

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**HERSCHEL WILSON,
JORDAN E. ETCITY,
RENA PABLO GANADONEGRO and
EARLMAN GANADONEGRO, as parents
and guardians of RANDALL PABLO,
DOLLY FRANCISCO as parent and
guardian of ISAAC FRANCISCO, and
THE TO'HAJILEE COMMUNITY
SCHOOL BOARD OF EDUCATION, INC.,**

Plaintiffs,

vs.

**DONALD O'CONNOR,
DAVID ROMERO, and
ALAN L. APODACA, in their
individual capacities as employees
of the New Mexico State Police,**

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT FOR DAMAGES TO REMEDY CIVIL RIGHTS VIOLATIONS
AND COMMON LAW TORTS**

Plaintiffs, through their undersigned counsel, cooperating attorneys for the American Civil Liberties Union of New Mexico, bring this complaint under 42 U.S.C. § 1983 and the New Mexico Tort Claims Act for damages resulting from the illegal search and seizure of Plaintiffs and/or Plaintiffs' minor children.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, and common law.
2. This Court has proper subject matter and personal jurisdiction over the parties.

3. Venue is appropriate in this district.
4. Upon information and belief, Defendants reside in New Mexico.
5. The acts complained of occurred in New Mexico, and Plaintiffs' causes of action arose in New Mexico.

PARTIES

6. Plaintiff Jordan E. Etcitty resides in To'hajiilee, New Mexico.
7. Plaintiff Herschel Wilson resides in To'hajiilee, New Mexico.
8. Plaintiffs Rena Pablo Ganadonegro and Earlman Ganadonegro reside in To'hajiilee, New Mexico. Plaintiffs Rena Pablo Ganadonegro and Earlman Ganadonegro represent their minor son, Randall Pablo, who also resides in To'hajiilee, New Mexico.
9. Plaintiff Dolly Francisco resides in To'hajiilee, New Mexico. Plaintiff Dolly Francisco represents her minor son, Isaac Francisco, who also resides To'hajiilee, New Mexico.
10. Plaintiff The To'hajiilee Community School Board of Education, Inc. ("School Board") is the governing board for the To'hajiilee Community School ("To'hajiilee School").
11. Defendant Donald O'Connor is a New Mexico State law enforcement officer with the rank of patrolman.
12. Defendant David Romero is a New Mexico State law enforcement officer with the rank of patrolman.
13. Alan L. Apodaca is a New Mexico State law enforcement officer with the rank of senior patrolman.

14. At all pertinent times, Defendants were acting in the course and scope of their employment and under color of state law. They are sued in their individual capacities.

ALLEGATIONS

15. Herschel Wilson, Jordan E. Etcitty, Randall Pablo, and Isaac Francisco (“To’hajiilee Players”) are Native American students, who were attending the To’hajiilee School and were members of the School basketball team (“To’hajiilee Team”) on March 3, 2006.

16. On or about March 3, 2006, the basketball teams from the To’hajiilee School, the Baptist High School, the Springer High School, and the Des Moines High School competed in a regional basketball tournament hosted by Des Moines High School, in Des Moines, New Mexico.

17. On March 3, 2006, Defendants O’Connor, Romero, and Apodaca were present at Des Moines High School to provide security during the basketball game.

18. During the tournament, the four teams shared two adjacent locker rooms; the Temple Baptist team and the School Team used separate locker rooms.

19. Temple Baptist’s Head Coach, James Adams, told Defendants that items had been stolen but that he did not know who had taken them. Defendants then indicated that they needed to search the To’hajiilee locker room. Mr. Adams indicated that a search of the To’hajiilee locker room was not necessary, but Defendants insisted.

20. Mr. Adams also told Defendants that people had come in and out through an exit door which was near the locker room that the Temple Baptist team was using and that those persons could have stolen the items. Defendants did not respond to this statement.

21. Defendants then informed the To'hajiilee Team coach, Frank Larraba, that Defendants were going to search the To'hajiilee Team's belongings in an effort to find the missing items.

22. Frank Larraba requested that the search of the To'hajiilee Team's bags be done on the basketball court in front of the crowd in attendance. Defendants refused and stated that the bags would be searched in the locker room.

23. The To'hajiilee Team was warming up in front of the crowd when Defendants told the team members to get their bags. Defendants then ordered the team, including the To'hajiilee Players, to line up on the basketball court, in front of the spectators.

24. In front of the spectators, Defendants then ordered the To'hajiilee Team to go into the locker room, where Defendants confined the To'hajiilee Team members while Defendants searched their belongings.

25. The To'hajiilee Players did not feel free to leave the locker room during the search and were in fact not free to leave the locker room during the search.

26. Defendants neither requested nor received consent to search any of the team members' belongings, including the To'hajiilee Players' belongings.

27. Defendants did not have probable cause to believe that any of the team members, including the To'hajiilee Players, had stolen the items or that they were in possession of any stolen items.

28. Following the search in the locker room, Defendants searched the To'hajiilee Team bus which had been locked and attended to by the bus driver the entire time the alleged thefts could have occurred. Defendants neither requested nor received consent to search the bus.

29. Defendants did not have probable cause to believe that the stolen items would be on the team bus.

30. Defendants did not find any of the stolen items from their searches of either the To'hajiilee Team's possessions or the school bus.

31. The To'hajiilee Team was the only team at the tournament that Defendants searched, and the only team that Defendants escorted off the court.

32. While Defendants searched the To'hajiilee Team members' belongings, the game was delayed. After about a half-hour, Defendants released the To'hajiilee Team, and the team, including the To'hajiilee Players, returned to the court.

33. Nearly 4 weeks later, on or about March 29, 2006, Defendant O'Connor prepared his incident report. O'Connor reported the total value of the missing belongings as \$393.07. O'Connor's report does not mention the detention of the To'hajiilee Team and the To'hajiilee Players, the search of their property or the search of the team bus.

34. On or about May 4, 2006, Defendant O'Connor prepared a supplemental report that stated that the case was closed "due to the lack of suspects and [because] the stolen items have not been recovered."

35. Defendant O'Connor also wrote in his supplemental report that he did not close the Des Moines School Gym because the items were most likely [*sic*] not on the premises. [*sic*] Where the items were taken was about fifteen feet from an exterior door that was not locked and did not have an alarm or guard. . . .

36. As a direct and proximate result of the Defendants' conduct set out above, Plaintiffs suffered mental distress, humiliation, fear, anxiety, and emotional suffering.

37. Defendants' conduct was willful, wanton, malicious, and in utter disregard for Plaintiffs' legal rights.

COUNT I - FOURTH AMENDMENT CLAIM (UNREASONABLE SEIZURE)

38. Plaintiffs hereby reallege and incorporate by reference each of the allegations set forth in the preceding paragraphs.

39. The individual Plaintiffs have and had right under the Fourth Amendment to the United States Constitution to be free of unreasonable seizures.

40. Defendants violated the individual Plaintiffs' Fourth Amendment right to be free from unreasonable seizures.

COUNT II - FOURTH AMENDMENT CLAIM (UNREASONABLE SEARCH OF PLAINTIFFS' PROPERTY)

41. Plaintiffs hereby reallege and incorporate by reference each of the allegations set forth in the preceding paragraphs.

42. Plaintiffs have and had right under the Fourth Amendment to the United States Constitution to be free of unreasonable searches.

43. Defendants violated Plaintiffs' Fourth Amendment right to be free of unreasonable searches.

COUNT III – STATE TORT CLAIMS

44. Plaintiffs hereby reallege and incorporate by reference each of the allegations set forth in the preceding paragraphs.

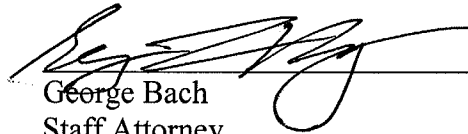
45. Defendants' detentions of Plaintiffs constitute false arrest and false imprisonment.

46. Defendants' entry and search of the To'hajiilee School team bus constitutes trespass.

47. The actions of Defendants were not justified or privileged under state law.

WHEREFORE, PLAINTIFFS request compensatory damages; punitive damages under the federal claims against the individual Defendants in their individual capacities; post-judgment interest; and reasonable costs and attorneys fees incurred in bringing this action.

Respectfully submitted,



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