

2009 - 60471

CAUSE NO. _____

JOSLYN M. JOHNSON,

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IN THE DISTRICT COURT OF

VS.

HAROLD HURTT, in his Official
Capacity as Chief of Police of the
Houston Police Department, THE
CITY OF HOUSTON, and THE
HOUSTON POLICE DEPARTMENT

HARRIS COUNTY, TEXAS

151ST JUDICIAL DISTRICT

FILED
LOREN J. JACKSON
CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS
2009 SEP 21 PM 3:14
SEP 21 2009
CLERK DEPUTY

PLAINTIFF'S ORIGINAL PETITION WITH REQUEST FOR DISCLOSURES

Plaintiff, Joslyn M. Johnson, complains of Defendants Harold Hurtt, in his official capacity as Chief of Police of the Houston Police Department, the City of Houston, and the Houston Police Department, and will show the following:

I.
OVERVIEW

1. Plaintiff, a Sergeant in the Houston Police Department, challenges current policies, practices, and procedures of the Houston Police Department that substantially restrict, if not prohibit, Plaintiff from communicating with U.S. Immigration and Customs Enforcement ("ICE") about illegal aliens who are criminally present in the United States.
2. Plaintiff does not seek to detain or arrest persons in order to inquire about their immigration status. Rather, Plaintiff seeks to use her professional judgment to determine when it is appropriate to contact ICE to inquire or provide information about a person's

immigration status if, in the course of carrying out her duties and responsibilities as a law enforcement officer, she has reason to believe a crime may have been committed. The Houston Police Department's current policies, practices, and procedures largely prohibit such communications and harm Plaintiff's ability to carry out her duties and responsibilities as a law enforcement officer. They also deprive her of her right to freedom of expression under the U.S. and Texas constitutions and federal law.

3. These same policies, practices, and procedures led to the shooting death of Plaintiff's husband, Houston Police Department Officer Rodney J. Johnson, in September 2006, by Juan Leonardo Quintero-Perez, an illegal alien criminally present in the United States. Officer Rodney Johnson was a 12-year veteran of the Houston Police Department and a U.S. Army veteran. He was 40 years old at the time of his death and had 5 children.

4. Because of the policies, practices, and procedures at issue in this lawsuit, the Houston Police Department failed to discover Quintero-Perez's criminal alien status and failed to report him to federal immigration authorities despite detaining him or having him in custody on at least three separate occasions. The Houston Police Department's failure to discover Quintero-Perez's status or report him to ICE thus enabled Quintero-Perez to remain at large and, ultimately, he shot and killed Officer Rodney Johnson.

5. **PROHIBITION OF RACIAL PROFILING.** It is significant that both the State of Texas and the Houston Police Department have enacted provisions, including but not limited to Texas Code of Criminal Procedure Art. 2.131 and Houston Police Department

General Order 600-42, that prohibit racial profiling and other types of unlawful discrimination by law enforcement officials. General Order 600-42 states, in pertinent part:

This General Order establishes the department's policy against the practice of racial profiling as set out in state and federal laws concerning racial profiling and discriminatory practices in general. Discrimination in any form, including racial profiling, is strictly prohibited and the department will take immediate and appropriate action to investigate allegations of discrimination.

Such provisions will continue to protect the public from racial profiling and other unlawful discrimination. Consequently, law abiding residents and victims and witnesses of crime should have nothing to fear from contact with the police should Plaintiff be granted the relief requested herein.

6. This lawsuit also seeks to compel the Defendants to comply with federal laws, rules, and regulations, so that Officer Johnson and others may communicate with ICE, rather than allow the Defendants to turn a blind eye to its legal and lawful obligations by prohibiting such communication with the expectations that one day the United States Congress will modify existing U.S. immigration laws to conform with Defendants current practices, policies, and procedures. It is clear such modifications, if any, will not occur in the near future. Therefore, the Defendants' practices, policies, and procedures must cease and desist.

II.
DISCOVERY CONTROL PLAN LEVEL

7. Plaintiff intends to conduct discovery under Discovery Control Plan Level Two of Rule 190 of the Texas Rules of Civil Procedure.

III.
PARTIES AND SERVICE

8. Plaintiff, Joslyn M. Johnson, is a Texas resident. In addition, at all times relevant to this lawsuit, Plaintiff was and continues to be employed by the Houston Police Department as a Police Officer.

9. Defendant, Harold Hurtt, is the Chief of Police of the Houston Police Department. Chief Hurtt is being sued in his official capacity and can be served with process by serving him at 1200 Travis, 16th Floor, Houston, Texas 77002.

10. Defendant, City of Houston, is a municipal corporation located in the State of Texas and incorporated under the laws of the State of Texas. Defendant City of Houston can be served with process by serving its Secretary, Ms. Anna Russell, at 900 Bagby, Suite P101, Houston, Texas 77002.

11. Defendant, Houston Police Department, is an agency/department of the City of Houston, a municipality located in the State of Texas and incorporated under the laws of the State of Texas. Defendant Houston Police Department can be served with process by serving the City of Houston Secretary, Ms. Anna Russell, at 900 Bagby, Suite P101, Houston, Texas 77002.

IV.
JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter and venue is proper in Harris County, Texas because all or a substantial part of the events or omissions giving rise to the claims made herein occurred in Harris County, Texas and Defendants' principal place of business is in the City of Houston, in Harris County, Texas.

V.
STATEMENT OF FACTS

13. Since becoming Chief of Police, Defendant Hurtt has reaffirmed and reiterated the policies, practices, and procedures at issue in this lawsuit and otherwise authorized and approved their continuation. At all relevant times, Defendant Hurtt has acted under color of state law.

14. At the time Plaintiff was sworn in as a Houston Police Officer, she took the following oath:

“I do solemnly swear that I will faithfully execute the duties of the office of Regular Officer of the City of Houston, Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State and City. So help me God.”

15. As an officer in the Houston Police Department, Plaintiff is charged by City Ordinance 34-21 with the duty of “detecting and preventing crimes, and arresting violators of the law.”

16. Plaintiff's husband, Officer Rodney Johnson, was killed in the line of duty on or about September 21, 2006 by Juan Leonardo Quintero-Perez, a criminal illegal alien

present in the United States. Quintero-Perez currently is serving a lifetime sentence at the Texas Department of Corrections.

17. Quintero-Perez's history illustrates the tragic effects that can result from Houston Police Department's policies, practices, and procedures that substantially restrict, if not prohibit, officers from communicating with ICE which is in direct contravention to federal statutes, rules, and regulations.

18. In March 1999, while residing illegally in Houston, Texas, Quintero-Perez was convicted of indecency with a minor and placed on probation. He subsequently was arrested by federal immigration officials for immigration law violations during a meeting with his probation officer in April 1999. He was deported in May 1999, but later that same year, criminally reentered the United States and resumed living in Houston.

19. On at least three separate occasions after his criminal reentry, Quintero-Perez was arrested or detained by the Houston Police Department. All three incidents occurred before Quintero-Perez shot and killed Officer Rodney Johnson.

20. Specifically, Quintero-Perez was arrested at least once for driving under the influence. He also received citations for failing to stop and give information following an accident, and, in another separate incident, was cited for driving with a suspended driver's license.

21. On each of these separate occasions, none of the Houston Police Department officers who arrested or detained Quintero-Perez were allowed to communicate with ICE

in order to discover Quintero-Perez's criminal alien status because Houston Police Department policies, practices, and procedures substantially restrict, if not prohibit, its officers from contacting ICE.

22. If any of the Houston Police Department officers who arrested or detained Quintero-Perez had been allowed to contact ICE during any one of these three incidents, it is likely that the officers would have discovered Quintero-Perez was a previously deported felon and was criminally present in the United States.

23. But for the Houston Police Department's policies, practices, and procedures that substantially restrict, if not prohibit its officers from sharing information with ICE, Officer Rodney Johnson may be alive today.

24. Current Houston Police Department policies, practices, and procedures prohibit officers from contacting ICE to obtain information about a person's immigration status. In particular, General Order 500-05, the subject of which is described as "Immigration," states in pertinent part: "Officers shall not make inquiries as to the citizenship status of any person" In practice, officers are generally prohibited from contacting ICE to obtain information about a person's citizenship or immigration status.

25. Subsequent to Officer Rodney Johnson's murder, the Houston Police Department issued Circular No. 06-1010-298, which authorizes officers to check the "wanted" status of anyone who is legally detained. Circular No. 06-1010-298 affirmatively requires

officers to check the "wanted" status of anyone who has been ticketed, arrested, and/or jailed.

26. Such checks are performed by running a person's name through one or more computer databases, including the National Crime Information Center ("NCIC") database, which may reveal whether the person is the subject of any outstanding "wants" or warrants.

27. Only if an officer receives an "NCIC Immigration Hit" indicating that a person is the subject of an outstanding criminal warrant issued by ICE, an administrative warrant of removal, or a notice of detainer for a previously deported felon, is the officer allowed to contact ICE directly to confirm the person's identity, the existence of the warrant or detainer, or confirm the information that the NCIC "hit" may contain. Otherwise, officers are not permitted to contact ICE and if no "hit" is made direct contact with ICE is prohibited to confirm database differentials.

28. An alien may be criminally present in the United States without a warrant or notice of detainer being issued for his or her arrest or detention, however, indeed, an officer may encounter a criminal alien whose presence in the United States is not even known to federal immigration officials, as was the case with Quintero-Perez when Officer Rodney Johnson stopped him on September 21, 2006.

29. In addition, not all previously deported aliens are included in the NCIC database. Rather, only aliens convicted and deported for "drug trafficking, firearms trafficking, or

serious violent crimes" are included in the database. Aliens deported for any other reasons are not included in the database. Consequently, it is not clear that Quintero-Perez, who was deported following his conviction for indecency with a minor, would have been identified as a "previously deported felon" by the NCIC database even if the officers who arrested or detained Quintero-Perez before he killed Officer Rodney Johnson had checked his "wanted" status.

30. By contrast, ICE operates and maintains a broad range of databases regarding persons' citizenship and immigration status, and it makes this information available to other law enforcement agencies whose policies, practices, and procedures allow them to access it. In this regard, in 1994, the Law Enforcement Support Center ("LESC") was established by what was then known as the U.S. Immigration and Naturalization Service to provide timely, accurate information to local, state, and federal law enforcement agencies on individuals arrested, suspected, or under investigation for criminal activity. LESG operates 24 hours a day, 7 days a week assisting law enforcement agencies with information gathered from a wide range of databases and intelligence resources, including ICE immigration databases, the NCIC, the Interstate Identification Index, the Student and Exchange Visitor Information System, the U.S. Visitor and Immigrant Status Indicator Technology System, and the National Security Entry-Exit Registration System.

According to an ICE Fact Sheet, "[t]he primary users of the LESG are state and local law

enforcement officers in the field who need information about foreign nationals they encounter in the course of their daily duties.”

31. By limiting an officer to checking the "wanted" status, via the NCIC database, of a person who is lawfully detained, ticketed, arrested, or jailed, the Houston Police Department substantially restricts the officer's ability to obtain information from ICE about that person's immigration status, whether legal, illegal, or criminal.

32. Even when a person's immigration status is or becomes known to an officer, such as if a person identifies himself or herself as an illegal alien or a previously deported alien, current Houston Police Department policies, practices, and procedures substantially restrict the officer's ability to report that information to ICE.

33. In this regard, General Order 500-05 states, in pertinent part: “Officers will contact [ICE] regarding a person only if that person is arrested on a separate criminal charge (other than a class C misdemeanor) and the officer knows the prisoner is an illegal alien.”

34. Thus, an officer is prohibited from notifying ICE about persons who identify themselves as illegal or previously deported aliens but are not arrested. Similarly, an officer is prohibited from notifying ICE about known illegal aliens, including previously deported aliens, the officer encounters unless the aliens are charged with a class B misdemeanor or a higher offense.

35. Plaintiff seeks to have the ability to contact LESC or other appropriate ICE offices to request or provide information about the immigration status of persons she lawfully encounters in the course of carrying out her daily duties and responsibilities, but is restricted, if not prohibited from doing so, by the Houston Police Department's current policies, practices, and procedures.

36. The Houston Police Department's policies, practices, and procedures restricting Plaintiff's ability to obtain or provide information to ICE about the immigration status of persons she lawfully encounters in carrying out her duties and responsibilities as a law enforcement officer have injured Plaintiff by harming her ability to fulfill her oath and otherwise carry out her duties and responsibilities as a law enforcement officer. They also restrict Plaintiff's freedom of expression.

VI.

PETITION FOR WRIT OF MANDAMUS

37. Defendant Hurtt has a clear, non-discretionary legal duty under 8 U.S.C. §§ 1373 and 1644 to refrain from prohibiting or in any way restricting Plaintiff from obtaining information about a person's immigration status or providing such information to federal immigration officials. In particular, Title 8, Section 1373(a) states in pertinent part: "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service

information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” The Immigration and Naturalization Service is now known as ICE.

38. Defendant Hurtt has acted contrary to his clear, non-discretionary legal duty under 8 U.S.C. §§ 1373 and 1644 by reaffirming, reiterating, and otherwise authorizing and approving the continuation of policies, practices, and procedures that substantially restrict, if not prohibit, Plaintiff from contacting ICE to obtain or provide information about the immigration status of persons she lawfully encounters in performing her duties and responsibilities as a law enforcement officer.

39. In a letter sent to Defendant Hurtt on March 3, 2009, Plaintiff demanded that Defendant Hurtt comply with his clear, non-discretionary legal duty under 8 U.S.C. §§ 1373 and 1644. Plaintiff received no response from Defendant Hurtt to her March 3, 2009 letter.

40. Defendant Hurtt has failed and refused to comply with his clear, non-discretionary legal duty under 8 U.S.C. §§ 1373 and 1644.

41. Defendant Hurtt’s failure and refusal to comply with his clear, non-discretionary legal duty under 8 U.S.C. §§ 1373 and 1644 is injuring Plaintiff by harming her ability to fulfill her oath and otherwise carry out her duties and responsibilities as a law enforcement officer and by restricting her freedom of expression.

VII.
VIOLATION OF 42 U.S.C. § 1983

42. Acting under color of state law, Defendants officially adopted and promulgated, or, at a minimum, authorized and approved the continuation of, policies, practices, and procedures that substantially restrict, if not prohibit, Plaintiff from contacting ICE to obtain or provide information about the immigration status of persons she lawfully encounters in performing her duties and responsibilities as a law enforcement officer.

43. Defendants are depriving Plaintiff of rights and privileges and immunities secured by the Constitution and the laws of the United States, including but not limited to, the right to freedom of expression guaranteed by the First Amendment and the right to contact ICE to obtain or provide information about a person's immigration status, as set forth in 8 U.S.C. §§ 1373 and 1644.

44. Defendants' deprivation of Plaintiff's rights and privileges and immunities secured by the Constitution and the laws of the United States is unlawful and arbitrary.

45. Defendants' deprivation of Plaintiff's rights and privileges and immunities secured by the Constitution and the laws of the United States is injuring Plaintiff by harming her ability to fulfill her oath and otherwise carry out her duties and responsibilities as a law enforcement officer and by restricting her freedom of expression.

VIII.
VIOLATION OF TEXAS CONSTITUTION

46. Acting under color of state law, Defendants officially adopted and promulgated policies, practices, and procedures that substantially restrict, if not prohibit, Plaintiff from contacting ICE to obtain or provide information about the immigration status of persons

she lawfully encounters in performing her duties and responsibilities as a law enforcement officer.

47. Defendants' conduct is depriving Plaintiff of rights and privileges and immunities secured by the Texas Constitution, including but not limited to, the right to freedom of expression guaranteed by Article I, Section 8 of the Texas Constitution.

48. Defendants' deprivation of Plaintiff's rights and privileges and immunities secured by the Texas Constitution is injuring Plaintiff by harming her ability to fulfill her oath and otherwise carry out her duties and responsibilities as a law enforcement officer and by restricting her freedom of expression.

IX.
CONDITIONS PRECEDENT

49. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

X.
REQUEST FOR DISCLOSURE

50. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, it is hereby requested that each Defendant provide complete disclosure responses to Rule 194.2 (a) through (l) within fifty days of being served with this document.

XI.
PRAYER FOR RELIEF

51. For these reasons, Plaintiff asks that Defendants be cited to appear and answer, and, on final hearing, that Plaintiff have judgment against Defendants for the following:

- a. a writ of mandamus against Defendant Hurtt directing him to comply with his non-discretionary, legal duty to refrain from prohibiting or in any way restricting Plaintiff from contacting ICE to obtain or provide information about the immigration status of persons she lawfully encounters in performing her duties and responsibilities as a law enforcement officer;
- b. a declaration that Defendants' policies, practices, and procedures referenced herein are unlawful and void;
- c. an injunction permanently enjoining Defendants from enforcing or otherwise continuing in effect the policies, practices, and procedures referenced herein;
- d. costs of suit;
- e. attorney's fees; and
- f. all other relief, in law and in equity, to which Plaintiff may be entitled.

Respectfully submitted,

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