

ALESSANDRA SOLER  
EXECUTIVE DIRECTOR

ZENAIDO QUINTANA  
PRESIDENT



November 12, 2013

SOUTH TUCSON POLICE DEPARTMENT  
1601 South 6th Avenue  
South Tucson, Arizona 85713

CHIEF WILLIAM LACKEY  
1601 South 6th Avenue  
South Tucson, Arizona 85713

OFFICER PAUL SOUTH  
1601 South 6th Avenue  
South Tucson, Arizona 85713

STPD DEPUTIES, AGENTS, OFFICERS,  
AND EMPLOYEES STILL UNKNOWN  
1601 South 6th Avenue  
South Tucson, Arizona 85713

RE: *Notice of Claim Pursuant to A.R.S. § 121-821.01*

To Whom It May Concern:

This letter constitutes a Notice of Claim pursuant to Arizona Revised Statute § 12-821.01 against the South Tucson Police Department (“STPD”), Police Chief William Lackey, Officer Paul South, and STPD employees still unknown. This Notice of Claim is served on behalf of Alejandro Valenzuela (“Claimant”), whom this office represents. This letter also satisfies the requirements of A.R.S. § 11-622(A), to the extent that section applies. The conduct of other STPD employees, officers, agents or others acting with the authority and/or at the direction of the STPD (“Responsible parties”) may also have contributed to the injuries suffered by Claimant as discussed here within, and when their identities become known, this claim may be supplemented to include them.

This Notice of Claim is given without the benefit of formal discovery and is subject to amendment or supplementation. Claimant reserves the right to amend this Notice of Claim. If for any reason you believe this Notice of Claim is not in

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compliance with A.R.S. § 12-821.01, or if additional facts/information is needed please contact the attorney listed.

The Claimant seeks an award of damages reasonably calculated to compensate for the injuries he suffered in connection with his unlawful and unnecessarily protracted detention on or about July 13, 2013.

Furthermore, the terms and content of this Notice of Claim are subject to Rule 408 of the Arizona Rules of Evidence and Rule 408 of the Federal Rules of Evidence.

## I. FACTUAL BASIS FOR CLAIM

Mr. Alejandro Valenzuela is a Deferred Action for Childhood Arrivals (“DACA”) applicant.

On or about July 13, 2013, Mr. Valenzuela was unlawfully detained by Officer Paul South and a female STPD officer who has yet to be identified, and then transported to federal immigration authorities. Below is a description of the events leading up to the unlawful detention of Mr. Valenzuela.

During the mid-afternoon of July 13, Mr. Valenzuela was traveling as a passenger in a car being driven by his work colleague. While traveling, Mr. Valenzuela received a call from a friend who was very upset because the police had arrived at his home where he lives with his girlfriend. The friend did not know why the police had come to his home, or whether he or his girlfriend were in danger. Given his friend’s concerns, Mr. Valenzuela agreed to go to his friend’s house to observe as a witness and to provide moral support. Mr. Valenzuela’s work colleague then drove them to the friend’s house, which was nearby.

When Mr. Valenzuela and his colleague arrived at the friend’s house, they saw that there were two police cars parked in front. In order to ensure that they wouldn’t hinder any police investigation or activity, they parked a good distance away from the house and the squad cars. Mr. Valenzuela and his colleague saw that Mr. Valenzuela’s friend was sitting on the curb with a female police officer standing near him. His friend did not appear to be under arrest at that time. They approached Mr. Valenzuela’s friend to see if he was alright. Mr. Valenzuela’s colleague spoke briefly with the police officer to see if she could give them information about what was going on. She responded politely that she did not speak Spanish, and therefore did not know what had happened. She also asked the colleague for the name of Mr. Valenzuela’s friend, which he provided to her. The officer did not ask Mr. Valenzuela or his colleague to leave.

Mr. Valenzuela and his colleague proceeded to wait with the friend. A few minutes later, a male police officer—who was later identified as Officer Paul South—walked out of the friend’s home. In an overly aggressive manner, Officer

South demanded that Mr. Valenzuela and his colleague tell him who they were and why they were there. They responded that they knew the friend and were there to just make sure that he was okay. Officer South then ordered them to leave the scene, which Mr. Valenzuela and his colleague did immediately.

Mr. Valenzuela and his colleague returned to the car that they had arrived in. The car was still parked a good distance from the police cars and the friend's home. Several minutes later, Officer South walked up to the parked car and grabbed the car keys from the ignition, demanding that Mr. Valenzuela and his colleague provide identification. Officer South then left the driver's side and began to walk to the passenger side, saying something to the effect of, "I'm going to get this guy because he has no ID," indicating that he had already decided that Mr. Valenzuela was undocumented based on factors such as Mr. Valenzuela's Latino ethnicity.

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Officer South then walked around to the passenger side, opened the passenger door, and demanded that Mr. Valenzuela exit the vehicle and show him identification. Mr. Valenzuela exited the vehicle and provided three forms of identification to Officer South: his community college ID, his bus ID, and an ID from a local worker center. All of them identified Mr. Valenzuela by his correct name and picture. Officer South then demanded repeatedly that Mr. Valenzuela tell him whether or not Mr. Valenzuela was a "citizen." Mr. Valenzuela remained silent. Officer South then instructed Mr. Valenzuela to remain where he was and went back to talk with Mr. Valenzuela's colleague. By this time, the female officer had also arrived at the parked car and asked for Mr. Valenzuela's work colleague for identification and the car registration papers, which he provided. After a short time, Officer South said, "Okay, let's go" and indicated for Mr. Valenzuela and his colleague to follow him to his squad car.

At that time a third police officer arrived to the scene. Officer South told Mr. Valenzuela and his colleague, "Wait here" and approached the third officer. Officer South communicated to the third officer Mr. Valenzuela and his friend were "illegals." The female police officer remained at the car with Mr. Valenzuela and his colleague, while Officer South and the third officer walked away.

Several minutes later, Officer South returned to the squad car, approached Mr. Valenzuela's colleague and repeatedly said something to the effect, "Don't you feel bad your friend is going to be deported?" Officer South then instructed the colleague to leave, which he did after getting his keys back from Officer South.

After the colleague left, Officer South searched Mr. Valenzuela and then locked him in the back seat of the female officer's squad car. Officer South then told the female officer to take Mr. Valenzuela to the South Tucson police station.

After the squad car arrived at the parking lot of the police station, Officer South then opened the car door and told Mr. Valenzuela to get into the backseat of

Officer South's car. Officer South remarked, "I'll take them to Border Patrol myself." Also in the car was Mr. Valenzuela's friend, who had evidently been arrested.

Officer South did not take Mr. Valenzuela or his friend into the police station; rather, he proceeded to transport them to the Tucson U.S. Customs and Border Patrol Station. Mr. Valenzuela was detained at the Border Patrol Station for approximately five hours. Mr. Valenzuela was eventually released from Border Patrol when he provided the agents with documentation that he is DACA-eligible.

Mr. Valenzuela has never been charged with any crime or violation stemming from this incident. He was detained by STPD for no other reason than to check his immigration status and to transport him to federal immigration authorities.

## II. LEGAL BASIS FOR CLAIMS

### **VIOLATION OF CONSTITUTIONAL RIGHTS TO FREEDOM FROM UNREASONABLE SEIZURES**

The Responsible Parties, while acting in their official capacity and individual capacities and under the color of law, violated the Claimants' rights to freedom from unreasonable seizures. Under Article 2, Section 8 (Right to Privacy) and 13 (Equal Privileges and Immunities) of the Arizona Constitutions: By authorizing, acquiescing in, employing, failing to adequately train or supervise those directly involved in, and/or participating in or being deliberately indifferent to the stop, warrantless arrest, detention and interrogation of Claimant, the entities and individuals to whom this Notice of Claim is addressed violated Claimant's right to freedom from unreasonable seizure. The Claimant was also subjected to unreasonable seizure based on his actual or perceived race and ethnicity.

### **VIOLATION OF EQUAL PROTECTION OF THE LAW UNDER FOURTEENTH AMENDMENT**

By the actions described above, the entities and individuals to whom this Notice of Claim is addressed violated Claimant's right to freedom from unreasonable seizure as protected by the Fourth Amendment of the United States Constitution and his right to equal protection of the law as protected by the Fourteenth Amendment to the United States Constitution.

### **FALSE ARREST/FALSE IMPRISONMENT**

By authorizing, acquiescing in, employing, failing to adequately train or supervise those directly involved in, and/or participating in or being deliberately indifferent to the restraint of Claimant's liberty without lawful justification and

without Claimant's consent, the entities and individuals listed to whom this Notice of Claim is addressed subjected the Claimant to false arrest/imprisonment.

Based on the principles of vicarious liability, respondeat superior, and municipal liability, the entities and individuals listed in this Notice of Claims are liable for the conduct of their employees and their agents. Thus, the SPTD and Chief Lackey are responsible for actions of Officer South and other officers and agents acting with the authority and/or at the direction of the STPD. Additional liability is created by the entities and individuals due to their failure to adequately train and supervise their officers and agents.

### III. AMOUNT OF CLAIM

The Responsible Parties conducted themselves in a manner in both their official and individual capacities that violated clearly established rights. Claimant asserts that the Responsible Parties' actions have caused substantial harm that entitles him to monetary damages for the claims listed above, and payment of these claims is justly due.

Claimant would also be entitled to recover punitive damages against the Responsible Parties and any other individual(s) acting in their individual capacities, for their intentional acts because their conduct was malicious or in reckless disregard of the Claimant's clearly established rights.

Claimant will settle for \$100,000 in addition to reasonable costs and attorneys' fees.

Pursuant to A.R.S. § 12-821.01, the entities and individuals named in this letter have sixty (60) days to respond before further legal action can be instituted under Arizona state law.

Sincerely,



Daniel J. Pochoda  
Legal Director  
ACLU of Arizona

cc: Andrea Castillo  
City Attorney for South Tucson  
1601 South 6th Avenue  
South Tucson, Arizona 85713