

THE
CIVIL RIGHTS GROUP
TRIAL LAWYERS

May 15, 2023

By Email

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Re: Alexander Bonilla
Time-Limited Settlement Opportunity Letter

To the City of West Allis, Brandon Rapp, Jason Komorowski, Justin Schrandt, and your insurers:

I represent Alexander Bonilla. On October 24, 2021, West Allis police officer Brandon Rapp stomped on Mr. Bonilla's head during an arrest:



Fellow officers Jason Komorowski and Justin Schrandt saw the stomp but failed to call an ambulance for Mr. Bonilla. Mr. Rapp's stomp and Mr. Komorowski and Mr. Schrandt's failure to provide medical care violated Mr. Bonilla's rights under the Fourth Amendment of the United States Constitution. The City of West Allis will be liable under state law to pay any judgment entered in a lawsuit over those violations. This letter offers you the opportunity to settle Mr. Bonilla's claims before litigation.

This letter explains the facts, the law, and what we expect if we litigate this case. I encourage you to share this letter with any insurance company that may provide you with coverage for these claims and any lawyer you may hire or that an insurance company may provide. Your lawyers or, if you are unrepresented, you, may also contact me at the address, email, or phone number in the footer below. Please do not try to contact Mr. Bonilla directly.

For Mr. Rapp, Mr. Komorowski, and Mr. Schrandt, I am sending this letter to you by sending it first to your attorneys, Mr. Decker and Mr. Steinle. It is my understanding that Mr. Steinle is Mr. Rapp's lawyer for the criminal case arising from the stomp. I ask that Mr. Steinle please forward this letter to Mr. Rapp or let me know that he cannot or will not do so. It is my understanding that Mr. Decker, as the City Attorney for West Allis, is the appropriate person for this letter to the City and that he may also represent Mr. Komorowski and Mr. Schrandt because, as near as I can tell, they are still City employees. If my assumptions here are wrong, please let me know.

Please also take care to preserve any documents related to the incident on October 23, 2021, and the later investigation of that incident by the Waukesha Police Department. This includes text messages, Facebook messages, other electronic/phone messages of any kind, email, and all other kinds of documents. If you destroy evidence after receiving this letter, we will bring it up in court and seek penalties against you.

I. The Basic Facts

On October 24, 2021, James Robles-Parilla asked Alexander Bonilla for a ride to Home Depot. Mr. Bonilla drove Mr. Robles-Parilla to the store and waited in the car. Mr. Robles-Parilla went into the store, took merchandise, and left without paying. An observant loss-prevention associate recognized Mr. Robles-Parilla from past thefts and called the police quickly. By the time Mr. Robles-Parilla was leaving the store, West Allis Police Department squad cars were rolling into the parking lot.

After Mr. Robles-Parilla got into Mr. Bonilla's car with the stolen goods, Mr. Bonilla began to drive away. But when Mr. Rapp waived him down, Mr. Bonilla stopped. Mr. Robles-Parilla threatened to kill Mr. Bonilla unless Mr. Bonilla drove away, so Mr. Bonilla drove away. West Allis Police including Mr. Rapp, Mr. Komorowski, and Mr. Schrandt, gave chase. The chase ended when police were able to puncture Mr. Bonilla's tires.

What happened next was captured on multiple video cameras: Mr. Rapp orders Mr. Bonilla to exit the car. Mr. Bonilla does so with his hands up. Mr. Rapp orders Mr. Bonilla to walk backward toward him. Mr. Bonilla does so. Mr. Rapp then grabs Mr. Bonilla by the back

collar of his shirt, pushes him face first to the road, and stomps on his head with his right boot. Mr. Bonilla's head bounces off the road surface, breaking his glasses and leaving an abrasion on his face. From the time he exited the car through the stomp, Mr. Bonilla was compliant with officer instructions. Mr. Bonilla briefly lost consciousness and has no memory of what happened after the stomp until sometime during his transport to jail.

Mr. Komorowski and Mr. Schrandt were shoulder-to-shoulder with Mr. Rapp watching as Mr. Rapp stomped on Mr. Bonilla's head. Immediately afterward, Mr. Komorowski and Mr. Schrandt place handcuffs on Mr. Bonilla and Mr. Komorowski says "fucking stupid ass thing to do." Despite seeing the stomp, watching Mr. Bonilla's head bounce, and seeing the abrasion near Mr. Bonilla's nose, neither Mr. Komorowski nor Mr. Schrandt summoned an ambulance or provided any medical care to Mr. Bonilla.

Mr. Rapp later drafted a police report claiming that his stomp was really a trip. But the Waukesha Police Department investigated, and that investigation led to a prosecution of Mr. Rapp. He later pled guilty to disorderly conduct for stomping on Mr. Bonilla's head.

Since the stomp, Mr. Bonilla experiences severe headaches, trouble focusing, vision problems, a twitch in his left eye, and other issues. He had none of these symptoms before the stomp. Due to his incarceration, he has been unable to seek treatment or expert diagnosis but these symptoms are consistent with a traumatic brain injury. *See, e.g.*, Symptoms of TBI and concussion, <https://www.cdc.gov/traumaticbraininjury/concussion/symptoms.html>.

To assist your evaluation of this settlement opportunity, I am providing several exhibits demonstrating the material facts:

Exhibit 1 is a clip from Mr. Komorowski's body camera footage showing the stomp at full speed

Exhibit 2 is the same clip slowed to one-tenth speed

Exhibit 3 is the same time frame as the first clip, but shown from Mr. Schrandt's body camera

Exhibit 4 is Waukesha Police Department Sergeant Ian DeKarske's final report summarizing the available footage and witness interviews

Exhibit 5 is the Judgment of Conviction in Rapp's criminal case

In Exhibit 4, you'll see that officers on scene reported to Mr. DeKarske that Mr. Bonilla was compliant when Mr. Rapp stomped on his head. For example, Mr. Schrandt told Mr. DeKarske that he "did not see any resistance from the suspect and did not believe the suspect's behavior would have required them to take some drastic measures and it appeared he was compliant." Ex. 4 at 14.

III. The Legal Claims

Mr. Bonilla is currently contemplating three legal claims:

First, Mr. Bonilla will allege under 42 U.S.C. § 1983 that Mr. Rapp used excessive force in violation of the Fourth Amendment when Mr. Rapp stomped on Mr. Bonilla's head.

Second, Mr. Bonilla will allege under 42 U.S.C. § 1983 that Mr. Komorowski and Mr. Schrandt unreasonably failed to provide medical care to Mr. Bonilla when, having seen the stomp, they failed to provide or summon any medical care.

Third, Mr. Rapp will allege under Wis. Stat. § 895.46 that the City of West Allis must pay any judgment entered against Mr. Rapp, Mr. Komorowski, or Mr. Schrandt because they were acting within the scope of their employment during Mr. Bonilla's arrest.

If Mr. Rapp is successful on either of his § 1983 claims, he will seek an award of attorneys' fees and costs, including expert expenses, under 42 U.S.C. § 1988.

A. Excessive Force

To prove an excessive force claim against Mr. Rapp, Mr. Bonilla must show that Mr. Rapp's stomp was unreasonable force and that Mr. Rapp acted under color of law. *E.g.*, 42 U.S.C. § 1983; *Graham v. Connor*, 490 U.S. 386 (1989); *see also* Seventh Circuit Pattern Civil Jury Instructions 7.09 (2017 rev.). Because Mr. Rapp was an on-duty police officer arresting Mr. Bonilla, there is no question that he was acting under color of law. *E.g.*, *Estate of Sims ex rel. Sims v. Cnty. of Bureau*, 506 F.3d 509, 515-516 (7th Cir. 2007); *Pickrel v. City of Springfield*, 45 F.3d 1115, 1118 (7th Cir. 1995).

To determine whether force is unreasonable, a jury will consider all the circumstances. Seventh Circuit Pattern Civil Jury Instructions 7.10 (2017 rev.). These include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Under this analysis, "[i]t has long been established that using a significant level of force on a non-resisting or passively resisting individual constitutes excessive force." *Negethon v. Wilkens*, 21-cv-0764-bhl, at *8-9 (E.D. Wis. Aug. 4, 2022) (citing *Rambo v. Daley*, 68 F.3d 203, 207 (7th Cir. 1995)). That was the situation with Mr. Rapp. As multiple officers said and the video shows, Bonilla was not resisting when Mr. Rapp stomped on his head. The stomp was, therefore, excessive force. The video makes this a simple case, and one that Mr. Bonilla may be able to win on summary judgment. *See, e.g.*, *Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513 (7th Cir. 2012) (reversing denial of Rule 50 motion to non-resisting plaintiff in excessive force case).

B. Denial of Medical Care

"[A]n officer violates the [Fourth Amendment's] prohibition on unreasonable seizures when, in the course of making an otherwise lawful arrest, he does not respond reasonably to an

arrestee's medical needs." *Florek v. Vill. of Mundelein*, 649 F.3d 594, 598 (7th Cir. 2011). Four factors bear on this type of claim:

- (1) The officer's "notice of the arrestee's medical need ... whether by word ... or through observation of the arrestee's physical symptoms";
- (2) "the seriousness of the medical need";
- (3) "the scope of the requested treatment," which is balanced against the seriousness of the medical need; and
- (4) police interests, a factor which "is wide-ranging in scope and can include administrative, penological, and investigatory concerns."

Id. (citing *Williams v. Rodriguez*, 509 F.3d 392, 402 (7th Cir. 2007)). Each of these four factors suggests that Mr. Komorowski and Mr. Schrandt violated Mr. Rapp's rights.

Both officers had notice of Mr. Bonilla's medical need because they saw Mr. Rapp stomp on Mr. Bonilla's head, saw Mr. Bonilla's head bounce off the road, saw Mr. Bonilla's glasses break, and saw the abrasion on his face. Head trauma is serious. It would have been easy to summon an ambulance for Mr. Bonilla. And there was no police interest in refusing to do so. Doing nothing was therefore unreasonable under the circumstances.

That Mr. Komorowski and Mr. Schrandt asked Mr. Bonilla if he was injured changes nothing. They had just witnessed Mr. Bonilla sustain a head injury; he obviously needed to get checked out, no matter what he said about his condition. A reasonable jury may one day infer that the reason the officers did not summon medical care was because, if they had, they would have had to tell the first responders about Mr. Rapp's misconduct.

C. Indemnification

Under Wisconsin law, the City of West Allis is legally obligated to pay any judgment entered against Mr. Rapp, Mr. Komorowski, or Mr. Schrandt so long as the judgment arises from "acts committed while carrying out duties" as officers and "within the scope of employment." Wis. Stat. § 895.46; *Javier v. City of Milwaukee*, 670 F.3d 823 (7th Cir. 2012) (explaining statute). Both conditions are satisfied here. All the officers were in uniform, on duty, and did what they did as police officers arresting Mr. Bonilla.

That Mr. Rapp's stomp was so far outside the realm of what constitutes proper conduct for a police officer does not spare West Allis its obligation to pay. Extreme misconduct can still be within the scope of employment for a police officer under Wisconsin law. For example, *Graham v. Sauk Prairie Police Commission*, 915 F.2d 1085 (7th Cir. 1990), affirmed a grant of summary judgment under this indemnification against the employer of a police officer who shot a handcuffed man twice in the head. In this case, as in that one, the officer used significant force against a passive arrestee. There, as here, Wisconsin law will require the employer to pay.

D. Damages

Under 42 U.S.C. § 1983, a plaintiff may recover compensatory, nominal, and punitive damages. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986); *Smith v. Wade*, 461 U.S. 30, 56 (1983). To obtain punitive damages, a plaintiff need only show that the defendant acted with reckless disregard of the plaintiff's rights. *Id.* If he needed to go to trial today, Mr. Bonilla would ask a jury for:

- \$500,000 in compensatory damages for the pain and fear he suffered when Mr. Rapp stomped on his head;
- \$1,500,000 in compensatory damages for the headaches, eye problems, lack of focus, and other symptoms caused by Mr. Rapp stomping on his head that began shortly after, continue today, and will likely continue for years;
- \$100,000 in compensatory damages for the pain and fear he suffered on the scene of his arrest after the stomp that could have been avoided had Mr. Komorowski or Mr. Schrandt summoned medical aid; and
- \$2,000,000 in punitive damages against Mr. Rapp for his egregious conduct.

Because his incarceration limits his access to medical care, Mr. Bonilla has not been able to fully investigate his damages case. Absent a settlement, he will do so when he is released later this year. This will involve medical assessment and imaging to ascertain the nature and extent of any brain injury and prove that his current symptoms stem from Mr. Rapp's abuse. This investigation may lead to a substantial increase in Mr. Bonilla's valuation of his claim.

E. Fees and Costs

Under 42 U.S.C. 1988(b), "a prevailing party" in an action under § 1983 may recover "a reasonable attorneys' fee." This includes "expert fees." *Id.* § 1988(c). To date, Bonilla has incurred just over \$3,500 in attorneys' fees and minimal costs. If the case proceeds, these numbers will escalate quickly, especially "expert fees." Mr. Bonilla plans to investigate and, if appropriate, present a damages case based on Mr. Rapp causing him a traumatic brain injury. That is an expert-intensive—and therefore expensive—proposition.

You should know that, although the statute says that a prevailing party can recover attorneys' fees, defendants need to do more than prevail. While a plaintiff need only prevail to obtain attorneys' fees, a prevailing defendant must prevail and then show that the plaintiff brought her action in bad faith or that it was frivolous. *E.g., Leffler v. Meer*, 936 F.2d 981, 986 (7th Cir. 1991). Given the video and Mr. Rapp's conviction, that will not happen here.

F. Qualified Immunity

Qualified immunity is not going to help Mr. Rapp, Mr. Komorowski, or Mr. Schrandt.

To get around qualified immunity, Mr. Bonilla need only prove that you violated his constitutional rights and that those violations were clearly established by the time they occurred or were otherwise obvious. *Taylor v. Riojas*, 141 S. Ct. 52 (2020); *Groh v. Ramirez*, 540 U.S. 551 (2004); *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). The paragraphs above explain why your conduct violated Mr. Bonilla's rights. As to Mr. Rapp's excessive force, it is both obvious and "it was clearly established in November 2005 that officers could not use such a significant level of force on a nonresisting or passively resisting individual." *Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513, 529 (7th Cir. 2012) (citing *Rambo v. Daley*, 68 F.3d 203, 207 7th Cir. 1995)). As to Mr. Komorowski and Mr. Schrandt it is obvious that officers cannot do nothing after seeing excessive force applied to an arrestee's head. *Florek*, 649 F.3d at 598.

Qualified immunity is also illegitimate and likely to be overturned in the near future. Recent scholarship has undercut the foundation the Supreme Court relied on to create qualified immunity. See Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 CAL. L. REV. 201 (2023). When the Supreme Court created the doctrine, it reasoned that, had the Congress that passed § 1983 wished to do away with the common law immunity doctrines then available to state officials, it would have said so explicitly in the text of the statute. Because Congress hadn't explicitly negated background law in § 1983, the Supreme Court reasoned, those background principles still applied. But, it turns out, Congress did negate background law. The as-passed version of § 1983 contains a clause explicitly negating background immunity. It made state actors liable for constitutional violations "notwithstanding" "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary . . ." Then, by simple accident, this notwithstanding clause was omitted when the law was codified. The Supreme Court based its qualified-immunity decision on the mistaken, codified version. The notwithstanding clause should have the effect Congress clearly intended and qualified immunity should fall. Courts across the country are now recognizing the force of this argument. See, e.g., *Rogers v. Jarrett*, No. 21-20200 (5th Cir. Mar. 30, 2023) (Willett, J., dissenting). Qualified immunity is not going to be around much longer.

III. The Benefits of Settling Before Litigation

I wish to highlight two potential benefits to you of settling before litigation.

First, this case is likely to get more expensive to settle rather than less. Your lawyers may suggest to you that the amount of money we ask for will never go up. That would be wrong. In this case it will go up for two reasons. The first is that in a 42 U.S.C. § 1983 case like this Mr. Bonilla can ask the court to make you pay his attorneys' fees and costs under 42 U.S.C. § 1988. The longer this case goes, the higher those fees are likely to be. Also, because Mr. Bonilla may suffer from a brain injury, there is likely to be a significant amount spent on expert witnesses to confirm the existence of a brain injury and explain its effects to the jury. Under § 1988, you can be made to pay those expert costs.

Second, you are not going to get this case thrown out before trial. The videos show what they show. Your insurer or lawyer may try to convince you that this case is winnable on a motion for summary judgment. That kind of motion asks the judge to look at the evidence and rule that there is no reason to have a trial because no reasonable jury could find for the plaintiff. Summary judgment is rare in cases of obvious misconduct like this, especially with video.

IV. Mr. Bonilla's Terms

Mr. Bonilla has authorized me to offer you the opportunity to settle on these terms:

- You or your insurers will pay to Mr. Bonilla \$750,000
- Mr. Rapp will agree to never again seek employment as a law enforcement officer
- All settling parties will mutually release all claims against each other from the beginning of time to the present

For clarity's sake, for these terms, "you" means every person or entity to whom this letter is addressed. This settlement opportunity expires on June 9, 2023 at 5:00 p.m. CST. Mr. Durr will not file a lawsuit until that time expires or you decline this settlement opportunity.

V. Conclusion

We hope to hear from you soon and that you take this opportunity to resolve this matter before litigation.

Sincerely yours,



Tom Kayes
Attorney

Enclosures

cc: File #11220494