

Mexico, when they were unlawfully stopped by Albuquerque Police Department School Resource Officers. Without consent or probable cause, the School Resource Officers searched and interrogated the two sixteen year-old students, determining that the boys had committed no crime. The School Resource Officers nevertheless continued to unlawfully detain the students for approximately one and one-half hours. Following their detention of Ruben and Sergio, the School Resource Officers handed the students over to the United States Border Patrol to have them removed from the school.

Either voluntarily or at the request and/or direction of a Border Patrol Agent, Albuquerque Police Department Officers also sought out, located, and unlawfully seized 15 year-old Plaintiff Carlos Gonzalez, who was attending class, and delivered him to the Border Patrol to have him removed from school.

JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) for causes of action arising under the Fourth and Fourteenth Amendments to the United States Constitution.

2. Jurisdiction for Plaintiffs' claim under the Fourteenth Amendment to the United States Constitution is also based upon 42 U.S.C. § 1983.

3. Jurisdiction for Plaintiffs' claim under the Federal Tort Claims Act is conferred upon this Court by 28 U.S.C. 1346(b) and 28 U.S.C. § 2671 *et seq.*

4. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), over Plaintiffs' state constitutional and state law claims.

5. Venue is proper in the United States District Court for the District of New Mexico pursuant to 28 U.S.C. § 1391(b) and (c).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

6. Plaintiffs presented timely administrative claims with the United States Customs and Border Protection, an agency of the Department of Homeland Security, pursuant to 28 U.S.C. § 2675(a). Plaintiffs' administrative claims were received by the United States on March 29, 2006.

7. The United States has neither approved nor denied the claims, and more than six months has elapsed since the United States' receipt of the claims. Plaintiffs' suit is timely filed pursuant to 28 U.S.C. § 2675(a).

PARTIES

Plaintiffs

8. Plaintiffs Carlos Gonzalez and Sergio Gonzalez are brothers who were enrolled students at Del Norte High School during the time period relevant to this litigation. Carlos Gonzalez and Sergio Gonzalez reside in Albuquerque, New Mexico.

9. Plaintiff Ruben Tarango was a student enrolled at Del Norte High School during the time period relevant to this litigation. At the time this complaint was originally filed, Ruben Tarango resided in Albuquerque, New Mexico.

10. Plaintiff Padres Unidos is an organization whose members include students and parents of students who attend the Albuquerque Public Schools. Carlos Gonzalez, Sergio Gonzalez and Ruben Tarango are members of Padres Unidos, as are their parents.

11. The mission of Padres Unidos is to seek to ensure access to public education in New Mexico to all children, without undue interference and regardless of their race, ethnicity, national origin or immigration status. In pursuing this action, Padres Unidos acts

to remove impediments to the fulfillment of its mission and acts to vindicate and protect the rights of its individual members who are subject to the policies and practices of Defendants.

City of Albuquerque Defendants

12. Defendant CITY OF ALBUQUERQUE, NEW MEXICO (“the City”) is a municipal entity created and authorized under the laws of the State of New Mexico. It maintains a police department, the Albuquerque Police Department (“APD”), which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The City is responsible for the hiring, screening, training, retention, supervision, discipline, counseling and control of its police officers, including the School Resource Officer defendants herein. The City is also responsible for the policies, customs, and practices of the APD and assumes the risks incidental to the maintenance of a police force and the employment of police officers.

13. Defendants ALBUQUERQUE POLICE DEPARTMENT SCHOOL RESOURCE OFFICERS JOE LEHOCKY and RANDY ROGERS (“APD School Resource Officers”), are and/or were at all relevant times herein, officers, employees, and agents of the APD, a municipal agency of the City. The APD School Resource Officers are sued in their individual and official capacities.

14. At all relevant times herein, the APD School Resource Officers acted under color of state law and within the course and scope of their duties and functioned as agents, employees and officers of the City in engaging in the conduct described herein. At all relevant times herein, the APD School Resource Officers acted for and on behalf of the City and acted in the pursuit of their duties as officers, employees and agents of the City.

15. At all relevant times herein, the APD School Resource Officers violated clearly established constitutional standards under the Fourth and Fourteenth Amendments of the United States Constitution of which a reasonable person would have known.

16. At all relevant times herein, the APD School Resource Officers acted with reckless or callous indifference to the federally-protected rights of Sergio Gonzalez, Ruben Tarango and Carlos Gonzalez.

17. At all relevant times herein, Defendants CITY OF ALBUQUERQUE acted with deliberate indifference to the Constitutional rights of plaintiffs in their policies, practices and customs, including the failure to properly train and supervise the APD School Resource Officers.

The Federal Defendants

18. Defendant BORDER PATROL AGENT PATRICK HERNANDEZ (“Agent Hernandez”) is and/or was at all relevant times herein, a federal officer, employee and agent of the United States Border Patrol and the United States Customs and Border Protection. Upon information and belief, Agent Hernandez is a resident of Albuquerque, New Mexico. At all relevant times, Agent Hernandez acted under color of law and with reckless or callous indifference to the federally-protected rights of Sergio Gonzalez, Ruben Tarango and Carlos Gonzalez.

19. Defendant UNITED STATES OF AMERICA is a sovereign nation, existing under the Constitution of the United States of America and the laws enacted by the United States Congress, and is responsible for the enforcement of federal laws through its officers, agents and employees, including those of the Department of Homeland Security. The United

States Customs and Border Protection and the United States Border Patrol are, and at all times relevant to this lawsuit were, agencies of the Department of Homeland Security.

STATEMENT OF FACTS

20. Defendants APD School Resource Officers Joe Lehocky and Randy Rogers are and/or were School Resource Officers assigned to the Del Norte High School campus. As APD School Resource Officers, Lehocky and Rogers have and/or had daily contact with students attending Del Norte. The Albuquerque Police Department continues to assign School Resource Officers to Del Norte High School and, upon information and belief, all other high schools within the Albuquerque Public Schools.

21. On March 30, 2004, Officers Lehocky and Rogers, without reasonable suspicion or probable cause, stopped and detained two undocumented students, 16 year-old Ruben Tarango and 16 year-old Sergio Gonzalez, on the campus of Del Norte High School.

22. APD School Resource Officers Lehocky and Rogers knew Ruben Tarango and Sergio Gonzalez were students at Del Norte High School and knew or suspected that they were undocumented.

23. The uniformed and armed APD School Resource Officers ordered the boys out of the car they were in and forced the students to spread their legs and put their hands on the roof of the car.

24. Without consent or probable cause, the APD School Resource Officers then searched both Ruben Tarango and Sergio Gonzalez. The officers found no evidence suggesting that either Ruben Tarango or Sergio Gonzalez were engaged in criminal activity.

25. The APD School Resource Officers then called over two Albuquerque Public School security officers who were standing nearby, and asked them to search another student,

whom Ruben and Sergio had identified as the person they had been talking with before being detained.

26. The two Albuquerque Public School security officers complied and, after searching the other student, found no evidence suggesting that Ruben Tarango and Sergio Gonzalez were engaged in criminal activity.

27. After concluding that the students were not or had not been engaged in criminal activity, and although the APD School Resource Officers knew Ruben Tarango and Sergio Gonzalez to be students, the APD School Resource Officers demanded that Ruben Tarango and Sergio Gonzalez produce documents of identification.

28. Ruben Tarango produced a student identification card showing that he was a student at Del Norte High School.

29. Sergio Gonzalez informed the officers that he did not have any identification in his possession, but affirmed that he too was a student at Del Norte.

30. The APD School Resource Officers then searched the car belonging to Ruben Tarango without consent or probable cause. Again, the officers found no evidence showing the students had been or were engaged in criminal activity.

31. The APD School Resource Officers removed a wallet belonging to Sergio Gonzalez from underneath a seat in the car. Without consent or probable cause, one of the APD School Resource Officers searched the wallet.

32. The APD School Resource Officers contacted and/or asked Albuquerque Police Department Dispatch to contact the United States Border Patrol because they suspected Ruben Tarango and Sergio Gonzalez were undocumented students.

33. The APD School Resource Officers continued to detain Ruben Tarango and Sergio Gonzalez without cause for approximately one and one-half hours after the initial unlawful stop until Border Patrol Agent Patrick Hernandez arrived on the scene.

34. Agent Hernandez arrived on the school campus and took Sergio Gonzalez into custody and placed him in his Border Patrol vehicle. Then, without reasonable suspicion or probable cause, Agent Hernandez sought out, seized and interrogated Ruben Tarango without consent on the Del Norte High School campus and then placed him into his Border Patrol vehicle with Sergio Gonzalez.

35. Upon information and belief, the APD School Resource Officers purposefully and maliciously informed Border Patrol Agent Hernandez that there was another student in class whom the Border Patrol might want to interrogate.

36. Upon information and belief, the APD School Resource Officers volunteered to remove Carlos Gonzales from class and bring him to the Border Patrol agent for questioning.

37. Upon information and belief, without cause or any reasonable suspicion, Border Patrol Agent Hernandez requested and/or directed that Carlos Gonzalez be removed from class and brought to him.

38. The APD School Resource Officers then searched for 15 year-old Carlos Gonzalez on campus, found him in the class he was attending, seized him, searched him and brought him to Border Patrol Agent Hernandez against his will.

39. Without reasonable suspicion or probable cause, Agent Hernandez detained and interrogated Carlos Gonzalez.

40. Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez were never cited or charged with any criminal offense stemming from the March 30, 2004 incident.

41. Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez were never accused of or disciplined for any violation of school policy related the incident on March 30, 2004.

42. Plaintiffs Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez suffered severe emotional and mental distress as well as other harm as a direct result of their illegal and unreasonable seizure, interrogation, detention and removal from school.

43. The actions taken by the City Defendants frustrated and impeded the mission of Padres Unidos, interfered with Padres Unidos' regular activities, thwarted the organization's goals, and drained Padres Unidos of scarce resources.

44. As a result of these Defendants' actions, undocumented students and their parents are more fearful and less likely to communicate with school officials and work effectively with them to ensure a positive educational experience. In this way, Defendants have thwarted and interfered with the mission and goals of Padres Unidos, which include ensuring access to public education in New Mexico to all children, without undue interference and regardless of their race, ethnicity, national origin or immigration status.

45. Defendants' actions have forced the organization to spend significant time and energy responding to the fears of the immigrant parent and student community, helping the parents of the students who were removed from school, and educating its members and others about the rights of undocumented students in public schools.

46. To counteract the actions taken by the City Defendants, Padres Unidos has also been forced to organize and hold meetings with community members and APS educators, conduct media interviews, contact elected officials, contact civil rights advocates

and provide monetary and emotional support to its members the Gonzalez and Tarango families.

47. If the City Defendants are not enjoined from continuing their unlawful policies and practices, Padres Unidos and its members will continue to suffer such harm.

48. Both parent and student members of Padres Unidos are vulnerable to the policies and practices of the City Defendants. These members live in Albuquerque and student members may only attend public school in the Albuquerque Public School District, whose schools are patrolled by APD School Resource Officers employed by Defendant City of Albuquerque.

49. These student members are in immediate danger of being subjected to the unlawful practices of the City Defendants merely by being on campus of a public school. The danger to student members and their parents is real, as these students must interact on a daily basis with officers employed by Defendant City of Albuquerque.

50. Padres Unidos seeks to enjoin the City of Albuquerque Defendants from engaging in practices and maintaining policies and customs that: 1) will continue to violate the legal rights of the children Padres Unidos seeks to protect, including its members, and/or 2) continue to deter its members and other children from practicing their right of access to public education. Members of Padres Unidos have been harmed by Defendants' illegal and unconstitutional policies, customs and practices and it is imminent that they will suffer future harm if Defendants are not enjoined from engaging in practices and maintaining policies and customs that violate the rights of undocumented students.

51. Padres Unidos asserts all claims brought by its members Sergio Gonzalez, Ruben Tarango and Carlos Gonzalez, except under the Fourth and Fifth Causes of Action below.

FIRST CAUSE OF ACTION

FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(Made applicable to the States by the Fourteenth Amendment)

52. Plaintiffs reallege and incorporate by reference paragraphs 1 through 51, as though fully set forth herein.

53. Defendant APD School Resource Officers unreasonably stopped, detained and interrogated Ruben Tarango and Sergio Gonzalez without probable cause or reasonable, articulable suspicion that they had been or were engaged in criminal activity.

54. Defendant APD School Resource Officers unreasonably searched Ruben Tarango and Sergio Gonzalez, the vehicle they were in, and their effects without a warrant, consent or probable cause.

55. The APD School Resource Officers unlawfully seized, searched and detained Carlos Gonzalez without cause.

SECOND CAUSE OF ACTION

EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 55, as though fully set forth herein.

57. Defendants APD School Resource Officers deprived Plaintiffs and/or conspired to deprive Plaintiffs of a public education in violation of their rights under the Fourteenth Amendment to the U.S. Constitution.

THIRD CAUSE OF ACTION

DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 57, as though fully set forth herein.

59. Defendants APD School Resource Officers acted with deliberate or reckless intent to falsely imprison Plaintiffs without due process of law.

60. Defendants APD School Resource Officers had an affirmative duty to ensure that the constitutional rights of Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez were not violated and created the danger that led to their unlawful seizure and removal from school by immigration officials.

61. Defendants APD School Resource Officers acted arbitrarily and without rational basis, in a manner intended to injure Plaintiffs and deprive Plaintiffs of their rights secured by the Constitution. The conduct of these defendants shocked the conscience.

FOURTH CAUSE OF ACTION

"BIVENS" CLAIM

62. Plaintiffs reallege and incorporate by reference paragraphs 1 through 61, as though fully set forth herein.

63. Border Patrol Agent Hernandez, without cause or reasonable suspicion, unlawfully interrogated, detained and seized Ruben Tarango and Carlos Gonzalez in violation of their constitutional rights.

FIFTH CAUSE OF ACTION

FEDERAL TORT CLAIMS ACT

64. Plaintiffs reallege and incorporate by reference paragraphs 1 through 63, as though fully set forth herein.

65. Border Patrol Agent Hernandez unlawfully and falsely arrested Ruben Tarango and Carlos Gonzalez, and falsely imprisoned them against their will without authority of law.

SIXTH CAUSE OF ACTION

ARTICLE II, SECTION 10 OF THE CONSTITUTION OF THE STATE OF NEW MEXICO

66. Plaintiffs reallege and incorporate by reference paragraphs 1 through 65, as though fully set forth herein.

67. Defendant APD School Resource Officers unreasonably stopped, detained and interrogated Ruben Tarango and Sergio Gonzalez without probable cause or reasonable, articulable suspicion that they had been or were engaged in criminal activity.

68. Defendant APD School Resource Officers unreasonably searched Ruben Tarango and Sergio Gonzalez, the vehicle they were in, and their effects without a warrant, consent, probable cause or the existence of exigent circumstances.

69. The APD School Resource Officers unlawfully seized and detained Carlos Gonzalez without cause.

SEVENTH CAUSE OF ACTION

EQUAL PROTECTION CLAUSE OF ARTICLE II, SECTION 18 OF THE
CONSTITUTION OF THE STATE OF NEW MEXICO

70. Plaintiffs reallege and incorporate by reference paragraphs 1 through 69, as though fully set forth herein.

71. Defendants APD School Resource Officers deprived Plaintiffs and/or conspired to deprive Plaintiffs of their constitutionally-protected and state-created rights to receive a public education.

EIGHTH CAUSE OF ACTION

DUE PROCESS CLAUSE OF THE CONSTITUTION OF THE STATE OF NEW MEXICO

72. Plaintiffs reallege and incorporate by reference paragraphs 1 through 71, as though fully set forth herein.

73. Defendant APD School Resource Officers acted with deliberate or reckless intent to falsely imprison Plaintiffs without due process of law.

74. The APD School Resource Officers had an affirmative duty to ensure that the constitutional rights of Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez were not violated and created the danger that led to their unlawful seizure and removal from school by immigration officials.

75. The APD School Resource Officers acted arbitrarily and without rational basis, in a manner intended to injure Plaintiffs unjustifiably and to deprive Plaintiffs of their rights as secured by the New Mexico Constitution. The conduct of these defendants shocked the conscience.

NINTH CAUSE OF ACTION

NEW MEXICO TORT CLAIMS ACT

76. Plaintiffs reallege and incorporate by reference paragraphs 1 through 75, as though fully set forth herein.

77. Defendants APD School Resource Officers unlawfully and falsely arrested Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez, and falsely imprisoned them by interfering with their personal liberty and freedom of locomotion in violation of the New Mexico Tort Claims Act, N.M.S.A. 1978 § 41-4-1, *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Ruben Tarango, Sergio Gonzalez, Carlos Gonzalez and Padres Unidos pray that this Court provide the following relief:

1. Declare that the City Defendants violated the rights of Plaintiffs as protected by the United States Constitution and the Constitution of the State of New Mexico as alleged herein;

2. Declare that the City Defendants violated the New Mexico Tort Claims Act as alleged herein;

3. Declare that Border Patrol Agent Patrick Hernandez violated the rights of Plaintiffs as protected by the United States Constitution as alleged herein;

4. Issue an order requiring the City Defendants to institute appropriate policies, practices, training and other measures to remedy their policies, practices and/or customs and ensure that the constitutional violations described herein do not continue to occur;

5. Award plaintiffs Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez actual and compensatory damages, in an amount to be determined at trial, against all Defendants, including Defendant United States of America for claims arising under the Federal Tort Claims Act;

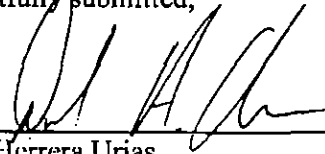
6. Award plaintiffs Ruben Tarango, Sergio Gonzalez and Carlos Gonzalez punitive damages, in an amount to be determined at trial, against the APD School Resource Officers and Border Patrol Agent Hernandez.

7. Award Plaintiffs reasonable attorneys' fees and costs; and

8. Award such other and further relief as this Court may deem appropriate, including injunctive and declaratory relief as may be required in the interests of justice.

DATED: November 3, 2006

Respectfully submitted,



David Herrera Urias

Nina Perales

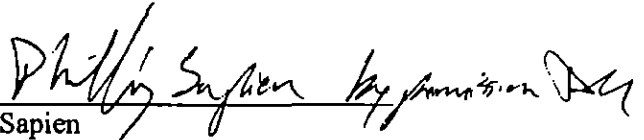
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