

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

**COURTNEY FOSTER and MATTHEW
KISCADEN, on their behalf
and on behalf of similarly situated persons,**

Plaintiffs,

v.

Case No.

CITY OF ALBUQUERQUE,

Defendant.

CLASS ACTION COMPLAINT FOR UNLAWFUL FORFEITURE

Plaintiffs COURTNEY FOSTER and MATTHEW KISCADEN, through their attorneys, KENNEDY KENNEDY & IVES, PC, bring the following Class Action Complaint for Unlawful Forfeiture on their behalf and on behalf of similarly situated persons:

INTRODUCTORY STATEMENT

1. For more than two decades, the City of Albuquerque operated an unconstitutional vehicle forfeiture program that seized over a thousand cars each year and auctioned nearly two cars each day—half of which belonged to owners who had committed no crime.

2. During fiscal years 2009 to 2016, the forfeiture program generated \$11.8 million in revenue from forfeitures and fees. Millions of dollars raised by the program were used to buy police cars and radar guns, and to pay the salaries and benefits of seizure unit personnel, including the city attorneys who were tasked with setting the amounts vehicle owners paid to retrieve their cars.

3. In fact, revenue generation was a core part of the program’s mission: unit employees faced annual job performance evaluations that viewed “increased revenue from seized vehicles” as a determinant of success or failure; city attorneys set yearly targets for vehicle

auctions, fees, and boots with fines; and program supervisors maintained spreadsheets with month-over-month comparisons to determine, real-time, whether seizure revenues were trending up or down.

4. The terms to release a vehicle were calculated at the discretion of city attorneys and ranged wildly from a \$500 payment with no boot requirement to a \$5,100 payment and a requirement to boot the car for two years.

5. Countless owners, who had done nothing wrong, lived for years with their cars immobilized in their yards, or in the yards of friends or family members when apartment complexes refused to allow booted vehicles in apartment lots.

6. Others forfeited their cars to the city in lieu of paying enormous fees; some owners bought new cars; some bought their own cars back at city auctions; some took the city bus; some paid their fees and retrieved hail damaged cars from the city's seizure lot; others found themselves mired in costly legal battles with the lenders that had financed their vehicles; and many lost their credit, their means of transportation, and their jobs.

7. The City of Albuquerque has been bull-headed in its enforcement of the forfeiture program.

8. When, in 2015, the State Legislature unanimously enacted historic legislation abolishing civil forfeiture in New Mexico, the City of Albuquerque defiantly maintained its seizure program, auctioning 441 cars the following year.

9. When, in July of 2018, a federal court ruled that the City of Albuquerque was unconstitutionally policing for profit, the city continued seizing cars to sell at auction. The Mayor's proposed budget for fiscal year 2019 anticipated that the city would sell another 300 cars.

10. When, in December of 2018, the New Mexico Court of Appeals unanimously

concluded that the city's forfeiture program violated state law, the city responded by seizing a car ten days later.

11. This lawsuit seeks full compensation for those wronged by the City of Albuquerque's vehicle forfeiture program for the class period from three years prior to the date this Complaint is filed until the program completely ceases its operations and returns all seized vehicles to their rightful owners.

JURISDICTION AND VENUE

12. This lawsuit raises federal questions, the parties are New Mexico residents, and all relevant events took place in New Mexico. This Court has jurisdiction over this action and venue is proper in this district.

PARTIES

13. Plaintiff Foster is a resident of Albuquerque, New Mexico. Her vehicle was seized by the Albuquerque Police Department on or around August 11, 2017.

14. Plaintiff Kiscaden is a resident of Albuquerque, New Mexico. His vehicle was seized by the Albuquerque Police Department on or around June 7, 2017.

15. Defendant City of Albuquerque is a municipality within the territorial limits of the State of New Mexico. The City of Albuquerque is a "person" within the meaning of 42 U.S.C. § 1983.

CLASS ALLEGATIONS

16. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated. The Plaintiff Class is composed of the following:

All persons and entities who, within three years prior to the filing of this Complaint and until the unconstitutional policy ceases and all seized vehicles have been returned, have suffered the impairment of property interests, including the unlawful seizure, impound,

immobilization, or sale of their vehicles, or the imposition of unlawful fines related thereto, resulting from one or more of the following:

(a) the City of Albuquerque's creation and operation of a civil vehicle forfeiture program that was affected by an unlawful profit incentive in violation of the Due Process Clause of the United States Constitution;

(b) the City of Albuquerque's creation and operation of a civil vehicle forfeiture program that required car owners to prove their innocence to secure the return of their vehicles in violation of the Due Process Clause of the United States Constitution; and

All persons and entities who, within two years prior to the filing of this Complaint and until the unlawful policy ceases and all seized vehicles have been returned, have suffered the impairment of property interests, including the unlawful seizure, impound, immobilization, or sale of their vehicles, or the imposition of unlawful fines related thereto, resulting from:

(c) the City of Albuquerque's operation of a civil vehicle forfeiture program in violation of the New Mexico Forfeiture Act, NMSA 1978, §§ 31-27-1 to -11 (2002, as amended through 2015), a duly enacted state law.

17. Plaintiffs believe that the Plaintiff Class consists of more than 2000 members.

18. Questions of law and fact are common to the Plaintiff Class and predominate over questions affecting individual members. Common questions include: (a) the meaning and application of the City of Albuquerque vehicle forfeiture ordinances; (b) whether the City of Albuquerque's vehicle forfeiture program created a realistic possibility that forfeiture officials' judgement would be distorted by the prospect of institutional gain; (c) whether the program's burden-shifting framework created such a risk of erroneous deprivation that it violated the dictates of procedural due process; (d) whether the program contravened the New Mexico Forfeiture Act; (e) whether the City of Albuquerque is precluded from challenging liability in the wake of *Harjo v. City of Albuquerque*, 326 F.Supp.3d 1145 (D.N.M. July 28, 2018), and *Espinoza v. City of Albuquerque*, —NMCA—, —P.3d—, No. A-1-CA-35908 (N.M. Ct. App. Dec. 5, 2018); and (f)

whether the City of Albuquerque's defenses, if any, have merit.

19. The claims asserted by Plaintiffs are typical of the claims of the members of the Plaintiff Class, described above. The claims arise from the same course of conduct by the City of Albuquerque, and the relief sought is common.

20. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Plaintiff Class. Plaintiffs have retained counsel competent and experienced in civil rights cases and in class action litigation, including civil rights class actions in state and federal court; civil rights class actions certified pursuant to Rule 23(b)(3); and civil rights class actions in which the City of Albuquerque was a defendant.

21. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. There will be no undue difficulty in the management of this case as a class action.

ALBUQUERQUE'S VEHICLE FORFEITURE PROGRAM

22. The City of Albuquerque's motor vehicle seizure and forfeiture ordinance, *see* Revised Ordinances of Albuquerque §§ 7-6-1 to -7 ("Forfeiture Ordinance"), provides that a vehicle is "subject to immediate seizure and forfeiture ... if it is ... [o]perated by a person in the commission of a DWI offense" and the driver has at least one prior DWI arrest, summons, or conviction; or if it is "[o]perated by a person whose license is suspended or revoked as a result of" arrest or conviction for previously driving while intoxicated.

23. During fiscal years 2010 to 2018, the City of Albuquerque seized over 12,000 vehicles.

24. By ordinance, if somebody other than the alleged offender owns the seized vehicle, the owner bears the burden to "demonstrate[] by a preponderance of the evidence that the owner

... could not have reasonably anticipated that the vehicle could be used” to commit the alleged offense. Ord. § 7-6-7(A).

25. While the City of Albuquerque does bear the burden to establish probable cause that the requirements for seizure apply, the city is never required to prove anything about the car’s owner.

26. While the program was operational, vehicles seized under the Forfeiture Ordinance were brought for intake to the City of Albuquerque’s DWI seizure unit, which was housed within the City of Albuquerque Police Department and consisted of uniformed officers and civilian employees.

27. The seizure unit worked closely with the city’s legal department, where city attorneys were assigned to specifically handle vehicle forfeiture cases.

28. Whenever a vehicle was seized, seizure unit employees conducted an investigation that was generally limited to making electronic database searches and verifying that the seizure occurred inside city limits.

29. There was no special investigation conducted for if the vehicle was owned by somebody other than the alleged drunk driver.

30. No one from the City of Albuquerque Police Department contacted owners to conduct an interview prior to proceeding with a vehicle forfeiture or to investigate whether the owner might have a valid innocent-owner defense.

31. The City of Albuquerque’s Chief Hearing Officer has stated that “about half of the vehicles that APD seizes are not owned by the offender that we confiscate it from,” rather, “it’s the mothers, the fathers, the wives, the girlfriends, the brothers, [and] the uncles’ ” who own the vehicles.

32. When owners objected that they needed their car and had not done anything wrong, they were often told by officers or city attorneys that the program was “completely legal,” and fighting it would be a waste of time and money.

33. Following a vehicle seizure, owners had ten days to pay a \$50 fee to request an administrative hearing. Ord. § 7-6-5(D), (F).

34. If the owner did not request a hearing, which happened approximately sixty times a month, the vehicle was deemed “abandoned” and sold at auction.

35. During fiscal years 2010 through 2018, the City of Albuquerque sold over 5,000 cars at auction, generating millions of dollars in revenue.

36. By ordinance, vehicles sold at auction could be used by the Police Department “for official law enforcement purposes prior to sale.” Ord. § 7-6-5(E).

37. Despite the city’s claim that the program’s mission was public safety, vehicle owners were permitted to attend city auctions and bid for their own vehicles—even if the owner was driving the car when the offense occurred—and the City of Albuquerque was aware that owners sometimes chose to buy back their vehicles rather than engage in the costly process of contesting the forfeiture.

38. When an owner requested a hearing, a city attorney would negotiate with the owner.

39. As a practical matter, car owners participated in these negotiations under duress and only in order to retrieve their own property from unlawful detention by the City of Albuquerque.

40. During these negotiations, the city attorney exercised discretion about what amounts would be charged in exchange for a vehicle’s return. Potential offers ranged from a \$500 payment, with no boot requirement, to a \$5,100 payment and a requirement to boot the car for two

years.

41. If the owner could not pay, there would be a hearing before the city's administrative hearing officer.

42. The city's hearing officer would exercise broad discretion to determine whether the owner proved his or her innocence.

43. Even if the city's hearing officer ruled in favor of the owner, the city ordinarily required payment of storage and towing fees.

INSTITUTIONAL PRESSURES AND THE PROGRAM'S PROFIT-INCENTIVE

44. The City of Albuquerque's forfeiture program operated as a special revenue fund, meaning that the program had a specific revenue funding source and a specific restricted use.

45. The forfeiture program generated nearly all of its revenue from forfeitures and fees.

46. When the program was generating more revenue, its expenditures increased.

47. Each fiscal year, the city made a lump-sum transfer out of the forfeiture account to pay the entire salaries and benefits of employees associated with the program. In this manner, the city used millions of dollars in program revenues to pay compensation to its forfeiture attorneys and seizure unit employees.

48. Money left over and above salaries and program expenses was used to fund discretionary purchases, such as police vehicles and radar guns.

49. In fiscal year 2016, the city made a lump sum transfer of \$3.3 million of accumulated fund balance to buy new vehicles and an educational building.

50. The incentive to increase fund revenues put substantial pressure on seizure unit employees, city attorneys, and the hearing officers who officiated forfeiture cases.

51. Every year, the City of Albuquerque's annual budget included "performance

measures” for the vehicle forfeiture program, which set targets for settlements, immobilizations, vehicle auctions, and revenue generated therefrom.

52. For example, in fiscal year 2016, the city set a target to sell 625 cars and enter into 600 “agreements” involving a boot and a payment of money and 350 “agreements” where the vehicle would be released without a boot for a smaller payment of money.

53. Program personnel, including city attorneys, compiled these “annual performance measures,” and also tracked performance on a monthly basis, providing immediate checks on revenue trends.

54. Seizure unit employees were evaluated annually based on revenue-related “output measures” to measure success or failure in the unit.

55. When, thanks to the advance of ride share companies like Uber and Lyft, DWI seizures declined in recent years, the forfeiture program became financially strained.

56. With less revenue coming in, the program had to cut expenses, effecting job security of program personnel, including seizure unit employees, city attorneys, and even the city’s hearing officers who decide forfeiture cases.

57. From 2013 on, forfeiture personnel worked to maintain program revenues in accordance with the city’s unrealistic annual targets, “despite drop of intake.”

THE SEIZURE OF MATTHEW KISCADEN’S SATURN 2-DOOR

58. In June of 2017, Plaintiff Kiscaden became tangled up in the City of Albuquerque’s forfeiture program.

59. At the time, Plaintiff Kiscaden had a single vehicle that was his sole means of transportation: a two-door, 2008 Saturn.

60. On or around June 7, 2017, Plaintiff Kiscaden was pulled over for a headlight

violation.

61. Plaintiff Kiscaden was ultimately charged with driving on a revoked license.

62. Plaintiff Kiscaden presented proof of legal compliance to the Metropolitan Court and the charge was dismissed with prejudice.

63. Nevertheless, Plaintiff Kiscaden's only vehicle was seized by the City of Albuquerque Police Department, pursuant to the Forfeiture Ordinance.

64. The seizure occurred more than two years after the State of New Mexico had unanimously passed a law designed to "protect against the wrongful forfeiture of property" and "ensure that only *criminal* forfeiture is allowed in [New Mexico.]" NMSA 1978, § 31-27-1(A)(5)-(6).

65. At the time Plaintiff Kiscaden's vehicle was seized, state law permitted vehicle forfeitures only when a person was convicted of a criminal offense. Even then, the law ensured various procedural protections, clearly assigning to the government the burden of proof, and providing mechanisms for challenging excessive penalties.

66. The procedures employed to seize Plaintiff Kiscaden's car were at odds with the requirements of state law.

67. The Notice of Forfeiture directed Plaintiff Kiscaden—who had been convicted of no crime—to pay a \$50.00 "hearing fee" and request an administrative hearing within ten days in order to challenge the seizure.

68. Meanwhile, the City of Albuquerque would keep his only vehicle at the impound lot, generating fees.

69. The seizure unit employees that processed the forfeiture of Plaintiff Kiscaden's car had their salaries paid by forfeiture revenues.

70. Plaintiff Kiscaden contacted the city attorney, Kyle Hibner, and asked for the return of his vehicle since the criminal charge was dismissed.

71. Mr. Hibner explained that the dismissal had nothing to do with the vehicle seizure, which was a “civil matter.”

72. Mr. Hibner told Plaintiff Kiscaden that the city’s vehicle forfeiture program was “completely legal,” and had “held up in court for ten years.”

73. When Plaintiff Kiscaden said he would hire a lawyer and challenge the program, Mr. Hibner responded, “good luck.”

74. Mr. Hibner had his salary paid through forfeiture program revenues.

75. Plaintiff Kiscaden paid \$4,500.00 in legal fees to challenge the forfeiture at the administrative hearing.

76. The City of Albuquerque agreed to return Plaintiff Kiscaden’s car only if he signed an immobilization agreement, paid an additional \$2,800.00, and kept his car booted in his yard for nine months.

77. The agreement lacked consideration because, in exchange for the fine and immobilization agreement, Plaintiff received nothing aside from the return of his own, unlawfully seized, property. *See Union Pac. Railroad Co. v. Commissioners*, 98 U.S. 541, 543-544 (1956).

78. The city attorney who demanded the unconstitutional fee from Plaintiff Kiscaden had his salary paid through forfeiture revenues.

79. Because Plaintiff Kiscaden’s landlord did not permit him to keep a booted vehicle on the property, Plaintiff was forced to move back in with his parents, who drove him to work for the next three months.

80. Because the City of Albuquerque—as a rule—prohibited Plaintiff Kiscaden from

keeping the car in a garage or “covering it,” the car sustained weather damage, including hail damage.

81. After three months, Plaintiff Kiscaden bought a used car for \$5,000.00, which he put on a credit card, so that he would have his own transportation for the remainder of the 240-day immobilization agreement.

82. Plaintiff Kiscaden suffered damages as a result of the City of Albuquerque’s unlawful vehicle forfeiture program.

THE SEIZURE OF COURTNEY FOSTER’S KIA 4-DOOR

83. In August of 2017, Plaintiff Foster became tangled up in the City of Albuquerque’s forfeiture program.

84. At the time, Plaintiff Foster had one vehicle, a four-door, 2006 Kia that her father had sold to her.

85. The Kia was Plaintiff Foster’s first car, which she was using to learn how to drive a stick shift.

86. In August of 2017, Plaintiff Foster lent the vehicle to a trusted childhood friend who asked to use it for a few days so that he could drive to job interviews.

87. Plaintiff Foster had no reason to think her friend would drink and drive.

88. Unfortunately, Plaintiff Foster’s friend disabused her trust.

89. On or around August 11, 2017, the City of Albuquerque Police Department seized the KIA when the friend was charged with a DWI offense in the middle of the night.

90. The seizure unit employees that processed the seizure had their salaries paid through forfeiture revenues.

91. The procedures employed to seize Plaintiff Foster’s car were at odds with the

requirements of state law.

92. When Plaintiff Foster learned what had happened, she contacted the City of Albuquerque about retrieving her Kia and was told that she would have to pay a substantial fine, plus fees for daily storage, towing, and impound.

93. Plaintiff Foster learned that if she challenged the forfeiture, she would have to prove her own innocence and there was no guarantee she would be successful.

94. The seizure unit employees and/or city attorneys that Plaintiff Foster spoke to had their salaries paid through forfeiture revenues.

95. Plaintiff Foster was unable to afford the fees and did not have enough money to hire an attorney to challenge the forfeiture.

96. The City of Albuquerque took ownership of Plaintiff Foster's Kia.

97. Plaintiff Foster does not know whether the City of Albuquerque still has her car or has sold it at auction.

98. Plaintiff Foster does not have a car anymore and walks to work every day.

99. Plaintiff Foster's driver's education was interrupted by the City of Albuquerque's vehicle forfeiture program, and she still does not know how to drive a stick shift.

100. Plaintiff Foster suffered damages as a result of the City of Albuquerque's unlawful vehicle forfeiture program.

FIRST CAUSE OF ACTION FOR DEPRIVATION OF PROPERTY INTERESTS IN VIOLATION OF DUE PROCESS: UNCONSTITUTIONAL PROFIT INCENTIVE

Section 1983 and the Due Process Clause of the United States Constitution

101. Plaintiffs incorporate all allegations as if fully stated herein.

102. The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.

103. Due Process imposes limits on the partisanship of administrative prosecutors in civil cases.

104. A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.

105. Such personal interest can take the form of economic profit or the prospect of institutional gain as a result of zealous enforcement efforts.

106. While the forfeiture program was in operation, “the City of Albuquerque’s forfeiture officials had an unconstitutional institutional incentive to prosecute forfeiture cases, because forfeiture revenues were set in a special fund, and the forfeiture program can spend, without meaningful oversight, all of the excess funds it raises from previous years.” *Harjo v. City of Albuquerque*, 326 F.Supp.3d 1145, 1193 (2018).

107. The forfeiture program had “de facto power over its spending, and thus, the more revenue it raise[d], the more revenue” it could spend. *Id.*

108. The City of Albuquerque’s City Council set its Forfeiture Program appropriations to estimated revenues, as opposed to estimated costs and retroactively authorized overspending when the Forfeiture Program raised additional funds. In other words, the Forfeiture Program operated with the ability to spend as much as it raised, thereby infecting the program with an incentive to seize cars, inflate fees, prosecute forfeitures, engage in discretionary negotiations, and exercise other administrative discretion with the purpose of increasing institutional revenues.

109. Forfeiture program officials, including seizure unit employees, hearing officers, and city attorneys, also had an unconstitutional personal incentive to prosecute, because their continued employment and salary was contingent on program revenues.

110. Unit employees who investigated cases and served as witnesses benefitted from forfeiture revenues, which were used to pay police salaries and to make discretionary purchases.

111. Upon information and belief, hearing officers, who oversaw the city's administrative hearings also benefitted from forfeiture revenues in that forfeiture cases represented the bulk of the city's overall docket, and the hearing officers' jobs depended on the program's continued operation.

112. City attorneys who prosecuted forfeiture cases and exercised discretion about how to proceed had their salaries paid through forfeiture revenues.

113. As a direct and proximate result of the City of Albuquerque's unlawful policies and practices, Plaintiffs suffered injuries and are entitled to full compensation.

SECOND CAUSE OF ACTION FOR DEPRIVATION OF PROPERTY INTERESTS IN VIOLATION OF DUE PROCESS: UNCONSTITUTIONAL BURDEN SHIFTING

Section 1983 and the Due Process Clause of the United States Constitution

114. Plaintiffs incorporate all allegations as if fully stated herein.

115. Plaintiffs who had their vehicles seized could not be lawfully saddled with any proof burden. They were entitled to be presumed innocent.

116. Thus, "[t]he Forfeiture Ordinance independently violates due process by depriving car owners of their property unless they prove their innocence." *Harjo*, 326 F.Supp.3d at 1193.

117. Plaintiffs had an obvious and significant interest in their cars.

118. While the program was operational, there was a risk of erroneous deprivation because the Forfeiture Ordinance required Plaintiffs to prove their innocence, and because the City of Albuquerque's probable-cause burden with respect to the car was not a sufficient burden to alleviate the risk.

119. The City of Albuquerque's interest in seizing and impounding Plaintiffs' vehicles

was slight when confronted with an innocent owner or an owner not involved in DWI, because there was little to no evidence that the car was dangerous in that owner's hand.

120. As a direct and proximate result of the City of Albuquerque's policies and practices, Plaintiffs suffered injuries and are entitled to full compensation.

**THIRD CAUSE OF ACTION FOR UNLAWFUL FORFEITURE IN VIOLATION OF
STATE LAW**

The New Mexico Tort Claims Act and the New Mexico Forfeiture Act

121. Plaintiffs incorporate all allegations as if fully stated herein.

122. All City of Albuquerque program personnel are law enforcement officers charged with maintaining public order.

123. Sovereign immunity is waived by the New Mexico Tort Claims Act.

124. The City of Albuquerque's actions are contrary to the New Mexico Forfeiture Reform Act. The Act "denies the City's authority to seize and forfeit property under the Ordinance because the enforcement of the Ordinance frustrates, and, in fact, completely contradicts the Legislature's intent in amending" the Act. The Forfeiture Ordinance is preempted "in its entirety." *Espinoza v. City of Albuquerque*, —NMCA—, —P.3d—, No. A-1-CA-35908 (N.M. Ct. App. Dec. 5, 2018).

125. The City of Albuquerque violated a clear directive from the State of New Mexico that abolished civil forfeiture in the state.

126. The City of Albuquerque unlawfully seized Plaintiffs' property and leveraged its return on the payment of significant fees.

127. The City of Albuquerque placed the burden on Plaintiffs to prove their own innocence.

128. As a direct and proximate result of the City of Albuquerque's unlawful policy and

practice of disregarding state law, Plaintiffs suffered injuries and are entitled to full compensation.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray that this HONORABLE COURT:

- A. Certify this matter as a class action;
- B. Order the unconditional return of any vehicle seized by the City of Albuquerque pursuant to its Forfeiture Program;
- C. Pay damages to make Plaintiffs whole;
- D. Award Plaintiffs costs and reasonable attorney's fees for maintaining this suit;
- E. Award Plaintiffs pre-judgment and post-judgment interest; and
- F. Award Plaintiffs such other relief that the Court may deem appropriate, just and proper.

Respectfully Submitted,

KENNEDY KENNEDY & IVES

/s/ Joseph P. Kennedy

Joseph P. Kennedy

Shannon L. Kennedy

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

COURTNEY FOSTER and MATTHEW KISCADEN, on their behalf and on behalf of similarly situated person.

(b) County of Residence of First Listed Plaintiff Bernalillo (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) KENNEDY KENNEDY & IVES 1000 2ND STREET NW ALBUQUERQUE, NM 87102 505-244-1400

DEFENDANTS

CITY OF ALBUQUERQUE

County of Residence of First Listed Defendant BERNALILLO (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C Section 1983 and the Due Process Clause of the United States Constitution. Brief description of cause: Class action complaint for unconstitutional vehicle forfeiture program

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE JAMES O. BROWNING DOCKET NUMBER 1:16-CV-01113-JB-JHR

DATE 03/26/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Joseph P. Kennedy

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Tackles Albuquerque's Allegedly Illegal Car Forfeiture Program](#)
