be others, of whom Defendants are presently unaware. Defendants reserve the right to name additional lay witnesses as their identity may be revealed through ongoing investigation and discovery.

Respectfully submitted,

ATWOOD, MALONE, TURNER & SABIN, P.A.

By Electronically Filed /s/ Bryan Evans

Bryan Evans

Barbara Evans

Jacqueline Miller

P.O. Drawer 700

Roswell, NM 88202-0700

(575) 622-6221

Attorneys for Defendants

I HEREBY CERTIFY that on May 8, 2023, I filed the foregoing instrument Electronically through the Court's Mandatory Electronic Filing system which caused all parties of record to be served by electronic means, as more fully reflected on the emailed Notice of Electronic Filing received from the Court.

Electronically Filed /s/ Bryan Evans
Bryan Evans

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

JESUS IBARRA-PONCE,

Plaintiff,

v.

No. D-307-CV-2022-01982

CITY OF SUNLAND PARK; ANDY MORALES;
AMADOR QUINTANA; and ALEJANDRO
VALENCIA,

Defendants.

**PLAINTIFF'S RESPONSES TO DEFENDANT CITY OF SUNLAND PARK'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

1. All medical and drug bills or other related medical charges for treatment of the injuries alleged to have been sustained as a result of this incident.

RESPONSE: Copies of medical/drug bills in my possession are produced herewith.

2. Any and all hospital notes, doctors' notes, nurses' notes, medical reports, or any other records by any medical care provider who saw or treated you for injuries alleged to have been incurred as a result of this incident, or for any other reason.

RESPONSE: Copies of such records in my possession are produced herewith.

3. All documents, including but not limited to, check stubs, ledger sheets, annuity tables, or life expectancy charts which reflect the lost wages claimed to have been sustained as a result of this incident.

RESPONSE: N/A

4. All documents, including but not limited to, check stubs, charge slips, receipts, invoices, or any other records which show personal property loss, or any other special damages sustained by you which are alleged to be the result of this incident.

RESPONSE: I am not aware of any such documents

5. Any and all notes, diaries, calendars, journals, memoranda, tape recordings, photographs, videotapes, models, plats or drawings pertaining to any facts involved in this controversy, including pictures of the scene of the incident, persons, or objects involved.

RESPONSE: All responsive documents in my possession, if any, are produced herewith.

6. Any and all statements, whether written or recorded or otherwise, and all documents which relate to statements, taken from, or interviews with, any witness or persons with knowledge of any facts involved in this controversy, including any statements made by any of the Defendants or employees or representatives of any of the Defendants.

RESPONSE: All responsive documents, if any, in my possession are produced herewith.

7. All documents which refer or relate to, or which you have relied upon or now rely upon to support any of the allegations in your Complaint.

RESPONSE: All responsive documents in my possession are produced herewith.

8. Please produce any documents you or anyone on your behalf has obtained from agents, employees, or representatives of any of the Defendants or employees or representatives of any of the Defendants prior to filing this lawsuit, which relate to the events made the basis of this lawsuit.

RESPONSE: All such documents in my possession are produced herewith.

9. All documents or tangible items that were used in any way to answer Defendant City of Sunland Park's First Set of Interrogatories to Plaintiff, or which relate to any answer to any interrogatory.

RESPONSE: All such documents in my possession are produced herewith.

10. All documents which have been provided or made available to any consultants or experts which relate to the issues in this lawsuit, whether or not such expert is expected to testify at trial.

RESPONSE: I am not aware of any such document.

11. All reports, memoranda, and correspondence prepared by any consultants or experts which relate to the issues in this lawsuit, whether or not such expert is expected to testify at trial.

RESPONSE: I am not aware of any such document.

12. Any and all exhibits you or your attorney contemplate, or could reasonably contemplate, using as evidence or demonstration at any hearing or trial in support of any claim or defense in this lawsuit.

RESPONSE: I do not know what documents I will use at a hearing or trial. Nonetheless, it is anticipated that my medical records, bills, photographs and property damage estimates which are produced herewith will be offered into evidence.

13. Any and all documents relating to Plaintiff's claim for damages.

RESPONSE: All such documents are produced herewith.

14. Any insurance policy, including property and your personal auto insurance policy, under which payments have been made, or under which the insurer refused to make, any requested payments to Plaintiff for personal injury, property damage, or otherwise.

RESPONSE: Objection. This request seeks information which is irrelevant and not otherwise reasonably calculated to lead to the discovery of admissible evidence in that the information sought is a collateral source. See Rule 1-026 NMRA; *McConal Aviation, Inc. v. Commercial Aviation Ins. Co.*, 110 N.M. 697, 799 P.2d 133 (1990).

15. Any journals, diaries, notes, calendars or other memoranda in any form, including but not limited to computer files, e-mail, newspaper articles, tweets, Facebook posts, internet posts, blogs, disks, logs, etc., authored by Plaintiff any other person, concerning this action or its subject matter.

RESPONSE: I am not in possession of ay such documents.

16. Please produce copies of any and all documents relevant to any settlement agreement, or understanding with any person or entity concerning the subject incident, including copies of any releases.

RESPONSE: I am not aware of any such documents.

17. Please sign the medical authorization attached hereto as Exhibit “A”.

RESPONSE: Please see signed medical authorization produced herewith.

18. Please sign the employment authorization attached hereto as Exhibit “B”. If you are not making a claim for lost wages or lost earning capacity, you may so state and deny this request.

RESPONSE: Denied, as no wage loss claim is being made.

19. Please sign the authorization to obtain income tax records attached hereto as Exhibit “C,” and provide herein the name used on your return, your social security number, your spouse's name on the return and spouse's social security number if it is a joint return, your current address, and the tax form number. If you are not making a claim for lost wages or lost earning capacity, you may so state and deny this request.

RESPONSE: Please see signed authorization produced herewith.

20. Please sign the authorization to obtain social security records attached hereto as Exhibit “D,” and provide herein your complete name, social security number, date of birth, and other names used. If you are not making a claim for lost wages or lost earning capacity, you may so state and deny this request.

RESPONSE: Please see signed authorization produced herewith.

ELIAS LAW P.C.

By: /s/ Matthew J. Malleis
MATTHEW J. MALLEIS
111 Isleta Blvd. SW, Suite A
Albuquerque, NM 87105
(505) 221-6000
Attorney for Plaintiff

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT

JESUS IBARRA-PONCE,

Plaintiff,

v.

No. D-307-CV-2022-01982

CITY OF SUNLAND PARK; ANDY MORALES;
AMADOR QUINTANA; and ALEJANDRO
VALENCIA,

Defendants.

**PLAINTIFF'S ANSWERS TO DEFENDANT CITY OF SUNLAND PARK'S FIRST SET
OF INTERROGATORIES**

1. Please state your full name, any other names or aliases used or by which you have been known, your residence addresses for the last ten (10) years, including the dates you lived at each address and the name(s) and relationship(s) of all person(s) who lived with you at each address, your social security number, the date and place of your birth, your current marital status, your occupation, and the names, addresses, ages and occupations of your spouse and each of your children.

ANSWER:

Jesus Rodolfo Ibarra-Ponce Other names: Jesus Ibarra and nickname: Chuy

705 Arcy St
Santa Teresa, NM 88008
Dates: 2019

Persons who lived with me: Cristina Ibarra (wife), Destiny Ibarra (daughter), Jaden Ibarra (son)

309 Riverside
Sunland Park NM
Dates: 2014-2019

Persons who lived with me: Cristina Ibarra (wife), Destiny Ibarra (daughter), Jaden Ibarra (son)

328 Riverside
Sunland Park NM

Dates: 2014 (about 6 months)

Persons who lived with me: Cristina Ibarra (wife), Destiny Ibarra (daughter), Jaden Ibarra (son)

209 Buenavista
Sunland Park NM,

Dates: around 2009 – 2013

Persons who lived with me: Cristina Ibarra (wife), Destiny Ibarra (daughter), Jaden Ibarra (son)

DOB:03/16/1981

Place: Juarez, Mexico

SSN: 585-95-8294

Marital status: Married

Occupation: When the incident happened, I was working in the oil. Since 2022, I started a Party rentals business with my wife.

Wife:

Cristina Ibarra, Age 37

Occupation: Takes care of party rental business.

Children:

Kimberly Ibarra, Age 23, YOB: 1999

Address: El Paso Texas, exact address unknown.

Destiny Ibarra , Age 19, YOB: 2004

Jaden Ibarra, Age 9

2. You allege you sustained personal injuries and mental anguish as a result of the incident described in your Complaint. Please state the name, current address and telephone numbers of all physicians, osteopaths, chiropractors, physical therapists, psychiatrists, psychologists, mental health counselors or other health care practitioners you have consulted in the last ten (10) years, and all medical/osteopathic/psychiatric hospitals or other facilities to which you have been admitted during that time period, and the reasons for such consultations and admissions.

ANSWER:

Plaintiff objects as this Interrogatory is overly broad and unduly burdensome. Without waiving these objections, for additional details please see the bills and records from the facilities below, please see the bills and records attached with Plaintiff's Responses to Requests for Production, and Plaintiff will provide a medical records authorization so that you may obtain the bills and records as well.

Las Palmas Medical Center

1801 N Oregon St,
El Paso, TX 79902
915-521-1200

Dates: 2019

Reason: Neck and back pain due motor vehicle accident.

Del Sol Medical Center

10301 Gateway Blvd W,
El Paso, TX 79925
915-595-9000

Dates: 2019

Reason: Transfer from Las Palmas. neck and back pain due to motor vehicle accident

Fyzical Therapy Balance & Hand Centers

4646 North Mesa Mtreet
El Paso, TX 79912
915-313-6331

Dates: 2019

Reason: Physical therapy after 2019 car accident.

Fred Aguayo, DC

Southwest Chiropractic Work Injury Center
1030 N. Zaragosa Rd. Suite, E
El Paso, TX 79907
915-260-7717

Dates: around 2019

Reason: Pain injection in spine due to 2019 accident.

Terren Klein, MD

1300 Murchison Dr #310,
El Paso, TX 79902
915-706-2500

Dates: 2019

Reason: Therapy due to pain because of the injection referenced above.

Hospital in Carlsbad

I do not remember the name, address or exact dates.

Dates: around 2019

Reason: Back pain related to 2019 motor vehicle accident.

Country Club Medical Clinic
5290 McNutt Rd,
Santa Teresa, NM 88008
575-589-1144
Dates: around 2017-2020
Reason: physicals or routine visits.

Dentist
Santa Teresa Smiles
103 Livingston Dr. Ste. 3
Santa Teresa, NM 88008
575-332-4047
Dates: 2022

Adrian DelaRosa, Paramedic
Casey Rede, EMT
Connie Gutierrez, EMT intermediate
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074
Reason: Transported to Las Palmas Medical Center.
Date: 10/20/20

Mark Crosby, MD
Brenna N. Umino, PA
Rob A. Reed, MD
Las Palmas Medical Center
1801 N Oregon St,
El Paso, TX 79902
915-521-1200
Reason: Headache, back pain, joint pain, neck pain, wrist pain, bleeding, bruising, abrasion, erythema. Hematoma to forehead with superficial abrasion, mild swelling, mild tenderness palpation, superficial abrasion to bridge of nose.
Date: 10/20/20

Rob A. Reed, MD
Rad Advantage (Las Palmas Radiology)
P.O. Box 3353
Indianapolis, IN 46206
Date: 10/20/20

Ryan Campbell, MD
Gregory Witcher, MD
University Medical Center El Paso
4815 Alameda Ave

El Paso, TX 79905

915-544-1200

Reason: Concussion without loss of consciousness, abrasion of other part of head, nose, left forearm, right forearm, abrasion of left lower leg, wight lower leg, headache.

Date: 10/22/20

University Medical Center El Paso-Physician

4815 Alameda Ave

El Paso, TX 79905

915-544-1200

Reason: Concussion without loss of consciousness, abrasion of other part of head, nose, left forearm, right forearm, abrasion of left lower leg, wight lower leg, headache.

Date: 10/22/20

Humera Chaudhary, MD

Terry Hernandez, FNP

Lubbock Diagnostic radiology (University Medical Center El Paso)

8401 jack Finney Blvd.

Greenville, TX 75402

903-453-2500

Reason: XR chest 2 views PA/LAT, XR elbow 2 views left, XR elbow complete left and XR hand complete right, and XR wrist complete left.

Date: 10/22/20

Casey Mullen, MD

Hospitals of Providence Transmountain Campus

2000 Woodrow Bean Transmountain Dr,

El Paso, TX 79911

915-877-8136

Reason: Evaluation for pain related to incident herein.

Dates: 9/27/22

The Hospitals of Providence Memorial Campus

2001 N Oregon St,

El Paso, TX 79902

915-577-6011

Dates: 2/17/23

Reason: muscles (nerve) spasms then left side got numb and pain and I felt pressure in the chest.

El Paso Fire Department-Ambulance

300 N. Campbell,

El Paso, TX 79901

877-399-1496 (billing)

Dates: 2/17/23

Reason: transported to The Hospitals of Providence Memorial Campus.

I do not recall any other doctors.

3. You allege you sustained personal injuries and mental anguish as a result of the incident described in your Complaint. Please describe each injury, illness, pain, or disability which you claim to have suffered or sustained as a result of the incident described in your Complaint, specifying the part or parts of your body affected by each such injury, illness, pain, or disability, the severity of each, and how long each lasted.

ANSWER:

I suffered of a severe concussion, hurt both arms, severe chest injury, nausea, dizziness, abrasion to the forehead, neck pain, after an officer knelt on my neck, pain on my right wrist, pain in left shoulder, burning sensation on my left leg above the knee and on my lower back.

My left hand is still hurting, and it had never hurt like it does now, especially in cold weather, now I get occasional headaches. I cannot lift heavy objects for a long time with left hand. Sometimes when I am sleeping my hand hurts and even if hand is straight it hurts. Also, if I have my left hand lifted for a long time it also hurts in a way it did not hurt before the incident herein.

4. Please state the inclusive dates for which you claim that you were partially or totally disabled from normal activities as a result of the incident described in your Complaint, and describe in detail the nature and extent of such disability and the normal activities with which it interfered.

ANSWER:

I was not able to perform my normal activities for about two months. because of headaches and pain and now I can perform them, but my left hand still hurts and I cannot lift heavy objects for a long time with my left hand.

5. Please state whether at the time of the incident described in your Complaint, you were suffering from any pre-existing bodily injury, illness or disability, or mental and/or emotional illness or disability and, if so, describe in detail the nature and extent of each and give the name, current address and telephone number of each physician, osteopath, chiropractor, physical therapist, psychologist, psychiatrist, mental health counselor, or other health care practitioner who

examined, evaluated, or treated you with regard to each.

ANSWER: None.

6. Please state whether subsequent to the date of the incident described in your Complaint, you have sustained any bodily injury, illness, disability, or mental and/or emotional illness or disability from any cause other than that incident and, if so, state the date on which each was sustained, describe in detail the nature and extent of each and the circumstances under which it was sustained, and give the name, current address and telephone number of each physician, osteopath, chiropractor, physical therapist, psychologist, psychiatrist, mental health counselor, or other health care practitioner who has examined, evaluated, or treated you with regard to each.

ANSWER:

Please see my answer to Interrogatory No. 2.

7. Please identify all medical charges, whether it be for services, equipment or medications, to which you claim you are entitled as a result of the incident described in your Complaint. For each charge, please state the following:

- a. The amount of the charge;
- b. The individual or entity who generated the charge;
- c. The date on which the charge was generated;
- d. The purpose of the charge;
- e. The amounts of the charges that have been paid by Plaintiff;
- f. The identity of all third parties who have paid any of the charges along with the dates and amount of charges paid;
- g. The amount of charges that were written off by healthcare providers; and
- h. The holder and the current amount of any liens asserted by any person or entity.

ANSWER: (a-h)

Plaintiff objects as this Interrogatory is overly broad and unduly burdensome. Without waiving these objections, for additional details please see the bills and records from the facilities below, please see the bills and records attached with Plaintiff's Responses to Requests for Production, and Plaintiff will provide a medical records authorization so that you may obtain the bills and records as well.

Adrian DelaRosa, Paramedic
Casey Rede, EMT
Connie Gutierrez, EMT intermediate
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074
Reason: Transported to Las Palmas Medical Center.
Date: 10/20/20
Amount: \$725.69

Mark Crosby, MD
Brenna N. Umino, PA
Rob A. Reed, MD
Las Palmas Medical Center
1801 N Oregon St,
El Paso, TX 79902
915-521-1200
Reason: Headache, back pain, joint pain, neck pain, wrist pain, bleeding, bruising, abrasion, erythema. Hematoma to forehead with superficial abrasion, mild swelling, mild tenderness palpation, superficial abrasion to bridge of nose.
Date: 10/20/20
Physician Services Amount: \$1,572.00
Hospital Amount: \$29,002.00

Rob A. Reed, MD
Rad Advantage (Las Palmas Radiology)
P.O. Box 3353
Indianapolis, IN 46206
Date: 10/20/20
Amount: \$1,014.00

Ryan Campbell, MD
Gregory Witcher, MD
University Medical Center El Paso
4815 Alameda Ave
El Paso, TX 79905
915-544-1200
Reason: Concussion without loss of consciousness, abrasion of other part of head, nose, left

forearm, right forearm, abrasion of left lower leg, wight lower leg, headache.
Date: 10/22/20
Amount: \$4,108.65

University Medical Center El Paso-Physician
4815 Alameda Ave
El Paso, TX 79905
915-544-1200

Reason: Concussion without loss of consciousness, abrasion of other part of head, nose, left forearm, right forearm, abrasion of left lower leg, wight lower leg, headache.

Date: 10/22/20

Amount: Bills have been requested

Humera Chaudhary, MD
Terry Hernandez, FNP
Lubbock Diagnostic radiology (University Medical Center El Paso)
8401 jack Finney Blvd.
Greenville, TX 75402
903-453-2500

Reason: XR chest 2 views PA/LAT, XR elbow 2 views left, XR elbow complete left and XR hand complete right, and XR wrist complete left.

Date: 10/22/20

Amount: Bills have been requested

Casey Mullen, MD
Hospitals of Providence Transmountain Campus
2000 Woodrow Bean Transmountain Dr,
El Paso, TX 79911
915-877-8136

Reason: Evaluation.

Dates: 9/27/22

Amount: \$2,260.00

8. If you are making a claim for lost wages or lost income, past or future, state the total amount of lost wages or lost income, past and future, which you claim to have sustained as a result of the incident described in your Complaint, up to and including the date you respond to these interrogatories, and fully describe the method by which you have calculated such losses, including the exact dates on which you were unable to work. Please also state whether your lost wages have been paid, in full or in part, by Worker's Compensation. If such payment has been

made, please state the date(s) for which you received lost wage benefits and the amounts of such benefits.

ANSWER: No

9. Other than medical expenses and loss of earnings, please state, by type and amount, every element or type of damages or injury of any kind, including out of pocket expenses for which you claim compensation in this lawsuit or from which you believe you suffered, and fully describe the method by which you calculated each element of damages.

ANSWER:

The exact amount of each of my damages have not been itemized or calculated at this time. However, in addition to my medical expenses, which are set forth in the bills I am producing herewith, I am seeking the following damages: compensatory and punitive damages, damages for pain and suffering arising from my personal injuries. I have not yet decided how much to ask the jury to compensate for these items.

10. Please identify all documents and facts which support the damages claimed in this action, summarizing the substance of the information contained in such documents.

ANSWER:

I have not decided which documents will be introduced. However, I anticipate I may introduce my medical records and bills.

11. Please state, in specific detail, the factual basis for your claim that the individual Defendant Officers acted without provocation or resistance and battered you as alleged in paragraph 13 of your Complaint. Your answer should include, but not be limited to the names, current addresses, and telephone numbers of any witnesses you claim can substantiate these allegations, and state, insofar as you know, the nature of such knowledge or information. Your answer should also include the identification of any documents that support these allegations.

ANSWER:

Plaintiff objects as discovery is still taking place, this Interrogatory is overly broad and

unduly burdensome, and the allegations and facts set forth in the Complaint speak for themselves and describe the claim against Defendants. On information and belief, Plaintiff's believe these allegations will be borne out by the Plaintiff's personal knowledge of the incident, as well as via the video recordings of the incident, responses to the written discovery served on the Defendants, statements from witnesses identified in the incident reports, and statements and evidence gathered during the ongoing discovery process.

At this time, it has not been decided which fact witnesses will be called to testify at trial. However, it is anticipated that the foregoing individuals may have information as to the facts and circumstance of the accident and may testify as to their knowledge:

Myself

Plaintiff has knowledge regarding the accident, injuries, pain, suffering, medical treatment and other damages he sustained as the result of this incident.

Defendant Andy Morales

Defendant may have knowledge of the facts and circumstance of this incident.

Defendant Amador Quintana

Defendant may have knowledge of the facts and circumstance of this incident.

Defendant Alejandro Valencia

Defendant may have knowledge of the facts and circumstance of this incident.

Detective Reyes, 124

Sundland Park Police

Address: 1000 McNutt Rd Suite C,

Sundland Park, NM 88063

575-589-2225

may have knowledge of the facts and circumstance of this incident.

Officer Valenzuela

Sundland Park Police

Address: 1000 McNutt Rd Suite C,

Sundland Park, NM 88063

575-589-2225

Officer Valenzuela may have knowledge of the facts and circumstance of this incident.

Witness Daniel Mendez

Address: 107 Elm Court

Sundland Park, NM 88063

Phone number: unknown

Mr. Mendez may have knowledge of the facts and circumstance of this incident.

Witness Erwin Kuehne

Address: Unknown

Phone number: unknown

Mr. Kuehne may have knowledge of the facts and circumstance of this incident.

Cristina Ibarra

705 Arcy St

Santa Teresa, NM 88008

Mrs. Ibarra may have knowledge of Plaintiff's injuries, pain, suffering and other damages he sustained because of the incident.

12. Please state, in specific detail, the factual basis for your claim that the individual Defendant Officers failed to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of New Mexico and acted contrary to law when, without provocation or resistance, battered you as alleged in paragraph 15 of your Complaint. Your answer should include, but not be limited to the names, current addresses, and telephone numbers of any witnesses you claim can substantiate these allegations, and state, insofar as you know, the nature of such knowledge or information. Your answer should also include the identification of any documents that support these allegations.

ANSWER:

Plaintiff objects as discovery is still taking place, this Interrogatory is overly broad and unduly burdensome, and the allegations and facts set forth in the Complaint speak for themselves and describe the claim against Defendants. On information and belief, Plaintiff's believe these allegations will be borne out by the Plaintiff's personal knowledge of the incident, as well as via the video recordings of the incident, responses by the Defendants to written discovery, statements from witnesses identified in the incident reports, and statements and evidence gathered during the ongoing discovery process. Additionally, see the witnesses identified at the Answer to Interrogatory #11.

13. Please list the name, current address, and telephone number of each individual known to you or your counsel who may have knowledge, evidence, or documents in their possession, custody, or control which are relevant to any of the issues involved in this action, and for each such person describe the nature and content of the knowledge possessed by such individual or the evidence or documentation in his or her possession, custody, or control.

ANSWER:

Plaintiff objects that this Interrogatory is overly broad and unduly burdensome. Without waiving these objections, Plaintiff states as follows in response:

Myself

Plaintiff has knowledge regarding the accident, injuries, pain, suffering, medical treatment and other damages he sustained as the result of this incident.

Defendant Andy Morales

Defendant may have knowledge of the facts and circumstance of this incident.

Defendant Amador Quintana

Defendant may have knowledge of the facts and circumstance of this incident.

Defendant Alejandro Valencia

Defendant may have knowledge of the facts and circumstance of this incident.

Detective Reyes, 124

Sundland Park Police

Address: 1000 McNutt Rd Suite C,

Sundland Park, NM 88063

575-589-2225

Detective Reyes may have knowledge of the facts and circumstance of this incident.

Officer Valenzuela

Sundland Park Police

Address: 1000 McNutt Rd Suite C,

Sundland Park, NM 88063

575-589-2225

Officer Valenzuela may have knowledge of the facts and circumstance of this incident.

Witness Daniel Mendez

Address: 107 Elm Court

Sundland Park, NM 88063

Phone number: unknown

Mr. Mendez may have knowledge of the facts and circumstance of this incident.

Witness Erwin Kuehne

Address: Unknown

Phone number: unknown

Mr. Kuehne may have knowledge of the facts and circumstance of this incident.

Cristina Ibarra

705 Arcy St

Santa Teresa, NM 88008

Mrs. Ibarra may have knowledge of Plaintiff's injuries, pain, suffering and other damages he sustained because of the incident.

It has not been decided which expert witnesses will be called to testify at trial. However, it is anticipated that Plaintiff's medical providers who examined and treated him for the injuries sustained resulting from this accident will be called to testify:

Adrian DelaRosa, Paramedic
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074

Mr. DelaRosa was a first responder who attended to Plaintiff after the incident. He may have knowledge of his examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Casey Rede, EMT
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074

Ms. Rede was a first responder who attended to Plaintiff after the incident. She may have knowledge of his examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Connie Gutierrez, EMT intermediate
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074

Ms. Gutierrez, was a first responder who attended to Plaintiff after the incident. She may have knowledge of his examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Mark Crosby, MD
Brenna N. Umino, PA
Rob A. Reed, MD
Las Palmas Medical Center
1801 N Oregon St,
El Paso, TX 79902
915-521-1200

These providers examined and treated Plaintiff for the injuries sustained resulting from this incident. They may have knowledge of their examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Ryan Campbell, MD
Gregory Whitcher, MD
University Medical Center El Paso
4815 Alameda Ave

El Paso, TX 79905
915-544-1200

These providers examined and treated Plaintiff for the injuries sustained resulting from this incident. They may have knowledge of their examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Humera Chaudhary, MD
Terry Hernandez, FNP
Lubbock Diagnostic radiology (University Medical Center El Paso)
8401 Jack Finney Blvd.
Greenville, TX 75402
903-453-2500

These providers examined and treated Plaintiff for the injuries sustained resulting from this incident. They may have knowledge of their examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Casey Mullen, MD
Hospitals of Providence Transmountain Campus
2000 Woodrow Bean Transmountain Dr,
El Paso, TX 79911
915-877-8136

These providers examined and treated Plaintiff for the injuries sustained resulting from this incident. They may have knowledge of their examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

14. Please list the name and current address of each expert witness whom Plaintiff or Plaintiff's counsel will or may call at the trial of this action, and as to each expert, please specify:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts to which the expert is expected to testify;
- c. All opinions to which the expert is expected to testify;
- d. A summary of the grounds for each opinion;
- e. A listing of all publications authored by the expert within the preceding ten (10) years;
- f. The expert's hourly rate for review, deposition testimony, and trial testimony;
- g. Identification of all documents, facts or data that were provided to the expert and that the expert considered in forming opinions to be expressed in this case;
- h. All assumptions that were provided to the expert and that the expert relied on in

forming opinions to be expressed in this case; and

i. A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

ANSWER:

It has not been decided which expert witnesses will be called to testify at trial. However, it is anticipated that Plaintiff's medical providers who examined and treated him for the injuries sustained resulting from this incident will be called to testify:

They are not retained experts but may provide expert opinion testimony in their respective health care fields as to the nature, extent and medical necessity of the treatment and care related to Plaintiff's injuries and the reasonableness and relatedness of damages.

Adrian DelaRosa, Paramedic
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074

Mr. DelaRosa was a first responder who attended to Plaintiff after the incident. He may have knowledge of his examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

Casey Rede, EMT
American Medical Response (AMR)
P.O Box 56141
Los Angeles, CA 90074

Ms. Rede was a first responder who attended to Plaintiff after the incident. She may have knowledge of his examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

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Ms. Gutierrez, was a first responder who attended to Plaintiff after the incident. She may have knowledge of his examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

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University Medical Center El Paso
4815 Alameda Ave
El Paso, TX 79905
915-544-1200

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Terry Hernandez, FNP
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Greenville, TX 75402
903-453-2500

These providers examined and treated Plaintiff for the injuries sustained resulting from this incident.

Casey Mullen, MD
Hospitals of Providence Transmountain Campus
2000 Woodrow Bean Transmountain Dr,
El Paso, TX 79911
915-877-8136

These providers examined and treated Plaintiff for the injuries sustained resulting from this incident. They may have knowledge of their examination and treatment of Plaintiff for the injuries he sustained resulting for this incident herein.

15. Please list the name and current address of each lay witness whom Plaintiff or Plaintiff's counsel will or may call at the trial of this action, and as to each witness, please state:

- a. All facts or lay opinions to which the witness may testify;
- b. the witness' relationship with Plaintiff; and
- c. the witness involvement in any of the matters out of which this action arose.

ANSWER:

Please see my answers to Interrogatories 11. and 14.

16. Have you or has any person, firm, or business entity retained by you, obtained any

statement from any person, oral, written, recorded or taped regarding any of the facts surrounding the incident described in your Complaint? If so, identify each such statement obtained by stating the name and address of each person giving the statement, the name, address and present position or relationship to you of the person taking the statement; the date of the statement; the circumstances under which the statement was obtained; the substance of the statement; and the identity of the person presently having custody or a copy of the statement, if written or recorded, or knowledge with regard to any oral statement.

ANSWER:

I am not aware of any statements other than the statements included in the police report produces herewith.

17. Please list and describe adequately for identification all exhibits of any nature which you or your counsel will, or may, use at the trial of this action, including both demonstrative exhibits and evidentiary exhibits.

ANSWER:

It is anticipated that my medical records, bills, video recordings provided by Defendants, and photographs, which are produced herewith will be offered into evidence.

18. Other than the incident described in your Complaint, have you been involved in any other incidents or accidents, including but not limited to motor vehicle, work, sports, recreation, or product liability? If your answer is "yes", please state the date, location, and names and current addresses of all parties involved in the incident or accident. If your answer is "yes" please state whether you sought medical care as a result of the incident or accident. If a lawsuit or claim of any kind was filed related to any other incidents or accidents, state the Court in which the suit was filed (or the administrative body, if applicable), the cause number, the lawyers

representing the parties, the date of final adjudication, and the amount of any judgment or award to you.

ANSWER:

On 2019 I was involved in a motor vehicle accident which involved multiple vehicles. It happened on the Freeway on I-10 in El Paso Texas, near Geronimo St. I got rear ended and I injured my neck and back. I did seek medical care because of the accident. The case was resolved in 2022, attorney Michael Gopin Represented me. I do not remember the full amount of my compensation and do not remember all the details of the accident or my representation.

19. Please describe fully all payments made to you, or any other person, under any insurance policy, related to the events or occurrences described in your Complaint, including payments for property loss, property damage, medical bills, lost wages, or any other loss whatsoever, and include in your answer:

- a. The name, current address and telephone number of the insurance company;
- b. The insurance policy number;
- c. The claim number;
- d. The name, current address and telephone number of the claim representative who handled the claim; and
- e. The date and amount of all such payments.

ANSWER: (a-e)

Objection. This interrogatory seeks information which is irrelevant and not otherwise reasonably calculated to lead to the discovery of admissible evidence in that the information sought is a collateral source. *See* Rule 1-026 NMRA; *McConal Aviation, Inc. v. Commercial Aviation Ins. Co.*, 110 N.M. 697, 799 P.2d 133 (1990).

20. Please identify each person or company (including self-employment) for whom you have worked in the last ten (10) years and state:

- a. the name, current address and telephone number of each employer;
- b. the dates of employment;

- c. your job title(s); and
- d. your total compensation, to date, earned from each employer, and describe in complete detail all the employee benefits in which you were entitled to participate and/or participated.

ANSWER: (a-d)

Self Employed
Party Rentals
Dates: Around 2021-Present
Job Title/duties: rent chairs, tables for parties.
Salary: it varies greatly.

Name of Employer: Southeast Electric
Address: 1101 Med Park Dr
Las Cruces NM 88005
Phone No.: Unknown
Dates of Employment: around 2020
Job Title: Electrician
Salary: I do not remember
Employee benefits: I do not remember

Name of Employer: CTJ Electric
Address: Midland TX
Supervisor; Danny Summers
Phone No.: Unknown
Dates of Employment: Around 2019
Job Title: Electrician
Salary: \$30.00 per hour
Employee benefits: I do not remember

Name of Employer: Genesis Endeavors LLC
Business Address: P.O. Box 10148
Longview, TX 75608
Tasks performed at
Phone No.: Unknown
Dates of Employment: 2020
Job Title: Electrician
Salary: I do not remember
Employee benefits: I do not remember.

Name of Employer: C&W facility services Inc

Address: 275 Grove St. Suite 3-200
Auburndale, MA 02466
Place of employment Union pacific Intermodal Terminal Santa Teresa, NM
Phone No.: Unknown
Dates of Employment: 2017-2018
Job Title: Electrician
Salary: \$20 per hour
Employee benefits: Health insurance, life insurance.

Name of Employer: True Power Electric
Address: El Paso, Exact address unknown
Phone No.: unknown
Dates of Employment: Around 2016
Job Title: Electrician
Salary: it varied.
Employee benefits: N/A

Name of Employer: IES
Address: Oklahoma
Supervisor: Fernando Lopez
Phone No. of supervisor: 915-490-0697
Dates of Employment: about 4 months in 2016
Job Title: subcontract (electrician)
Salary: it varied.
Employee benefits: N/A

Name of Employer: Stampede Oil Field Services,
Address: Midland Texas -TS-349 and Rankin Hwy
Phone No.: Unknown
Dates of Employment: 2014 -2016
Job Title: Electrician
Salary: \$30.00 plus \$100 per day
Employee benefits: Regular benefits

Name of employer: Unknown
Date: around 2013
Sub-Contract with friend, assembly piece work.
I do not remember the name of his company

Name of Employer: Code Electric
Address: 811 N Walnut St,
El Paso, TX 79903
Phone No.: 915-581-6979
Dates of Employment: 2013
Job Title: Electrician

Salary: I do not remember.
Employee benefits: I do not remember.

21. Please describe all lawsuits and claims, (including any tort claims notices completed by you and proffered to any governmental body or entity), to which you have been a party or prospective party including, but not limited to: criminal complaints, civil lawsuits, workers' compensation, and bankruptcy matters. In your description, please include the type of lawsuit or claim, names of parties involved, date of filing, court in which filed, entity to which a tort claim notice was provided by you, counsel representing any party, docket number, and final disposition.

ANSWER:

Objection. This interrogatory seeks information, which is not admissible, relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, I have not been convicted of crime involving dishonesty or a crime punishable by death or by imprisonment for more than one (1) year within the past ten (10) years. *See NMRA 11-09.*

22. Have you ever applied for, or received, any social security disability benefits? If so, please state the name and current address of all physicians who submitted medical reports to the Social Security Administration related to your application, the date of your first application, the date on which you first received benefits, and the amount of your monthly benefits.

ANSWER: No

23. Have you received treatment for the injury, illness, pain, or disability which you claim to have suffered or sustained as a result of the incident described in your Complaint at any United States military or Veterans Administration facility or have any of your medical bills or other expenses been paid by or through the United States Government or the New Mexico State Government, or their agencies, e.g., Medicare or Medicaid? If your answer is "yes," please

describe.

ANSWER: No

24. Have you ever been convicted of a crime punishable by imprisonment in excess of one year, or a crime involving dishonesty or false statement, regardless of the punishment? If your answer “yes,” list for each such conviction:

- a. The date of conviction;
- b. The Court where such conviction was entered;
- c. The punishment imposed; and
- d. The nature of the crime.

ANSWER: No

ELIAS LAW P.C.

By: /s/ Matthew J. Malleis
MATTHEW J. MALLEIS
111 Isleta Blvd. SW, Suite A
Albuquerque, NM 87105
(505) 221-6000
Attorney for Plaintiff

PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY/CLIENT PRIVILEGE

TO: Ms. Marcea Dark
FROM: Atwood, Malone, Turner & Sabin, PA, Bryan Evans
DATE: 6/5/23
RE: *Ibarra-Ponce v. City of Sunland Park, et al.*, Claim No.: 2021027720
(Insureds/Defendants: City of Sunland Park, Andy Morales, Amador Quintana and Alejandro Valencia)

INITIAL RISK ANALYSIS

1. What do you see as the significant legal or factual issues in the case?

Plaintiff sued for personal injury and damages. He claims assault and battery against the individual police officers named and that they violated the New Mexico Constitution's guarantee against unreasonable seizures and use of excessive force. Plaintiff's claim against the City of Sunland Park stems from the doctrine of respondeat superior. Because Plaintiff carefully avoided invoking his federal constitutional rights, the case was not removed to Federal Court.

Plaintiff's claim stems from his arrest, on October 20, 2020, on charges of disorderly conduct and resisting/obstructing police officers. Plaintiff was observing and filming a fire scene in a residential neighborhood in Sunland Park, approximately four miles from his house when he, and other bystanders, were told to move further back from the fire. In spite of multiple requests, Plaintiff refused, claiming he did not have to move. After a brief argument with the police officers, Plaintiff was taken to the ground and arrested. Two officer/defendants used an arm bar/leg sweep takedown maneuver to get Plaintiff to the ground. Plaintiff went down face first, hitting his face and head on the sidewalk. After being taken down, Plaintiff would not release his arms to be handcuffed, and had to be tased twice before complying. The criminal charges against Plaintiff were ultimately dropped, allegedly because the prosecuting officer failed to show up for Court. Plaintiff claims the officers "singled him out" from the other bystanders because he had been filming the fire scene. We have retained police practices expert Damon Fay to analyze this case on our behalf.

2. In what way might the issues be resolved, assuming the facts as stated?

The New Mexico Tort Claims Act waives immunity for police officer liability for damage resulting from assault, battery and constitutional claims. Therefore, it does not bar to the tort claims. N.M. Stat. Ann. § 41-4-12 (“Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery...”); *Wells v. County of Valencia*, 98 N.M. 3, 6, 1982-NMSC-048, ¶8, 644 P.2d 517 (Section 41-4-12, N.M.S.A.1978, waives immunity for certain specified torts and for the violation of constitutional rights when caused by law enforcement officers.”)

For the torts claims, the question is whether the officer exercised the care that a reasonably prudent and qualified officer would exercise in the same situation. *Hernandez v. Parker*, 508 P.3d 947, 950, 2022 N.M. App. LEXIS 5, *1, 2022 WL 336419.

New Mexico law applies a reasonableness standard, much like federal law, to excessive-force claims under the New Mexico constitution. In addition, probable cause is necessary for a valid arrest under New Mexico law. *Sisneros v. Fisher*, 685 F. Supp. 2d 1188, 1222 (D.N.M. 2010). Moreover, under New Mexico law, an officer also needs exigent circumstances and/or an arrest warrant. *Id.* An officer may only use that amount of force reasonably believed to be necessary and is liable for assault and battery if excessive force is used. *Pena v. Greffet*, 108 F. Supp. 3d 1030, 1048, 1063 n.15 (D.N.M. 2015).

Based on the information known at this time, we believe this case is defensible. We believe the officers had probable cause to arrest Plaintiff, given his repeated refusal to obey their lawful commands to move back. We believe the officers were justified in their method of arresting Plaintiff, i.e., taking him to the ground. We believe the officers were justified in tasing Plaintiff, considering his resistance to being handcuffed.

3. If litigation is undertaken, what do you envision in terms of:
 - A. Any steps that should be taken immediately (e.g., to prevent the running of a statutory deadline or to preserve evidence);
N/A. We have answered Plaintiff’s complaint and initiated discovery.
 - B. Legal research and factual investigation;
Research will be required regarding probable cause for arrest as it applies to this case and the reasonableness of the officers’ actions.
 - C. Possible pleadings (including cross-complaints), motions, and discovery the parties are likely to undertake;

We filed an Answer in this case on December 22, 2022, along with a 12-person-jury demand. Based on the information known at this time, we believe a motion for summary judgment would have a good chance of success.

D. The litigation's likely duration and expense

Trial in this case is set on a five-week trailing docket that opens on March 18, 2024. We would presently estimate a total defense expenditure, from start to finish, of approximately \$75,000.

E. The range of recovery or exposure for the client (if reasonably based on the information provided in the first interview and known to you).

Plaintiff claims injuries from the takedown of cuts and bruises to his face and a sore neck. He received medical treatment for these injuries. Based upon his interrogatory answers, Plaintiff appears to be claiming approximately \$38,000 in past medical bills, though we are in the process of gathering copies of the actual bills, and cannot vouch for Plaintiff's claimed total. Plaintiff is not claiming lost wages.

4. The possibility of early settlement and the feasibility of a minimal cost approach to the litigation.

The Court has ordered us to mediation. **The parties agreed to Bruce McDonald as a mediator. Mediation, via Zoom, is set for August 9, 2023.**

NMSIF Liability Settlement Authority Request

Due 48 hours before Claims Review Discussion

FACTS OF CLAIM

Claimant: Jesus Ibarra Claim#: 2021027720
Member: Sunland Park DOI: 10/20/2020
Current Expense Paid: \$ 24,112.67 Current Incurred Reserves: \$ 80,000
Excess Reportable: Yes No Date Reported to Reinsurer: _____
Defense Atty: Bryan Evans, Atwood Malone Plaintiff Atty: David Idinopulos, Elias Law
Other Defendants: Andy Morales, Amador Quintana, Alejandro Valencia
Trial Date: n/a Trial Judge: n/a
Total Litigation Costs Including Trial and Discovery: \$ n/a Jury: n/a
Initial Legal Analysis Report Date: 6/5/2023 Current Legal Analysis Report Date: 6/5/2023
Mediation: Mediator Name & Date: Bruce McDonald Court Ordered Mediation: Yes No
Settlement Authority Request Amount: \$ 35,000 Plaintiff's Settlement Demand: \$ 400,000

EXPLANATION OF LOSS AND CAUSE OF INJURY

Excessive force by police. Injury to head.

LEGAL STATUS/UPDATE

Case was settled in mediation on 8/9/2023. Mediation was attended by myself, Bryan Evans, Chief Eric Lopez and was mediated by Bruce McDonald. Case settled for \$35,000. During mediation, oral authorization was given by Clinton to go up to \$40,000 if needed.

SETTLEMENT RATIONALE (CASE STRENGTHS & WEAKNESSES)

During mediation, plaintiff was not concerned about the tasing or the fact that he fell to the floor, the concern was more on the officers knee being pushed on his head against the floor. Plaintiff claimed \$62,000 in medical bills in which \$30,000 was deemed non applicable to the injuries since the bills were 2 years after incident. Plaintiff can be seen on video provoking and swearing at the officers which led to force by the PD. During our investigation it was found that the officers were within their SOPs and did not violate the policies. Plaintiff agreed to release all officers from claims past, present, and future. Because this was a simple TCA claim and did not include CRA, there were no punitive damages available for this incident.

APPROVED BY:

- \$1 - \$30K
 \$30,001 - \$150K
 \$150,001 - \$400K

Examiner: [Signature] Date: 8-10-2023
Risk Services Director: [Signature] Date: 08/10/23
Executive Director: _____ Date: _____



PAYMENT REQUEST FORM

PAYEE:

ADDRESS:

PAYMENT CODE:

AMOUNT: \$

PAYMENT NARRATIVE:

DATES: FROM: TO:

CLAIM #:

CLAIMANT:

IF NO PAYMENT NARRATIVE, PLEASE GIVE BRIEF EXPLANATION OF PAYMENT:

EXAMINER INITIALS:

Date:

***Mail Check to:

P. O. Box 846
Santa Fe, New Mexico 87504
(800) 432-2036 Toll Free
(505) 820-0670 Fax

NMSIF Liability Notification of Settlement & Payment Request Form

FACTS OF CLAIM

Claimant: _____ Claim#: _____

Member: _____ DOI: _____

Current Expense Paid: \$ _____ Current Incurred Reserves: \$ _____

Excess Reportable: Yes No Date Reported to Reinsurer: _____

Defense Atty: _____ Plaintiff Atty: _____

Other Defendants: _____

Trial Date: _____ Trial Judge: _____

Total Litigation Costs Including Trial and Discovery: \$ _____ Jury: _____

Initial Legal Analysis Report Date: _____ Current Legal Analysis Report Date: _____

Mediation: Mediator Name & Date: _____ Court Ordered Mediation: Yes No

Settlement Authority Request Amount: \$ _____

Date Settlement Authority Was Approved and by Whom: _____

Plaintiff's Settlement Demand: \$ _____ Case Settlement Amount: \$ _____

EXPLANATION OF LOSS AND CAUSE OF INJURY

SETTLEMENT RATIONALE (CASE STRENGTHS & WEAKNESSES)

PAYMENT REQUEST

PAYEE: _____

ADDRESS: _____

City _____ State _____ Zip _____

PAYMENT CODE: _____

AMOUNT: \$ _____

PAYMENT NARRATIVE: _____

DATES: FROM: _____ TO: _____

INSTRUCTIONS: _____

NMSIF Liability Settlement Authority Request

Due 48 hours before Claims Review Discussion

FACTS OF CLAIM

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Other Defendants: Andy Morales, Amador Quintana, Alejandro Valencia
Trial Date: n/a Trial Judge: n/a
Total Litigation Costs Including Trial and Discovery: \$ n/a Jury: n/a
Initial Legal Analysis Report Date: 6/5/2023 Current Legal Analysis Report Date: 6/5/2023
Mediation: Mediator Name & Date: Bruce McDonald Court Ordered Mediation: Yes No
Settlement Authority Request Amount: \$ 35,000 Plaintiff's Settlement Demand: \$ 400,000

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APPROVED BY:

- \$1 - \$30K
 \$30,001 - \$150K
 \$150,001 - \$400K

Examiner: _____ Date: 8-10-2023
Risk Services Director: Clinton Wilson Date: 08/10/23
Executive Director: _____ Date: _____

From: [Tammy Fitts](#)
To: [Brandon Heckler](#)
Subject: FW: Ibarra-Ponce v. City of Sunland Park, et al.; Claim No. 2021027720
Date: Wednesday, August 16, 2023 3:08:31 PM
Attachments: [image001.png](#)
[Elias Law W-9.pdf](#)

Mr. Heckler,

Please see below the attached & below for the payee instructions for the settlement check. Please send the settlement check to our office & we will exchange it for a signed & notarized *Settlement Agreement and Release*. If you have any questions, please do not hesitate to contact us. Thank you.



Tammy Fitts

Legal Assistant to:

Robert E. Sabin

Bryan Evans

Barbara Evans

Alyssa D. Rogers

Jacqueline L. Miller

K. Renee Gantert

Atwood, Malone, Turner & Sabin, P.A.

400 N. Pennsylvania Ave., Suite 1100

P.O. Drawer 700

Roswell, NM 88202-0700

Office: (575) 622-6221

Facsimile: (575) 624-2883

Email: tfitts@atwoodmalone.com

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From: Matthew Malleis <matthew@abogadoelias.com>

Sent: Wednesday, August 16, 2023 3:03 PM

To: Tammy Fitts <tfitts@atwoodmalone.com>; Michael Ross <mike@abogadoelias.com>

Cc: Fatima Turino <fatimar@abogadoelias.com>; Julie Nunez <julien@abogadoelias.com>;

IbarraPonceJesusZ991035474@abogadoelias.filevineapp.com

Subject: RE: Ibarra-Ponce v. City of Sunland Park, et al.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tammy,

Attached is the current W-9 for the firm. The settlement draft should be made out to:

Jesus Ibarra and Elias Law, PC

Let me know about any other questions you may have. Thanks!

Matthew J. Malleis

Elias Law, P.C.

111 Isleta Blvd. SW, Suite A

Albuquerque, NM 87105

(505) 221-6000

matthew@abogadoelias.com

abogadoelias.com

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From: Tammy Fitts <tfitts@atwoodmalone.com>

Sent: Wednesday, August 16, 2023 2:40 PM

To: matthew@abogadoelias.com; Michael Ross <mike@abogadoelias.com>

Cc: Fatima Turino <fatimar@abogadoelias.com>; Julie Nunez <julien@abogadoelias.com>; Claudia Jimenez <claudiaj@abogadoelias.com>

Subject: Ibarra-Ponce v. City of Sunland Park, et al.

Counsel,

Can you please forward me a W-9 & let me know the payee instructions for the settlement check?

Thank you.



Tammy Fitts

Legal Assistant to:

Robert E. Sabin
Bryan Evans
Barbara Evans
Alyssa D. Rogers
Jacqueline L. Miller
Atwood, Malone, Turner & Sabin, P.A.
400 N. Pennsylvania Ave., Suite 1100
P.O. Drawer 700
Roswell, NM 88202-0700
Office: (575) 622-6221
Facsimile: (575) 624-2883
Email: ffitts@atwoodmalone.com

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PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY/CLIENT PRIVILEGE

TO: Ms. Marcea Dark
FROM: Atwood, Malone, Turner & Sabin, PA, Bryan Evans
DATE: 6/5/23
RE: *Ibarra-Ponce v. City of Sunland Park, et al.*, Claim No.: 2021027720
(Insureds/Defendants: City of Sunland Park, Andy Morales, Amador Quintana and Alejandro Valencia)

INITIAL RISK ANALYSIS

1. What do you see as the significant legal or factual issues in the case?

Plaintiff sued for personal injury and damages. He claims assault and battery against the individual police officers named and that they violated the New Mexico Constitution's guarantee against unreasonable seizures and use of excessive force. Plaintiff's claim against the City of Sunland Park stems from the doctrine of respondeat superior. Because Plaintiff carefully avoided invoking his federal constitutional rights, the case was not removed to Federal Court.

Plaintiff's claim stems from his arrest, on October 20, 2020, on charges of disorderly conduct and resisting/obstructing police officers. Plaintiff was observing and filming a fire scene in a residential neighborhood in Sunland Park, approximately four miles from his house when he, and other bystanders, were told to move further back from the fire. In spite of multiple requests, Plaintiff refused, claiming he did not have to move. After a brief argument with the police officers, Plaintiff was taken to the ground and arrested. Two officer/defendants used an arm bar/leg sweep takedown maneuver to get Plaintiff to the ground. Plaintiff went down face first, hitting his face and head on the sidewalk. After being taken down, Plaintiff would not release his arms to be handcuffed, and had to be tased twice before complying. The criminal charges against Plaintiff were ultimately dropped, allegedly because the prosecuting officer failed to show up for Court. Plaintiff claims the officers "singled him out" from the other bystanders because he had been filming the fire scene. We have retained police practices expert Damon Fay to analyze this case on our behalf.

2. In what way might the issues be resolved, assuming the facts as stated?

The New Mexico Tort Claims Act waives immunity for police officer liability for damage resulting from assault, battery and constitutional claims. Therefore, it does not bar to the tort claims. N.M. Stat. Ann. § 41-4-12 (“Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery...”); *Wells v. County of Valencia*, 98 N.M. 3, 6, 1982-NMSC-048, ¶8, 644 P.2d 517 (Section 41-4-12, N.M.S.A.1978, waives immunity for certain specified torts and for the violation of constitutional rights when caused by law enforcement officers.”)

For the torts claims, the question is whether the officer exercised the care that a reasonably prudent and qualified officer would exercise in the same situation. *Hernandez v. Parker*, 508 P.3d 947, 950, 2022 N.M. App. LEXIS 5, *1, 2022 WL 336419.

New Mexico law applies a reasonableness standard, much like federal law, to excessive-force claims under the New Mexico constitution. In addition, probable cause is necessary for a valid arrest under New Mexico law. *Sisneros v. Fisher*, 685 F. Supp. 2d 1188, 1222 (D.N.M. 2010). Moreover, under New Mexico law, an officer also needs exigent circumstances and/or an arrest warrant. *Id.* An officer may only use that amount of force reasonably believed to be necessary and is liable for assault and battery if excessive force is used. *Pena v. Greffet*, 108 F. Supp. 3d 1030, 1048, 1063 n.15 (D.N.M. 2015).

Based on the information known at this time, we believe this case is defensible. We believe the officers had probable cause to arrest Plaintiff, given his repeated refusal to obey their lawful commands to move back. We believe the officers were justified in their method of arresting Plaintiff, i.e., taking him to the ground. We believe the officers were justified in tasing Plaintiff, considering his resistance to being handcuffed.

3. If litigation is undertaken, what do you envision in terms of:
 - A. Any steps that should be taken immediately (e.g., to prevent the running of a statutory deadline or to preserve evidence);
N/A. We have answered Plaintiff’s complaint and initiated discovery.
 - B. Legal research and factual investigation;
Research will be required regarding probable cause for arrest as it applies to this case and the reasonableness of the officers’ actions.
 - C. Possible pleadings (including cross-complaints), motions, and discovery the parties are likely to undertake;

We filed an Answer in this case on December 22, 2022, along with a 12-person-jury demand. Based on the information known at this time, we believe a motion for summary judgment would have a good chance of success.

D. The litigation's likely duration and expense

Trial in this case is set on a five-week trailing docket that opens on March 18, 2024. We would presently estimate a total defense expenditure, from start to finish, of approximately \$75,000.

E. The range of recovery or exposure for the client (if reasonably based on the information provided in the first interview and known to you).

Plaintiff claims injuries from the takedown of cuts and bruises to his face and a sore neck. He received medical treatment for these injuries. Based upon his interrogatory answers, Plaintiff appears to be claiming approximately \$38,000 in past medical bills, though we are in the process of gathering copies of the actual bills, and cannot vouch for Plaintiff's claimed total. Plaintiff is not claiming lost wages.

4. The possibility of early settlement and the feasibility of a minimal cost approach to the litigation.

The Court has ordered us to mediation. **The parties agreed to Bruce McDonald as a mediator. Mediation, via Zoom, is set for August 9, 2023.**

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Elias Law, PC	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.) See instructions. 111 Isleta SW, Suite A	Requester's name and address (optional)
6 City, state, and ZIP code Albuquerque, NM 87105	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
or									
Employer identification number									
4	5	-	2	3	9	2	0	4	5

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶ 1/23/23
------------------	----------------------------	----------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Unspecified Delivery Type

Job Name: Distribution Assembly
Batch(DD) Name:

Documents: 18
Pages: 168

Mailing Instructions

Packages

Mailed By:

Date:

Use Of Force							
Year	Physical	Taser	Pepper	Show of Force (no discharge of weapon)			
2013							
2014							
2015							
2016							
2017							
2018	11	3					
2019	6						
2020	15	4					1

Shootings

2013							
2014							
2015							
2016	1						
2017							
2018							
2019							
2020							

PROPERTY DECLARATIONS PAGE

Policy #: 1845
Insured: Sunland Park*
Address: 1000 McNutt Road, Suite A Sunland Park, NM 88063

Policy Period: July 1, 2022 to July 1, 2023
Rating Anniversary Date: July 1st

The coverage afforded by this policy is only with respect to the coverages indicated below and is subject to the values submitted to and on file with the Fund as well as all terms and conditions of the Master Policy.

TOTAL INSURED VALUE: \$13,701,794

BUILDINGS & PERSONAL PROPERTY

Coverage Applicable:

Property Deductible per Occurrence:	\$2,500
Earthquake Deductible per Occurrence:	\$100,000
Flood Deductible per Occurrence:	\$100,000 except zones A&V
Deductible for Zones A&V:	Minimum of 5% of Insured Value or Excess Maximum NFIP Limits Whether Purchased or Not

CONTRACTORS EQUIPMENT

Coverage Applicable:

Deductible per Occurrence: \$1,000

ELECTRONIC DATA PROCESSING EQUIPMENT (EDP)

Coverage Applicable:

Deductible per Occurrence: \$250

FINE ARTS

Coverage Applicable:

Deductible per Occurrence: \$2,500

EQUIPMENT BREAKDOWN

Coverage Applicable:

Deductible per Occurrence: \$2,500



August 8, 2022

Fund Representative

Date

LIABILITY DECLARATIONS PAGE

Policy #: 1845
 Insured: Sunland Park*
 Address: 1000 McNutt Road, Suite A Sunland Park, NM 88063

Policy Period: July 1, 2022 to July 1, 2023
 Rating Anniversary Date: July 1st

The coverage afforded by this policy is only with respect to the coverages indicated below and is subject to the values submitted to and on file with the Fund as well as all terms and conditions of the Master Policy.

LIMITS OF LIABILITY

- \$ 400,000 Per Person Bodily Injury (BI)
- \$ 750,000 Per Occurrence Bodily Injury (BI)
- \$ 100,000 Per Occurrence Property Damage (PD)
- \$ 300,000 For All Past & Future Medical/Medically-Related Expenses Per Occurrence
- \$ 100,000 Per Occurrence Fire Legal Liability Damage

\$4,000,000 Annual Aggregate

GENERAL LIABILITY

Limits of Liability Per Occurrence: See Above
 Deductible Per Occurrence: \$500

AUTO LIABILITY - See Schedule for Coverages and Deductibles

Limits of Liability Per Occurrence : See Above
 Deductible Per Occurrence: \$
 Uninsured Motorists * : \$60,000
 Auto Medical Payments * : \$2,000

AUTO PHYSICAL DAMAGE – As per schedule on file with NMSIF

Valuation ACV
 Comprehensive Deductible \$1,000
 Collision Deductible \$1,000

LAW ENFORCEMENT LIABILITY

Limits of Liability Per Claim \$2,000,000
 Limits of Liability Aggregate \$2,000,000
 Deductible Per Per Claim: \$5,000

PUBLIC OFFICIALS ERRORS & OMISSIONS

Limits of Liability Per Claim \$2,000,000
 Limits of Liability Aggregate
 Deductible Per Claim \$5,000

FOREIGN JURISDICTION

Limits of Liability * : \$1,000,000
 Deductible Per Occurrence: \$500

EMERGENCY MEDICAL MALPRACTICE

Limits of Liability * : See Above

Deductible Per Occurrence: \$500

Clinton Wick

August 8, 2022

Fund Representative

Date



NMSIF

NEW MEXICO SELF-INSURERS' FUND

WORKER'S COMPENSATION & EMPLOYER'S LIABILITY PLAN
DECLARATIONS PAGE

Policy #: 1845
Insured: Sunland Park*
Address: 1000 McNutt Road, Suite A Sunland Park, NM 88063

Policy Period: July 1, 2022 to July 1, 2023
Rating Anniversary Date: July 1st

The Policy is continuous until canceled or terminated by either the Insured or the Fund in accordance with the terms of this Policy. Sixty (60) days advance written notice is required of the Insured to cancel or terminate this Policy, or as otherwise provided by the Fund's Board of Trustees. Should the Insured cancel at any time other than the anniversary date (July 1st of each year) the Insured shall be subject to the short rate procedures as provided for in the Bylaws and Resolutions.

Total Payroll: \$4,482,855
Experience Modifier: .12

Worker's Compensation Insurance:

Part One of the Policy applies to the Worker's Compensation Law of New Mexico.
Policy Limits: Statutory

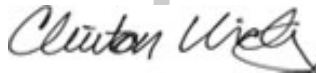
Employer's Liability Insurance:

Part Two of the Policy applies to work in New Mexico.
Policy Limits: \$1,050,000 each accident/\$1,050,000 policy limit

Other States Insurance:

Part Three of the Policy applies to all states in the United States.
Worker's Compensation Limits: Statutory

Each member's contribution is determined by the Rules, Classifications, Rates, and Rating Plans. The basis for the contribution is the payroll by class as shown on the payroll rating forms and as verified or revised by audit.



Fund Representative

August 1, 2022

Date

NEW MEXICO SELF-INSURERS' FUND

Coverage Renewal Invoice

Policy Number: 1845
Sunland Park*

Invoice Date: 7/31/2022
Coverage Dates: 07/01/2022 to 07/01/2023
Fund Year: FY23

Reference #	Coverage	Premium
	Property	\$27,749
Property	Fine Arts	\$
	EDP	\$253
	Contractors Equipment	\$2,177
23Prop 087	Total Property	\$30,179
	General Liability	\$54,309
	Automobile	
Liability	Auto Liability	\$15,169
	Auto Physical Damage	\$12,514
	Public Officials Liability	\$47,415
	Law Enforcement Liability	\$78,555
	Total Liability	\$207,962
	Less Discount	50%
23Liab 093	Net Premium Due	\$103,981
Workers' Compensation	Total Work Comp	\$133,327
	Less Discount	50%
23WC 096	Net Premium Due	\$66,664
	Total NMSIF Premium Due	\$200,824

Passthrough Coverage

Reference #	Coverage	Premium
	Airport	
	Employee Dishonesty	
	Volunteer Accident	
	Volunteer Firefighter Accident	
	Storage Tank Liability	
	Total NMSIF and Passthrough Renewal Premiums Due	\$200,824

Notes:

- *NMSIF Property and Liability renewal premiums are due in full upon receipt of invoice. Worker Compensation renewal premium may be split in 2 payments, the 1st due within 30 days of receipt, the 2nd due by 12/31/22.*
- *Passthrough coverage premium is due in full*
- *Employee Dishonesty/Crime will be invoiced in September*

Remit Payment to:

New Mexico Self Insurers' Fund
PO Box 846
Santa Fe, NM 87504-0846

New Mexico Self-Insurers' Fund
ADMINISTRATIVE OFFICES: 1229 Paseo de Peralta, Santa Fe, NM 87504
(hereinafter called the "Fund")

LIABILITY DECLARATIONS

Policy #: 1845

Member Insured: Sunland Park*

Address: 1000 McNutt Road, Suite A Sunland Park, NM 88063

Policy Period: **July 1, 2023 to June 30, 2024** (at 12:01 a.m. Standard time at your mailing address shown above)

The coverage afforded by this policy is only with respect to the coverages indicated below and is subject to the values submitted to and on file with the Fund. If there is no limit indicated, coverage is not included.

LIMITS OF LIABILITY

- \$ 400,000 Per Person Bodily Injury (BI)
- \$ 750,000 Per Occurrence Bodily Injury (BI)
- \$ 200,000 Per Occurrence Property Damage Real Property for physical damage or destruction(PD)
- \$ 300,000 For All Past & Future Medical/Medically-Related Expenses Per Occurrence
- \$ 100,000 Per Occurrence Fire Legal Liability Damage

\$4,000,000 Annual Policy Aggregate

GENERAL LIABILITY

Limits of Liability Per Occurrence:	\$1,050,000
Liquor Liability	\$
Foreign Jurisdiction	\$1,000,000
Emergency Medical Malpractice.....	\$See Above
Deductible Per Occurrence:	\$500

AUTO LIABILITY AND PHYSICAL DAMAGE – AS PER SCHEDULE ON FILE WITH THE FUND

Combined Single Limit of Liability Per Occurrence :	\$1,050,000
Deductible Per Occurrence:.....	\$
Combined Single Limit Uninsured Motorists :	\$60,000
Deductible per occurrence:.....	\$250.00
Auto Medical Payments :	\$2,000
Valuation	ACV

(unless otherwise indicated on the Schedule on file with the Fund)

Comprehensive Deductible per occurrence.....	\$1,000
Collision Deductible per occurrence.....	\$1,000

Claims Made Coverage

Retroactive Date: **See Endorsement**

LAW ENFORCEMENT LIABILITY

Limits of Liability Per Claim\$2,000,000
Limits of Liability Aggregate.....\$2,000,000
Deductible Per Per Claim:.....\$5,000

PUBLIC OFFICIALS ERRORS & OMISSIONS

Limits of Liability Per Claim\$2,000,000
Limits of Liability Aggregate.....\$2,000,000
Deductible Per Claim.....\$5,000



Fund Representative

July 11, 2023

Date

LIABILITY CERTIFICATE OF COVERAGE

I. PURPOSE

This Certificate of Coverage provides an explanation to covered *Member Insureds* about the intent and use of funds in their pooled risk management program.

The *Fund* is a self-insured governmental risk pool formed under Section 3-62-1 NMSA 1978 et. seq. The *Fund* is neither an insurance company nor subject to New Mexico's laws regulating insurance companies. The *Fund* has no obligation to issue reservation of rights letters, nor does it have an obligation to provide separate counsel to a *Covered Party* in disputed coverage situations. Failure to provide notice to a *Covered Party* of any covered dispute shall not operate to waive any of the provisions of this Certificate of Coverage.

II. RIGHTS AND DUTIES OF THE FUND

The *Fund* has a *right to control* the defense and settlement of a claim covered under this Certificate, including the selection of the attorney or attorneys representing each covered party. Such attorney or attorneys shall be directed by, and report to, the *Director* with regard to the defenses, procedural decisions, and settlement of a claim. Implicit in the right to control also is the exclusive right to settle a claim for which proceeds are to be paid out of the appropriate account.

The *Fund* has a *duty to defend* its *Member Insureds* – subject to any exclusions or conditions described in this Certificate – against claims arising out of occurrences within New Mexico's Civil Rights Act, Fair Pay for Women Act, Inspection of Public Records Act, Tort Claims Act, and Whistleblower Protection Act(s). The *duty to defend* extends also to occurrences that give rise to claims under Section 1983 of the United States Federal Code. There is no general duty to defend a *Covered Party* against any other *Claims* seeking *Damages*. With respect to any legal action brought against a *Covered Party* seeking *Damages*, and subject to all the *Fund's* terms, limits, exclusions, duties, rules and conditions, the *Fund* may advance the costs of defense in any such legal action until it is determined that the *Member Insured* is not entitled to coverage for the *Claim*. In the case of such determination, the *Member Insured* shall be obligated to repay to the *Fund* all costs of defense advanced by the *Fund* in defending any *Claim* not covered pursuant to this Certificate of Coverage.

The *Fund* has a *duty to indemnify* up to the limits of the applicable policy, subject to any exclusions or conditions described in this Certificate.

III. RIGHTS AND DUTIES OF MEMBER INSURED

Member Insureds have a *duty to notify* the *Director* in writing as soon as practicable, but in no event more than seven (7) days from, acquisition of knowledge that an occurrence is likely to result in a claim under this Certificate. Such notice shall include information sufficient to identify the time, place, and circumstances of the occurrence.

Member Insureds have a *duty to cooperate* with the *Director* and assist in making settlement, in the conduct of suits, and enforcing any right of contribution or indemnity against any person or organization who may be liable to *Member Insured*, and shall attend hearings and trials to assist in securing and giving evidence and obtaining attendance of witnesses. As part of the *duty to cooperate*, *Member Insureds* agree to be bound by the terms and conditions set forth in the governing documents and agreements made by the *Fund*, as amended from time to time, as well as resolutions and rules made by the *Fund's* Board of Trustees.

Member Insureds have a *duty to mitigate* damages, where they will take reasonable steps to prevent additional injury or damage from arising out of the same or similar conditions under which the initial injury or damage occurred.

Member Insureds have a *right to appeal* within 30 days of final decisions of the *Director* through the Executive Director of the League, who shall make a written determination on such appeal within fifteen (15) calendar days of receipt. Further appeals shall be made through the Board of Trustees pursuant to Article XI(E) of the joint powers agreement to which all *Member Insureds* are signatories.

IV. DEFINITIONS

- A. *Bodily Injury* means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury.
- B. *Certificate of Coverage Period* means the period of time between the Effective Date and Expiration Date set forth in the Declarations to the Certificate of Coverage.
- C. *Claims Made* means coverage applies to *claims* first made during the policy period or extended reporting period arising out of a *wrongful act* taking place on or after the retro active date.
- D. *Covered Auto* means any vehicle owned by or rented to a *Member Insured*.
- E. *Covered Party* means any *Member Insured* under this Certificate of Coverage. Any *Employee* of a *Member Insured*, acting within the course and *scope of duties* are deemed to be a *Covered Party*.
- F. *Claim* means any written or oral demand or lawsuit to recover money from a *Member Insured* for a wrongful act As defined by this certificate.
- G. *Damages* means any compensatory amount which a *Member Insured* become legally obligated to pay as a result of a covered *Claim*, including judgments, awards, and settlements. *Damages* shall not include civil or criminal fines, penalties, sanctions, whether pursuant to law, statute, regulation or court rule; punitive and exemplary damages and the multiplied portion of multiplied damages; any matter, sum or award that is uninsurable under any applicable law; or the cost to comply with or defend against an injunction or other non-monetary or declaratory relief.
- H. *Defense Costs* means reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense and appeal of a *Claim*. *Defense Costs* does not include wages or salaries or costs associated with *Employees* or officials of the *Member Insured*.
- I. *Director* means the Risk Services Director of the New Mexico Self-Insurers' Fund.
- J. *Employee* means any person who has been authorized to act on behalf of the *Member Insured* whether that person is acting on a permanent or temporary basis, with or without being compensated, or on a full-time basis. However, *Employee* does not include a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor.
- K. *Extended Reporting Period* the *Member Insured* has an automatic extended period of time to file a *claim* arising out of a *wrongful act* that occurred prior to the effective date of cancelation and after the policy retro active date. This period begins on the effective date such coverage is canceled and

end on the 90th day unless the *Member Insured* purchased an extended reporting period endorsement.

- L. *Fund* means the New Mexico Self Insurers' Fund.
- M. *Law Enforcement Employees* means those *Employees* whose ordinary duties are directly or indirectly related to the enforcement of criminal laws while such *Employees* are acting both within the course of their official duties, and within their *Scope of Duties*.
- N. *Law Enforcement Act* means all individual, continuing, serial, or repeated instances of a *Wrongful Act* by a *Member Insured*, a *Law Enforcement Employee*, or other *Covered Party* committed while acting in the course and scope of his or her official duties, or while acting in in both the course and scope of a mutual aid agreement between governmental entities for the temporary sharing of *Law Enforcement Employees* or other *Covered Party* under the terms and circumstances specified therein, which individually or in combination with others contribute to or cause *Property Damage* or *Bodily Injury* which is caused and first becomes manifest during the *Certificate of Coverage Period*. All such instances of a *Wrongful Act(s)* shall be considered one *Law Enforcement Incident*, regardless of the number of *Certificate of Coverage Period* during which the *Wrongful Acts* began, allegedly began, or continued, regardless of the number of perpetrators, tortfeasors or defendants involved, regardless of the number of victims, claimants, or plaintiffs involved, regardless of the number of separate *Wrongful Acts* involved or that occurred over time, and regardless of how the resulting injuries or damage are described or the legal theory invoked, whether under state or federal law or both, by any victim, victims, claimant, claimants, plaintiff or plaintiffs to recover for injuries.
- O. *Auto Medical Payments* reasonable and necessary medical and funeral expenses for a passenger of a covered vehicle regardless of fault. We will pay only those expenses incurred within two (2) years from the date of the accident. This coverage does not apply to an employee of the member insured, or any other insured person.
- P. *Member Insured* means a municipality or any local public body which has paid its allocated contribution to the Fund.
- Q. *Occurrence* means an event, act, failure to act, or any other incident which results, or is likely to result, in a *Claim* under this Certificate of Coverage. All such instances of an *Occurrence* shall be considered one *Occurrence*, regardless of the number of *Certificate of Coverage Period* during which the *Occurrence* began, allegedly began, or continued, regardless of the number of perpetrators, tortfeasors or defendants involved, regardless of the number of victims, claimants, or plaintiffs involved, regardless of the number of separate *Occurrence* involved or that occurred over time, and regardless of how the resulting injuries or damage are described or the legal theory invoked, whether under state or federal law or both, by any victim, victims, claimant, claimants, plaintiff or plaintiffs to recover for injuries.
- R. *Property Damage* means only direct physical injury to tangible property and loss of use of such physically injured property which results from the direct physical injury to it; however, *Property Damage* does not include damage to or loss use of property owned by the *Member Insured* or *Covered Party*. *Property Damage* does not include the discontinuation, interruption of or failure to provide utility services, waste disposal, or any other service, whether or not such services are provided by the *Member Insured* and regardless of the effect of such discontinuation, interruption, or failure on the use or enjoyment of any property.

- S. *Pollutant* means any solid, liquid, gaseous, thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, airborne particles or fibers, molds, asbestos, lead, and waste. Waste includes material to be recycled, reconditioned, or reclaimed. The term pollutant as used herein does not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression. The term pollutant also does not mean police use of mace, oleoresin capsicum, pepper gas, or tear gas, or to weed abatement or tree spraying.
- T. *Scope of Duties* means performance by an *Employee* acting in good faith within the duties of the *Employee's* office, employment or tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the *Employee*. However, *Scope of Duties* shall not include any dishonest, criminal, fraudulent, bad faith, reckless, wanton, or malicious act.
- U. *Ultimate Net Loss* means the total of all loss adjustment expenses including *Defense Costs* and all *Damages* for which the *Covered Party* is liable arising out of an occurrence for which coverage under this Certificate of Coverage applies.
- V. *Uninsured Motorist* means a land motor vehicle or trailer for which no liability bond or policy at the time of an *occurrence* provides at least the amounts required by the applicable law where a *vehicle* is principally garaged; or for which an insuring or bonding company denies coverage or is or becomes insolvent; or which is a hit-and-run vehicle and neither the driver nor owner can be identified. Does not include any *vehicle* owned or operated by the *member insured*, designed for use primarily off public roads.
- W. *Vehicle* means a land, water, or air motorized vehicle, trailer or semi-trailer, including any machinery or apparatus attached thereto. Drones?
- X. *Wrongful Act* means any actual or alleged error in the performance or failure to perform an official duty; or any misstatement, misleading statement, or misleading act made or done in the course of official duty and upon which a claimant or plaintiff has relied to his, her, or its detriment; or any omission or neglect in performing an official duty; or any breach of an official duty, including misfeasance and nonfeasance; but only, with respect to any or all of the foregoing, when it is committed by a *Member Insured* or by a *Covered Party* while acting within their *Scope of Duties*. All such instances of a *Wrongful Act(s)* shall be considered one *Wrongful Act*, regardless of the number of *Certificate of Coverage Period* during which the *Wrongful Acts* began, allegedly began, or continued, regardless of the number of perpetrators, tortfeasors or defendants involved, regardless of the number of victims, claimants, or plaintiffs involved, regardless of the number of separate *Wrongful Acts* involved or that occurred over time, and regardless of how the resulting injuries or damage are described or the legal theory invoked, whether under state or federal law or both, by any victim, victims, claimant, claimants, plaintiff or plaintiffs to recover for injuries.

V. **COVERAGE**

The following coverage is written on an occurrence basis.

A. **Auto Liability**

The Fund will pay on behalf of the *Member Insured* the *Ultimate Net Loss* in excess of any applicable deductible that a *Member Insured* becomes obligated to pay and to which this Certificate of Coverage

applies because of *Bodily Injury* or *Property Damage* caused by an *Occurrence* resulting from the ownership, maintenance, or use of a *Covered Auto*, except as otherwise excluded or conditioned in Sections VI and VII.

In the event of a liability claim arising out of a public employee's authorized use of a personal vehicle, that is within the scope of that employee's duties, this Certificate of Coverage provides coverage in excess of the employees' personal liability insurance.

B. General Liability

The *Fund* will pay on behalf of the *Member Insured* the *Ultimate Net Loss* in excess of any applicable deductible that a *Member Insured* becomes obligated to pay and to which this Certificate of Coverage applies because of *Bodily Injury* or *Property Damage* caused by an *Occurrence*, except as otherwise excluded or conditioned in Sections VI and VII.

The following coverage is written on a claims-made basis.

C. Law Enforcement Liability

The *Fund* will pay on behalf of the *Member Insured* the *Ultimate Net Loss* in excess of any applicable deductible that a *Member Insured* becomes obligated to pay and to which this Certificate of Coverage applies because of a *Claim* first made against a *Covered Party* by reason of a *Law Enforcement Act* committed by a *Covered Party* except as otherwise excluded or conditioned in Sections VI and VII.

D. Public Officials Errors & Omissions

The *Fund* will pay on behalf of the *Member Insured* the *Ultimate Net Loss* in excess of any applicable deductible that a *Member Insured* becomes obligated to pay and to which this Certificate of Coverage applies because of a *Claim* first made against a *Covered Party* by reason of a *Wrongful Act* committed by a *Covered Party* except as otherwise excluded or conditioned in Sections VI and VII.

VI. EXCLUSIONS

Exclusions are those matters that result in complete denials of coverage. Stated another way, the *Fund* will extend neither a defense nor any indemnity payment on the claim.

A. Procurement and Contractual Obligations

Claims arising out of protests, estimates of probable costs or costs estimated being exceeded, faulty preparation of bid specifications, or plans, including architectural plans; mechanic's lien claims, stop notice claims, change order claims, or similar claims by contractors for the value of services or materials provided. Breach of contractual obligation(s), or a covered party's obligation to pay damages by reason of assumption of liability under contract or agreement. Including *claims arising out of the indemnification of a third party in contradiction to the NM Anti-donation clause.*

B. Property of Others

Property damage to property owned by or in the care, custody, or control of a *Covered Party*; rented to or leased to the *Covered Party* where it has assumed liability for damage to or destruction of such property; or aircraft, watercraft, or any vehicle in the *Covered Party's* care, custody, or control.

C. Insects, and Plants, Vermon, Rodents

Any bodily injury or property damage where an insect, plant, or is a direct or proximate cause.

D. Fireworks, Explosives, Pyrotechnic Devices or Incendiary Devices

Claims for bodily injury, property damage or medical expenses whether or not direct or proximate cause by any of the above.

E. Workers' Compensation and Employer's Liability

Claims for bodily injury to employees arising out of or in the course of employment by a *Covered Party* that is covered by the workers' compensation laws of the State of New Mexico, of any other state, or of the federal laws of the United States.

E. Cyber Loss

An unauthorized, malicious, or criminal act, or series of related unauthorized, malicious, or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of, or operation of, any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, or wearable device), server, cloud or microcontroller, including any similar system or any configuration of the aforementioned, and including any associated input, output, data storage device, networking equipment, or back-up facility, owned or operated by the *Member Insured.*

F. Intentional, Criminal, or Profit-Seeking Conduct

Criminal acts or criminal proceedings against a *Member Insured* or its *Employees.* Any *Covered Party's* intentional conduct committed with malice, intent to cause damage, knowledge of its wrongful nature, or willful or conscious disregard of New Mexico statutes, court orders, or rights or safety of others.

This exclusion does not apply to a *Covered Party* whose liability is based solely on its vicarious liability arising out of its relationship to one acting as described above.

Acts during which an *Employee* obtains personal profit or advantage to which they are not otherwise legally entitled.

G. Claims arising out of or in connection with: land use regulation, land use planning, or the principles of eminent domain or condemnation proceedings.

H. Pollution Cleanup

Request, demand, or order that a covered party or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Claim or suit by or on behalf of a governmental authority for damages because of testing, monitoring, cleaning, removing, containing, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

I. Reasonable Accommodations

Any expenses or costs incurred by a covered party arising from providing a reasonable accommodation to a disabled person, including any modification to premises or workspace to comply with the Human Rights Act or the Americans with Disabilities Act.

VI. CONDITIONS

Conditions are matters that may result in partial denials of coverage. Stated another way, while the *Fund* may extend a *duty to defend* a lawsuit and portions of settlements not provided for below, the *Member Insured* will be obligated to remit the entirety of Paragraph VI(A) through VI(C) obligations should they be awarded at trial.

The Fund may advance payments that would otherwise contemplate below only in furtherance of an early resolution – such as a settlement. But where claimants ultimately seek redress or relief in the form captioned below, there is a required contribution from the *Member Insured* in an amount to be determined by the *Director* not to exceed one-third of the total resolution value. Payment shall be due to the *Fund* no later than sixty (60) days from the date on which the claim was resolved.

A. Attorney Fees, Fines, Penalties, Enforcement, and Punitive Damages

Attorney fees, fines, sanctions, assessments, penalties, restitution, disgorgement, exemplary, enforcement, or punitive damages, except those provided for in Section 14-2-11(C) NMSA 1978 and Section 41-4-4(C) NMSA 1978.

B. Injunctive or Declaratory Relief

Any obligation whatsoever arising out of injunctive or declaratory relief.

C. Employment Redress

Redress in the form of wages, salaries, multipliers, benefits, retirement, insurance, or any other compensation-related relief.

J. DETERMINATION OF COVERAGE ELIGIBILITY

The *Director* shall make a written determination as to whether this Certificate of Coverage applies to any claim. The decision of the *Director* may only be appealed through written appeal to the Executive Director of the

League within 30 days of written determination, who shall make a determination on the appeal within fifteen (15) calendar days. Further appeals shall be made through the Board of Trustees pursuant to Article XI(E) of the joint powers agreement to which all *Member Insureds* are signatories.

As a condition precedent to any right of action hereunder following the appeals process outlined above, it is hereby mutually agreed that a dispute between a *Member Insured* and the *Fund* involving this Certificate of Coverage shall be determined by final and binding arbitration before a single arbitrator.

Such arbitration cannot commence until thirty (30) days after the issuance of a final determination from the Board of Trustees. All decisions of the arbitration shall be final and binding upon the parties and shall not be subject to any further appeal or court action.

If a *Member Insured* attempts to bring suit, assign rights to bring suit, or otherwise in any way institute legal action against the *Fund*, such *Member Insured* shall be delivered in writing, within thirty (30) days of such action, a letter of intent to terminate *Member Insured's* membership in the *Fund* pursuant to Article XI(A) of the joint powers agreement to which it is a signatory. The *Member Insured* will not be entitled to a hearing, appeal, or review of its prospective termination of membership, and no liability shall accrue to the *Fund* or its *Member Insureds* for any injury or accident occurring to an Employee of a prospective terminnee after the effective date of the termination notice.

K. LIMIT OF LIABILITY

The *Fund's* maximum liability for all *Damages* and *Defense Expenses* resulting from each *Claim* covered under this Certificate of Coverage shall not exceed the amount stated in the Declarations as the Limits of Liability Per Occurrence or Limits of Liability Per Claim. The *Fund's* maximum annual aggregate liability for all *Damages* and *Defense Expenses* resulting from all *Claims* covered by this Certificate of Coverage shall be the aggregate Limit of Liability stated in the Declarations as Limits of Liability Annual Aggregate.

All *Ultimate Net Loss* caused by accidents, incidents, negligent, or wrongful acts, as well as all *Occurrences* or *Wrongful Acts* that are related, interrelated, logically related, or causally related, or that are part of a common scheme or series of events, will be considered a single *Claim*, and a single Limit of Liability will apply under a single Certificate of Coverage, regardless of whether: there are more than one victims or parties claiming injury from the misconduct, *Wrongful Act* or *Occurrence*; there is some variation in the conduct constituting the misconduct, *Wrongful Act* or *Occurrence*; there are several legal theories under which recovery is sought, or a number of causes of action asserted, or multiple sources of the law, whether local, state, federal, or international, upon which recovery is sought; or, the misconduct, *Wrongful Act* or *Occurrence* occurred over more than one Certificate of Coverage. If a *Claim* causes *Damages* or *Ultimate Net Loss* during more than one Certificate of Coverage, all *Damages* or *Ultimate Net Loss* will be deemed to occur during the first Certificate of Coverage during which *Damages* or *Ultimate Net Loss* first occurred.

For any amount for which the *Member Insured* would not be liable under applicable governmental or sovereign immunity but for the existence of this Certificate of Coverage; the issuance of this Certificate of Coverage shall not be deemed a waiver of any statutory immunities by or on behalf of any *Member Insured*, nor of any statutory limits on the monetary amount of liability applicable to any *Member Insured* were this Certificate of Coverage not in effect; and as respects to any *Claim*, the *Fund* expressly reserves any and all rights to deny liability by reason of such immunity, and to assert limitations as to the amount of liability as might be provided by law.

The coverage provided by this Certificate of Coverage shall be excess over and not contributed with any insurance or other coverage that is available to the *Covered Party* whether such insurance or other coverage was purchased by the *Covered Party* or included such *Covered Party* as an additional insured or additional *Covered Party*. The number of *Covered Parties* covered by the Certificate of Coverage shall not operate to increase the Limit of Liability.

There is no stacking of limits, coverage, or benefits available under this Certificate of Coverage, whether by claimants, *Member Insureds*, or any other interested person.

L. CERTIFICATE RENEWAL PROCEDURE

Other than its annual issuance, the terms and conditions of this Certificate of Coverage shall not be altered or amended or waived, except by written notice signed by the Director. Such notice shall be provided at least thirty (30) days prior to the effective date of the change, in writing to the Member Insureds.

NEW MEXICO SELF-INSURERS' FUND

Coverage Renewal Invoice

Policy Number: 1845
Sunland Park*

Invoice Date: 08/02/2023
Coverage Dates: 07/01/2023 to 06/30/2024
Fund Year: FY24

Reference #	Coverage	Premium
	Property	\$43,517.00
Property	Fine Arts	\$.00
	EDP	\$106.00
	Contractors Equipment	\$537.00
24Prop 071	Total Property	\$44,160.00
	General Liability	\$62,371.00
	Automobile	
Liability	Auto Liability	\$19,346.00
	Auto Physical Damage	\$14,090.00
	Public Officials Liability	\$76,452.00
	Law Enforcement Liability	\$100,421.00
	Total Liability	\$272,680.00
	POL/LEL Increased Limit Premium	
24Liab 073	Net Premium Due	\$136,340.00
Workers' Compensation	Total Work Comp	\$122,595.00
24WC 078	Net Premium Due	\$30,649.00
	Total NMSIF Premium Due	\$211,149.00

Passthrough Coverage

Reference #	Coverage	Premium
24EmpDsh 064	Airport	
	Employee Dishonesty	\$1,075.00
	Volunteer Accident	
	Volunteer Firefighter Accident	
	Storage Tank Liability	
Total NMSIF and Passthrough Renewal Premiums Due		\$212,224.00

Notes:

- *Premium includes any applicable credits.*
- *NMSIF Property and Liability renewal premiums are due in full upon receipt of invoice. Worker Compensation renewal premium may be split in 2 payments, the 1st due within 30 days of receipt, the 2nd due by 12/31/23.*
- *Passthrough coverage premium is due in full.*
- *Storage Tank Liability will be invoiced separately.*

Remit Payment to:

New Mexico Self Insurers' Fund
PO Box 846
Santa Fe, NM 87504-0846