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November 23, 2015

Via email: CAO@cityofirving.com

Via facsimile (972) 721-2750

Charles R. Anderson
City Attorney – Irving, Texas
Irving City Hall
825 Irving Blvd.
Irving, Texas 75060

Re: Notice of Claims and Demand regarding the detention, interrogation, arrest, and public mistreatment of Ahmed Mohamed by Mayor Beth Van Duyne, Chief of Police Larry Boyd, and numerous other City of Irving officials

Dear Mr. Anderson:

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 and a resident of the City of Irving. For personal security reasons, Ahmed and family are in Doha, Qatar. However, when they feel safe again, all of them want more than anything to come home, to Irving, Texas.

The primary purpose of this letter is to provide the City of Irving with formal notice regarding the events of September 14, 2015, involving Ahmed, in which several Irving Police personnel, acting in league with numerous 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.

Our firm was only retained by this family a short time ago. Please do not take the list of rights violations in this letter as exhaustive of the possible causes of action which may be relevant on these facts. Please accept this notice as an expression of our intent to pursue all litigation necessary to achieve a full vindication of all of Ahmed's and his family's rights.

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 City of Irving has actual notice of Ahmed's injuries, and that under CPRC §101.101(c), additional, formal notice is unnecessary. City of Irving internal emails demonstrate that the City of Irving has actual notice of the claims and that Ahmed has been damaged by the events at issue. Furthermore, nothing in this letter should be construed as an election of remedies under the Tort Claims Act.

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 Mohamed and his family as a result of the violations of Ahmed's rights by the City of Irving and its employees, acting in concert and participation with the Irving ISD 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. This is notice of the claims against the individuals, as well.

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, Ahmed 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. Ahmed did this sort of things many times at Sam Houston.

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 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 – none of whom saw fit to Mirandize Ahmed – 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, and that despite having never been read his rights, he in fact had a right not to talk.

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. Irving police quickly determined that the clock was not dangerous. It appears that the police kept escalating the situation because they were frustrated that they failed to coerce Ahmed into signing a false confession. With no evidence whatsoever, Irving Police arrested Ahmed anyway. He was not Mirandized at this point either. After he was senselessly arm barred, four officers escorted Ahmed out of school in handcuffs. Police Chief Larry Boyd later claimed that Ahmed was handcuffed, "for his safety and for the safety of the officers." One must ask, whose safety was the arm bar for? Ahmed remembers the look of bewilderment on the face of his school counselor, who Ahmed said "knows I'm a good boy."

Irving Police took him to a detention center where he was fingerprinted, photographed, and illegally questioned – again – without his parents present. In violation of the Texas Juvenile Justice Code, Police officials left Ahmed alone while he was in custody. When Police finally contacted Ahmed's father, Mr. Mohamed was at the police station within moments. The Irving Police were openly hostile to Ahmed's family when they arrived at the station.

Understandably, Mr. Mohamed was furious at the treatment of his son – and at the rancid, openly discriminatory intent that motivated it. Irving Police did not, however, want to hear any of it from Mr. Mohamed. When he asked Lieutenant John Mitchell to speak to his boss, Lt. Mitchell responded brusquely, and inaccurately, that he was the boss. When Mr. Mohamed started talking about the enormous power Mitchell had and how he had abused that power against a young boy, Mitchell wanted to hear nothing of it. Instead, Lt. Mitchell told Mr. Mohamed to take his son and leave, or they would arrest Mr. Mohamed, too. Start to finish, the Irving Police bullied Ahmed Mohamed, and when Ahmed's dad tried to voice his concerns, he got threatened, too.

United States Supreme Court Justice Louis Brandeis once noted that, "Sunlight is said to be the best of disinfectants." Intuitively understanding this, Ahmed's sister took a picture of Ahmed in handcuffs and tweeted it out. Before long, and to the great dismay of the Irving authorities who caused this mess, the sunlight of global scrutiny shone bright on MacArthur High School and the City of Irving. Naturally, it was not long before people remembered the notoriety Mayor Van Duyn had gained for herself earlier this year by stoking the flames of Islamophobia.

The City Scrambles to Save Face (and Kneecap a Kid in the Media)

Knowing they could not really defend what they had done, City of Irving and Irving ISD officials chose another course: trash Ahmed. This was going to be tricky in light of Ahmed's well-recognized right to privacy in his educational information. Thus, they devised a plan to do an end run around Ahmed's privacy and achieve their purposes anyway:

- (1) Publicly pressure Ahmed's parents to release his educational information;

- (2) Claim repeatedly that the media is not providing balanced coverage or the story;
- (3) Assert that the whole thing was a misunderstanding that could have been avoided if Ahmed had not exercised – to the best of his abilities – of his 5th Amendment right to remain silent in the face of police and school interrogation;
- (4) Claim the action was justified in today's climate, and distort the size of the clock; and
- (5) Push the false narrative that the school's hands were tied by Texas' "zero tolerance" law on school discipline.

Coordinating with Principal Cummings and others at Irving ISD, Irving Police Chief Larry Boyd and Mayor Beth Van Duyne launched their plan. Items one and two were handled primarily by the school district. Items three and five were shared by the city and the district, and item four was taken care of primarily by the city.

Mayor Beth Van Duyne

Mayor Beth Van Duyne went on Glenn Beck's television show, helped with some of the set up, then sat back and watched – and apparently approved – as Beck and his other guest at the time turned Ahmed's story into what they called "an influence operation" that was undertaken – probably by Ahmed's father (and maybe his sister) – in furtherance of a coming "civilization jihad." Beck later opined that this was the "Islamists" conspiracy to soften us up, so that we could later be attacked from inside. When the guest sitting less than an arm's length from Mayor Van Duyne called the pencil box a "briefcase," she did not say a word. She just nodded.

Mayor Van Duyne also characterized Ahmed as "passive aggressive" and "less than forthcoming" because he exercised his constitutional right to remain silent while he was being illegally detained and interrogated by the police. Combined with the "civilization jihad" backdrop established by her friend, Glenn Beck, the Mayor fed a completely false impression about Ahmed and his family.

Van Duyne's appearance with Glenn Beck came well after Irving Police had ruled out any wrongdoing by Ahmed under the "hoax bomb" law. Chief Boyd called the whole thing a "naive mistake." The official investigation had already concluded that Ahmed did not intend to cause any alarm or reaction with his clock. Nonetheless, during the Beck interview, Mayor Van Duyne called the clock a "hoax bomb." By doing so, Van Duyne defamed Ahmed, because she asserted (1) that he committed a crime that had already been ruled out, and (2) she implicitly claimed that Ahmed did in fact intend to cause alarm. Without Ahmed's intent, there could be no hoax bomb.

Finally, along with Irving ISD personnel, Van Duyne said that the reason Ahmed was suspended from school was because of Irving ISD's "zero tolerance" policy. Mayor Van Duyne

did not explain where she got Ahmed's private educational information. Nor did she assert any justification for her choice to release it to an audience that is paranoid about the "final confrontation" between "Islamists" and "Americans." Not only was this dangerous "baiting" that destroyed any chance the Mohamed family ever had of being truly safe and secure in the United States, but it was also defamatory. 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. Mayor Beth Van Duyne lied about Ahmed and his family, and she did it to an audience that is on the absolute fringe of American life. Van Duyne irreparably endangered the safety of the Ahmed family.

Police Chief Larry Boyd

Two days after the incident, Chief Boyd went before the media and called the clock a "very suspicious device." He referred the media to a photo of the clock that the police released. The first photo released was cropped in a way that it was impossible to get a perspective on its size. It was, in fact, tiny. It was also open, and taken from an angle that obscured the tiger hologram which would have immediately identified it as pencil case. In the large segment of the media who were anxious to label Ahmed as a budding bomb builder, the pencil case became a "briefcase" or even a "suitcase."

Chief Boyd also claimed that "we live in an age where you can't take things like that to school." Irving Police Department spokesman James McLellan later said that the clock "could reasonably be mistaken as a device if left in a bathroom or under a car." This is an absurd rationalization, designed to head off or blunt what internal communications called, "the highly likely event that we get sued over this arrest." If the clock had been left somewhere that it looked "planted," it would have looked like Ahmed lost his tiger hologram pencil box. But the city's carefully calibrated message fed the misperception that the actions of the police and school toward Ahmed were justified.

Violations of Ahmed's Fourth Amendment Rights

Both on campus and at the station, Irving police knowingly disregarded Ahmed's rights against unreasonable searches and seizures. Ahmed was detained and interrogated when there was no reasonable suspicion to belief that a specific crime had been committed or that he was about to commit any crime. The attempt to coerce from Ahmed a confession to a "hoax bomb" violation, and the later public castigation he received from Irving officials for his refusal to be coerced violated both Ahmed's procedural and substantive due process rights. This is not a case where a few of Ahmed's rights were disregarded. From the time Ahmed was escorted out of class and into the interrogation room, he was treated by ALL of the adults responsible for his safety as though he had not rights at all.

This was a complete breakdown in the City's protection of Ahmed's fundamental constitutional rights. Ahmed should have been allowed to have his parents or an attorney present during his detention and interrogation. He should have been Mirandized before the on-campus interrogation – which he obviously was not free to end – even commenced. If you want to argue

that he was not in custody during the on-campus interrogation, then Ahmed should have been Mirandized when he was cuffed. Ahmed should not have been detained when police knew immediately that there was no threat. The detention should have ended – rather than been prolonged – while police walked the arrest decision up the chain of command. This whole chain of events was an extraordinary rendition in miniature, in which Ahmed was treated as though he had no rights at all, despite his American citizenship.

42 U.S.C. § 1983

Ahmed also has claims against the City 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 attaches to the city itself if the actions of the officers were pursuant to the official policy of the City of Irving. Chief Boyd repeatedly stated that Irving Police acted in accordance with policy. This means that the City of Irving 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. These are real, substantive rights, and their loss damaged Ahmed as a matter of law.

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. Irving Police 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. 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 and city officials involved knew what they needed to do to protect Ahmed's rights. They just decided not to do it. 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. Ahmed endangered no one.

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 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, in coordination with the City, Mr. Cummings went onto 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 false 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 experience pain and suffering as result of this for the rest of his days. 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 and the Irving PD unceremoniously slapped him away, and then sought to cover their 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. They very much appreciate the hospitality they have received in Qatar, but it’s not Texas.

In ways that are virtually impossible to comprehend, this thing turned the Mohamed family’s lives upside down. All semblance of what they knew before has vanished. But even after the scale of the eruption became clear, rather than trying to calm the waters, Irving ISD and the 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. Ten million dollars as compensation for the damages Ahmed suffered at the hands of the City of Irving and its employees.
2. A written apology from Mayor Van Duyn acknowledging that she has never been presented with any evidence that Ahmed was a “pawn” in any “civilization jihad” or that the events here were planned by Ahmed’s family or friends as part of an “influence operation.”
3. A written apology from Police Chief Larry Boyd 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.

If you have any questions concerning these matters, please do not hesitate to contact me.

Very truly yours,



Kelly D. Hollingsworth