

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

CURTIS BLACKWELL,

Plaintiff,

vs.

No. CIV-09-_____

JOHN DENKO, individually and in his official capacity; FORREST SMITH, individually and in his official capacity; TIM LABIER, individually and in his official capacity; BEN STRAIN, individually and in his official capacity, and STATE OF NEW MEXICO, ex rel. Department of Public Safety – Motor Transportation Division, and Taxation & Revenue Department – Motor Vehicle Division,

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT FOR DAMAGES
FOR VIOLATION OF CONSTITUTIONAL RIGHTS
AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff Curtis Blackwell, by and through his attorneys, Michael W. Lilley, Michael Stout, George Bach, and Brendan Egan and for his cause of action against Defendants states:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (4) and the doctrine of pendent jurisdiction.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).
3. This action arises under 42 U.S.C. § 1983, the United States Constitution, the New Mexico Tort Claims Act, the New Mexico Constitution and federal and state law.
4. The causes of action alleged herein arose in Hidalgo County, New Mexico.

PARTIES

5. Plaintiff Curtis Blackwell (hereinafter Blackwell) is an African-American/Black long-

haul commercial truck driver who lives in Altadena, California.

6. Defendant State of New Mexico is a political subdivision of the United States. The Department of Public Safety is an agency of the State of New Mexico, and the Motor Transportation Division is a division of the Department of Public Safety. The Taxation and Revenue Department is an agency of the State of New Mexico, and the Motor Vehicle Division is a division of the Taxation and Revenue Department. The State of New Mexico is a defendant only in the claims under the Tort Claims Act and the request for Declaratory and Injunctive Relief.

7. Defendant John Denko (hereinafter Denko) was at all material times hereto the New Mexico Secretary of the Department of Public Safety (hereinafter DPS) and was responsible for operating the DPS. At all material times hereto, Denko was acting under color of law. He is sued in his individual and official capacities.

8. Defendant Forrest Smith (hereinafter Smith) was at all times material hereto the Division Head of the Motor Transportation Division (hereinafter MTD) and administrative director, and was responsible for operating the MTD. MTD is a division of the DPS and is responsible for enforcing both federal safety regulations and state motor vehicle and criminal codes. At all times material hereto, Smith was acting under color of law. He is sued in his individual and official capacities.

9. Defendant Tim Labier (hereinafter Labier) was at all times material hereto the MTD Captain in charge of Division 4, which covers Catron, Grant, Hidalgo, and Luna Counties. Division 4 includes the Lordsburg, New Mexico, Port of Entry (hereinafter Lordsburg POE or POE) which is located on eastbound Interstate-10, mile marker 23. He is responsible for the supervisory and administrative functions of the Division 4 and the Lordsburg POE. At all times material hereto, Labier

was acting under the color of law. He is sued in his individual and official capacities.

10. Defendant Ben Strain (hereinafter Strain) was at all times material hereto an MTD Officer assigned to Division 4 and the Lordsburg POE. At all times material hereto, Strain was acting under color of law. He is sued in his individual and official capacities.

11. Denko, Smith, and Labier were responsible for the operation of the Lordsburg POE and for ensuring that MTD Officers, including Strain, complied with the federal and state constitutions and laws.

FACTS

12. The preceding paragraphs are incorporated herein by reference as if fully set forth herein.

13. On or about August 15, 2008, Blackwell drove his tractor-trailer into the Lordsburg POE. Blackwell owns the vehicle. His vehicle was stopped by Strain rather than being waved through the POE. Strain stopped the vehicle wholly or partly because Blackwell is African-American/Black.

14. Blackwell was asked by Strain to produce his log book and other documents. He complied and gave the log book and documents to Strain, and was then ordered by Strain to pull his truck under a POE tent. Blackwell was forced to wait needlessly for an extended period while Strain performed unrelated activities.

15. Strain then inspected Blackwell's truck, including the truck's lights, brakes, fire extinguisher, flares, and the interior of the cargo trailer and cab.

16. During the inspection, Strain told Blackwell to open the side box on the tractor cab, which box is only accessible from the outside of the vehicle.

17. Inside the side box was an unopened package beer and an unopened bottle of liquor.

18. Strain advised Blackwell that this was a violation of federal Department of Transportation (hereinafter DOT) standards, and as a result of Blackwell's vehicle would be placed out of service for 24 hours.

19. Strain expressed suspicion that Blackwell was under the influence of drugs and asked Blackwell if he had any drugs in the truck. Blackwell stated he did not use drugs. Strain then searched the cab interior with a flashlight. No controlled substances were found.

20. Strain then expressed suspicion that Blackwell was under the influence of alcohol and conducted a Horizontal Eye Gaze Nystagmus (hereinafter HGN) test on him. Once Strain completed the HGN test, which gave no indication that Blackwell had consumed alcohol, Strain stated, "Something isn't right."

21. Strain then had another MTD officer conduct a Breath Alcohol Test (hereinafter BAT) on Blackwell. The BAT test did not give any indication that Blackwell had consumed alcohol.

22. In fact, Blackwell had not consumed any alcohol or controlled substances.

23. Strain informed Blackwell that he was being cited for possession of alcohol. Strain completed a Uniform Traffic Citation for the alleged violation of carrying alcohol in a commercial vehicle. Strain erroneously wrote in the citation that the penalty assessment was \$250.00, when it was actually only \$200.00. The back of the citation stated, "**REFUSAL TO ACCEPT AND SIGN THIS CITATION WILL REQUIRE THAT YOU BE DETAINED IMMEDIATELY AND HELD IN CUSTODY UNTIL TAKEN TO APPEAR BEFORE A JUDGE, WHEN ONE BECOMES AVAILABLE.**"

24. Strain directed Blackwell to read the notice on the back of the citation and told him he had to sign and pay the citation or he would be taken to court. Blackwell was confused and scared,

in effect having been falsely accused of using drugs and alcohol and just having read the citation statement that refusal to sign would result in detention. Strain pressured Blackwell to make a decision on whether or not to sign the citation. Strain did not tell Blackwell that he had the choice of paying the penalty assessment or of contesting the citation in court, without being detained and held in custody in either case.

25. Blackwell believed that if he refused to sign and pay the citation he would be arrested, and his vehicle would be impounded, causing an additional financial hardship on him. He never knew he had the choice of signing and paying the penalty assessment, or signing and contesting the citation in court, without being detained and held in custody in either case. Blackwell reluctantly agreed to pay the penalty assessment and signed the citation. He later paid the \$250 assessment under protest.

26. During the time he was detained at the checkpoint and the ensuing 24-hour period that his vehicle was forcibly placed out-of-service, Blackwell observed Strain and other MTD officers at the POE. During that period, Strain and other MTD officers singled out African-American/Black truck drivers for detention and inspection, while permitting almost every other driver of every other ethnicity to go through the POE without detention or inspection. Blackwell obtained the names of five other African-American/Black drivers during that period who felt that they were singled out for detention and inspection because of their ethnicity.

27. For the last several years, MTD officers manning the Lordsburg POE and patrolling in the area have targeted trucks and other vehicles being driven by African-American/Blacks for detention, inspection and searches. Evidence of this racial profiling, aside from the allegations already made herein, include:

- a. From April 7, 2005, through March 19, 2008, the Hidalgo County Detention Center

(hereinafter HCDC) recorded 2,232 bookings of individuals. Of those persons, approximately 112, or about five percent, were African-American/Black.

b. During that period, MTD officers were responsible for 428 of said bookings. Of the MTD bookings, 85 persons, or about 20 percent, were African-American/Black.

c. During that period, MTD officers were responsible for the bookings of 333 persons who identified themselves as truck drivers (this number is included in the 428 bookings cited in the preceding subparagraph). Of those bookings, 78 persons, or about 23 percent, were African-American/Black.

d. During that period, law enforcement agencies other than MTD were responsible for 1804 bookings. Of those bookings, 37 persons, or about two percent, were African-American/Black. Of the 37 persons, 26 identified themselves as truck drivers.

e. On December 19-20, 2008, a private investigator observed the ethnicity of truck drivers who stopped at truck stops at Interstate 10 exits in Lordsburg. Of the 204 drivers who were observed, 27, or about 13 percent, were African-American/Black.

f. The Federal Defender office in Las Cruces, as well as CJA federal contract defenders working out of Las Cruces, represent virtually all of the truck drivers who have been charged criminally in federal court after their vehicles were stopped and searched by MTD officers stationed at the Lordsburg POE or MTD officers patrolling in the Lordsburg area. In the last several years, virtually every truck driver charged criminally in federal court who was arrested by an MTD officer stationed in Lordsburg is African-American/Black.

COUNT I (Section 1983)

28. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as

if fully set forth herein.

29. Strain's detention of Blackwell, as well as the inspection and search of Blackwell's vehicle and the issuance of a citation were racially motivated, at least in part, in that Blackwell is African-American/Black. Strain's actions had a racially discriminatory effect, in that Blackwell was the subject of the detention, search and citation because he is African-American/Black.

30. Strain's actions were in deliberate indifference to, and reckless disregard of, Blackwell's constitutional rights, including his right to equal protection of law.

31. Denko, Smith and Labier knew or should have known that MTD officers manning the Lordsburg POE and patrolling in the area have been targeting vehicles driven by African-American/Blacks for detention, inspection and search. Denko, Smith and Labier did not take any action to prevent or stop this racial profiling.

32. Denko, Smith and Labier had a duty to adequately train, supervise and discipline MTD officers manning the Lordsburg POE and patrolling in the area to ensure that African-American/Blacks were not targeted by the officers.

33. Denko, Smith and Labier failed to fulfil said duty.

34. The failure of Denko, Smith and Labier to adequately train, supervise and discipline MTD officers, and their failure to take any action to prevent or stop the racial profiling amounted to deliberate indifference to, and reckless disregard of, Plaintiff's constitutional rights, including the right to equal protection of law, and amounted to a custom, practice and policy of approving or ignoring racial discrimination against African-American/Blacks by MTD officers.

35. The above-described acts and omissions of the individual Defendants were unreasonable, shocking to the conscience, wilful and intentional, and violated Plaintiff's Fourteenth Amendment

right to equal protection of law and substantive and procedural due process.

36. The above-described acts and omissions of the individual Defendants justify an award of punitive damages.

COUNT II (Tort Claims Act)

37. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

38. The above-described acts and omissions of the individual Defendants amounted to deprivation of Blackwell's rights under the laws and constitution of the State of New Mexico, in violation of the Tort Claims Act.

39. The State of New Mexico is liable for the acts and omissions of the individual Defendants under the provision of the Tort Claims Act and the doctrine of *respondeat superior*.

40. Blackwell gave timely notice of his intent to sue under the Tort Claims Act.

COUNT III (Declaratory and Injunctive Relief)

41. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

42. Blackwell's decision to sign the citation agreeing to pay the penalty assessment amount was coerced and involuntary, in light of the statements and actions of Strain and the misleading statement on the back of the citation form.

43. The citation was entered into Blackwell's driving record with the Motor Vehicle Division of the Taxation and Revenue Department of the State of New Mexico, was reported to the California motor vehicle department and can be accessed by all law enforcement agencies and state motor vehicle departments.

44. Because Blackwell's decision was invalid, and because the entire process by which a motorist agrees to plead guilty to a citation and pay a penalty assessment without appearing in court is in violation of constitutional standards for guilty pleas, the entry of the citation into his driving record is in violation of his federal and state constitutional rights to due process and equal protection of law.

45. The presence of the citation on Blackwell's driving record is causing him damage, in that it causes his insurance rates to be increased, causes him to be jeopardy of losing his commercial driver license and makes it more difficult for him to obtain contracts to transport goods in his tractor trailer.

46. This Court should declare that the citation entered in Blackwell's driving record is invalid and unconstitutional, and should order the Motor Vehicle Division to remove the citation from its records and notify the California motor vehicle department that the citation has been removed from Blackwell's record. This Court should further enjoin the Motor Vehicle Division from providing any information about the citation to any other entity, other than to state that the citation was removed from Blackwell's record.

47. This Court should further order the Motor Vehicle Division to return to Blackwell the \$250 penalty assessment paid by him.

48. Blackwell has no plain, adequate, speedy or complete remedy at law, and he will suffer irreparable harm unless the requested declaratory and injunctive relief is granted.

DAMAGES AND PRAYER FOR RELIEF

49. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

50. As a direct and proximate cause of Defendants' acts and omissions, Plaintiff suffered

damages, including but not limited to:

- a. violation of his constitutional rights;
- b. loss of liberty and property;
- c. pain and suffering, including embarrassment and humiliation;
- d. lost income; and
- e. loss of enjoyment of life.

WHEREFORE, Plaintiff respectfully prays for a judgment against the Defendants as follows:

- a. Compensatory damages from Defendants in an amount to be determined at the trial of this cause;
- b. Reasonable attorneys' fees, costs and expenses incurred herein;
- c. Pre-judgment and post-judgment interest;
- d. Punitive damages against the individual Defendants in an amount to be determined at the trial of this cause;
- e. Declaration that the citation is invalid and unconstitutional;
- f. Injunction ordering that the citation be removed from Blackwell's driving record; and
- e. Such other and further relief as the Court deems just and proper.

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES OF FACT WHICH ARE TRIABLE BY JURY.

Respectfully submitted,

LILLEY LAW OFFICES

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By: /s/ Michael W. Lilley

Michael W. Lilley
1014 S. Main
Las Cruces, NM 88005
(575) 524-7809
(575) 526-2462 (fax)

Michael L. Stout
Law Offices of Michael Stout
910 Lake Tahoe St.
Las Cruces, NM 88007
(575) 524-1471
(575) 647-0408 (fax)

George Bach
Brendan Egan
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 243-0046
(505) 266-5916 (fax)

Attorneys for Plaintiff