

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ARTURO OCAMPO APONTE;
FRANCISCO JOSE BARBA AGUILERA;
OSCAR IVAN OCAMPO APONTE;
ISIDRO GARCIA BARRADAS;
JOSE LUIS MURILLO GONZALEZ;
MIGUEL ANGEL LINARES YESCA;
J. LUZ MURILLO RODRIGUEZ;
JULIO MURILLO RODRIGUEZ; and
MARIO ALBERTO ALVAREZ CANALIZO,**

Plaintiffs,

v.

**JOSEPH MARTINO, in his individual
capacity as a police officer for Frazer
Township; FRAZER DOES 1 and 2, police
officers for Frazer Township; J.C. PENNEY
COMPANY, INC.; PENNEY DOE 1, the J.C.
Penney store manager; and PENNEY DOE 2,
the J.C. Penney investigator,**

Defendants.

CIVIL ACTION NO. _____

Electronically Filed

COMPLAINT

PRELIMINARY STATEMENT

1. In this civil rights action for damages, nine lawfully present Mexican citizens charge that J.C. Penney employees conspired with Frazer Township police officers to falsely arrest and detain them without probable cause simply because two other, unrelated Mexican men had used counterfeit \$100 bills at a different department store in a neighboring county. In addition to Fourth Amendment false arrest and common law

false-imprisonment claims, plaintiffs allege that defendants' actions of tracking them down in three different locations in a large shopping center and detaining them was invidious discrimination based on race and national origin in violation of the Fourteenth Amendment's Equal Protection Clause and federal civil-rights laws.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2002 to declare the rights of the parties and to grant all further relief found necessary and proper. This Court has supplemental jurisdiction over Plaintiffs' common law false imprisonment cause of action under 28 U.S.C. § 1367.
2. Venue is proper in this District under 28 U.S.C. § 1391(a) because the defendants are subject to personal jurisdiction within the Western District of Pennsylvania and the events that gave rise to this action occurred within the District.

PARTIES

Plaintiffs

3. Plaintiff Arturo Ocampo Aponte is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.
4. Plaintiff Francisco Jose Barba Aguilera is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary

seasonal workers.

5. Plaintiff Oscar Ivan Ocampo Aponte is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.
6. Plaintiff Isidro Garcia Barradas is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.
7. Plaintiff Jose Luis Murillo Gonzalez is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.
8. Plaintiff Miguel Angel Linares Yesca is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.
9. Plaintiff J. Luz Murillo Rodriguez is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.
10. Plaintiff Julio Murillo Rodriguez is a Mexican citizen who at all times relevant to this

complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.

11. Plaintiff Mario Alberto Alvarez Canalizo is a Mexican citizen who at all times relevant to this complaint lived in Sharpsburg, Pennsylvania. He was (and is) legally present in the United States working for a lawn service company under an H-2B visa for temporary seasonal workers.

Defendants

12. Defendant Joseph (or “Joe”) Martino was at all relevant times hereafter mentioned a police officer employed by Frazer Township who was operating under color of state law. He is sued in his individual capacity.
13. Defendants Frazer Does 1 and 2 were at all relevant times hereafter mentioned police officers employed by Frazer Township who were operating under color of state law. The names “Frazer Does 1 and 2” are pseudonyms that are being used in this complaint to represent the actual defendants, whose true identities are presently not known, but will be supplied after they are identified through discovery. The Frazer Doe officers are sued in their individual capacities.
14. Defendant J.C. Penney Company, Inc. is a publicly traded corporation headquartered in Plano, Texas, that operates department stores throughout the United States. One such store is at the Galleria Mall at Pittsburgh Mills, which is in Tarentum, PA, where the events underlying this lawsuit took place.
15. Defendants Penney Doe 1 and Penney Doe 2 are individuals who at all relevant times

were employees of Defendant J.C. Penney Company, Inc., and who were operating within the scope of their employment. The names Penney Doe 1 and Penney Doe 2 are pseudonyms that are being used in this complaint to represent the actual defendants, whose true identities are presently not known, but will be supplied after they are identified through discovery. The Penney Doe Defendants are sued in their individual capacities.

FACTUAL ALLEGATIONS

Plaintiffs' Background

16. Plaintiffs are nine Mexican nationals who have been coming to the Pittsburgh area for between two and eight years on H-2B visas to do seasonal labor for an area landscaping company.
17. They reside in the Pittsburgh area from approximately mid-March until mid-December, when they return to their native Mexico.
18. Plaintiffs all work for the same landscaping company, live together in a large apartment, and travel together in a company-furnished van.
19. Plaintiffs' work includes cutting grass, tending plants and shrubbery, and constructing walkways and water features.
20. Plaintiffs have never entered the United States illegally or violated the terms of their visas.
21. Each plaintiff has family in Mexico, but none of them have ever brought their family members to the United States. Beyond paying living expenses, plaintiffs send most of the extra money they earn back to their families in Mexico.

22. Plaintiffs are readily identifiable as Hispanic men based on their appearance and speech. Except for Plaintiffs Arturo Ocampo Aponte and Francisco Jose Barba Aguilera, the men speak limited English, with their primary language being Spanish.
23. Prior to the incident described in this complaint, no plaintiff had ever been arrested.

The October 8, 2010, Incident at J.C. Penney at Galleria Mall in Pittsburgh Mills

24. After work on Friday, October 8, 2010, the nine plaintiffs and one other man¹ drove in the company van to the bank, where the men deposited their biweekly paychecks, withdrew some money, and then drove to the Sam's Club at Pittsburgh Mills in Frazer Township to shop for groceries.
25. Pittsburgh Mills is the largest shopping complex in Western Pennsylvania and the second largest in Pennsylvania.
26. Upon information and belief, Frazer Township has an agreement with Pittsburgh Mills to provide public safety and other police services for the mall and the stores located therein, and it maintains a station on the premises.
27. After completing their grocery shopping at Sam's Club, Plaintiffs J. Luz Murrilo Rodriguez, Yesca and Gonzalez remained behind to shop at the nearby Walmart store, which was walking distance from Sam's Club.
28. The seven other men left in the van and drove to the mall, arriving at approximately 8:30. p.m.
29. The seven men divided into two groups. Plaintiffs Arturo and Oscar Ocampo Aponte, Canalizo and another colleague went to the J.C. Penney store, while Plaintiffs Barradas,

¹ One of the ten men on the expedition did not return to the United States this year and thus is not

Aguilera and Gonzalez went to the Sears store.

30. At the J.C. Penney store, Plaintiff Arturo Ocampo Aponte returned pants he had bought for his wife two weeks earlier, i.e., on his previous pay day, because his wife told him he had purchased the wrong size when he mentioned them to her over the phone. He had paid for those pants with a \$100 bill he had received from the First National Bank on Route 8 in Hampton on September 24, 2010.
31. In a different part of the J.C. Penney store, Plaintiff Canalizo used a \$100 bill to purchase a pair of tennis shoes and sandals.
32. Shortly thereafter, while the four men were browsing in different areas of the store, they were each seized by Penney Doe 1, the J.C. Penney store manager, and taken forcibly to a security room inside the J.C. Penney store.
33. Inside the security room, the four plaintiffs encountered Defendants Frazer Police Officers Martino and Frazer Doe 1, along with several J.C. Penney employees who cooperated and acted in concert with the Frazer police to detain and interrogate the men.
34. In the course of the seizure, Plaintiff Canalizo did not respond to one of the officer's commands because he did not understand English. The officer then physically grabbed him by the shoulder.
35. Upon information and belief, Frazer police defendants seized and detained the plaintiffs at the direction or request of J.C. Penney officials, including the Penney Doe Defendants herein named.
36. Three of the employees were a store security guard, who was fluent in Spanish and acted

a plaintiff in this action.

as a translator for much of the evening; Penney Doe 1, who is believed to have been the store manager; and Penney Doe 2, another J.C. Penney employee who identified himself as an investigator and who questioned Plaintiffs Arturo Ocampo Aponte and Canalizo by telephone.

37. Defendants Martino and Frazer Doe 1 were soon joined in the store security room by an additional Frazer police officer, Frazer Doe 2.
38. Defendants Martino and Frazer Doe 1 conducted a pat-down search of the plaintiffs, confiscated their wallets, removed the contents and closely inspected the men's bank cards, store receipts, family photos and U.S. currency.
39. The Frazer Defendants also directed the four Plaintiffs not to speak and to sit back to back so that they could not communicate among themselves.
40. Penney Doe 1 told the four Plaintiffs, through the interpreter, that if they did not cooperate, things would "go badly" for them.
41. The Frazer police defendants escorted Plaintiffs Arturo Ocampo Aponte and Canalizo to a different room where they were questioned, separately, in the presence of one or more Frazer police defendants by Penney Does 1 and 2.
42. The Penney Defendants accused the two men of using fake \$100 bills to make purchases in the store.
43. During the questioning, Penney Doe 1 displayed two photographs on his computer, claiming that one looked like Arturo Ocampo Aponte. Defendant Martino looked at the photographs and shook his head in what appeared to be a "no" gesture. Plaintiff Canalizo saw the photographs and they were of what appeared to be a Hispanic male but

neither photograph resembled Plaintiff Arturo Ocampo Aponte or any of the other plaintiffs.

44. Defendant Martino and Penney Doe 1 questioned all four plaintiffs regarding the whereabouts of their co-workers, who told the defendants that some were shopping at Sears while the rest had gone to Walmart.
45. The Frazer Defendants found Plaintiffs Barradas, Aguilera and Gonzalez in the parking lot outside of J.C. Penney, where they had gone after Sears closed, placed them under arrest and brought them to the J.C. Penney security room where the Frazer Defendants searched the three men and then directed them to sit quietly.
46. Defendant Martino instructed Penney Doe 1 to take photographs of the seven men (six of whom are plaintiffs), which he did.
47. The Frazer Defendants then handcuffed the seven men with their hands behind their backs.
48. Defendant Martino told the men, through the translator, that they were being detained for “carrying fake money.”
49. All plaintiffs denied that they knowingly had possessed or used counterfeit money.
50. The men remained handcuffed in the security room for about 40-45 minutes, at which time the Frazer Defendants took the seven men to several Frazer police cars.
51. The Frazer defendants kept the seven handcuffed men in the patrol cars — with lights flashing — for about another 45 minutes.
52. While the men were detained in the patrol cars they observed a flatbed tow truck take away their van.

53. After making them sit in the police cars for about 45 minutes, where they were observed by countless mall patrons and passersby, the Frazer defendants brought the seven men to the Frazer Police substation, located at or near Pittsburgh Mills, at about 11:00 p.m.
54. The Frazer defendants uncuffed the plaintiffs, one by one, to allow them to use the bathroom, but they were not allowed any privacy and were told not to flush the toilet or wash their hands. The Frazer defendants did not offer the plaintiffs any food or water.
55. Defendant Martino again told the men they were being detained because of charges by J.C. Penney.
56. Martino told the plaintiffs, using the J.C. Penney guard — who accompanied the Frazer police to the station — as a translator, that if they behaved he would eventually remove their handcuffs.
57. Martino left the handcuffs on the plaintiffs for at least another hour.
58. While in the police station, Plaintiff Aguilera received several calls on his cell phone from his three other colleagues who had been shopping at Walmart.
59. Martino eventually allowed Aguilera to answer the phone, but directed him to tell his friends to go to the McDonald's restaurant, located inside the Walmart, to await pickup.
60. Martino also instructed Aguilera not to tell the three men about the police.
61. Aguilera complied with Martino's instructions and did not mention the police in speaking with his co-workers.
62. One or more of the defendant Frazer police officers went to the McDonald's restaurant where they arrested and detained Plaintiffs Yesca, Julio Murillo Rodriguez, and J. Luz Murrillo Rodriguez, put them up against a wall where they were searched, and brought

them back to the police station.

63. The men were told that they were being taken to the police station because their friends were waiting for them.
64. After the ten men (all nine plaintiffs) had been detained at the station for about an hour, Martino told them that they were free to leave.
65. The police took Plaintiff Arturo Ocampo Aponte to the tow pound to retrieve the men's van at about 12:30 a.m.
66. Arturo Ocampo Aponte found the van in complete disarray, with the glove compartment open, grocery bags knocked over, and food lying everywhere, much of it trampled on, effectively destroyed and, thus, unusable.
67. The plaintiffs were detained for between ninety minutes and four hours, depending on when during the evening they were taken into custody.
68. The Frazer police defendants confiscated the purchases that the plaintiffs made at J.C. Penney and Sears, and did not return them until a week later.

J.C. Penney and Its Employees Conspired With Frazer Police

69. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth herein.
70. Upon information and belief, the Frazer Police Defendants and the J.C. Penney Defendants entered into a combination, agreement or understanding to violate plaintiffs' constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1985(3), and 42 U.S.C. § 2000(d), by searching, seizing and imprisoning plaintiffs without warrant or probable cause and on account of their race

and/or national origin.

71. In furtherance of this combination, agreement or understanding, Defendants Martino and Penney Does 1 and 2 conspired to seize and imprison the plaintiffs without warrant or probable cause and on account of their race and/or national origin.
72. Upon information and belief, J.C. Penney Company, Inc. has an agreement with the Frazer Township Police Department whereby the latter will provide security and policing services to the store, including the apprehension of people identified by J.C. Penney employees as needing to be seized and arrested.
73. After the plaintiffs were seized by Penney Doe 1 and brought to the J.C. Penney store security room, the Defendant Penney Does actively participated with the Frazer Defendants in first interrogating the plaintiffs and then in deciding whether to further detain the plaintiffs.
74. The Frazer Defendants and the Penney Defendants each acted in furtherance of said agreement, combination, or understanding by cooperating in the searches, seizures, interrogations and arrests of the plaintiffs.
75. Defendants' actions violated plaintiffs' clearly established rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1985(3), and 42 U.S.C. § 2000(d) .
76. Defendants acted intentionally to deprive plaintiffs of their rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1985(3), and 42 U.S.C. § 2000(d), or in wanton, reckless disregard of those rights.

Damages

77. Plaintiffs have since this incident been afraid to shop at J.C. Penney and have desisted from going on the premises.
78. The events of October 8, 2010, caused plaintiffs to suffer, without limitation, a deprivation of their liberty, an invasion of their privacy, humiliation, ongoing emotional and psychological distress and other harms and damages to be proved at trial.

CAUSES OF ACTION

Count I

Fourth Amendment to U.S. Constitution
(Unreasonable Search and Seizure)

All Plaintiffs v. All Defendants

79. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth herein.
80. Defendants' search, seizure and detention of the plaintiffs without warrant or probable cause was unreasonable and therefore in violation of the plaintiffs' rights under the Fourth Amendment to the U.S. Constitution, as applied to the states and municipal subdivisions by the Fourteenth Amendment to the U.S. Constitution.
81. Upon information and belief, defendants' reason for detaining plaintiffs was that a currency counterfeiting ring of Mexican men had been operating in Washington County and a federal law enforcement investigation was in process.
82. Upon information and belief, the Frazer police did not contact appropriate authorities within the U.S. Attorney's Office, Treasury Department or Secret Service that evening to

ascertain whether any of the plaintiffs in fact matched the description of the Mexican men wanted in Washington County, or if those suspects were even still at large.

83. The Frazer defendants' search of the plaintiffs was not supported by reasonable suspicion or probable cause.
84. The J.C. Penney defendants are liable under a 42 U.S.C. § 1983 conspiracy theory.
85. Defendants' violation of plaintiffs' Fourth Amendment rights resulted in damages, emotional and psychological pain and suffering, humiliation, and injury to their reputations.
86. Furthermore, defendants' conduct was in willful, wanton and/or reckless disregard of plaintiffs' constitutional rights.

Count II

Fourteenth Amendment to U.S. Constitution **(Discrimination)**

All Plaintiffs v. All Defendants

87. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth herein.
88. Defendants' seizure and arrest of all plaintiffs was based not on individualized or particularized probable cause to believe any of the plaintiffs had committed a crime, but on account of plaintiffs' race and/or ethnicity.
89. The J.C. Penney defendants are liable under a 42 U.S.C. § 1983 conspiracy theory.
90. Defendants' deprivation of plaintiffs' Fourth Amendment rights amounted to intentional discrimination based on race and/or ethnicity in violation of the Equal Protection Clause

of the Fourteenth Amendment to the U.S. Constitution.

91. Furthermore, defendants' conduct was in willful, wanton and/or reckless disregard of plaintiffs' constitutional rights.

Count III

Title VI of Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d), et seq.
(Discrimination)

All Plaintiffs v. Frazer Defendants

92. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth herein.
93. Defendants' seizure and arrest of all plaintiffs was based not on individualized or particularized probable cause but on account of plaintiffs' race and/or ethnicity.
94. Defendants' illegal search and seizure of plaintiffs based on plaintiffs' race and/or ethnicity violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d), et seq.
95. Furthermore, defendants' conduct was in willful, wanton and/or reckless disregard of plaintiffs' statutory rights.

Count IV

Conspiracy to Violate Plaintiffs' Civil Rights
and 42 U.S.C. § 1985(3)
(Discrimination)

All Plaintiffs v. All Defendants

96. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth herein.
97. The Frazer Police Defendants conspired with Defendants J.C. Penney and its employees, Penney Does 1 and 2, to invidiously discriminate against plaintiffs by depriving them of

their rights to equal protection and equal privileges and immunities under law based on plaintiffs' race and/or ethnicity.

98. Defendants' discriminatory acts violate plaintiffs' rights under 42 U.S.C. § 1985(3).
99. Furthermore, defendants' conduct was in willful, wanton and/or reckless disregard of plaintiffs' constitutional rights.

Count V

Common Law False Imprisonment **All Plaintiffs v. J.C. Penney Co., Inc., Penney Doe 1 and Penney Doe 2**

100. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth herein.
101. The J.C. Penney Defendants knowingly, purposely and intentionally confined and imprisoned plaintiffs against their will, and/or jointly conspired with Frazer Defendants to purposely and intentionally confine and imprison plaintiffs against their will and are therefore liable at common law for false imprisonment.

RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- a. Enter a declaratory judgment that defendants' actions violated plaintiffs' rights under the Fourth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §§ 1985(3) and 2000d;
- b. Award to plaintiffs against all defendants compensatory damages, jointly and severally, and punitive damages;

- c. Award to plaintiffs costs and reasonable attorneys' fees; and
- d. Award to plaintiffs such other relief as this Court may deem just and appropriate.

Respectfully submitted,

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