



March 6, 2019

Grand Rapids Civilian Appeal Board
City of Grand Rapids
Attn: City Attorney's Office, Civil Litigation
300 Monroe Avenue NW, 6th Floor
Grand Rapids, MI 49503

Re: Jilmar Ramos Gomez Appeal

Dear Civilian Appeal Board:

We write to appeal the decision of the Grand Rapids Police Department's Internal Affairs Unit regarding the complaint we filed on behalf of Jilmar Ramos Gomez. We ask that the Civilian Appeals Board (CAB) conduct a comprehensive review of the interactions between the Grand Rapids Police Department (GRPD) and U.S. Immigration and Customs Enforcement (ICE) regarding Mr. Ramos-Gomez, and require further investigation as needed by the Labor Relations Board. Because the evidence available clearly shows that Captain Curt VanderKooi racially profiled Mr. Ramos-Gomez and discriminated against him based on his race and disability, we also specifically request that the CAB overturn the finding of Internal Affairs exonerating Captain VanderKooi of violating the Impartial Policing Policy, and review the adequacy of the investigation into his use of derogatory and demeaning language, which resulted in mere coaching.

**BACKGROUND OF MR. RAMOS-GOMEZ'S COMPLAINT AND
OVERVIEW OF REQUESTED ACTIONS**

On January 23, 2019, the American Civil Liberties Union of Michigan (ACLU) and Michigan Immigrant Rights Center (MIRC) wrote to Interim Police Chief Kiddle, Mayor Bliss, the City Commissioners, and City Manager Washington, 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. 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).

When we called for an investigation, what we wanted was an independent investigation. What we got was a whitewash. Despite clear evidence that Captain VanderKooi racially profiled Mr. Ramos-Gomez by contacting ICE to check his "status" after seeing a picture of him on the news, the Internal Affairs Unit exonerated Captain VanderKooi. Even though Captain VanderKooi mocked Mr. Ramos-Gomez's disability, calling him "loco" and "mad," the only discipline imposed for this appalling violation of the GRPD's policies appears to have been that the matter was "addressed" with Captain VanderKooi. And the Internal Affairs Unit utterly failed to address

the conduct of other officers, or look at the systemic problems – such as inadequate policies around ICE entanglement and inadequate training on treatment of people with mental disabilities – that also contributed to this terrible incident.

The results of the IAU’s investigation in Mr. Ramos-Gomez’s case make clear what residents of this City have known for a long time: the police cannot police themselves. The IAU’s brochure on the “Citizen Complaint Procedure” states that “[a]ll complaints receive an appropriate, thorough, and objective investigation.” That is not what occurred here.

We applaud the City Manager for asking for further review of the discipline imposed based on the sustained findings of discourtesy, as well as for asking for further review of other matters related to this incident.

Accordingly, we request that the CAB:

- Reverse the IAU’s exoneration of Captain VanderKooi and find that he violated the Impartial Policing Policy;
- Review the adequacy of the investigation into the sustained charge of Discourtesy;
- Review Captain VanderKooi’s actions to determine whether other policies were violated;
- Review the actions of all other GRPD officers involved in this incident; and
- Review the broader policy issues this incident raises.

We also believe that many questions remain unanswered and more thorough investigation is required. We further believe that the City Manager must be afforded the opportunity to review a full, complete, thorough and impartial investigation to determine the appropriate discipline for the racial profiling, disability discrimination, and offensive actions of Captain VanderKooi, all other GRPD officers involved in this incident, including and especially Officer Adam Baylis, and the system failures of training and policy with respect to racial profiling, treatment of people with disabilities, and entanglement with ICE.

While we are appealing to you, as the Civilian Appeals Board, we do so with full knowledge that you must operate with your hands tied behind your back. The CAB cannot engage in a separate investigation, but must rely on the incredibly flawed investigation provided to it by Internal Affairs. The Board cannot interview witnesses, but must be content with whatever interviews were conducted by Captain VanderKooi’s colleagues. And the Board cannot hold evidentiary hearings. *See City Commission Policy 800-02(3)*. Given such severe constraints on the Board’s autonomy, it is hard to see how it can discharge its mission of ensuring a fair process for assessing alleged officer misconduct and affording the community a sense of confidence that police officers are accountable to the community they serve.

Nevertheless, this appeal process, as inadequate as it is, is the process we currently have. We recognize that you, as the Board, are bound by the City Commission Policy 800-02(3), and that you are operating under severe constraints. As discussed below, we do believe there are some small changes you can make in advance of the hearing in Mr. Ramos-Gomez’s case that will somewhat improve the process, and accordingly we request the opportunity to present before the Board and submit relevant information. With respect to the many necessary changes that you as a

Board are unable to make, we will also be urging the City Commission to strengthen the CAB so that the police are truly accountable to the public that they serve.

FACTUAL HISTORY

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

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 as a result of bravely serving our country in Afghanistan. On November 21, 2018, GRPD officers arrested Mr. Ramos-Gomez. Although he had identification on him that showed he is a United States citizen and a veteran, including his U.S. passport, U.S. Marine Corp tags, and REAL ID compliant driver's license. Captain Curt VanderKooi asked an immigration enforcement officer at ICE to investigate Mr. Ramos-Gomez's "status." ICE incorrectly determined that Mr. Ramos-Gomez was a foreign national unlawfully present in the United States, 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 which he described Mr. Ramos-Gomez as "loco" and "mad". The prosecutor subsequently flagged that Mr. Ramos-Gomez is a U.S. citizen and veteran, yet no action was taken to prevent ICE from detaining and trying to deport him. ICE subsequently unlawfully detained Mr. Ramos-Gomez for three days until his family's attorney intervened on his behalf by providing documentation proving his United States citizenship.

Lawyers for the ACLU and MIRC, representing Mr. Ramos-Gomez, requested an investigation. At the conclusion of the Internal Affairs Unit investigation, the GRPD determined that Captain VanderKooi's decision to have Mr. Ramos-Gomez's "status" investigated by ICE did not violate GRPD's impartial policing policy. However, the GRPD did conclude that Captain VanderKooi's "unprofessional language" violated GRPD policy on Discourtesy.

ARGUMENT

We appeal the findings of the Internal Affairs Unit for two reasons. First, the investigation was incomplete in that it focused solely on Captain VanderKooi and did not look at whether other GRPD employees violated the impartial policing policy, such as Officer Adam Baylis, who failed to report Captain VanderKooi's biased comments and turned a blind eye to ICE's planned detention and deportation of a U.S. citizen. The investigation also failed to look at the inadequate and non-existent policies and procedures of the GRPD regarding ICE collaboration or treatment of individuals with mental illness, or our respected marine veterans.

Second, the finding of the Internal Affairs that Captain VanderKooi did not violate the GRPD's Impartial Policing Policy should be overturned because the evidence already in the record clearly establishes that he engaged in racial profiling and disability-based discrimination by intentionally contacting ICE based on Mr. Ramos-Gomez' Latino heritage and by mocking Mr. Ramos-Gomez for his mental disability.

1. The Evidence Establishes that Captain VanderKooi Engaged in Racially Biased Policing

The GRPD's Policy on Impartial Policing states that "Employees shall not engage in racial profiling or any other bias based law enforcement practices." Racial profiling is defined as:

The practice of relying, to any degree, on race, ethnicity or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on the criteria in combination with other identifying factors when the officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect, and the description is thought to be reliable.

Based on the facts in this case, it is impossible to conclude that Captain VanderKooi did not rely in any degree on the fact that Mr. Ramos-Gomez is Latino in deciding on the scope of and substance of his investigation—i.e. to contact ICE.

First, 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.

Second, the 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." Report, at 7. However, the Internal Affairs report did not consider Captain VanderKooi's use of prejudiced language in assessing what his motives were in contacting ICE.

Third, Captain VanderKooi's explanation that he contacted ICE because of suspected terrorist activity, and he did not believe GRPD would follow-up in an expedient manner, is without merit for the following reasons:

- Immigration and Customs Enforcement is not the proper federal authority to involve in a terrorism investigation. ICE is responsible for the deportation of foreign citizens, not for terrorism.
 - The Federal Bureau of Investigation (FBI) is the proper federal agency to contact regarding terrorism. Captain VanderKooi had previously received training with the FBI. He should therefore have been well aware of its responsibilities, and presumably should have had contacts within the FBI whom he could have notified if he was truly concerned about terrorism.
 - The ICE officer Captain VanderKooi contacted was 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, 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 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 police officer responsible for deportations, not terrorism investigations.
 - Captain VanderKooi states that he did not contact any of the GRPD investigating officers at that time.
 - 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 terrorism is contradicted by the City’s Facebook post and press release 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 “loco,” he not only used 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 or to alert ICE of that fact even through 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.

The CAB should not accept the implausible conclusions of the Internal Affairs Unit’s report that Captain VanderKooi’s actions were intended to investigate a potential act of terrorism by a U.S. citizen. What confidence can our community have in GRPD’s competency to handle a terrorism incident if the proper way to investigate a potential terrorism threat to our community is for an off-duty police officer to email a friend at an immigration removal agency, and no one else, to check that person’s status and then wait a day and a half for any kind of response?

Captain VanderKooi and the GRPD have provided no legitimate reason why ICE should have been involved in this investigation. Rather, the evidence shows that Captain VanderKooi acted based on the fact that Mr. Ramos-Gomez is Latino.

We are also deeply troubled by the statement, both in in the Internal Affairs Unit report and in public statements by Interim Chief Kiddle that Captain VanderKooi contacted ICE to prevent Mr. Ramos-Gomez from being released from custody. Individuals who are arrested are not released until a judge considers the appropriateness of doing so, and sets bail. Our criminal justice system has a mechanism for such situations, and if the GRPD was concerned about Mr.

Ramos-Gomez's release, the appropriate procedure would have been to have the prosecutor raise those concerns when bail was set.

It appears Captain VanderKooi was trying to circumvent that process. As he is well-aware, and as evidenced by the Internal Affairs Report, the easiest way to prevent a person from posting bail is to get an immigration detainer issued. At the time, the Kent County Sheriff's Department was not allowing individuals to be released on bail when an immigration detainer was issued, even though there was no judicial warrant. The practical result was that when an immigration detainer was issued, Mr. Ramos-Gomez could not be released.

For these reasons, the Internal Affairs Investigation conclusion to exonerate Captain VanderKooi should be overturned.

2. The Evidence Also Establishes that Captain Curt VanderKooi Engaged in Biased Policing on the Basis of Disability Status.

The facts of this case also clearly establish that Mr. Ramos-Gomez's perceived mental disability played a role in Captain VanderKooi's policing decisions with respect to ICE. In addition to its prohibition on racial profiling, GRPD's Policy on Impartial Policing forbids GRPD officers from engaging in "any other bias based law enforcement practices." Disability is listed as a "specified characteristic" covered under the policy. Captain VanderKooi's email referring to Mr. Ramos-Gomez as "loco" and having "mad intent" show bias on the basis of Mr. Ramos Gomez's perceived mental illness. That bias played a role in Captain VanderKooi's contacts with ICE.

We are also concerned about the adequacy of the investigation into the sustained allegation of Discourtesy, particularly given that it appears that the response was simply some form of coaching. While we recognize that the CAB does not have the authority to impose discipline, we urge the CAB to consider whether all relevant information has been uncovered, so that those with responsibility for imposing discipline can properly assess what discipline should be imposed. This necessarily includes looking at past incidents to determine whether Captain VanderKooi's biased language here is part of a larger pattern of such conduct.

3. The Investigation Was Inadequate and Incomplete, and May Have Been Compromised by Conflicts of Interest.

As the above discussion indicates, the investigation was inadequate and incomplete and should be overturned on that basis alone. In assessing why the Internal Affairs Investigation reached the conclusions that it did, in contradiction of the great weight of the evidence, the CAB should specifically assess whether the investigation complied with Section F of the Internal Affairs Unit Policy in the Grand Rapids Police Department Manual of Procedures. That policy discusses conflicts of interest that affect the ability to conduct an objective and unbiased investigation, and defines conflicts of interest to include close social relationships. We are concerned that Captain VanderKooi's close social relationships with those involved in investigating his case and reviewing the charges may have compromised the process.

We also believe that the investigation left many questions unanswered. After we were informed of the preliminary results of the investigation, we provided the City with a list of questions, attached as Appendix B, and asked that they be addressed. Most have gone unanswered, and additional questions have arisen since.

We ask that the CAB review the questions we submitted previously, as well as those that have arisen since, identify any additional questions that should be addressed, and – as provided in City Commission Policy 800-02(3) – task the Labor Relations Division with conducting further investigation. See Appendix B.

REQUEST FOR CHANGES TO CIVILIAN APPEAL BOARD PROCEDURES

We recognize that the CAB's powers are extremely limited, and that the CAB cannot itself make the changes that are necessary for the police to be truly accountable to the public. There are, however, small steps that you as a Board can take to make the process at least a little fairer before this case comes before you.

It is our understanding that Mr. Ramos-Gomez's appeal will be heard on April 17, 2019. Under Section 7.2 of the Board's Bylaws, the Board has the power to amend its bylaws by a two-thirds vote, provided that notice of the intention to make such a change is given at the next preceding meeting.

We ask that, at a minimum, you make the following changes to your bylaws.

- Amend Section 6.5 to allow submission of additional evidence or information, and allow statements by the complainant, his or her representatives, and others with relevant information. The current process is entirely one-sided. The Board only hears from Internal Affairs, not from the complainant. While City Commission Policy 800-02(3) prohibits the Board from holding an evidentiary hearing, the requested change is not for an evidentiary hearing, and is therefore permissible under the policy. The Board is not examining witnesses. Rather, the complainant and other people with relevant information are providing that information to the Board.
- Amend Section 4.7, which concerns Public Comment, and Section 5.2, which concerns the Order of Business, to allow public comment prior to a Board vote on an appeal.

We encourage other organizations committed to police accountability to likewise recommend changes to your bylaws. The Board should provide notice at its March 20, 2019 meeting of these proposed changes, and then vote on them at its April meeting, prior to consideration of Mr. Ramos-Gomez's appeal.

In the event that the Board does not make these changes to the Bylaws that would permit us time to present information and argument, we specifically request such an opportunity under Section 4.7 of the Bylaws. That section allows the chair to permit a person to speak at any time for any length of time deemed appropriate by the Chair. We request that, if the Bylaws are not changed

as requested, we be provided with at least 30 minutes to make public comment, and that this occur prior to a vote on Mr. Ramos-Gomez's appeal.

Accountability is the first step in making sure that no one else suffers what Mr. Ramos-Gomez suffered. We urge you to take the first step.

Sincerely,

/s/ Miriam Aukerman
Senior Staff Attorney

/s/ Hillary Scholten
Michigan Immigrant Rights Center