

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

ANDRES ALEXANDER CACEDA-
MANTILLA,

Plaintiff,

v.

CITY OF PALMER, ALASKA

KRISTI MUILENBERG, in her
official capacity,

JAMIE HAMMONS, in his official
capacity,

DANIEL POTTER, in his official
capacity, and

HILARY SCHWADERER, in her
official capacity,

Defendants.

No. 3PA-18-_____ CI

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Complaint for Declaratory Judgment and Damages

Plaintiff Andres Alexander Caceda-Mantilla (Alex Caceda) alleges the following facts for each cause of action as follows:

Introduction

1. On a crowded night at Klondike Mike's Saloon in Palmer last summer, Alex Caceda was helping friends who manage the bar by

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providing security to the rear door of the venue. A fight broke out when several male patrons began attacking one of the female bartenders. When Alex interceded to help her, three men brutally attacked him, punching him to the ground, kicking him in the head multiple times, and blinding him for several hours. When the Palmer Police arrived, they placed the three attackers in handcuffs and then singled out Alex for questioning based on his country of origin. Upon learning that Alex was from Peru, the Palmer Police officers called Immigration and Customs Enforcement (ICE), which agreed to officers' request to arrest Alex. As Defendant Muilenberg handcuffed Alex and placed him in the back of her police cruiser, he peered out the window to see his three assailants being released from handcuffs and set free. Alex, who has never been charged with a crime and has no criminal history, was detained for four days and ultimately—when ICE took custody of him—released without bond to pursue his green card.

2. Local police departments, including the Palmer Police, have no authority under state or federal law to arrest someone for civil immigration violations. Courts around the country have recognized that local police do not gain legal authority to arrest someone for civil immigration violations merely because ICE asks them to. Arresting Alex

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without probable cause of a crime or under any other legal authority violates the Alaska Constitution's prohibition on unreasonable seizures. Alaska Constitution, Article 1, Section 14.

Parties

3. Plaintiff Alex Caceda is a resident of Palmer, Alaska. Alex is originally from Peru. Although he did not have legal immigration status at the time of this incident, he was—and remains—married to a U.S. citizen and is currently applying for an immigrant visa as a spouse of a U.S. citizen, which will make him eligible for a green card.

4. Defendant City of Palmer is a municipal entity located in the Matanuska-Susitna Borough, Alaska. It is a municipal corporation and the public employer of the individually named Defendants.

5. Defendant Kristi Muilenberg is a Detective with the Palmer Police Department; she arrested Alex. She is sued in her official capacity.

6. Defendant Jamie Hammons is a Patrol Sergeant with the Palmer Police Department; he was present during the incident and assisted Defendant Muilenberg with the arrest of Alex. He is sued in his official capacity.

7. Defendant Daniel Potter is a Police Officer with the Palmer Police Department; he was present during the incident, assisted

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Defendant Muilenberg and Sergeant Hammons with the arrest of Alex, and transported Alex to the hospital and then to the jail. He is sued in his official capacity.

8. Defendant Hilary Schwaderer is a Dispatcher II with the Palmer Police Department. She radioed with Defendants Muilenberg and Hammons and assisted in the arrest of Alex. She is sued in her official capacity.

Facts

9. On August 27, 2017, Alex Caceda was helping a friend by serving as the bouncer at the rear of Klondike Mike's Saloon. The bar was especially crowded that night, with both the Alaska State Fair taking place nearby and the highly promoted fight of Floyd Mayweather and Conor McGregor being shown at the bar.

10. One of the bartenders had just finished her shift and was sitting down to have a drink when a man approached her seat.

11. An interaction between the female bartender and the man led to an altercation. The bartender called one of the other security guards over for help, and they escorted the man and his two friends toward the door of the bar. This set off a melee.

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12. Alex saw one of the men holding the female bartender in a headlock and punching her in the face and pushing her into a door, cutting her nose. Alex rushed over to intercede and help the woman, when the men began attacking him.

13. Alex was surrounded and attacked by at least three men. The men punched him until he hit the ground and, according to Alex, kicked him repeatedly, playing “soccer with his head.”

14. When Palmer Police officers responded to the scene Alex was bleeding profusely from cuts to his head and face—which would ultimately require eight stitches—and he was blinded in one eye for several hours from a scratched sclera. Alex also reported feeling dizzy after the assault.

15. Immediately after arriving on the scene, Defendants Muilenberg and Hammons were directed to three men that witnesses indicated had started the fight and attacked Alex. The Palmer Police officers handcuffed the three assailants and seated them on the sidewalk outside the bar.

16. One of the responding officers, Palmer Police Officer Kristi Muilenberg, approached Alex and the female bartender to ask about the incident.

17. She immediately asked Alex whether he was from Alaska and whether he had an Alaska driver's license.

18. On information and belief, Defendant Muilenberg did not ask the other individuals involved, including the female bartender, whether they were from Alaska or whether they had Alaska identification.

19. On information and belief, Defendant Muilenberg does not have a regular practice of asking all individuals that she encounters, including victims and witnesses of crimes, whether they are from Alaska.

20. On information and belief, Defendant Muilenberg singled out Alex for these questions because of his race or national origin.

21. Alex responded that he was from Peru and, when asked for identification, produced his Peruvian passport.

22. As the bartender wiped the blood away from Alex's head and examined his injuries, Defendant Muilenberg radioed instructions to the Palmer Police dispatcher, Defendant Hilary Schwaderer, to call Immigration and Customs Enforcement (ICE).

23. Paramedics directed Alex to the ambulance on site to receive treatment for his injuries.

24. During this time, Defendant Muilenberg asked one of the other officers to keep an eye on Alex in case he prepared to leave. When that officer reported back to her that Alex was exiting the ambulance, Defendant Muilenberg approached him and asked him to step over to her car.

25. Alex, believing that he was being questioned as a crime victim, asked to have a seat in Muilenberg's vehicle. Muilenberg agreed, but asked him to walk behind her car, where, unannounced, she forcibly bent his thumbs behind his back, handcuffed him and placed him into the back of her vehicle.

26. Because Alex's hands were in handcuffs behind his body, he was unable to apply pressure to the bleeding wounds on his head. These wounds would eventually require eight stitches.

27. Alex asked repeatedly why he was being arrested, but Muilenberg's response was only that it was "a federal thing."

28. Defendant Muilenberg informed Alex that he was "considered a criminal in the United States right now," and transported him to the police station.

29. Defendant Muilenberg had no basis to believe Alex had committed any violation of federal or state criminal laws.

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30. As Alex was seated in the police car, he looked out the window to see the three men who had attacked him being uncuffed and released by the responding Palmer Police Officers. He was then transported to the station.

31. After arriving at the station house, another Palmer Police Department Officer, Defendant Potter, transported Alex to the hospital where he received treatment for his injuries. Defendant Potter then took him to Mat-Su Pretrial Facility.

32. Alex was held in Mat-Su Pretrial before being transported by an Immigration and Customs Enforcement (ICE) agent to Anchorage.

33. Alex was not transferred to Tacoma for a bail determination, nor was he placed into removal (deportation) proceedings.

34. Rather, Alex indicated to federal officials that he would apply for a visa sponsored by his wife, who is a U.S. citizen, which would ultimately allow him to become a lawful permanent resident (“green card” holder). He was released on his own recognizance and is seeking his visa and green card now.

35. The arrest exacerbated Alex’s physical injuries, humiliated him, and caused him severe distress and depression. He believed he

might not see his wife and family members again before being transferred out of state and ultimately deported to Peru.

36. Alex was never accused or charged with any crime, nor does he have any criminal history. It was only after being a victim of a violent attack that Alex spent a total of four nights in jail.

37. His attackers were never prosecuted.

38. On January 25, 2017, President Trump issued an executive order to dramatically expand those who are considered a “priority” for deportation,¹ later interpreted in a memorandum by the Department of Homeland Security.² Unlike in previous administrations, which prioritized those with criminal convictions or repeated removals, today in America almost any one of the estimated 11 million people living undocumented in the United States is at risk of immediate deportation.

¹ Exec. Order No. 13768, 82 C.F.R. 8799 (2017) *available at* <https://www.federalregister.gov/d/2017-02102>.

² Dep’t of Homeland Security, Memorandum on Enforcement of Immigration Laws to Serve the National Interest, www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (Feb. 20, 2017).

Jurisdiction and Venue

39. This is a complaint for declaratory relief and damages brought under AS 22.10.020(a), (g). This court has jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1), (3) and AS 22.10.020(a), (b).

40. Venue is proper in this district under AS 22.10.030 and Alaska Rule of Civil Procedure 3(d).

Count I: Declaratory Judgment for Unlawful Arrest (All Defendants)

41. Under Article 1, Section 14, of the Alaska Constitution, arrests require probable cause of a crime, a warrant, or a court order.

42. Alaska peace officers have no authority under Alaska law to make arrests solely for civil immigration violations.

43. Alaska law comprehensively defines the limits of officers' arrest authority.

44. Defendants' arrest and detention of Alex constitutes a warrantless arrest.

45. Defendants had no reasonable, individualized, or articulable suspicion that Alex was involved in any criminal activity.

46. Alex's arrest does not comply with any statutory grants of authority to arrest without a warrant in AS 12.25.030, or any other

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provision in Alaska law. AS 12.25.160 provides that, in the context of a warrantless arrest, arrests that are authorized by state law involve the “taking of a person into custody in order that the person may be held to answer for the commission of a crime.”

47. Because they lacked any authority under state law to arrest or detain people for civil immigration purposes, Defendants’ arrest and detention of Alex violates Article 1, Section 14 of the Alaska Constitution.

**Count II: False Arrest, False Imprisonment
(All Defendants)**

48. The officers were acting within the course and scope of their employment for the City of Palmer.

49. Because Defendants lacked the authority to arrest Alex, and his arrest and detention were not otherwise privileged, they committed false arrest and false imprisonment.

50. The arrest and detention injured Alex physically and exacerbated his injuries from the assault. He was humiliated; experienced emotional distress, physical pain, and suffering; and lost money due to Defendants’ unlawful conduct.

**Count III: Assault
(Defendants City of Palmer and Kristi Muilenberg)**

51. Defendant Muilenberg was acting within the course and scope of her employment for the City.

52. In arresting Alex, Defendant Muilenberg intended to and did touch Alex in a manner that was offensive to his personal dignity.

53. By forcibly bending his thumbs behind his back, handcuffing him so that he could not apply pressure to his wounds, and placing him in her police cruiser, Defendant Muilenberg exacerbated his injuries from the assault, humiliated him, and caused him emotional distress, physical pain and suffering, and lost money.

**Count IV: Punitive Damages
(All Individual Defendants)**

54. By unlawfully detaining and arresting Alex, the City of Palmer and its employees and agents, Defendants Hammons, Muilenberg, Potter, and Schwaderer acted outrageously, with bad motives or malice, or at least with reckless indifference to Alex's interests.

55. Pursuant to AS 09.17.020, Alex is entitled to punitive damages in an amount to be adduced by the evidence at trial.

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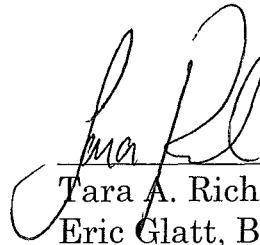
Prayer for Relief

Accordingly, based on the facts set forth above, Plaintiff requests that judgment be entered in his favor as follows:

1. For a judgment pursuant to AS 22.10.020(g), declaring that Defendants have no authority to arrest or detain people for civil immigration violations and that therefore Alex's arrest violated Article 1, Section 14, of the Alaska Constitution;
2. For damages for his assault, false arrest, and false imprisonment, in an amount to be adduced by the evidence at trial;
3. For punitive damages against the individual defendants pursuant to AS 09.17.020 in an amount to be adduced by the evidence at trial;
4. For a declaration that Plaintiff is a constitutional public interest litigant pursuant to AS 09.60.010(c) and Alaska Rule of Civil Procedure 82;
5. For Plaintiff's costs and attorneys' fees; and
6. For any other just and equitable relief.

Dated this 22nd day of March, 2018.

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