

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID ALLEN,

Plaintiff,

v.

COMPLAINT
[Civil Rights Action under 42
U.S.C. § 1983]

CITY OF HOUSTON; CHARLES MCCLELLAND,
Chief of Police, City of Houston; F.
GALLEGOS, Police Officer, City of Houston, J.
MONTELONGO, Police Officer, City of Houston,
A.H. CISNEROS, Police Officer, City of Houston,

Defendants.

COMPLAINT

Plaintiff David Allen (referred to as “Plaintiff”), by and through their undersigned counsel, bring this civil rights Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 challenging Defendants’ acts, policies, practices, customs, and/or procedures that deprived Plaintiff of the right to engage in religious speech and expressive activities in the City of Houston, Texas during Plaintiff’s unlawful arrests on May 16, 2011, October 31, 2011, and January 14, 2012. Defendants’ policies, practices, customs, and/or

procedures will continue to deprive Plaintiff of his fundamental constitutional rights at future speaking events in the City of Houston (hereinafter “City” or “City of Houston”).

2. The City’s acts, policies, practices, customs, and/or procedures, and its failure to adequately train and supervise its police officers were each a moving force behind the constitutional violations in this case.

3. The City and its highest ranking officials, including the chief of police, Defendant Mc Clelland and police officers Defendant F. Gallegos, Defendant J. Montelongo, and A.H. Cisneros, in conjunction, agreement, and cooperation with police officers and officials, worked together, acted with reckless and callous indifference to Plaintiff’s constitutional rights, and in fact did jointly engage in conduct that deprived Plaintiff of his fundamental constitutional rights. Defendants’ actions were taken to silence, chill, and stop Plaintiff from engaging in constitutionally protected activities; and did so silence, chill, and stop Plaintiff.

4. Plaintiff seeks a declaration that Defendants violated his clearly established constitutional rights as set forth in this Complaint; a declaration that Defendants in their individual capacity acted with callous indifference for Plaintiff’s clearly established constitutional rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Defendants’ unconstitutional acts, policies, practices, customs, and/or procedures as set forth in this Complaint; and a judgment awarding nominal, compensatory, and punitive damages against Defendants for the harm caused to Plaintiff by the conduct of the Defendants which violated the fundamental rights of Plaintiff. Plaintiff also seeks an award of their reasonable costs of litigation, including attorneys’ fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

5. The action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

6. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C §§ 2201 and 2202, by Rule 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiff's claims for damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court.

7. Venue is proper under 28 U.S.C. § 1391(b) because substantial parts of the events or omission giving rise to Plaintiff's claims occurred in this district.

PLAINTIFF

8. Plaintiff David Allen is a resident of Texas.

9. Plaintiff David Allen is a peaceful street preacher who spreads his message of God's love and Christianity through his religious speech and religious activities which including sounding the shofar.

10. The shofar is horn made out of ram's horn which makes a melodic and pleasing sound.

11. The shofar is mentioned throughout the Bible appearing in Joshua 6:20 and spreads God's messages such as jubilee, hope, and forgiveness.

12. Engaging in religious speech and activities in the City of Houston spreading Christianity and God's love is Plaintiff's religious exercise.

13. Sounding the shofar is Plaintiff's religious exercise. Plaintiff sounds the shofar to share God's messages of love and peace throughout the City of Houston

14. Plaintiff intends to speak, engage in religious activities, and sound his shofar again in the future in the City of Houston to inform the public about God's love.

DEFENDANTS

15. Defendant City is a municipal entity organized and existing under the laws of the State of Texas. It is a municipal corporation with the right to sue and be sued.

16. The City and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, policies, practices, procedures, and/or customs of the City, including the policies, practices, and procedures of its police department as set forth in this Complaint.

17. The City and its officials are also responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, policies, practices, procedures, and/or customs that deprived Plaintiff of his fundamental constitutional rights during the free speech event. These rules, regulations, policies, practices, procedures and/or customs were the moving force behind the actions that deprived Plaintiff of his fundamental constitutional rights as set forth in this Complaint.

18. At all relevant times, the City trained, supervised, and employed its police officers, including Defendants chief of police, Defendant McClelland and police officers Defendant F. Gallegos, Defendant J. Montelongo, and A.H. Cisneros

19. The acts, policies, practices, customs, and/or procedures of the City and its police department were the moving force behind the constitutional violations set forth in this Complaint. The deficient training and supervision of these officers, which was done with the deliberate indifference as to their known or obvious consequence, was also a moving force

behind the actions that deprived Plaintiff of his fundamental constitutional rights as set forth in this Complaint.

20. The City approved of and ratified the acts, policies, practices, customs, and/or procedures of its police department and its police officers, including Defendant police officers relating to silencing Plaintiff's speech and religious exercise on or about May 16, 2011, October 31, 2011, and January 14, 2012.

21. The City's actions relating to the free speech event deprived Plaintiff of his fundamental constitutional rights as set forth in this Complaint.

22. Defendant McClelland is the chief of police for the City Police Department. At all relevant times, he was an agent, servant, and/or employee of the City, acting under the color of state law and acting pursuant to the City's policies, practices, customs, and/or procedures.

23. As the chief of police, Defendant McClelland is responsible for the acts, policies, practices, customs, and/or procedures of the police department that deprived Plaintiff of his fundamental constitutional rights during the free speech event as set forth in this Complaint.

24. These rules, regulations, policies, practices, procedures, and/or customs were the moving force behind the actions that deprived Plaintiff of his fundamental constitutional rights. Defendant Clelland is sued individually and in his official capacity as chief of police for the City Police Department.

25. Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros are police officers for the City Police Department. At all relevant times, Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros were agents, servants, and/or employees of the City, acting under color of state law.

26. Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros deprived Plaintiff of his fundamental constitutional rights on or about May 16, 2011, October 31, 2011, and January 14, 2012. Defendants F. Gallegos, J. Montelongo, and A.H. Cisneros are sued individually and in their official capacities as police officers for the City Police Department.

STATEMENT OF FACTS

27. Plaintiff David Allen was arrested three times in the City of Houston for his constitutional, religious speech and expressive activity.

First Arrest, May 16 2011

28. On May 16, 2011, Plaintiff was on the public sidewalk in front of the Planned Parenthood Clinic at 4600 Gulf Freeway in the City of Houston, Texas.

29. Plaintiff was praying and sounding the shofar on the public sidewalk.

30. Plaintiff stood on a storm drain in the public area outside of the far southern gate of the Planned Parenthood Clinic in the shade to avoid the hot sun and high temperature of the day.

31. Plaintiff was wearing a wool prayer shawl called a Tallit.

32. While standing on the sidewalk praying, two officers from the City's Police Department (Houston Police Department) approached Plaintiff.

33. Plaintiff explained that he did nothing wrong.

34. Officer F. Gallegos of the City's Police Department placed Plaintiff in handcuffs.

35. This arrest was performed without probable cause that Plaintiff committed a crime.

36. Once handcuffed, Plaintiff was placed in the back of a squad car.

37. The backseat area of the squad car was separated by plexiglass from the front seat area.

38. The air conditioning only was on in the front seat of the car.

39. The backseat of the squad car was separated from the air condition by plexiglass and parked under the hot sun.

40. Plaintiff, wearing his wool Tallit and unable to remove it due to being handcuffed, began having difficulty breathing.

41. Plaintiff became dehydrated.

42. Plaintiff asked the City's officers several times to help.

43. As it grew even hotter, Plaintiff became extremely nauseous and numb in his head and extremities.

44. Plaintiff's repeated pleas for help were meet with chiding.

45. After approximately 45-60 minutes of struggling to breath, Plaintiff feared he might die.

46. Officer Hugo Castro, who it is believed had been inside Planned Parenthood reviewing surveillance video, saw Plaintiff's condition and said "you'd better let him out of there" or words to that effect.

47. Plaintiff was removed from the back of the squad car.

48. Plaintiff, still handcuffed, slumped to his knees and propped his head against the back of the squad car.

49. Plaintiff requested water and an ambulance.

50. Officers did not provide water, but did call an ambulance.

51. Plaintiff was still in handcuffs as he waited for an ambulance to come.

52. Plaintiff then collapsed under the back of the squad car with his head on this ground.

53. Plaintiff asked for the car to be turned off as he was breathing in exhaust fumes and could not reposition himself due to being handcuffed.

54. Officers declined to turn off the squad car because “we have to keep the air conditioning running” or words to that effect.

55. Christine Melchor arrived with a camera.

56. Officers then removed Plaintiff from the handcuffs.

57. Officers then tried to stand Plaintiff up, but Plaintiff could not move and was close to passing out, numb in all extremities and extremely nauseous.

58. An ambulance arrived.

59. Paramedics placed Plaintiff on a gurney and transported Plaintiff to Memorial Hermann Hospital in Houston, Texas.

60. After two hours of Emergency Room care, Plaintiff was released.

61. Medical expenses for the ambulance and medical care in the emergency room totaled \$1,422.56.

62. Plaintiff paid for the \$1,422.56 out of pocket, without reimbursement or insurance.

63. Plaintiff never faced criminal charges from Plaintiff’s actions on May 16, 2011.

64. Plaintiff faced no criminal charges because he had committed no crime.

65. Plaintiff requested for mediation with Defendant Chief Charles McClelland of the City Police Department.

66. Neither the City nor its officers explained why Plaintiff was not simply released.

67. Plaintiff made numerous requests to obtain the security video of the arrest from Planned Parenthood and/or from the City. All of Plaintiff's requests were denied.

Second Arrest, October 31, 2011

68. On October 31, 2011 at Westheimer and Montrose Streets in Houston, Texas, Plaintiff joined with another street preacher. The two shared in the Gospel and Plaintiff sounded his shofar.

69. After sounding the shofar, a Houston Police Department squad car arrived on scene.

70. An officer exited the squad car and approached Plaintiff.

71. The officer told Plaintiff that he was doing nothing wrong.

72. As that officer began to leave, several other squad cars arrived.

73. Officer J. Montelongo immediately took a recording video camera from the other street preacher, forced him to the ground, and handcuffed him.

74. Plaintiff took out his iPhone to film what was occurring.

75. As Plaintiff took out his iPhone, officers grabbed the phone, forced Plaintiff to the ground, and handcuffed him.

76. Officers removed the Tallit from Plaintiff's shoulders.

77. Officers placed Plaintiff in the back of a squad car.

78. The confiscated video camera that was recording was left running and therefore continued to record audio while it sat on the back hood of the squad car.

79. Officers can be heard on the recording discussing how to justify the arrests.

80. Plaintiff, sitting in the rear of a squad car, became faint and an ambulance was called.

81. Plaintiff was allowed out of the squad car.

82. Officers removed Plaintiff's handcuffs for the paramedics to examine him.

83. Plaintiff was cited for City Code 28-33 and released.

84. City's Police Department confiscated Plaintiff's shofar.

85. Media outlet KHOU 11 reported a new story about the arrest.

86. The ZKHOU 11 reported suggested that Plaintiff file an Internal Affairs Investigation with City's Police Department.

87. Plaintiff indeed filed an Internal Affairs Investigation with City's Police Department. The results of the City's Internal Affairs Investigation "exonerated" the Officers' actions.

88. On the date of trial, the prosecutor dismissed the charges against Plaintiff for insufficient evidence.

89. Officers J. Montelongo silenced Plaintiff and stopped his religious expressive activity.

90. Plaintiff was wrongly held in custody for a few hours and his shofar was held for the afternoon.

91. Plaintiff incurred stress and expenses due to the false arrest.

Third Arrest, January 14, 2012

92. On January 14, 2012 at Milam and McKinney Streets in the City of Houston, Texas, Plaintiff was on the public sidewalk to share the Gospel and sound the shofar.

93. Plaintiff's intent was to reach the crowds of people who were at that location to see the Houston Marathon.

94. Plaintiff's ministry had been coordinated another street preacher as well as with the Central Intelligence Division of the City's Police Department.

95. Upon arriving at the location, two officers greeted Plaintiff and the other street preacher.

96. The officers saw the sign the street preacher held and also the shofar the Plaintiff carried.

97. The officers voiced no objections to the sign or the shofar.

98. Plaintiff shook hands with the officers as they left.

99. Shortly afterwards, a female officer approached the street preacher and asked him to stop using his sign.

100. Plaintiff began videotaping.

101. Defendant Sgt. A.H. Cisneros of the City Police Department arrived and arrested the street preacher.

102. Plaintiff followed Defendant Sgt. Cisneros and the street preacher with the video camera, stepping into the street which was completely closed off from traffic for the marathon.

103. The road was completely closed off with traffic cones and many spectators of the marathon were in the streets.

104. Defendant Sgt. Cisneros forced Plaintiff back onto the public sidewalk.

105. Defendant Sgt. Cisneros then suddenly took the video camera from Plaintiff's hands and arrested Plaintiff.

106. Defendant Sgt. Cisneros confiscated Plaintiff's camera and shofar.

107. Plaintiff was placed in the back of a squad car for 30 to 40 minutes.

108. Defendant Sgt. Cisneros then returned Plaintiff's property and released Plaintiff without citation.

109. When Plaintiff returned to document the squad car where Plaintiff was held, Defendant Sgt. Cisneros arrested Plaintiff a second time.

110. Defendant Sgt. Cisneros again confiscated Plaintiff's shofar.

111. Defendant Sgt. Cisneros handcuffed Plaintiff and placed him against a building where Plaintiff was ordered to stand for approximately 40 minutes.

112. As Plaintiff waited a female officers from the City's Police Department told Plaintiff that "if you were a true Christian, you would stay in your house and read your Bible" or words to that effect.

113. Plaintiff was transported to City Jail at 61 Resner St., Houston, Texas where Plaintiff spent the majority of the day in a jail cell. That evening, Plaintiff's wife came into the police station and posted bond.

114. Defendant Sgt. Cisneros charged Plaintiff with failure to obey a lawful order and possession of a "staff."

115. The "staff" was Plaintiff's shofar.

116. Before trial, the charges against Plaintiff were dismissed because Defendant Sgt. Cisneros failed to appear for court.

FIRST CLAIM FOR RELIEF

(Free Exercise of Religion—First Amendment)

117. Plaintiff hereby incorporates by reference all stated paragraphs.

118. By reason of the aforementioned acts, policies, practices, procedures, and/or customs created, adopted, and enforced under color of law, Defendants City, Chief McClelland,

F. Gallegos, J. Montelongo, and A.H. Cisneros deprived Plaintiff of his right to religious exercise in violation of the Free Exercise clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

119. Plaintiff's expressive religious activity as set forth in this Complaint is protected by both the Free Speech Clause and the Free Exercise Clause of the First Amendment.

120. Defendants target Plaintiff for selective and disfavored treatment because of Plaintiff's expressive religious activity in violation of the Free Exercise Clause of the First Amendment.

121. By targeting Plaintiff's religious speech activities for disfavored treatment because Plaintiff is Christian and blows his shofar to exercise his Christianity, Defendants' actions violated the Free Exercise Clause of the First Amendment.

122. Defendants' City Ordinance 28-33 disallowing possession of an object not constructed of wood, wood products or other cellulose material on city property targets persecution or oppression of Plaintiff's religion and Plaintiff's religious practices in violation of the Free Exercise Clause of the First Amendment.

123. Defendants' City Ordinance 28-33 disallowing possession of an object not constructed of wood, wood products or other cellulose material on city property is selectively enforced and targets the persecution or oppression of Plaintiff's religion and Plaintiff's religious practices in violation of the Free Exercise Clause of the First Amendment.

124. As a direct and proximate result of Defendants' violation of the Free Exercise Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of

their fundamental constitutional rights, entitling them to declaratory and injunctive relief and damages.

SECOND CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

125. Plaintiff hereby incorporates by reference all stated paragraphs.

126. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of his right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

127. At the time of his arrest on May 16, 2011, Plaintiff was participating in constitutionally protected activity. Defendants' actions injured Plaintiff in a way likely to chill a person of ordinary firmness from further participation in that activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

128. At the time of his arrest on October 31, 2011, Plaintiff was participating in constitutionally protected activity. Defendants' actions injured Plaintiff in a way likely to chill a person of ordinary firmness from further participation in that activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

129. At the time of his arrest on January 14, 2012, Plaintiff was participating in constitutionally protected activity. Defendants' actions injured Plaintiff in a way likely to chill a

person of ordinary firmness from further participation in that activity. Plaintiff's constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

130. By arresting Plaintiff for engaging in his free speech activity on May 16, 2011, Defendants violated the First Amendment.

131. By preventing Plaintiff from engaging in his religious speech activity on May 16, 2011, Defendants violated the First Amendment.

132. By seizing Plaintiff's shofar on May 16, 2011 and maintain control of Plaintiff's shofar for several hours without lawful authority, Defendants deprived Plaintiff of his right to freedom of speech.

133. By arresting Plaintiff for engaging in his free speech activity on October 31, 2011, Defendants violated the First Amendment.

134. By preventing Plaintiff from engaging in his religious speech activity on October 31, 2011, Defendants violated the First Amendment.

135. By seizing Plaintiff's shofar on October 31, 2011 and maintain control of Plaintiff's shofar for several hours without lawful authority, Defendants deprived Plaintiff of his right to freedom of speech.

136. By arresting Plaintiff for engaging in his free speech activity on January 14, 2012, Defendants violated the First Amendment.

137. By preventing Plaintiff from engaging in his religious speech activity on January 14, 2012, Defendants violated the First Amendment.

138. By seizing Plaintiff's shofar on January 14, 2012 and maintaining control of Plaintiff's shofar for several hours without lawful authority, Defendants deprived Plaintiff of his right to freedom of speech.

139. Defendants' City ordinance 28-33 forbidding objects not constructed of wood, wood products or other cellulose material on public property on its face and as applied against Plaintiff as set forth in this Complaint violated the First Amendment.

140. By favoring certain religious speech over Plaintiff's religious speech, Defendants' restriction on Plaintiff's speech was content and viewpoint based in violation of the First Amendment.

141. Defendants targeted Plaintiff's religious speech activities for disfavored treatment because Plaintiff is Christian and blows the shofar to practice his Christian beliefs, in violation of the First Amendment.

142. Defendants' Arrest Policy as set forth in this Complaint violates the First Amendment.

143. The enforcement of Defendants' Arrest Policy against Plaintiff on May 16, 2011 deprived Plaintiff of his right to freedom of speech in violation of the First Amendment.

144. Defendants' Arrest Policy was the moving force behind the May 16, 2011 violation of Plaintiff's right to freedom of speech by the First Amendment.

145. The enforcement of Defendants' Arrest Policy against Plaintiff on October 31, 2011 deprived Plaintiff of his right to freedom of speech in violation of the First Amendment.

146. Defendants' Arrest Policy was the moving force behind the October 31, 2011 violation of Plaintiff's right to freedom of speech by the First Amendment.

147. The enforcement of Defendants' Arrest Policy against Plaintiff on January 14, 2012 deprived Plaintiff of his right to freedom of speech in violation of the First Amendment.

148. Defendants' Arrest Policy was the moving force behind the January 14, 2012 violation of Plaintiff's right to freedom of speech by the First Amendment.

149. Defendants' City Ordinance 28-33 prohibiting objects not constructed of wood, wood products or other cellulose material as set forth in this Complaint lacks objective standards or proper safeguards, is overbroad, and is selectively enforced, thereby operating to deprive Plaintiff of his right to freedom of speech or free exercise of religion protected by the First Amendment.

150. Defendants' policy, practice, custom, and/or procedure of selectively prohibiting the use of video camera violated the First Amendment's right to freedom of speech.

151. Defendants' policy, practice, custom, and/or procedure of selectively prohibiting the use, possession, or sounding of the shofar violated the First Amendment's right to freedom of speech.

152. The City's failure to adequately train and supervise its employees as set forth in this Complaint was a moving force behind the violation of the Plaintiff's right to freedom of speech and religious exercise, and this failure to adequately train and supervise has had a chilling effect on Plaintiff's free speech and religious exercise rights in violation of the First Amendment.

153. The City's failure to adequately train and supervise its employees as set forth in this Complaint was a moving force behind the violation of the Plaintiff's right to freedom of speech and religious exercise in violation of the First Amendment.

154. The City's acts, training, supervision, policies, practices, customs, and/or procedures were the moving force behind the violation of Plaintiff's right to freedom of speech and religious exercise and were viewpoint based in violation of the First Amendment.

155. Defendants will seek to enforce their Arrest Policy against Plaintiff in the future.

156. Defendants will seek to enforce their policy, practice, custom, and/or procedure of selectively prohibiting the use, possession, or sounding of the shofar against Plaintiff in the future.

157. Defendants will seek to enforce their policy, practice, custom, and/or procedure of selectively prohibiting the use of video camera against Plaintiff in the future.

158. Defendants will seek to enforce City Ordinance 28-33 prohibiting objects not constructed of wood, wood products or other cellulose material against Plaintiff in the future.

159. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief and damages.

160. As a direct and proximate result of Defendants City and F. Gallegos violation of the First Amendment, Plaintiff suffered injuries requiring medical treatment costing Plaintiff \$1,422.56, and entitling Plaintiff to compensatory damages.

161. Defendants City, Chief McClelland, F. Gallegos, J. Montelongo, and A.H. Cisneros acted with reckless or callous indifference to the federally protected rights of Plaintiff warranting punitive damages against these Defendants.

162. As a direct and proximate result of Defendants' violation of the First Amendment, Plaintiff suffered irreparable harm, including the loss of his fundamental constitutional rights,

entitling him to declaratory and injunctive relief. Additionally, Plaintiff is entitled to nominal damages for the past loss of his constitutional rights.

THIRD CLAIM FOR RELIEF

(Unlawful Search and Seizure—Fourth Amendment)

163. Plaintiff hereby incorporates by reference all stated paragraphs.

164. By reason of aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants City, Chief McClelland, F. Gallegos, J. Montelongo, and A.H. Cisneros have deprived Plaintiff of his right to be free from unreasonable searches and seizures protected by the Fourth Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

165. By seizing Plaintiff and his personal property and subjecting Plaintiff to search and seizure on May 16, 2011 without probable cause or any other lawful authority, Defendants violated Plaintiff's rights protected by the Fourth Amendment.

166. By seizing Plaintiff and his personal property and subjecting Plaintiff to search and seizure on October 31, 2011 without probable cause or any other lawful authority, Defendants violated Plaintiff's rights protected by the Fourth Amendment.

167. By seizing Plaintiff and his personal property and subjecting Plaintiff to search and seizure, and confining Plaintiff in jail on January 14, 2012 without probable cause or any other lawful authority, Defendants violated Plaintiff's rights protected by the Fourth Amendment.

168. The enforcement of Defendants' Arrest Policy against Plaintiff violated Plaintiff's rights protected by the Fourth Amendment.

169. Defendants' Arrest Policy was the moving force behind the violations of Plaintiff's rights protected by the Fourth Amendment.

170. As a direct and proximate result of Defendants' violations of the Fourth Amendment, Plaintiff has suffered irreparable harm, including the loss of his fundamental constitutional rights, and he suffered both physical and emotional harm, entitling him to declaratory and injunctive relief and damages.

171. Defendants City, Chief McClelland, F. Gallegos, J. Montelongo, and A.H. Cisneros acted with reckless or callous indifference to the federally protected rights of Plaintiff warranting punitive damages against these Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this court:

A) To declare that Defendants violated Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) To declare that Defendants' acts, training, supervision, policies, customs, and/or procedures violate Plaintiff's fundamental constitutional rights to freedom of speech, freedom from unreasonable search and seizure, and free exercise of religion as set forth in this Complaint;

C) To declare that Defendants' practice allowing its agents, servants, and/or employees to end constitutionally protected speech and religious exercise and to execute unlawful search and seizure is unconstitutional as set forth in this Complaint;

D) To temporarily and permanently enjoin Defendants' practice of allowing its agents, servants, and/or employees to end constitutionally protected speech and religious exercise and to execute unlawful search and seizure as set forth in this Complaint;

E) To award Plaintiff compensatory damages plus interest as set forth in this Complaint;

F) To award Plaintiff nominal damages against Defendants for all 42 U.S.C. § 1983 claims as set forth in this Complaint;

G) To award Plaintiff punitive damages against Defendants sued in their individual capacity for all 42 U.S.C. § 1983 claims for the Defendants' callous indifference for the Plaintiff's constitutional rights as set forth in this Complaint;

H) To award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

I) To grant such other relief as this court should find just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Dated: May 15, 2013

Respectfully submitted,

s/ Jerad Najvar
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**pro hac vice pending*