



April 30, 2019

VIA e-mail: MDCRServiceCenter@michigan.gov

Agustin Arbulu, Director
Michigan Department of Civil Rights (MDCR)
3054 W. Grand Boulevard, Suite 3-600
Detroit, MI 48202

RE: Complaint of Jilmar Ramos-Gomez of Race, National Origin, Color, and Disability Discrimination by the Grand Rapids Police Department

Dear Director Arbulu,

The American Civil Liberties Union of Michigan (ACLU) and Michigan Immigrant Rights Center (MIRC) file this complaint on behalf of Jilmar Ramos-Gomez. The Grand Rapids Police Department (GRPD) discriminated against Mr. Ramos-Gomez based on his race, color, national origin, and disability. GRPD's discrimination against Mr. Ramos-Gomez took place between his arrest on November 21, 2018 and his wrongful detention by United States Immigration and Customs Enforcement (ICE) on December 14, 2018.

I. Facts

Jilmar Ramos-Gomez is a decorated Marine combat veteran and United States citizen who was born and raised in Grand Rapids, Michigan. Mr. Ramos-Gomez developed Post Traumatic Stress Disorder (PTSD) as a result of bravely serving our country in Afghanistan. Mr. Ramos-Gomez is Latino and of Guatemalan descent.

On November 21, 2018, GRPD officers arrested Mr. Ramos-Gomez as a result of an incident where Mr. Ramos-Gomez entered the helipad at Spectrum Hospital. After his arrest, GRPD officers quickly determined that he was a veteran with PTSD. Mr. Ramos-Gomez was carrying identification that showed he is a United States citizen and a veteran, including his U.S. passport, U.S. Marine Corps tags, and REAL ID compliant driver's license that identified him as a veteran. Despite this documentation, an off-duty GRPD officer, Captain Curt VanderKooi, asked an immigration enforcement officer at ICE to investigate Mr. Ramos-Gomez's "status." ICE incorrectly identified Mr. Ramos-Gomez as a foreign national unlawfully present in the United States and informed Captain VanderKooi that ICE would be taking Mr. Ramos-Gomez into custody. ICE thanked Captain VanderKooi for "the lead" and encouraged him to continue providing ICE with "any other good leads."

Captain VanderKooi subsequently sent a copy of the police report to his ICE contact in an email in which he described Mr. Ramos-Gomez as “loco” and “mad.” After learning that ICE was planning to take custody of Mr. Ramos-Gomez, the prosecutor for his case flagged to GRPD Officer Adam Baylis that GRPD had documentation in its possession showing that Mr. Ramos-Gomez is a U.S. citizen and veteran. Despite the prosecutor’s questions, and GRPD’s awareness of Mr. Ramos-Gomez’s mental disability, GRPD failed to take any action to prevent ICE from detaining and attempting to deport Mr. Ramos-Gomez. ICE subsequently unlawfully detained Mr. Ramos-Gomez for three days until his family’s attorney intervened by providing documentation of his United States citizenship.

A detailed timeline and factual review is attached to this letter as Exhibit A.

II. The First Internal Affairs Report: The GRPD Fails to Take Responsibility or Adequately Investigate, Instead Finding that Captain VanderKooi Checked Mr. Ramos-Gomez’s “Status” Only Due to Concerns About Federal Airspace.

On January 18, 2019, after news about Mr. Ramos-Gomez’s case broke, the GRPD issued a statement (attached as Exhibit B) acknowledging that the GRPD had contacted ICE. The statement said that the GRPD did so only because officers believed “there was a risk to federal airspace.” The GRPD claimed:

Contacting ICE is not a routine part of our investigative process. We do this only when there is a potential risk to the public’s safety, specifically when there is a possible act of terrorism.

On January 23, 2019, the ACLU and MIRC wrote to Interim GRPD Police Chief, Grand Rapids Mayor, City Commissioners, and City Manager demanding an investigation to determine why the GRPD called ICE on Mr. Ramos-Gomez, despite the fact that he had his U.S. passport on him when he was arrested. Although we sought an independent investigation, that letter was deemed an official complaint under the GRPD’s citizen complaint procedure and turned over to the GRPD’s Internal Affairs Unit (IAU).

On February 14, 2019, the GRPD’s Internal Affairs Unit issued a report finding that Captain VanderKooi’s decision to have Mr. Ramos-Gomez’s “status” investigated by ICE did not violate the GRPD’s Impartial Policing Policy.¹ (That report is attached to this letter as Exhibit C.) The IAU concluded that Captain VanderKooi did not contact ICE because Mr. Ramos-Gomez is Latino. Rather, the IAU credited Captain VanderKooi’s explanation that he asked an ICE deportation officer to check Mr. Ramos-Gomez’s “status” because “what occurred met the criteria of a potential terrorist attack,” and because ICE has the resources to check not just citizenship status “but also any travel to foreign countries or affiliations with terrorist organizations.” The GRPD did conclude that Captain VanderKooi’s “unprofessional language” violated GRPD policy on Discourtesy. We appealed Captain VanderKooi’s exoneration to the Grand Rapids Civilian Appeal Board.

¹ The report was not released until February 20, 2019.

III. The Second Internal Affairs Investigation: The GRPD Seeks to Justify the Fact that Captain VanderKooi Routinely Requests “Status” Checks from ICE By Claiming that National Origin is a Legitimate Reason to Contact ICE.

While the IAU report exonerated Captain VanderKooi based on the argument that the circumstances of his arrest were unusual, the IAU did no investigation into whether Captain VanderKooi had asked ICE to check the “status” of other individuals. To remedy that deficiency, we sent a public records request to the GRPD on March 4, 2019 seeking communications between Captain VanderKooi and ICE. As a result of documents found in response to that request – documents which should have been reviewed from the outset had the IAU actually been conducting a thorough investigation – the GRPD reopened the investigation.

On Friday, April 26, 2019, the GRPD released the second IAU report, dated April 19, 2019, again exonerating Captain VanderKooi. At the same time, the GRPD released 230 pages of documents showing e-mail communications between Captain VanderKooi and ICE. There are 87 separate e-mail threads where Captain VanderKooi communicated with ICE. The documents released do not include any text communications Captain VanderKooi had with ICE (and of course cover only written, not verbal, communications). The document production covers only Captain VanderKooi, not other officers who may be communicating with ICE.

Although the documents are heavily redacted, they clearly show that Captain VanderKooi again and again asked ICE deportation officers to check the “status” of individuals in GRPD custody. When he asked about “status,” he was always asking about immigration status. Despite the GRPD’s earlier suggestion that Captain VanderKooi requested Mr. Ramos-Gomez’s “status” in order to check for foreign travel or potential terrorist ties, the documents show that in all of the many other instances where Captain VanderKooi asked ICE about someone’s “status”, what he was seeking was immigration status. Not a single one of these other “status” checks involved federal airspace. In addition, Captain VanderKooi routinely communicated with ICE about victims of crime who were seeking U-visas, a special visa designed to protect victims and ensure that they can contact the police without fear of immigration enforcement.

The second Internal Affairs report conspicuously fails to say what the race, color or national origin is of the many individuals whose “status” Captain VanderKooi checked with ICE. The IAU’s failure to include such information, despite its clear relevance to the question of whether Captain VanderKooi violated the GRPD’s Impartial Policing Policy, raises serious questions about the ability of the IAU to conduct a thorough and fair investigation.

IV. Violation of Elliott-Larsen Civil Rights Act

Section 302 of the Elliot-Larsen Civil Rights Act (ELCRA) prohibits the denial of “full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a [. . .] public service because of [. . .] race, color [or] national origin.” MCL 37.2302(a). A department or agency “owned, operated, or managed by or on behalf of” the state or a local government is a public service under the Elliott-Larsen Civil Rights Act. MCL 37.2301(b). The GRPD is a public service under the Elliott-Larsen Civil Rights Act because it is a department or agency “owned, operated, or managed by or on behalf of” the City of Grand Rapids.

A plaintiff can establish a claim of unlawful discrimination under ELCRA by either (1) producing direct evidence of discrimination, or (2) presenting prima facie case of discrimination in accordance with the tripartite burden-shifting *McDonnell Douglas/Burdine* framework. *Brintley v St Mary Mercy Hosp*, 904 FSupp2d 699 (ED Mich, 2012). *See also White v Baxter Healthcare Corp*, 533 F3d 381, 391 (CA 6, 2008).

It is clear that Captain VanderKooi engaged in profiling on the basis of race, color, and national origin by intentionally contacting ICE based on Mr. Ramos-Gomez's Latino heritage. Captain VanderKooi made his decision to contact ICE after seeing a news story about Mr. Ramos-Gomez on television. Mr. Ramos-Gomez's name is recognizably Latino, and the picture shown with that story clearly showed that he has a dark complexion. Thus, the only possible reasons that the officer could have had for his incorrect assumption that Mr. Ramos-Gomez was unlawfully in the country was Mr. Ramos-Gomez's skin color and Latino-sounding name.

Initially, in the February 14, 2019 IAU report, the GRPD sought to justify these discriminatory actions by claiming that Captain VanderKooi contacted ICE only because he suspected terrorist activity. That explanation is entirely without merit because:

- Immigration and Customs Enforcement is not the proper federal authority to involve in a domestic terrorism investigation. ICE is responsible for the deportation of foreign citizens, not for domestic terrorism.
 - The Federal Bureau of Investigation (FBI) is the proper federal agency to contact regarding domestic terrorism. Captain VanderKooi had previously received training with the FBI. He should therefore have been well aware of its responsibilities, and presumably should have contacts within the FBI whom he could have notified if he was truly concerned about terrorism.
 - Captain VanderKooi contacted ICE agent Derek Klifman, who is responsible for deportations.
- Captain VanderKooi's email to ICE did not indicate that the situation was urgent, or that he was concerned about a possible act of terrorism, but only that he was concerned about Mr. Ramos-Gomez's "status."
- If Captain VanderKooi was truly concerned about terrorism, he would have acted very differently, reflecting the urgency of such a situation:
 - Captain VanderKooi did not contact any of the GRPD investigating officers at that time. Those officers quickly realized that the incident reflected a mental health issue, and could have told Captain VanderKooi that had he inquired.
 - Captain VanderKooi claimed he saw the Wood TV8 news piece at either 5:00 pm or 6:00 p.m., yet he waited until 7:40 pm to take any action.
 - Captain VanderKooi contacted an immigration officer responsible for deportations.

- Captain Vanderkooi did not follow-up with his ICE contact even though he did not receive a response until a day and a half after his original email was sent.
- Captain VanderKooi and the GRPD’s explanation that ICE was involved because of potential terrorism is contradicted by the City’s Facebook post² and press release³ following the incident that there was no further threat to public safety.
- When Captain VanderKooi sent ICE copies of the police report and described Mr. Ramos-Gomez as “mad” and “loco,” he did more than use incredibly offensive language. He also demonstrated that he knew that incident reflected a mental health issue, not terrorism.
- Captain VanderKooi took no follow-up steps to investigate Mr. Ramos-Gomez’s citizenship. Nor did Captain VanderKooi alert ICE that Mr. Ramos-Gomez is a U.S. citizen, even though Captain VanderKooi had the police report which indicated that Mr. Ramos-Gomez had his passport on him, even though Captain VanderKooi had access to that passport and other identification which had been logged into evidence, even though the arrest log shows Mr. Ramos-Gomez’s country of birth as the United States, and even though Captain VanderKooi knew ICE was planning to try to deport Mr. Ramos-Gomez.

In addition, the February 14, 2019 Internal Affairs report itself notes that Captain VanderKooi’s use of the term “loco”, “in the context in which it was used, could reasonably be perceived as a ‘prejudiced word’ concerning national origin, mental handicap or other personal characteristics.” IAU Report, at 7. However, the IAU Report did not consider Captain VanderKooi’s use of prejudiced language in assessing what his motives were in contacting ICE.

Whatever plausibility the GRPD’s initial justification might have had, it is entirely discredited by the documents revealed as part of the second Internal Affairs investigation. Those documents, which came to light only because of external public records requests, show that Captain VanderKooi routinely requested “status” checks, and routinely communicated with ICE, both about victims of crime and about people in police custody. The obvious conclusion is that the original justification offered by Captain VanderKooi – i.e. that only concerns about federal airspace led him to contact ICE in Mr. Ramos-Gomez’s case – was a sham.

We are particularly concerned by the GRPD’s response, now that it has become clear that Captain VanderKooi’s action in Mr. Ramos-Gomez’s case were not an aberration, but a regular practice. The GRPD’s second exoneration of Captain VanderKooi rests on the premise that contacting ICE based on a person’s color or national origin is permissible. The April 29, 2019 Internal Affairs report states:

² A photo of the GRPD Facebook post is attached as Exhibit E.

³ A copy of the GRPD Press Release issued on the day of the arrest is attached as Exhibit F.

[I]t is legally appropriate for officers to take into consideration certain facts about a person that are linked to national origin, where the traits can be linked or aligned to that individual's alienage or immigration status, because both are legally relevant to law enforcement activities associated with immigration.... [I]nformation pertaining to place of birth, country of origin, lack of English proficiency, or immigration status, although tied to national origin, can be appropriately considered as part of the totality of circumstances in making a decision to contact immigration officials.

Thus, the GRPD's position is that it is appropriate for officers to decide to call ICE and subject individuals in GRPD custody to an additional, unequal, level of policing because a person is Latino or speaks limited English. Put simply, in this case, the GRPD thinks it is perfectly legal that Captain VanderKooi called ICE based on the fact that Mr. Ramos-Gomez is recognizably Latino and has a recognizably Latino name.

The law says otherwise. Such racial profiling by law enforcement is unconstitutional because targeting minorities on account of race or (perceived) national origin deprives these individuals of equal protection under the laws within the meaning of the Fourteenth Amendment to the United States Constitution, and the comparable protections under Michigan's Constitution and the Elliott-Larsen Civil Rights Act. As the Sixth Circuit Court of Appeals has repeatedly underscored, law enforcement officers cannot treat individuals differently in the course of an investigation solely on the basis of race or appearance.⁴ Regardless of whether the initial stop was lawful, discriminatory treatment by the police in the course of investigation violates the Equal Protection clause. For example, in *Farm Labor Organizing Committee v Ohio State Highway Patrol*, 308 F3d 523 (CA 6, 2001), the Sixth Circuit rejected police officers' claims that a Latino driver's difficulty speaking and understanding English establishes a valid race-neutral basis for initiating an immigration investigation, and held that police had violated the clearly established rights of Latino drivers to equal protection under the law by questioning them about their immigration status during an otherwise lawful stop. 308 F3d at 539. Similarly here, Captain VanderKooi had no reason, other than Mr. Ramos-Gomez's recognizably Latino appearance and name, to call ICE. That is discrimination.

In sum, by requesting that ICE investigate Mr. Ramos-Gomez's immigration status because he is Latino, Captain VanderKooi intentionally discriminated against Mr. Ramos-Gomez on the basis of his race, color and national origin. Such discrimination violates Section 302 of the Elliot Larsen

⁴ See *United States v Avery*, 137 F3d 343, 355 (CA 6, 1997) ("If law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred."); see also *United States v Taylor*, 956 F2d 572, 578 (CA 6, 1992) ("[A] general practice or pattern that primarily targeted minorities" would give rise to "due process and equal protection constitutional implications cognizable by this court."); *United States v Jennings*, 985 F2d 562, 1993 WL 5927, at *4 (CA 6, Jan 13, 1993) (unpublished opinion) ("A law enforcement officer would be acting unconstitutionally were he to ... consensually interview a person of color solely because of that person's color, absent a compelling justification.").

Civil Rights Act. To defend against this claim, the Defendant must establish a legitimate non-discriminatory reason for this action. *Ali v Advance America Cash Advance Centers, Inc*, 110 F Supp 3d 754, 758 (ED Mich, 2015). For the reasons outlined above, Captain VanderKooi's proffered explanations for calling ICE on a Latino United States citizen are clearly pretextual.

V. Violation of the Michigan Persons with Disabilities Civil Rights Act

Captain VanderKooi's actions also violate the Michigan Persons with Disabilities Civil Rights Act (PWDCRA). That statute guarantees "full and equal utilization of ... public services ... without discrimination because of a disability." MCL 37.1102(1). It also provides that public services "shall accommodate a person with a disability ... unless the person demonstrates that the accommodation would impose an undue hardship." MCL 37.1102(2). In addition, PWDCRA prohibits denying "full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a [. . .] public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations." MCL 37.1302(a). A department or agency "owned, operated, or managed by or on behalf of" the state or a local government is a public service covered by the PWDCRA. MCL 37.1301(b); *see also, Uhrynowski v Cty of Macomb*, No. 06-15483, 2007 WL 2984001, at *9 (ED Mich, Oct 12, 2007) (law enforcement agencies are public services under PWDCRA).

The animus displayed by Captain VanderKooi against Mr. Ramos-Gomez, whom he referred to as "loco" and "mad", also demonstrates that Captain VanderKooi intentionally discriminated against him because of his actual or perceived mental disability. His derogatory language shows that Mr. Ramos-Gomez's disability played a role in Captain VanderKooi's policing decisions with respect to ICE.

While Captain VanderKooi's actions were the most blatantly discriminatory, our concerns are not limited to him alone. We ask that you also investigate the conduct of the GRPD as a whole in this case. We are particularly concerned by the GRPD's statement and justification that place of birth, country of origin, and lack of English proficiency are legitimate bases for GRPD officers to subject individuals in their custody to an additional layer of policing by ICE. Moreover, the fact that the GRPD's Internal Affairs Unit twice found that Captain VanderKooi did not violate GRPD's Impartial Policing Policy, despite clear evidence to the contrary, shows that the GRPD is either incapable of holding GRPD officers accountable for committing civil rights violations, or unwilling to do so.

We are also deeply troubled by the fact that numerous GRPD officers were aware *both* that Mr. Ramos-Gomez is a U.S. citizen *and* that ICE was seeking to deport him. Yet those officers did nothing, even after the prosecutor assigned to Mr. Ramos-Gomez's case expressed incredulity that ICE was involved since Mr. Ramos-Gomez had his passport on him. Such disregard for the potential deportation of a U.S. citizen is appalling.

On behalf of our client, we ask that your office investigate this matter.

Sincerely,

Miriam Aukerman
Elaine Lewis
Monica Andrade
ACLU of Michigan

Hillary Scholten
Susan Reed
Michigan Immigrant Rights Center

Exhibit A: Timeline
Exhibit B: January 18, 2019 GRPD Statement
Exhibit C: February 14, 2019 Internal Affairs Investigation Report
Exhibit D: April 19, 2019 Internal Affairs Investigation Report
Exhibit E: November 21, 2018 GRPD Facebook Post
Exhibit F: November 21, 2018 GRPD Press Release
Exhibit G: Documents Showing Communications Between Captain VanderKooi and ICE