



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Alaska

September 24, 2019

Via Email and U.S. Postal Service

Honorable Richard Beneville, Mayor
City of Nome
P.O. Box 281
Nome, AK 99762
discover@gci.net

John K. Handeland, Interim Manager
City of Nome
P.O. Box 281
Nome, AK 99762
jhandeland@nomealaska.org

Dear Mayor Beneville and Mr. Handeland:

We write as counsel for Clarice Hardy, an Alaska Native woman who reported a crime of sexual assault to the Nome Police Department, only to have her complaint ignored to the point where an adequate investigation of her case became impossible. This abject failure to act, by people she trusted to keep her safe, has caused Ms. Hardy severe psychological harm and emotional distress, leaving her unable to work or even to feel safe in the City of Nome. And Ms. Hardy is far from alone. Dozens of other Alaska Native women have complained of sexual assaults to the Nome police, only to have their concerns dismissed or allowed to languish without investigation. It has become evident in recent months that a systemic, decades long indifference to the safety of Alaska Native women in Nome has led to the deprivation of their rights to equal protection under the Constitutions of the United States and Alaska. We seek, therefore, to vindicate Ms. Hardy's and all other Alaska Native women's rights to be treated equally under the law, and to obtain a remedy for Ms. Hardy that will fairly compensate her for the devastating impact the Nome Police Department's denial of protection has caused.

Ms. Hardy was employed as a dispatcher for the Nome Police Department (NPD) from May 27, 2015, to October 7, 2018. Ms. Hardy loved her job. She

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enjoyed being in a position where she felt like she was helping people, she looked up to her law enforcement colleagues, and she appreciated the camaraderie she felt she had with her fellow NPD employees. Ms. Hardy believed she had found a job and a purpose with NPD and hoped to remain employed there for a long, long time.

In March 2017, Ms. Hardy suffered a trauma that would change her life, one that was ultimately compounded by the failures and inaction of the NPD coworkers in whom she had placed her trust, and which ultimately forced her from her job with NPD. Early one morning, before she was scheduled to report to work, Ms. Hardy was sexually assaulted in her apartment by Donald Johnson, with whom she had been socializing at a local bar the night before. Ms. Hardy had no memory of leaving the bar or of how she arrived at her apartment, but she remembered she had been feeling “woozy” while at the bar, and believes she had been drugged. In fact, Ms. Hardy had no recollection of the sexual assault at all until late the following day when friends told her they had seen video of the assault posted on Snapchat. Apparently, Mr. Johnson’s girlfriend had tracked him down, forced her way into Ms. Hardy’s apartment bedroom, and had an accomplice record the events as she accosted Mr. Johnson, all while Ms. Hardy remained motionless and unresponsive on her bed. As Ms. Hardy’s friends described to her what they saw on the video, the horror of what must have occurred began to sink in, and she began to feel devastated.

Ms. Hardy reported the assault to one of her coworkers at NPD, Lieutenant Nick Harvey. Ms. Hardy believed she had a close collegial relationship with Lieutenant Harvey and that she could trust him to do the right thing. Ms. Hardy told Lieutenant Harvey that Mr. Johnson had had non-consensual sex with her, that Mr. Johnson’s girlfriend and another person had recorded part of the assault, and she told Lieutenant Harvey of the friends she knew who had seen the video. Ms. Hardy gave Lieutenant Harvey a written complaint with all of this information, and he assured her that he would begin an investigation right away.

Lieutenant Harvey, however, did not investigate or take any action on Ms. Hardy’s allegations at all. For months she would inquire of him about the status of the investigation, and each time he would tell her that he continued to work on the case. In truth, however, Lieutenant Harvey had not even initiated a report of Ms. Hardy’s complaint or even bothered to give it a case number. Finally, in March 2018, Ms. Hardy approached John Papasadora,

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then the chief of NPD, to get answers. Chief Papasadora told Ms. Hardy that there was no record of her complaint and that she would have to submit it again. Ms. Hardy was devastated to hear that almost a year had gone by with no action taken on her report of sexual assault; however, she complied with the chief's direction and resubmitted her written complaint.

Even then, however, the inaction and mistreatment continued. Chief Papasaroa told Ms. Hardy that he would forward her report to the Alaska State Troopers (AST), but weeks later she found her report still lying on the chief's desk. In May 2018, Ms. Hardy reached out to AST directly, and learned that Chief Papasadora had not forwarded her report to them at all. As a result of her direct contact with AST, however, an investigation was conducted under the auspices of the Alaska Department of Public Safety between May and October 2018. During this time, one of the State Troopers conducting the investigation attempted to obtain the recording of the sexual assault directly from Snapchat. AST learned at this time that Snapchat only retains user information for a period of thirty days, after which it is deleted from its server. Now well over a year since the incident, several witnesses gave AST differing accounts of what they saw on Snapchat, but there was no longer any way to independently verify what the recording actually showed. Thus, at the very least, Lieutenant Harvey's failure to initiate an adequate investigation resulted in the loss of objective, corroborating evidence of Ms. Hardy's allegations. AST forwarded the results of its investigation to the District Attorney's office, but no further action has been taken on Ms. Hardy's complaint.

NPD's failure to act on Ms. Hardy's reported rape was not only inexcusable, it has caused her debilitating emotional distress. While the initial sexual assault was traumatizing to her, Ms. Hardy was revictimized by Lieutenant Harvey and Chief Papasadora, causing her to suffer severe PTSD leading to persistent nightmares, flashbacks, and panic attacks. She initially tried to keep working as an NPD dispatcher, but the more the reality sunk in that her coworkers, those whom she trusted and on whom she depended for safety, had betrayed her, the more intolerable her working conditions became and she was constructively discharged from her job. The medication to which Ms. Hardy has had to resort to alleviate some of her more severe symptoms negatively impacts her ability to concentrate and perform complex tasks. These side effects, coupled with her ongoing emotional distress, make it

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impossible for her to seek or hold a job. Ms. Hardy has also had to move away from Nome because it is a city in which she simply no longer feels safe.

What happened to Ms. Hardy was not an isolated incident. Instead, it is but one example of a systemic and disastrous failure of the Nome Police Department to keep Alaska Native women in Nome safe from sexual abuse and assault. What's more, NPD's inaction and disregard for Native women's safety has been well known in the Nome community and among the city's elected officials. In June 2018, for example, Chief Papasadora announced to the Nome City Council that 126 rape kits, some more than a decade old, had never been submitted to the State of Alaska crime lab for analysis. In November 2018, Nome's mayor joined in a request by Kawerak, Inc., for the U.S. Department of Justice to conduct an investigation "to determine if there have been civil rights violations by the NPD in regards to sexual assault and violent crime investigations . . ." In October 2018, a new police chief, Bob Estes, replaced John Papasadora as the head of NPD. Chief Estes began an audit of the sexual assault complaints that had been filed with NPD since 2005. As of April 18, 2019, Chief Estes had concluded that at least 76 cases involving allegations of first- and second-degree sexual assault from 2015 to 2018 had not been adequately completed and required forwarding to the District Attorney's Office for review. In nineteen of those cases, the District Attorney found the investigations lacking and in need of continued investigation.

These repeated failures on the part of the NPD to investigate claims of sexual assault, claims brought forward predominantly by Alaska Native women, are the result of deliberate indifference on the part of NPD and the City of Nome to the civil rights of such women. All people in Alaska have a right under the Alaska and United States Constitutions to be treated equally, and "to have police services administered in a nondiscriminatory manner . . ." *Estate of Macias v. Ihde*, 219 F.3d 1018, 1028 (9th Cir. 2000). That right "is violated when a state actor denies such protection to disfavored persons." *Id.* The Equal Protection Clauses of both the U.S. and Alaska Constitutions prohibit selective or discriminatory enforcement of the law based on sex as well as race. *Whren v. United States*, 517 U.S. 806, 813 (1996). Importantly, a *failure* to take action on behalf of someone because of their sex or race is every bit as discriminatory as an affirmative act. *Bell v. Maryland*, 378 U.S. 226, 309 (1964). Furthermore, the Equal Protection Clauses prohibit discrimination in the provision of *any* law enforcement services to *any* degree. *Elliot-Park v.*

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Manglona, 592 F.3d 1003, 1007 (9th Cir. 2010). Finally, law enforcement agencies can be liable for Equal Protection violations even where discrimination is merely a contributing factor in their denial of service. *Village of Arlington Heights v. Metro, Housing Dev. Corp.*, 429 U.S. 252, 265-66 (1977). Courts will examine the totality of the circumstances, considering evidence of discriminatory impact, evidence of departures from proper procedures, and any statements by a decisionmakers or involved officers. *Id.*

NPD's utter failure to investigate Ms. Hardy's sexual assault allegations for over an entire year, coupled with its systematic indifference to the sexual assault allegations of dozens of other Alaska Native women, constitute a clear deprivation of her Equal Protection rights. What's more, the consequences of NPD's failure to act have been catastrophic for Ms. Hardy. The psychological and emotional trauma of being re-victimized by NPD and by her own coworkers not only forced Ms. Hardy out of her job, they have left her unable to work at all in any meaningful, remunerative employment. While she continues to seek treatment for her mental health, Ms. Hardy's prospects for gainful employment in the foreseeable future are dim.

The ACLU of Alaska Foundation is prepared to seek justice for Ms. Hardy, and for the other Alaska Native women in Nome whom the NPD has refused to protect, by filing a civil action for damages and make whole relief to enforce the Equal Protection provisions of the Alaska and United States Constitutions against the Nome Police Department and the City of Nome. As of this writing, however, the ACLU represents only Ms. Hardy. Because she was constructively discharged by the NPD, Ms. Hardy also has claims for damages (including compensatory and punitive damages), back pay, and front pay under Title VII of the Civil Rights Act of 1964 and the Alaska Human Rights Act, and claims for damages for intentional infliction of emotional distress and the violation of the implied covenant of good faith and fair dealing. Nevertheless, Ms. Hardy seeks to avoid protracted litigation of her claims, and she hopes the City of Nome and the NPD do too. To this end, Ms. Hardy would be willing to resolve her claims without court intervention for \$500,000. Given the severe emotional impact NPD's actions, and inactions, have caused her, as well as her inability to seek or hold remunerative employment as a result, this amount is fair compensation for Ms. Hardy's pain and suffering as well as her foreseeable loss of wages. Of course, Ms. Hardy would be willing to fully release NPD and the City of

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Nome from any liability and waive any further claims she may have in this matter in return.

Please let us know at your earliest convenience whether the NPD and City of Nome are willing to resolve Ms. Hardy's claims as we have proposed. Please consider this an offer of settlement subject to applicable evidence rules. This offer will remain open until 4:30 p.m. Alaska Time on October 11, 2019.

Sincerely,



Stephen Koteff
Legal Director



Joshua A. Decker
Executive Director