

do so, defendant officers prolonged the stop to investigate the men’s immigration status.

2. It is well settled law that a person’s presence in the United States in violation of immigration laws, standing alone, is not a crime. The United States Supreme Court has explained that, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States,” and, thus, stopping “someone based on nothing more than possible removability”—i.e., that they may not have lawful immigration status—does not provide the “usual predicate for an arrest” *Arizona v. United States*, 567 U.S. 387, 407 (2012). None of the circumstances that could legally authorize Jim Thorpe police officers to stop and detain people based on purported immigration violations were present in Mr. Joaquin Marte’s case.

3. In bringing this action, Mr. Joaquin Marte seeks to vindicate his constitutional right to be free from discriminatory and unjustified stops and unlawful detention on the basis of his perceived race, color, ethnicity, or national origin. He also seeks to vindicate his constitutional right to be free from unlawful detention by state actors who were not authorized to enforce civil immigration law and who did not have probable cause to detain him. Mr. Joaquin Marte seeks compensation for his harms and losses.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this Complaint under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1343(a)(3)–(4).

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because defendants have their principal place of business in the Middle District of Pennsylvania and the event that gave rise to this Complaint occurred within the Middle District of Pennsylvania.

PARTIES

6. Plaintiff Arturo Jonas Joaquin Marte is a Latino man who, at all times relevant hereto, lived in Philadelphia, Pennsylvania.

7. Defendant Kyle Oliver was, at all times relevant hereto, employed by Jim Thorpe Police Department and acting under color of state law. He is sued in his individual capacity.

8. Defendant John Doe was, at all times relevant hereto, employed by the Jim Thorpe Police Department and acting under color of state law. John Doe is a pseudonym being used until Plaintiff can determine his identity. He is sued in his individual capacity.

9. Defendant Borough of Jim Thorpe is a local governmental agency organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business at 101 East 10th Street, Jim Thorpe, PA 18229.

FACTUAL ALLEGATIONS

10. On February 13, 2018, Mr. Joaquin Marte and two Latino co-workers were traveling in a work van to install a deck at a nearby home.

11. Mr. Joaquin Marte was seated in the front passenger seat.

12. As they drove through Jim Thorpe, Pennsylvania, at approximately 9:40 a.m., a Jim Thorpe police vehicle pulled up behind them with lights flashing.

13. The van driver pulled over promptly.

14. The alleged basis for Defendant officers' stop of the van was that the license plate was obscured by a clear plastic cover, but Defendants Oliver and Doe could and did read the license plate and run a check prior to the stop. Indeed, Defendants Oliver and Doe did not have legal cause to stop the vehicle.

15. Defendants Oliver and Doe approached the passenger's side door and requested that the driver and the two passengers, including Mr. Joaquin Marte, provide identification.

16. Defendants Oliver and Doe returned to their police vehicle with the identifications provided by Mr. Joaquin Marte and his two co-workers. At no time during the stop was Mr. Joaquin Marte free to leave.

17. Approximately 15 to 20 minutes later, Defendants Oliver and Doe returned to the van.

18. Defendants Oliver and Doe did not issue a citation to the driver or to anyone else.

19. Instead, Defendants Oliver and Doe directed all three men to exit the van.

20. At no time did Mr. Joaquin Marte or his co-workers engage in any criminal conduct, nor was there any basis for Defendants Oliver and Doe to perceive that they had engaged in such conduct.

21. Despite having no evidence from which any reasonable officer would find probable cause to detain Mr. Joaquin Marte, Defendants Oliver and Doe arrested Mr. Joaquin Marte and his two co-workers, placing them in handcuffs.

22. Defendants then escorted the three men to their patrol vehicle and drove them to the Jim Thorpe police station.

23. Defendants Oliver and Doe brought Mr. Joaquin Marte inside the Jim Thorpe police station, where they kept him handcuffed in a holding cell.

24. At no time during his detention did Defendants Oliver and Doe provide Mr. Joaquin Marte with food, water, or access to the bathroom.

25. At approximately 1:00 p.m., over three hours after the initial stop, two Immigration and Customs Enforcement (ICE) officers arrived.

26. Prior to this time, neither the Defendant police officers nor ICE had probable cause to believe that Mr. Joaquin Marte was subject to removal.

27. The ICE officers transported Mr. Joaquin Marte to the Lehigh County Prison and later moved him to York County Prison. He was placed into removal proceedings and was eventually released on a bond set by an immigration judge.

28. Based on the misconduct of Defendants Oliver and Doe as described above, Defendant Borough of Jim Thorpe has failed to properly train, supervise, and/or discipline Defendants Oliver and Doe with regard to proper police practices, including but not limited to how, absent any request or instruction from the federal government, it is unlawful to seize individuals for civil immigration violations or to prolong a detention to investigate immigration status.

29. Defendants Oliver's and Doe's decision to initiate an unlawful traffic stop, extend the unlawful stop, and detain Mr. Joaquin Marte for more than three hours were all impermissibly based on Mr. Joaquin Marte's perceived race, color, ethnicity, or national origin.

30. As a result of the unlawful conduct described in the foregoing paragraphs, Mr. Joaquin Marte suffered substantial damages, including emotional trauma and distress, loss of enjoyment of life, and financial damages, some or all of which may be permanent.

CLAIMS FOR RELIEF

COUNT I

**VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS –
UNREASONABLE SEIZURE**

Plaintiff v. Defendants Oliver and Doe

31. Paragraphs 1 through 30 are incorporated by reference as if pled herein.

32. Defendants Oliver and Doe had no information from which a reasonable officer could believe they had probable cause to initially stop the vehicle carrying Mr. Joaquin Marte or to prolong his detention.

33. Specifically, Defendants Oliver and Doe were able to read the license plate—which had a clear cover—prior to initiating the traffic stop. Additionally, Defendant officers had no information from which a reasonable officer could conclude that the detention was justified.

34. Defendants Oliver and Doe also did not have authority to detain Mr. Joaquin Marte based on suspected removability without any request or direction from the federal government.

35. By unlawfully initiating a traffic stop and then prolonging the detention of Mr. Joaquin Marte without probable cause and without a request or direction from the federal government, Defendants Oliver and Doe violated Mr. Joaquin Marte's Fourth Amendment rights, as applied to the states by the Fourteenth Amendment, to be free from unreasonable seizures.

36. Mr. Joaquin Marte suffered loss of his fundamental rights and liberty as a result of the Defendants Oliver's and Doe's actions.

37. As such, Defendants Oliver and Doe are liable to Mr. Joaquin Marte for damages under 42 U.S.C. § 1983.

38. Mr. Joaquin Marte is also entitled to punitive damages, as the actions of Defendants Oliver and Doe were motivated by evil motive or intent and/or involved reckless or callous indifference to Mr. Joaquin Marte's rights.

COUNT II

42 U.S.C. § 1983 – *MONELL* FAILURE TO TRAIN

Plaintiff v. Defendant Borough of Jim Thorpe

39. Paragraphs 1 through 38 are incorporated by reference as if pled herein.

40. Under 42 U.S.C. § 1983, municipal defendants are "persons" liable for unconstitutional customs, practices, and policies, and for failure to train their law enforcement officers.

41. The Borough of Jim Thorpe has failed to train its police officers in proper police practices, namely, that they may not seize individuals for suspected civil immigration violations absent any request or instruction, which itself must be supported by probable cause of removability, from the federal government.

42. From 2000 to 2017, the foreign-born population in Pennsylvania nearly doubled and accounted for 76% of Pennsylvania's population growth.

43. Pennsylvania's Latino population has also steadily increased. In the last twenty years, Allentown and Hazleton—two cities closest to Jim Thorpe—grew to become majority Latino cities.

44. As such, the Borough of Jim Thorpe knew or should have known that such a lack of training would lead to improper conduct by its employee police officers but nonetheless exhibited deliberate indifference to the illegal conduct that would result from their failure to train officers.

45. The Borough of Jim Thorpe's failure to train its officers directly resulted in the violation of Mr. Joaquin Marte's Fourth Amendment rights by Defendants Oliver and Doe.

46. Mr. Joaquin Marte suffered loss of fundamental rights and his liberty, as well as emotional distress, as a result of this action by the Borough of Jim Thorpe.

COUNT III
UNLAWFUL DISCRIMINATION – FOURTEENTH AMENDMENT

Plaintiff v. Defendants Oliver and Doe

47. Paragraphs 1 through 46 are incorporated by reference as if pled herein.

48. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees all persons equal protection of the law.

Discrimination on the basis of race, color, ethnicity, and/or national origin violates equal protection.

49. Mr. Joaquin Marte was subjected to discrimination because he is Latino.

50. Defendants Oliver and Doe, acting under color of law and in the performance of their official duties, engaged in profiling of and discrimination against Mr. Joaquin Marte based on his perceived race, color, ethnicity, and/or national origin.

51. Both the initial traffic stop and the prolonged detention of Mr. Joaquin Marte by Defendants Oliver and Doe were not only unsupported by reasonable suspicion or probable cause, they were racially biased based on Mr. Joaquin Marte's perceived race, color, ethnicity, and/or national origin.

52. Defendants Oliver and Doe violated Mr. Joaquin Marte's clearly established right to equal protection.

53. As a result of the Defendant officers' actions, Mr. Joaquin Marte suffered loss of his fundamental rights and liberty.

54. As such, Defendants Oliver and Doe are liable to Mr. Joaquin Marte for damages under 42 U.S.C. § 1983.

55. Because Defendants Oliver's and Doe's actions were motivated by evil motive or intent and/or involved reckless or callous indifference to Mr. Joaquin Marte's rights, Mr. Joaquin Marte is also entitled to punitive damages.

REQUESTED RELIEF

WHEREFORE, Plaintiff Arturo Jonas Joaquin Marte respectfully requests:

- A. Actual and compensatory damages sufficient to make him whole;
- B. Punitive damages against Defendants Oliver and Doe to punish them and deter further wrongdoing;
- C. Reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable law; and
- D. Such other and further relief as may appear just and appropriate.

Plaintiff hereby demands a jury trial.

Dated: February 12, 2020

Respectfully submitted,

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**Petition pending for special admission to the bar of the Court*