

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. _____

Jose Sanchez and
Joshinna Carreras,

Plaintiffs,

v.

City and County of Denver;

Peri Beaulieu, a sergeant in the Denver Police Department, in her individual capacity;
Dan Giles, an officer in the Denver Police Department, in his individual capacity;
Kevin Ujcich, an officer in the Denver Police Department, in his individual capacity;
Jeffery Heinis, an officer in the Denver Police Department, in his individual capacity;
Andre Strode, an officer in the Denver Police Department, in his individual capacity; and
Glen S. Riggs, an officer in the Denver Police Department, in his individual capacity;

Defendants.

COMPLAINT

INTRODUCTION

1. As a result of the Denver Police Department's practice of racial profiling, ethnic stereotyping, and biased policing, plaintiff Jose Sanchez was unjustifiably targeted while he was standing lawfully on the public sidewalk, smoking a cigarette, outside the Denver home of his girlfriend, Joshinna Carreras. Police illegally detained and handcuffed him, falsely accused him of being an "illegal immigrant," and falsely arrested him on a bogus charge of providing "false identification." The supposedly "false" identification was a current and valid photo ID card issued by the Department of Homeland Security verifying Mr. Sanchez's legal presence and authorization to work in the United States. Mr. Sanchez spent five days in jail on the bogus charge before it was dismissed.

2. In the course of “investigating” Mr. Sanchez, police illegally barged into the home of Ms. Carreras when they knew she was alone and taking a shower. Police demanded that she exit the bathroom as they conducted an illegal warrantless search, rifling through cabinets, drawers, and Ms. Carreras’s purse.

3. In this action, plaintiffs seek compensation for these violations of their constitutional rights to the equal protection of the law and to be free from unreasonable searches and seizures.

JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

PARTIES

6. Plaintiff Jose Sanchez is a Mexican national who is legally authorized to live and work in the United States. At all times relevant to this Complaint, he was a resident of Denver and the boyfriend of plaintiff Joshinna Carreras.

7. Plaintiff Joshinna Carreras is a United States citizen and a resident of Colorado. At all times relevant to this Complaint, she was a resident of Denver and the girlfriend of plaintiff Jose Sanchez.

8. At all times relevant to this Complaint, Defendant Peri Beaulieu was a Sergeant in the Denver Police Department. She is sued in her individual capacity.

9. At all times relevant to this Complaint, Defendants Dan Giles, Ethan Aldridge, Kevin Ujcich, Jeffery Heinis, Adre Strode, and Glenn S. Riggs were officers working for the Denver Police Department. Each is sued in his individual capacity.

10. Defendant City and County of Denver (“Denver”) is a home rule municipality under Article XX of the Colorado Constitution. It operates the Denver Police Department. At all times relevant to this Complaint, the individual defendants acted as employees and agents of the City and County of Denver.

11. At all times relevant to this Complaint, defendants were acting or failing to act under color of state law.

FACTUAL BACKGROUND

12. Both plaintiffs are Hispanic and are identifiable as such by physical appearance. By his accent, Mr. Sanchez is identifiable as Mexican.

13. At the time of the events described in this Complaint, Ms. Carreras resided in an apartment in the 600 block of Wolff Street in Denver. Mr. Sanchez lived in a different apartment in the same complex.

14. On the evening of July 29, 2010, Mr. Sanchez had been visiting Ms. Carreras in her apartment. When she went to take a shower, Mr. Sanchez stepped outside the apartment to smoke a cigarette. He left the door ajar as he was standing right outside.

15. While outside the apartment, Mr. Sanchez was speaking with an acquaintance, another Hispanic male. They spoke in Spanish.

16. While the two men were standing outside talking, the defendant officers approached. Seeing the men’s Hispanic appearance and hearing them speak Spanish, the officers immediately demanded that Mr. Sanchez identify himself.

17. Mr. Sanchez provided his name and he was immediately placed in handcuffs.

18. The defendants did not have legitimate grounds to detain or handcuff Mr. Sanchez. They did not have probable cause or even reasonable suspicion to believe that Mr. Sanchez was involved in any criminal activity.

19. The officers demanded that Mr. Sanchez produce an ID. Mr. Sanchez replied that his ID was in his girlfriend's apartment. He said he thought it was in her purse, but that she was currently taking a shower.

20. Mr. Sanchez offered to go into the apartment to get the ID, but the officers refused to allow him to do so.

21. The officers stated that they could go into Ms. Carreras's apartment and look for the ID themselves. Mr. Sanchez then told the officers that they could not go into his girlfriend's apartment while she was in the shower. One of the officers replied, "yes we fucking can go in there."

22. Jose protested that his girlfriend might walk out of the shower and into her apartment not expecting to see police there. He told the police that they needed to wait until his girlfriend was out of the shower, so that she could get the ID and show it to the officers.

23. One of the officers stated, "You don't have any ID, you're lying."

24. Despite Mr. Sanchez's protests that the officers could not enter the apartment while his girlfriend was in the shower, three of the defendant officers went into the apartment anyway. The officers told Mr. Sanchez they had a right to enter Ms. Carreras's apartment.

25. While Ms. Carreras was naked in the shower and unaware of the officers' presence, the officers searched under sofa cushions, in drawers, in kitchen cabinets, in dressers, and they searched Ms. Carreras' purse.

26. When she got out of the shower, Ms. Carreras heard the voices of strange men in her apartment and was frightened and confused. Officers banged on the bathroom door and shouted “Denver Police. Come out”. Ms. Carreras was not dressed and told the officers she needed to get dressed.

27. Two officers were standing right outside the bathroom when Ms. Carreras exited the bathroom. She immediately saw her purse open on her bed, with her ID sitting on top of the purse.

28. Ms. Carreras asked who had searched her purse. Defendant officers denied searching the purse and said “it was like that.” This was a lie. As Ms. Carreras moved about the apartment, she noted the messed-up sofa cushions, the open drawers, the open cabinets, and she saw that coasters on the table had been moved. Officers denied having searched despite the clear evidence that they had. Ms. Carreras exited the apartment when she saw that Mr. Sanchez was being detained outside her apartment.

29. Mr. Sanchez asked Ms. Carreras to get his ID inside the apartment.

30. One of the defendant officers told her that she was not allowed to go back into her apartment by herself.

31. Ms. Carreras told the defendant officers that she was an American citizen and knew her rights. She told the officers that they had no right to be in her apartment because they had no warrant. One of the officers replied, “We don’t need a fucking warrant.”

32. One of the officers told Ms. Carreras that Mr. Sanchez had given them permission to enter the apartment and look for his ID. This was a lie.

33. Ms. Carreras asked Mr. Sanchez if he had given permission for the officers to come into her apartment. He stated that he had not.

34. While Ms. Carreras was standing outside with Mr. Sanchez, a call came in on her cell phone. She answered. Her father was calling. She started to explain the situation with the police officers. The officers instructed Ms. Carreras to hang up on her father. Ms. Carreras objected and said that she needed to let her father know what was going on, because he was babysitting her children at the time.

35. Given the aggressive tone defendant officers had taken with Ms. Carreras, and that defendant officers had forbidden her from speaking on her phone and from entering her apartment alone, Ms. Carreras reasonably believed that she was not free to leave the scene.

36. When Ms. Carreras re-entered her apartment to look for Mr. Sanchez's ID, one of the officers followed her inside her apartment, without her consent or permission. While waiting for Ms. Carreras to return with his ID, Mr. Sanchez tried to explain what was happening to his Hispanic acquaintance, who did not speak or understand English. Mr. Sanchez spoke to his acquaintance in Spanish. Defendant officers directed Mr. Sanchez to stop speaking Spanish and to speak only English.

37. Ms. Carreras located Mr. Sanchez's ID inside a backpack. The officers took it.

38. The photo ID was a valid Employment Authorization card issued by the Department of Homeland Security in Washington, D.C. The document confirms that Mr. Sanchez is legally present in the United States and is legally authorized to work.

39. The defendant officers immediately began to accuse Mr. Sanchez and harass him about the ID, telling him it was fake, a fraud and asking him to produce his "other fake ID's."

40. Defendant Beaulieu, the supervising sergeant on the scene, glanced at the Employment Authorization Card and immediately pronounced it a "fake." She declared that she had recently received training on this issue and knew it was fake.

41. The defendant officers laughed about the ID and repeatedly insisted that Mr. Sanchez had a lot of fake ID's. They taunted him to produce the others. Sgt. Beaulieu stated, "Oh come on, this isn't the only ID you have. Where are the other ones at? You people don't ever have just one."

42. Ms. Carreras then said, "You people? It's real! That's the only ID Jose has ever had since I've met him."

43. Mr. Sanchez told the officers to call his immigration lawyer, who could verify the document's authenticity. The defendant officers laughed at him and taunted him with comments suggesting he was illegally present in the United States. Comments made by officers included telling Sanchez he was lying about his name, asking him "which corner he got the ID on?", and asking him how much he had paid for his fake ID.

44. While standing outside, Ms. Carreras repeated to the officers that they had no right to enter her house and that it was particularly wrong that they had done so while she was in the shower.

45. One of the officers told Ms. Carreras to "shut the fuck up."

46. Mr. Sanchez told the officers to "stop talking to my lady like that". Ms. Carreras then told the officers that she was going to "talk to somebody" about what the officers had done. One officer mockingly responded, "Well, maybe you guys could use your boyfriend's attorney. He says he has one." At one point while Ms. Carreras and Mr. Sanchez were outside the apartment, the officers re-entered the apartment, picked up Ms. Carreras's other cell phone, and began scrolling through to search it. There was no warrant to search the phone, no exigent circumstances, no consent and no valid justification for doing so.

47. Mr. Sanchez was arrested without probable cause and taken to jail on a baseless charge of “offering false identification.” His valid Employment Authorization Card was seized as “evidence” of his supposed crime.

48. The Employment Authorization Card bears two unique numerical identifiers that law enforcement authorities can confirm with the Department of Homeland Security. None of the defendant officers bothered, either before or after the arrest, to contact Homeland Security to determine whether the agency had issued an Employment Authorization Card to Mr. Sanchez. If the defendants had inquired, they would have received a prompt reply confirming the validity of Mr. Sanchez’s ID and his legal status.

49. Mr. Sanchez spent five days in jail before he was released on bond. The City Attorney then dismissed the bogus charge.

50. While Mr. Sanchez was in jail on the false charge, he could not show up for work. He lost his job.

51. Even when the City Attorney dismissed the charge, Denver did not return Mr. Sanchez’s Employment Authorization Card. Over a period of five weeks, Mr. Sanchez made repeated attempts to get his ID card back, without success. During this time, he feared what would happen if police contacted him again and he did not have his identification. Denver did not return Mr. Sanchez’s ID until September 8, 2010.

52. In carrying out the detention and arrest of Mr. Sanchez and the search of Ms. Carreras’s home and belongings, the defendant officers acted jointly and in concert. None of the defendants objected to the actions of any of the others. None of the defendants objected to the handcuffing of Mr. Sanchez or to his arrest without probable cause. None of the defendants made any effort to stop their fellow officers from carrying out the illegal search of Ms. Carreras’s home

and belongings. On information and belief, none of the individual defendants reported the misconduct of any of the officers to the Denver Police Department's Internal Affairs Bureau. Each of the individual defendants, including the supervising sergeant, defendant Beaulieu, approved and ratified the actions of the others.

Denver's liability

53. Denver's written regulations and publicly-proclaimed policies require police officers to comply with the Fourth Amendment. They also prohibit biased policing. Nevertheless, it is the longstanding and widespread custom and practice of the Denver police department to engage in, tolerate, ratify, and/or acquiesce in racial profiling and unreasonable searches and seizures.

54. When the defendant officers demanded that Mr. Sanchez produce identification, they were conducting a "*Terry* stop" without the constitutionally-required reasonable suspicion. It is the custom, policy, and practice of Denver to authorize, tolerate, or permit police officers to carry out such detentions on the basis of an officer's subjective exercise of discretion rather than the objective reasonable suspicion required by the Fourth Amendment.

55. It is also Denver's custom, policy, and practice to fail to provide effective supervision to ensure that officers follow constitutional standards when they carry out *Terry* stops. Denver police officers are not required to make any report or make any contemporaneous notes that explain their reasons for conducting *Terry* stops.

56. By failing to require documentation, Denver provides a clear opportunity for wholesale violations of constitutional rights. When supervisors do not have written reports to review, there is no mechanism to hold officers accountable to constitutional standards. Without supervisory review, officers are free to, and do, carry out *Terry* stops on the basis of insufficient

evidence or impermissible reasons. The City and County of Denver is deliberately indifferent to the obvious risk that police officers will violate constitutional rights by conducting Terry stops without adequate grounds and on the basis of impermissible factors such as racial and ethnic stereotyping. Denver's deliberately indifferent failure to supervise caused Mr. Sanchez to be subjected to an unconstitutional detention.

57. When officers are accused of engaging in racial profiling or other violations of constitutional rights, it is the custom, policy, and/or practice within the Denver Police Department to conduct internal affairs investigations in a manner that protects the officers from findings of misconduct whenever possible, even when there is strong evidence that the officers engaged in misconduct.

58. It is also the custom and policy of the Denver Police Department to tolerate and acquiesce in the widespread "code of silence," in which police officers decline to report and fail to provide information or testimony about other officers' misconduct.

59. The result is a culture in which officers, such as the officer defendants in this case, know that they can engage in misconduct with only a minimal chance of adverse consequences or repercussions.

60. The actions and inactions of the defendant officers were carried out pursuant to long standing informal customs and practices of the Denver Police Department. Such customs and practices include racial profiling and detaining members of racial and ethnic minorities without reasonable suspicion, using demeaning and dehumanizing racial and ethnic slurs, and violating the Fourth Amendment's prohibition on illegal searches and seizures.

61. In its annual reports for the past three years, the Office of the Independent Monitor has repeatedly called attention to the Denver Police Department's custom of making illegal

entries into the homes of Denver residents. In 2009, the Monitor's report referred to "numerous" instances of warrantless entries in the previous year. In its 2010 annual report, the Monitor said it "has continued to find it necessary to intervene regarding the issue of warrantless entries into residences."

62. In its 2009 annual report, Denver's Citizen Oversight Board identified racial profiling by Denver law enforcement as a priority for reform. The report noted "the apparent lack of a systemic approach to eradicate the practice."

63. With deliberate indifference to the rights of persons in Denver, Defendant Denver has encouraged, tolerated, ratified, and acquiesced in racial and ethnic profiling, biased policing, and racially and ethnically-motivated violations of constitutional rights by

- a. failing to adequately investigate complaints of racial and ethnic slurs and racially and ethnically biased law enforcement actions;
- b. Failing to carry out sufficient training and supervision with respect to the rights of Denver residents to be free from biased policing practices;
- c. Tolerating an atmosphere and culture in the Denver Police Department where officers feel free to engage in biased policing practices without fear of consequences.

64. While there have been a litany of complaints regarding Denver's biased policing over the last several years, a review of legal complaints in only the last few months exemplifies the Denver Police Department's custom, policy and/or practice of biased policing and sham internal investigations that serve to ratify and/or show policy makers' acquiescence:

- a. On January 11, 2011, Alexander Landau sued Denver and individual police officers. Mr. Landau alleged that Denver officers spewed racist epithets as

they physically assaulted him during a traffic stop made without probable cause or reasonable suspicion. According to the complaint, despite blatantly obvious lies and inconsistencies in the written reports of individual officers and in their statements to Internal Affairs, Denver concluded that there had been no misconduct. No officers were disciplined for their biased policing.

- b. On February 11, 2011, Ashford Wortham and Cornelius Campbell sued Denver and individual officers for a racially-motivated traffic stop and detention. One of the defendants was a supervising sergeant with a significant history of prior citizen complaints and had previously been a defendant in a suit alleging racial profiling. A judge of the Denver County Court found no probable cause for the stop and, in a written order, wrote that “Police conduct was extreme, profane, and racially motivated.” The Denver Police Department found no grounds to discipline the officers for their biased policing.

65. The actions of the defendant officers described herein were carried out pursuant to and consistent with Denver’s informal policy, custom, or practice. The presence and participation of six officers, including a supervising sergeant, provides further evidence that all of their actions were consistent with Denver’s established custom, policy, or practice.

66. Denver police officers regularly come into contact with the large Hispanic population in Denver. Denver has authorized its police officers to target suspected “illegal immigrants” who provide “false identification,” but it has failed to train its officers to recognize a valid Employment Authorization Card such as the one issued to Mr. Sanchez. In an email to

Denver councilman Paul Lopez, Denver Police Commander Doug Stephens acknowledged that the false arrest of Mr. Sanchez revealed “a need for additional training for our officers concerning differing types of valid identification cards being carried by members of our community.” The need for specialized training regarding valid ID recognition is so obvious, and the inadequacy of the training provided by Denver so likely to result in a violation of constitutional rights, such as those described herein, that Denver’s failure to train amounts to deliberate indifference to the constitutional rights of persons, including Plaintiffs, with whom the Denver police officers come into contact. Denver’s deliberately indifferent failure to train the defendant officers was a proximate cause of the false arrest of Mr. Sanchez.

FIRST CLAIM FOR RELIEF

(Jose Sanchez; all defendants)

(42 U.S.C. § 1983; Fourth Amendment)

67. The previous allegations are incorporated by reference.

68. The Fourth Amendment forbids unreasonable searches and seizures. The initial detention of Mr. Sanchez and his subsequent arrest are seizures that must comply with Fourth Amendment standards. The Fourth Amendment forbids temporary detentions that are not supported by reasonable suspicion of criminal activity. It forbids arrests that are not based on probable cause.

69. The defendant officers subjected Mr. Sanchez to an illegal detention that was not based on reasonable suspicion that he was involved in criminal activity.

70. The defendant officers subjected Mr. Sanchez to an illegal arrest that was not supported by probable cause to believe he had committed a crime.

71. A reasonable officer would have known that the detention and subsequent arrest of Mr. Sanchez violated clearly established Fourth Amendment law.

72. Denver, through its procedures, policies, practices, and customs, and its deliberately indifferent failure to train, caused the violation of Mr. Sanchez's rights.

73. Wherefore, Mr. Sanchez is entitled to compensatory damages from Denver; compensatory and punitive damages from the individual defendants; an award of reasonable costs and attorney's fees, and such other relief as the Court deems just.

SECOND CLAIM FOR RELIEF

(Joshinna Carreras; all defendants)

(42 U.S.C. § 1983; Fourth Amendment)

74. The previous allegations are incorporated by reference.

75. The Fourth Amendment forbids unreasonable searches and seizures. The defendant officers subjected Ms. Carreras to an illegal detention that was not based on reasonable suspicion that she was involved in criminal activity. The defendant officers conducted a search of Ms. Carreras's home and her possessions that failed to comply with Fourth Amendment standards. The officers had no warrant. The search did not fall within any exception to the Fourth Amendment requirement of a warrant.

76. The detention of Ms. Carreras and the search of Ms. Carreras's home and belongings was unreasonable, in violation of Ms. Carreras's Fourth Amendment rights.

77. A reasonable officer would have known that the detention and search violated clearly established Fourth Amendment law

78. Denver, through its procedures, policies, practices, and customs, and its deliberately indifferent failure to train, caused the violation of plaintiff's rights.

79. Wherefore, Ms. Carreras is entitled to compensatory damages from Denver; compensatory and punitive damages from the individual defendants; an award of reasonable costs and attorney's fees, and such other relief as the Court deems just.

THIRD CLAIM FOR RELIEF

(both plaintiffs; all defendants)

(42 U.S.C. § 1983; 14th Amendment Equal Protection Clause)

80. The previous allegations are incorporated by reference.

81. The Fourteenth Amendment forbids the defendants from depriving the plaintiffs of the equal protection of the law.

82. Defendants intentionally targeted plaintiffs because of their perceived race, ethnicity, and national origin. They detained the plaintiffs while subjecting them to humiliating and demeaning treatment, racial and ethnic slurs, and violations of their constitutional rights.

83. Reasonable officers would have known that they were violating clearly established law.

84. Denver, through its procedures, policies, practices, and customs, and its deliberately indifferent failure to train and supervise, caused the violation of plaintiffs' rights.

85. Wherefore, plaintiffs are entitled to compensatory damages from Denver; compensatory and punitive damages from the individual defendants; an award of reasonable costs and attorney's fees, and such other relief as the Court deems just.

FOURTH CLAIM FOR RELIEF

(Jose Sanchez; all defendants)

(42 U.S.C. § 1983; 14th Amendment Due Process Clause)

86. The previous allegations are incorporated.

87. The defendants could easily have asked the Department of Homeland Security whether Mr. Sanchez had a valid Employment Authorization Card. Had they done so, they would have learned, within an hour, that Mr. Sanchez's ID was valid and genuine, and that he was not guilty of the ordinance violation for which he was arrested.

88. During the five days Mr. Sanchez was incarcerated on the bogus charge of "offering false ID," none of the defendant officers bothered to take this easy investigative step.

89. The defendant officers' failure to investigate was consistent with the policies and practices of the City and County of Denver.

90. The failure to investigate caused Mr. Sanchez's extended incarceration for five days.

91. The failure to investigate Mr. Sanchez's claim of innocence violated Mr. Sanchez's right to due process of law.

92. Wherefore, Mr. Sanchez is entitled to compensatory and punitive damages from the officer defendants, and compensatory damages from Denver; an award of reasonable costs and attorney's fees, and such other relief as the Court deems just.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief as follows:

- a. Compensatory and punitive damages from defendants sued in their individual capacity;
- b. Compensatory damages from the City and County of Denver;
- c. An award of reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and all applicable law;
- d. Interest from the date of each violation;
- e. Any further or other relief the Court deems just and proper in equity and at law.

JURY DEMAND

Plaintiffs request a trial by jury in this matter.

Respectfully submitted, March 28, 2011

s/ Elisa Moran

Elisa Moran
8451 E. Oregon Place
Denver, CO 80231
Phone: 303-745-6560
Fax: 303-632-5998
Email: Elisaatty@aol.com

In cooperation with the American Civil Liberties
Foundation of Colorado

s/ John Mosby

John Mosby,
621 17th Street, #1035
Denver, CO 80293
Ph 303-623-1355
Fax: 303-927-3860
Email: John_Mosby@msn.com

In cooperation with the American Civil Liberties
Foundation of Colorado

s/ Mark Silverstein

Mark Silverstein
Legal Director
American Civil Liberties Union Foundation of Colorado
400 Corona Street
Denver, Co 80218
Phone: 303-777-5482
Fax: 303-777-1773
Email: msilver2@att.net

s/ Rebecca Wallace

American Civil Liberties Union Foundation of Colorado
400 Corona Street
Denver, Co 80218

303-777-5482
Fax: 303-777-1773
Email: rtwallace@aclu-co.org

Attorneys for Plaintiffs