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November 23, 2015

**Via email: [tpatel@irvingisd.net](mailto:tpatel@irvingisd.net)**

**Via Facsimile (972) 215-5296**

Tina R. Patel

Chief Legal Counsel, Irving ISD

P.O. Box 152637

Irving, Texas 75015-2637

Re: Notice of Claims and Demand regarding the unlawful detention, interrogation, arrest, and public mistreatment of Ahmed Mohamed by administrators and teachers of the Irving ISD

Dear Ms. Patel:

Our firm has been retained by Mohamed Elhassan Mohamed to represent his son, Ahmed Mohamed. As you know, until a short time ago, Ahmed was a student at MacArthur High School in the Irving ISD. I am writing to provide Irving ISD with notice regarding the events of September 14, 2015, involving Ahmed, in which several Irving ISD personnel – among many others – deliberately disregarded and violated Ahmed’s rights under 42 U.S.C. §1983, Title VI of the Civil Rights Act of 1964, the Texas Juvenile Justice Code, Irving ISD’s policies and procedures, and Texas tort law.

I am relatively new to this engagement, so please do not take the list of rights violations in this letter as exhaustive of the possible causes of action which may attach on these facts. You should take the notice herein as notice of our intent to pursue full vindication of all of Ahmed’s rights in relation to the events at issue.

### **Statutory Notices**

Chapter 101 of the Texas Civil Practice & Remedies Code (“CPRC”) – the Tort Claims Act – requires that certain notices issue in relation to some of these claims. Our primary position on this matter is that the Irving ISD has actual of Ahmed’s injuries and their causes, and that additional, formal notice is unnecessary based on CPRC §101.101(c). Furthermore, nothing in this letter should be construed as an election of remedies under the Tort Claims Act. Internal email communications produced by the City of Irving demonstrate that the Irving ISD has actual notice of Ahmed’s claims and damages.

In an abundance of caution, however, please accept this as Notice under CPRC §101.101(a) [and Irving City Charter ART. III §8] of the injuries and damages sustained by Ahmed as a result of the violations of his rights by Irving ISD and its employees, acting in concert and participation with the City of Irving and its employees. Further, these notice requirements relate only to Irving ISD as a “governmental unit.” No such notice is required with respect to the individuals involved, who also will be defendants if resolution is not reached.

## **The Incident**

Ahmed Mohamed is a fourteen year-old American citizen of Sudanese origin – just like his parents. It is well-known by Ahmed’s fellow students and his teachers that he is an electronics enthusiast. When he was at Sam Houston Middle School, Ahmed participated quite successfully in a robotics team competition. In his room at his Irving home, Ahmed has tons of gadgets and the soldering and assembly tools necessary to work with them.

As a freshman who was new to MacArthur High School, Ahmed was looking for a way to demonstrate his technical abilities to some of his new teachers. The Friday before the incident, he told some of his teachers – including both Mr. Kelton Lemons (whom Ahmed calls his “engineering teacher”) and Ms. Erin West (his English teacher) – that he was going to build something over the weekend to show them and bring it for them to see on Monday. This very much comports with Ahmed’s personality. He loves what we used to call “show and tell” – bringing a unique or interesting item to school and showing it to his friends and teachers as a conversation piece.

Sunday night, Ahmed used some spare parts and scrap pieces he had around the house to assemble a digital clock. He routed the circuitry to run through a motherboard and enclosed his creative contraption in a little locking pencil case with the dimensions of approximately 8.5 x 5.75 x 2.5 inches. These Vaultz brand lockable cases are advertised by Target, Walgreen’s, CVS and other major retailers as “school supplies.” They come in numerous decorative colors and themes. Some are pink with big hearts on the front of them; some are “tie dye” pattern with a peace sign. Ahmed’s had a tiger hologram on the front of it.

## **September 14, 2015**

On Monday, September 14, 2015, Ahmed took the clock to school. Early in the school day, Ahmed showed the clock to Mr. Lemons. When Mr. Lemons saw the clock, he told Ahmed, “That’s really nice,” but Mr. Lemons also advised Ahmed to keep the clock in his backpack for the remainder of the school day. During Ahmed’s English class in the late morning, the alarm clock accidentally sounded when Ahmed plugged it in to show it to a friend. Ms. West noticed the alarm, but did not identify where it came from. Ahmed turned the alarm off without incident.

As Ahmed was leaving at the end of class – after most of the other students were already gone – Ahmed reminded Ms. West that he said he was going to bring her something and asked her if she wanted to see the clock he had built. Ms. West responded that she did want to see it. When Ms. West saw the clock, she told Ahmed it looked like a bomb, immediately confiscated

the clock and reported Ahmed to the school principal's office. During the exchange with Ms. West, Ahmed started what would become his refrain for the day: "It's an alarm clock. It's only an alarm clock." The basis for Ms. West's actions is unclear. She certainly did not treat the clock as though it were dangerous. Ms. West initially placed the clock on her desk.

Right around 2:00 p.m., during Ahmed's AVID class, Principal Daniel Cummings and an Irving police officer appeared and escorted Ahmed out of his class. They took Ahmed into another room where four more Irving police officers and Assistant Principal Patrick Smith were awaiting Ahmed's arrival. Immediately upon Ahmed entering the interrogation room, Irving Police Officer Charles Taylor commented, "Yep. That's who I thought it was." Ahmed found this to be quite unnerving because he had never had any prior contact with Officer Taylor.

The on-campus detention and 7-on-1 interrogation went on for approximately one hour and 25 minutes. Ahmed asked nearly immediately if he could contact his parents – which as you know, is his right under the Texas Juvenile Justice Code. His request was refused: "No. You're being interrogated, so you cannot talk to your parents." No one involved treated the clock as a potential explosive or incendiary device. The City of Irving's own documents support that the on-campus detention and interrogation lasted so long because the police were walking the decision about whether to arrest Ahmed up the chain of command. They were stretching the interrogation as long as possible, so they could find someone willing to take responsibility for arresting Ahmed. The decision to arrest apparently was made by the Assistant Chief.

Throughout the on-campus detention and interrogation – which was recorded on the iPhone of the one female officer present during the interrogation – Ahmed constantly was pressured to sign a written statement admitting that he intended to bring a "hoax bomb" to school. As if the pressure of having five uniformed Irving police officers were not enough, Mr. Cummings was threatening that if Ahmed did not sign the confession, he would be expelled. That is a huge threat for a kid like Ahmed. He rated MIT's interest in having him as a student as more exciting than meeting the President of the United States.

The detention, interrogation, search of Ahmed's belongings, and the arrest all occurred despite there being no reasonable suspicion to believe that Ahmed had committed or was about to commit any crime. Through the entire ordeal, Ahmed steadfastly maintained that the only reason he brought the clock to school was to show it off to some of his teachers. City and school personnel commented later to the press that Ahmed was not forthcoming during the inquisition. It seems not to have dawned on any of them that he was scared to death.

No one who saw Ahmed's clock that day thought it was a bomb. Ahmed did nothing to support the inference that he intended to cause alarm, or any reaction at all (other than his teachers' approval), in anyone. The police quickly determined that the clock was not dangerous. One easily could infer that the police kept escalating the situation because they were frustrated that they failed to coerce Ahmed into signing a false confession. Undeterred, the police arrested Ahmed anyway. When they took him out of school in handcuffs, Ahmed remembers the look of bewilderment on the face of his school counselor, who Ahmed said "knows I'm a good boy."

After Ahmed was removed from school in handcuffs, the Irving Police took him to a juvenile detention center where he was fingerprinted, photographed, and illegally questioned – again – without his parents present. This narrative is sufficient to frame most of Ahmed’s claims against the school and school officials. We will take up the rest of Ahmed’s treatment that day with the City of Irving. Unfortunately, several Irving ISD employees’ subsequent actions made the impact on Ahmed and his family even worse.

### **The Suspension**

Shortly after 7:00 p.m. that night, Ahmed’s dad received a call from a “blocked” number from Assistant Principal Patrick Smith. With numerous kids who had been educated in Irving ISD, Mr. Mohamed was puzzled by the fact that the call did not come from the familiar Irving ISD area code and exchange: (972) 600. Mr. Smith stated that the decision had been made to suspend Ahmed from school for three days. Mr. Mohamed rightfully stated that he did not have any verification that Mr. Smith was who he claimed to be, and that if he did not receive written notice from a school official of the suspension, Ahmed would be attending school the next day.

Only after being prompted by Mr. Mohamed, did Mr. Smith send an email saying that Ahmed was being given off-campus suspension. The Student Code of Conduct provision to which Mr. Smith referred as the basis for the suspension was the “Possession of Prohibited Items” provision on page 6. A review of that section of the Code of Conduct reveals that Ahmed was not in possession of any of the “prohibited items” listed in that rule. Ahmed was suspended for nothing. The school – chiefly Mr. Cummings and Mr. Smith – needed to justify the circus they created by disregarding Ahmed’s rights.

### **Principal Cummings’ and Leslie Weaver’s Statements**

Internal communications make clear that the City of Irving and Irving ISD were upset that news of their mistreatment of Ahmed received so much well-deserved scrutiny. On the morning of September 16, 2015, Mr. Cummings came over the MacArthur High School intercom system, and in relation to the Incident, said the following:

Right now the media has only one side of the story. Understand that the school district cannot release our statements or facts without written consent from the parents. And we have a very different version of what happened than what you are seeing from the media. Today the district will ask for written permission to release the facts.

By this statement, Mr. Cummings – the highest ranking official on the MacArthur campus – directly defamed both Ahmed and his family by calling them liars. There is no legitimate reason to even make a statement to the student body on these issues. Doing so violated Ahmed’s confidentiality rights. There is no relevant “other side of the story.” What is described above happened, and there is no excusing it. Mr. Cummings, in fact, tried to coerce a confession out of Ahmed, and he enlisted the help of the Irving Police in wrongfully detaining him, wrongfully interrogating him, and wrongfully searching him and his belongings. Mr. Cummings knows the

proper procedures and safeguards that Texas law provide for students in this situation. He consciously decided to violate them anyway.

Irving ISD spokeswoman Leslie Weaver repeatedly gave the media a false impression of events. At different times she referred to the pencil case as a “briefcase” and a “suitcase.” This fed the false impression – bolstered by the first picture of the clock the Irving PD released – that the clock is many times larger than it is. Ms. Weaver also repeatedly called the reporting on the story “unbalanced.” This, again, is tantamount to calling Ahmed and his family liars. They are not.

Ms. Weaver also implied to the press that the reason for Ahmed’s suspension was the Irving ISD’s “zero tolerance” policy. In order for the Texas zero tolerance standard to apply, the incident must have involved (1) a weapon, (2) drugs or alcohol, or (3) threats of harm to someone. There was no weapon. There were no drugs and alcohol involved. And the only person threatened that day was Ahmed. Ms. Weaver stated about the incident that the District was “doing everything with an abundance of caution to protect all of our students in Irving.” That day, there was one student whose safety was of no concern at all: Ahmed’s.

### **Violations of Irving ISD Policies**

Irving ISD and its employees knowingly disregarded the district’s written policies and procedures by detaining, interrogating, and attempting to coerce a confession from Ahmed. Irving ISD’s own policy prohibits discrimination, including harassment, of students on the basis of race, national origin, and religion. Prohibited harassment includes, but is not limited to, verbal and nonverbal conduct that “affects a student’s ability to participate in or benefit from an education program,” or “otherwise adversely affects the student’s educational opportunities.”

During the Incident, Mr. Cummings and Mr. Smith intentionally harassed and singled out Ahmed for undue punishment based on his race, national origin, and religion. During the on-campus detention and interrogation, Ahmed was verbally harassed. Mr. Cummings brought to bear every measure of pressure he could find to coerce Ahmed into providing a false confession to Class A misdemeanor. Apparently frustrated that he could not extract a criminal confession – even with five Irving police officers helping him – Mr. Cummings covered himself by suspending Ahmed. Mr. Cummings stayed by his decision even after Irving Chief of Police Larry Boyd called the entire ordeal a “naive accident.” Between the suspension and publicly calling Ahmed and his family liars, Mr. Cummings and Ms. Weaver rendered it impossible for Ahmed to pursue further education opportunities in the manner in which he was accustomed.

Mr. Cummings and Mr. Smith flagrantly violated Irving ISD’s policies on parental notification. When a law enforcement officer interrogates a student at school, Irving ISD policy requires the student’s parents to be notified unless an officer raises a valid objection to the notification. There was no valid objection because by the time of the interrogation, it was clear there was no potential harm to anyone at the school – except, of course, Ahmed. Just as he requested, and as required by law, Ahmed’s parents should have received timely notification of the incident.

## **42 U.S.C. § 1983**

Ahmed also has claims against the Irving ISD and its employees under 42 U.S.C. § 1983, which permits claims against individuals who “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States . . . deprivation of any rights, privileges, or immunities secured by the Constitution.” Section 1983 has been interpreted to allow suits for suits against police officers and other state officials (such as school personnel) acting in their official capacities. *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358 (1991); *Gillette v. Delmore*, 979 F.2d 1342 (9th Cir. 1992).

Liability also may be imposed on a school district if a policy or custom results in a deprivation of a student’s rights or places a student in danger. *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988). Irving ISD officials have claimed repeatedly that in treating Ahmed as they did, they were following Irving ISD policy. This means that Irving ISD as a governmental unit is equally responsible for Ahmed’s damages.

As American citizens, all of us – even the ones with “Muslim-sounding” names like Ahmed Mohamed – are entitled to have public officials with whom we come in contact to respect our rights. Ahmed’s rights were clearly violated. He was detained and interrogated by high-ranking employees of Irving ISD and the Irving Police Department, pressured to falsely confess to a crime he did not commit (and that no responsible person believed he had committed), and then interrogated again by the Irving Police Department at the juvenile detention center, all without his parents being notified or present.

## **Title VI**

Ahmed also has claims under Title VI of the 1964 Civil Rights Act. 42 U.S.C. § 2000D states that , “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” A deciding factor in private Title VI suits is whether "a challenged action was motivated by an intent to discriminate." *Elston v. Talladega County Board of Education*, 997 F.2d at 1406. One of the factors used to determine if discrimination intent exists is any departure, substantive or procedural from the normal decision making process. *Village of Arlington Heights v. Metropolitan Housing Development Corp*, 429 U.S. 252 (1977).

Ahmed clearly was singled out because of his race, national origin, and religion. Law enforcement and school officials immediately determined that the clock was harmless. The only reason for the overreaction was that the responsible adults involved irrationally assumed that Ahmed was dangerous because of his race, national origin, and religion. Police and school officials tried for an hour and a half to get Ahmed to sign a false confession, and then arrested him on baseless charges they had already ruled out. This shows their intent to discriminate. Let’s face it; if Ahmed’s clock were “Jennifer’s clock,” and if the pencil case were ruby red bedazzled with a clear rhinestone skull and crossbones on the cover, this would never have happened.

## **The Aftermath**

The Irving ISD and City of Irving Police Officers with whom Ahmed came in contact that day were tasked with the same responsibilities toward Ahmed as they were for all the other students. Ahmed never threatened anyone, never caused harm to anyone, and never intended to. The only one who was hurt that day was Ahmed, and the damages he suffered were not because of oversight or incompetence. The school officials and police knew what they needed to do to protect Ahmed's rights. They just decided not to. Their after-the-fact attempts to couch their deliberate disregard of Ahmed's rights as being motivated by concerns for the safety of the other students has only added to the harm Ahmed and his family have suffered.

Some aspects of the damages Ahmed has suffered as a result of this are quite difficult to quantify with certainty, though they are clearly severe. It is difficult to say how much monetary damage is caused by any of the following:

- Ahmed having his 14-year-old face superimposed onto a famous image of Osama bin Laden – beard included – appearing below a blogger's rant against the "parents of this little terrorist in training;"
- Ahmed being turned into Glenn Beck's latest object lesson in how "this is really kind of the final throes of weakening us to the point to where we don't ask any questions, to be ready for final confrontation, total confrontation," while Ahmed's hometown mayor, Beth Van Duyne, listens and nods, putting her imprimatur on Beck's delusional conspiracy theories;
- Ahmed being portrayed as the "Clock Boy" on a Halloween costume website;
- having Ahmed's name, and particularly his likeness, forever associated with arguably the most contentious and divisive socio-political issue of our time;
- Ahmed feeling the burden of responsibility for his siblings being harassed and scared to go to school, for his father's business suffering greatly from Mr. Mohamed's absence, for one of his sisters being fired from her job, and for neither of his older sisters being able to find schools in Qatar; and
- the loss of security that goes with having Ahmed's Irving home address tweeted out, and being labeled on Beck's show as "pawn" of the architects of a "global jihad."

Other damages are more conducive to quantification. Ahmed and his siblings had the right to a free and adequate public education, just like every other American child does. Ahmed first attended Irving ISD in pre-K, and he and all of his siblings had gone to school nearly exclusively in the Irving ISD. When, two days after the incident, Mr. Cummings went on to the

MacArthur High School intercom system and called Ahmed and his family liars, he took that opportunity away from Ahmed and all of his siblings.

Ahmed also has suffered severe psychological trauma during his involuntarily separation from his grandmother and extended family. This trauma has since been amplified due to the global media attention this incident has gathered. Ahmed and his siblings know that his life has inalterably changed. Ahmed will now forever be associated with bomb making wholly without basis. Many believe that Ahmed and his family are terrorists, similar to those responsible for the September 11th attacks on the Twin Towers. This characterization brings both short- and long-term challenges. In the short-term Ahmed fears for his physical safety after receiving many threatening emails.

In the long-term, we adults should know that – despite Ahmed’s efforts to be strong, and to prove that he is “a good boy” – he will continue for the rest of his days to experience pain and suffering. A large segment of potential employers will steer clear of Ahmed to avoid controversy, despite his many obvious talents. There is no other way to put it: ***Ahmed’s reputation in the global community is permanently scarred.*** One also would anticipate that Ahmed, quite reasonably, will have a lifelong fear of the law enforcement and educational establishments that have let him down so terribly.

Consider for a moment the true reason that Ahmed brought the clock to school. He was trying to impress his teachers. Anyone who has been around teenage boys knows that they are looking for leaders and mentors. They yearn to find acceptance in the results of their labors, whether it is in sports, the arts, or something technical. Ahmed was reaching out that day. Irving ISD unceremoniously slapped him away, then sought to cover its mistakes with a media campaign that further alienated the child at the center of this maelstrom. What must that do to a young man?

Finally, Ahmed and his family lost their home. The address that was tweeted out for the entire world to see was the only home Ahmed and his five siblings had ever known. This family left their home in Irving because of a very rational fear for their physical safety. On an elemental level, the Mohamed family’s life as any of them had known it evaporated that day at the hands of the Irving ISD and City of Irving. While many people online were gleeful to see them leaving their home in Irving, Texas, U.S.A., Ahmed and his family miss Texas. They miss their friends. They miss their grandmother. They miss their extended family. They miss their neighbors, many of whom cried hugged them as the Mohamed’s left their home.

In ways that are virtually impossible to comprehend, this thing turned the Mohamed family’s lives upside down. But even as the scale of the eruption became clear, rather than trying to calm the waters, the Irving ISD and City of Irving launched a public relations campaign against Ahmed. They stoked the flames. They tried to push responsibility off on the victim – Ahmed. They have even implied publicly that what has come of this has been good for Ahmed, as though the resilience of this fine boy and his fine family somehow excuses what they did. It does not, for there is no excuse. As Justice Clarence Thomas once said: “This is a high-tech lynching.”

## **Demand**

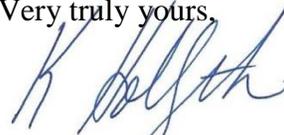
As a result of the above-described violations of Ahmed's constitutional, statutory, and common law rights, and the damages flowing from those violations, we demand the following:

1. Five million dollars as compensation for the damages Ahmed suffered at the hands of the Irving ISD and its employees.<sup>1</sup>
2. A written apology from Irving ISD acknowledging that Ahmed Mohamed never intended to threaten anyone, and that his detention, interrogation, and arrest were wrongful and were made at a point in time when there was no reasonable suspicion to believe that Ahmed had committed a crime or was about to commit any crime.

If you fail to comply with the above demands within sixty days from the date of this letter, you should expect that we will file a civil action addressing the causes of action and events described in this letter.

As indicated, our hope is that before litigation there will be some discussion between us regarding the possibility of settling before filing suit. I look forward to hearing from you.

Very truly yours,



Kelly D. Hollingsworth

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<sup>1</sup> This is not all of the damages Ahmed has sustained, and that will be reflected in our demand to the City of Irving. This reflects a willingness on the part of my client to seek compromise with the Irving ISD.