

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALMA BENITEZ,)	
)	
Plaintiff,)	No.
)	
vs.)	Judge
)	Magistrate Judge
CITY OF CHICAGO,)	
)	
Defendant.)	Jury Demand

COMPLAINT

1. This is an action for money damages brought pursuant to 42 U.S.C. § 1983, and the common law and statutes of the State of Illinois.

2. Jurisdiction for Plaintiff’s federal claims is based on 28 U.S.C. §§ 1331 and 1343(a).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that the claims arose in this district as alleged below.

Parties

4. Plaintiff is a resident of Chicago, Illinois.

5. At all times relevant to this Complaint, the Chicago police officers referred to in this Complaint were duly appointed and sworn Chicago police officers.

6. At all times relevant to this Complaint, the Chicago police officers were acting in the course and scope of their employment, and under color of state law, ordinance and/or regulation.

7. At all times relevant to this Complaint, Defendant City of Chicago was the employer and principal of the Chicago police officers referred to in this complaint.

Facts

8. On October 20, 2014, at approximately 10:00 p.m., Plaintiff was at the Burger King in the vicinity of 4112 South Pulaski in Chicago, Illinois.

9. On October 20, 2014, at approximately 10:00 p.m., Chicago Police Officer Jason Van Dyke shot and killed Laquan McDonald.

10. Plaintiff witnessed the shooting of Laquan McDonald by Van Dyke.

11. Plaintiff witnessed Van Dyke and other Chicago police officers’ actions after the shooting of Laquan McDonald.

12. Other individuals in the vicinity of Plaintiff also witnessed the shooting and/or Chicago police officers’ actions after the shooting.

13. Plaintiff attempted to take photos and video on her mobile phone of what she witnessed.

14. Chicago police officers on the scene became aware that Plaintiff was a witness to the shooting.

15. Chicago police officers on the scene became aware that Plaintiff had attempted to record the incident in a video and/or photos.

16. Chicago police officers demanded that Plaintiff surrender her phone at the scene of the shooting.

17. Chicago police officers told Plaintiff she had to go with them to Area Central.

18. No Chicago police officer told Plaintiff she could refuse to go to Area Central.

19. No Chicago police officer told Plaintiff she was free to leave, rather than go to Area Central.

20. No Chicago police officer told Plaintiff she was free to go home.

21. Chicago police officers took Plaintiff into custody.

22. Chicago police officers transported Plaintiff to Area Central.

23. Plaintiff's vehicle remained at the Burger King restaurant.

24. Chicago police officers also transported other witnesses to Area Central at around the same time.

25. Chicago police officers detained Plaintiff at Area Central from approximately 10:00 p.m. until approximately 4:00 a.m.

26. There was no probable cause or any other legal justification to detain Plaintiff at Area Central.

27. Plaintiff was never told by any Chicago police officers that she was free to leave Area Central.

28. Chicago police officers detained other witnesses at Area Central until approximately 4:00 a.m.

29. At Area Central, Chicago police officers questioned Plaintiff regarding what she witnessed.

30. Plaintiff described to the officers what she saw when she witnessed a Chicago police officer shoot and kill a civilian.

31. Chicago police officers told Plaintiff that her account of what she witnessed was "not what really happened," or words to that effect.

32. Chicago police officers told Plaintiff they had video of the shooting that contradicted her account of what she witnessed.

33. Chicago police officers did not have video of the shooting that contradicted Plaintiff's account of what she had witnessed.

34. Chicago police officers' statement that they had video of the shooting contradicting Plaintiff's account of what she had witnessed was false.

35. Chicago police officers knew that this statement about the video contradicting Plaintiff was false when they made the statement.

36. Plaintiff's account of what she had witnessed was consistent with what actually happened.

37. Video of the shooting was consistent with Plaintiff's statement of what she had witnessed.

38. Chicago police officers pressured Plaintiff to retract and/or forget what she witnessed.

39. Chicago police officers pressured other witnesses being held at Area Central, in a similar manner, to retract their accounts of the shooting.

40. At Area Central, Chicago police officers attempted to view, extract, and/or remove any recording of the shooting or incident that Plaintiff recorded on her phone.

41. Chicago police officers, including Detective David March, Sergeant Daniel Gallagher, and then-Lieutenant Anthony Wojcik, wrote false reports of these witness interviews.

42. Chicago police officers prepared false reports of the witness interviews in order to cover-up Officer Van Dyke's unjustified shooting of Laquan McDonald.

43. Chicago police officers prepared false reports of the witness interviews in order to cover-up the improper, illegal and unconstitutional interrogations they conducted of these witnesses.

44. The Chicago Police Department, a subdivision of the City of Chicago, has a pattern and practice of suppressing, concealing and covering-up incidents of police misconduct.

45. The Chicago Police Department, a subdivision of the City of Chicago, has a pattern and practice of suppressing, concealing and covering-up shootings of civilians by Chicago police officers.

46. The City of Chicago, by and through the Chicago Police Department and Chicago police officers involved, suppressed, concealed and covered-up (or attempted to suppress, conceal and cover-up) Officer Van Dyke's unjustified shooting of Laquan McDonald.

47. The City of Chicago, by and through the Chicago Police Department and Chicago police officers involved, did this in accordance with its pattern and practice of covering-up, concealing or denying police misconduct.

48. The City of Chicago and the Chicago Police Department's pattern and practice of covering-up, concealing, and denying police misconduct is often referred to as the code of silence.

49. Rahm Emmanuel, the Mayor of City of Chicago, has acknowledged the Chicago Police Department's code of silence.

50. Rahm Emmanuel specifically acknowledged the existence of the code of silence in the context of the murder of Laquan McDonald.

51. Inspector General Joe Ferguson is conducting an investigation of the Chicago Police Department's response and cover-up of the unjustified shooting of Laquan McDonald.

52. Ferguson has recommended the firing of ten officers that falsely reported the circumstances of the shooting death of Laquan McDonald.

53. Chicago Police Superintendent Eddie Johnson has recommended that Jason Van Dyke, Daphne Sebastian, Ricardo Viramontes, Janet Mondragon and Sgt. Stephen Franko be fired from the Chicago Police Department based on Ferguson's report.

54. Several of the officers recommended for termination in Ferguson's report were officers at the scene who witnessed the shooting.

55. One of these officers was Van Dyke's partner on the night of the shooting, Joseph Walsh.

56. Another of the officers recommended for termination, Deputy Chief David McNaughton, retired in August 2016 as a result of Ferguson's recommendations.

57. McNaughton was the officer immediately in charge of the scene at which Van Dyke killed Laquan McDonald.

58. In addition to the officers at the scene of the shooting, supervising officers are being investigated regarding their role in covering-up, falsely reporting and concealing the video of the Laquan McDonald shooting (and/or directing, ordering, and/or approving of the cover-up and false reports).

59. On October 21, 2014, the date after the shooting, an executive committee composed of police supervisors watched the video of the shooting.

60. The meeting was presided over by former Police Superintendent Garry McCarthy.

61. The meeting was attended by then-First Deputy Superintendent Al Wysinger, then-Chief of Detectives John Escalante, and then-Deputy Chief David McNaughton.

62. The video contradicted Van Dyke and the on-scene officers' account of the shooting.

63. McCarthy described the video in detail to Mayor Emmanuel within days after the shooting.

64. McCarthy was fired as a result of the release of the Laquan McDonald shooting video.

65. Former First Deputy Superintendent John Escalante was chief of detectives during the time period in which the Chicago Police Department investigated and cleared (found justified) Van Dyke's shooting of Laquan McDonald.

66. Escalante also retired in August 2016 as a result of external investigation(s) of the police department's handling of the Laquan McDonald shooting.

67. Then-Lieutenant Anthony Wojcik, who authored numerous false reports of the Laquan McDonald shooting, including reports of the witness interviews (including Plaintiff's interview) has also recently retired.

68. None of the on-scene officers (except Van Dyke), who falsely reported the Laquan McDonald shooting were disciplined, terminated or stripped of their police powers prior to the release of the shooting video in November 2015.

69. None of the on-scene officers (except Van Dyke) who falsely reported the Laquan McDonald shooting were disciplined, terminated or stripped of their police powers prior to the recommendations of Inspector General Ferguson in August 2016.

70. None of the on-scene officers, except the shooting officer Van Dyke, who falsely reported the Laquan McDonald shooting were disciplined, terminated or stripped of their police powers prior to external investigations being conducted into the shooting and cover-up.

71. None of the supervising officers involved in supervising and investigating the Laquan McDonald shooting were disciplined, terminated or stripped of their police powers prior to the release of the shooting video in November 2015.

72. None of the supervising officers involved in supervising and investigating the Laquan McDonald shooting were disciplined, terminated or stripped of their police powers prior to the recommendations of Inspector General Ferguson in August 2016.

73. None of the supervising officers involved in supervising and investigating the Laquan McDonald shooting were disciplined, terminated or stripped of their police powers prior to external investigations being conducted into the shooting and cover-up.

74. The Chicago police officers who threatened, detained, transported, pressured, interviewed and otherwise interacted with Plaintiff and other witnesses to the shooting and immediate police response to the shooting, committed the acts in order to cover-up the unjustified shooting and killing of Laquan McDonald.

75. The Chicago police officers who threatened, detained, transported, pressured, interviewed and otherwise interacted with Plaintiff and other witnesses (to the shooting and immediate police response) committed these acts as part of the City's pattern and practice of covering up police misconduct.

76. The Chicago police officers who threatened, detained, transported, pressured, interviewed and otherwise interacted with Plaintiff and other witnesses (to the shooting and immediate police response) committed these acts as part of the City's pattern and practice of covering up unjustified police shootings.

77. The Chicago police officers who threatened, detained, transported, pressured, interviewed and otherwise interacted with Plaintiff and other witnesses (to the shooting and immediate police response) committed these acts as part of the Chicago Police Department's code of silence.

78. The code of silence, caused the individual Chicago police officers to commit the specific acts of misconduct and unconstitutional acts against Plaintiff.

79. As a direct and proximate result of the acts described above, Plaintiff suffered damages including loss of physical liberty and emotional distress.

COUNT I
(42 U.S.C. § 1983 – Unreasonable Seizure)

80. Plaintiff realleges paragraphs 1 through 79 as if fully set forth herein.

81. Plaintiff witnessed the unjustified shooting of Laquan McDonald by Chicago Police Officer Van Dyke.

82. At the scene of the shooting, Plaintiff was seized by Chicago police officers.

83. There was no reasonable suspicion, probable cause, or any other legal justification to seize Plaintiff.

84. The seizure of Plaintiff without reasonable suspicion, probable cause and/or any other legal justification violated her Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from unreasonable seizures.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment for Plaintiff (against Chicago police officers to be specifically named later),
- b) Award Plaintiff compensatory and punitive damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT II
(42 U.S.C. § 1983 – Unreasonable Seizure)

85. Plaintiff realleges paragraphs 1 through 79 as if fully set forth herein.

86. Plaintiff witnessed the unjustified shooting of Laquan McDonald by Chicago Police Officer Van Dyke.

87. At the scene of the shooting, Chicago police officers seized Plaintiff and put her in a police car to transport her.

88. Chicago police transported Plaintiff in a police car from the scene of the shooting to Area Central.

89. Plaintiff was not given a choice about whether she had to go to Area Central.

90. Plaintiff was not given the option of driving her own car to Area Central.

91. Plaintiff did not go to Area Central on her own free will.

92. While the police transported Plaintiff to Area Central in a police car, she was not free to leave.

93. There was no reasonable suspicion, probable cause, or any other legal justification to seize Plaintiff and transport her to Area Central.

94. The seizure of Plaintiff without reasonable suspicion, probable cause and/or any other legal justification violated her Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from unreasonable seizures.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment for Plaintiff (against Chicago police officers to be specifically named later),
- b) Award Plaintiff compensatory and punitive damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT III
(42 U.S.C. § 1983 – Unreasonable Seizure)

95. Plaintiff realleges paragraphs 1 through 79 as if fully set forth herein.

96. Plaintiff witnessed the unjustified shooting of Laquan McDonald by Chicago Police Officer Van Dyke.

97. After the shooting, Chicago police officers seized Plaintiff and took her to Area Central.

98. After Plaintiff was taken to Area Central, she was not free to leave.

99. Plaintiff was held at Area Central from about 10:00 p.m. until about 4:00 a.m.

100. Chicago police officers interrogated and questioned Plaintiff at Area Central.

101. Plaintiff was held at Area Central against her free will.

102. The seizure of Plaintiff without reasonable suspicion, probable cause and/or any other legal justification violated her Fourth Amendment right, as guaranteed by the Fourteenth Amendment, to be free from unreasonable seizures.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment for Plaintiff (against Chicago police officers to be specifically named later),
- b) Award Plaintiff compensatory and punitive damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

COUNT IV
(42 U.S.C. § 1983 – *Monell* Claim against the CITY OF CHICAGO)

103. Plaintiff realleges all of the above paragraphs and counts, as if fully set forth herein.

104. At all times material to this Complaint, there existed in the City of Chicago the practice, policy and custom of covering-up and concealing instances of police misconduct, including unjustified shootings of civilians.

105. This practice, policy and custom is often referred to as the code of silence.

106. The code of silence existed at the time of the Laquan McDonald shooting.

107. The video of the Laquan McDonald shooting was withheld and the circumstances surrounding the shooting were falsely reported pursuant to the Chicago Police Department's code of silence.

108. The video of the Laquan McDonald shooting was withheld and the circumstances surrounding the shooting were falsely reported pursuant to the code of silence.

109. The actions of the Chicago police officers who interacted with Plaintiff as alleged in this Complaint were done pursuant to, and as a result of, one or more of the above practices, policies and customs of the City of Chicago, the Chicago Police Department, and its police officers.

110. The practices, policies and customs described above are widespread, permanent and well-settled, and were known, or should have been known, to the municipal policy-makers of the City of Chicago.

111. The municipal policy-makers of the City of Chicago acted with deliberate indifference in maintaining, overlooking and preserving the unconstitutional practices, policies and customs delineated above.

112. By their inaction and failure to correct the above-described practices, policies and customs, municipal policy-makers tacitly approve and thus indirectly authorize the type of misconduct Plaintiff complains of herein.

WHEREFORE, Plaintiff asks that this Honorable Court:

- a) Enter judgment against Defendant City of Chicago,
- b) Award Plaintiff compensatory damages,
- c) Award attorneys' fees and costs, and
- d) Award any further relief that this Honorable Court deems just and equitable.

Jury Trial Demanded

Respectfully submitted,

/s/ Lawrence Jackowiak
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/s/ Amanda Yarusso
Counsel for the Plaintiff

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