

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ABIEYUWA IKHINMWIN	§	
	Plaintiff, §	
v.	§	Cause No. 5:16-cv-00184-OLG-HJB
	§	
FELICIANO RENDON, SERGEANTS	§	
TOBIN and SOLIS, UNKNOWN	§	
OFFICERS, and the CITY OF SAN	§	
ANTONIO.	§	
	Defendants. §	

**AMENDED COMPLAINT**

Plaintiff Abieyuwa Ikhinmwin is suing San Antonio police officer Feliciano Rendon for racially profiling her as a bus stop, arresting her without probable cause, and violently striking her during the arrest. She is suing Sergeants Tobin and Solis and the City of San Antonio for facilitating his wrongdoing.

**STATEMENT OF THE CASE**

1. Abieyuwa Ikhinmwin, who in 2014 was a young San Antonio college student, was targeted by Rendon because she is a black woman. He approached her, interrogated her, and ultimately arrested her but not other similarly-situated individuals at the bus stop who were not black. His actions were an unlawful “selective enforcement” of the law, motivated by racial animus, which violated the Equal Protection Clause.

2. Rendon arrested Ms. Ikhinmwin for “Failure to Identify,” a crime which by definition cannot be a standalone crime, because it can only occur after another otherwise-lawful arrest. Tex. Penal Code 38.02. Ergo, he arrested her without probable cause, in violation of the Fourth Amendment.

3. Rendon used excessive force while arresting Ms. Ikhinmwin, striking her repeatedly about her body. His use of force was not authorized by Texas law, and it was unreasonable under

the circumstances – she was not breaking any laws, posed no danger to him, was not resisting arrest, and posed no risk of escape. Therefore, the force was excessive, in violation of the Fourth Amendment.

#### JURISDICTION AND VENUE

4. The Court has jurisdiction of federal civil rights claims under 28 U.S.C. § 1331.
5. The Court has supplemental jurisdiction over the state law claims in this suit pursuant to 28 U.S.C. § 1367.
6. Rendon's actions, and the events giving rise to the claims, occurred in Bexar County, Texas. Accordingly, this Court is the proper venue pursuant to 28 U.S.C. § 1391.

#### PARTIES

7. Abieyuwa Ikhinmwin is a resident of Travis County.
8. Defendants are the City of San Antonio, San Antonio Police Department (SAPD) officer Feliciano Rendon, Sgt. Martin Tobin, Sgt. Solis, and officers on the scene whose names are unknown at this time.

#### STATEMENT OF FACTS

9. On February 21, 2014, Abieyuwa Ikhinmwin was a college student. Originally a Houstonian, she moved to San Antonio to attend the University of Texas at San Antonio, and was pursuing undergraduate degrees in sociology and criminal justice.
10. Ms. Ikhinmwin was an active and upstanding resident of San Antonio. At the time of the arrest, she had recently completed a college internship with the Bexar County District Attorney's Office and was a substitute teacher at the Barshop Jewish Community Center's Dreben School for the Young.
11. On the afternoon of February 21, she had ridden her bike to the bus stop in the middle of a shopping center parking lot in San Antonio's "North Central" area. She planned to take a bus

ride to the grocery store. There were several other people at the bus stop of various racial and ethnic backgrounds.

12. While she waited, Officer Rendon approached her. He told her to move her bike, and when she briefly demurred, he told her she was under arrest, roughly grabbed both her wrists, and yanked her toward him.

13. Rendon hit Ms. Ikhinmwin repeatedly on her back, arms, and neck, while pulling her by her hair toward his squad car. Rendon slammed her into the side of his SUV more than once. He yanked her arms behind her body, and handcuffed her so tightly that she could feel them cutting into her wrist.

14. Rendon grabbed Ms. Ikhinmwin by the neck and threw her into the back of his SUV. Initially, he only shoved her upper body into the vehicle, and she had difficulty getting upright because she was handcuffed behind her back, which left her legs dangling out the car door. Rendon proceeded to slam the door into her legs, telling her to move, until she was able to wiggle further into the vehicle.

15. As a result of this ordeal, Ms. Ikhinmwin received cuts, bruises, abrasions and contusions. The fear, stress, and trauma inflicted on her also left her with mental and emotional distress.

16. Rendon did not, at any point in these events, tell Ms. Ikhinmwin why she was under arrest. When they arrived at the booking facility, a correctional officer at the booking desk asked Rendon what he had arrested her for. Rendon said he didn't know yet.

17. At the time Ms. Ikhinmwin was released, her only charge was for Failure to Identify, a Class C misdemeanor. Tex. Penal Code 38.02(c)(1). Weeks later when she first appeared at court, she learned two more charges had been added – “Stopping, Standing, or Parking Prohibited in

Certain Places” (Tex. Trans. Code 545.302)<sup>1</sup> and “Obedience Required to Police Officers and to School Crossing Guards” (Tex. Trans. Code 542.501) – both of which are Class C misdemeanors with a maximum fine of \$200. Tex. Trans. Code 542.401.

#### CAUSES OF ACTION

##### A. Equal Protection: Selective Enforcement

18. Even when a police officer has probable cause to arrest a person, he cannot exercise that authority differently for similarly situated people because of their race, ethnicity, or other protected status. Selectively enforcing the law is a violation of the Equal Protection Clause of the Fourteenth Amendment.

19. Ms. Ikhinmwin was not the only person at the bus stop when Rendon approached her. She was just the only black person.

20. Rendon approached Ms. Ikhinmwin, began interrogating her, asked for identification, and ultimately arrested her because she was black, while ignoring similarly-situated individuals at the bus stop who were not black.

##### B. Arrest without probable cause

21. Rendon arrested Ms. Ikhinmwin without articulating a reason. Several hours later he charged her with Failure to Identify. The reason for the delay was that he lacked probable cause at the time he arrested her.

22. Weeks later, he added two traffic misdemeanors, “Stopping, Standing, or Parking Prohibited in Certain Places” and “Obedience Required to Police Officers and to School Crossing Guards.” The charges were delayed because they were a post hoc rationale.

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<sup>1</sup> Plaintiff asserts she was not standing in a protected space, and if she was, she fell within subsection 545.302(d), which says “A person may stop, stand, or park a bicycle on a sidewalk if the bicycle does not impede the normal and reasonable movement of pedestrian or other traffic on the sidewalk.”

23. Ms. Ikhinmwin was waiting at a bus stop with her bike. She was not violating Transportation Code 545.302<sup>2</sup> because she was not in an area governed by the statute; and even if she was, her bike did not impede the movement of pedestrians. Therefore, Rendon did not have probable cause to believe she was committing that Class C misdemeanor.

24. Since Ms. Ikhinmwin was not committing a Class C misdemeanor while she stood quietly at the bus stop, Rendon's order that she move was not a lawful order, so not moving was not a violation of Texas Transportation Code 542.501.<sup>3</sup> Therefore, Rendon did not have probable cause to believe she was committing that Class C misdemeanor.

25. Since Rendon did not and could not have lawfully arrested Ms. Ikhinmwin, it was impossible for her to be guilty of failing to identify herself, because the duty to identify only exists after a person has been lawfully arrested. Tex. Penal Code 38.02. Therefore, Rendon did not have probable cause to believe she committed that Class C misdemeanor.

26. All the charges against Ms. Ikhinmwin were later dismissed without any finding of guilt.

C. Excessive force

27. Rendon arrested Ms. Ikhinmwin for Class C misdemeanors. In doing so, he hit her repeatedly on her back, arms, and neck, while pulling her by her hair; slammed her repeatedly into the side of his SVU; handcuffed her so tightly they cut her wrists; and slammed the car door on her legs several times.

28. The charges against Ms. Ikhinmwin were Class C misdemeanors, the most minor charges possible. Rendon had no reason to believe she posed a threat to public safety, she did not resist, and she made no effort to escape.

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<sup>2</sup> "Stopping, Standing, or Parking Prohibited in Certain Places," Tex. Transp. Code 545.302.

<sup>3</sup> "Obedience Required to Police Officers and to School Crossing Guards," Tex. Transp. Code 542.501.

29. Rendon injured Ms. Ikhinmwin by using force that was excessive for the situation, which was objectively unreasonable. He had no cause to use any force, let alone the kind of force he used. Therefore, his force was excessive and unconstitutional.

D. Common law assault

30. Texas Penal Code 9.051(a) only authorizes a peace officer to use force against a person “to the degree the [officer] reasonably believes the force is immediately necessary to make or assist in making an arrest.”

31. Rendon’s use of force on Ms. Ikhinmwin was not authorized by Texas law, because he did not (and could not) have believed the level of force he used was immediately necessary to arrest her.

32. Therefore, Rendon intentionally engaged in physical contact with Ms. Ikhinmwin, without authorization of law, knowing they would regard the contact as offensive. He is therefore liable for common law assault under state law.

E. Bystander liability

33. Other SAPD officers, whose names are not known at this time, were present while Rendon used excessive force on Ms. Ikhinmwin.

34. Those officers knew Rendon was using excessive force on Ms. Ikhinmwin. They had the opportunity to intervene and stop him, and had a duty to do so, but chose not to.

35. Therefore, those officers are liable as bystanders for Rendon’s use of excessive force.

F. Conspiracy liability: 42 U.S.C. §§ 1985(3), 1986

36. The officers at the scene with Rendon were aware he was violating Ms. Ikhinmwin’s rights by selectively enforcing the law, arresting her without probable cause, and using excessive force. They joined in a conspiracy with him to accomplish those goals, motivated by Ms. Ikhinmwin being a black woman in the wrong neighborhood. Rendon’s actions were made in

furtherance of the conspiracy. Further, one of the other officers at the scene took action in furtherance of the conspiracy. That officer was a woman. After Rendon handcuffed Ms. Ikhinmwin but before shoving her into his vehicle, the female officer searched her and asked if she had drugs and tossed out the contents of her purse. On information and belief, this was an extension of Rendon's racial profiling and/or an attempt to intimidate Ms. Ikhinmwin, in furtherance of the conspiracy.

37. Two sergeants in SAPD's internal affairs division – Sgt. Martin Tobin and Sgt. Solis (#3228) – also conspired to violate Ms. Ikhinmwin's rights, and/or had knowledge of the conspiracy between Rendon and other officers and the power to help Ms. Ikhinmwin or prevent further harm, but neglected or refused to do so.

38. After the incident, Ms. Ikhinmwin visited SAPD internal affairs to press charges against Rendon. She met with Sgt. Martin Tobin. At the end of their meeting, he arrested her, claiming she had outstanding warrants for unpaid tickets, which was untrue. As a result, she had to spend six hours in jail, pay \$863.40 for tickets that had already been paid, and another \$50 to retrieve her confiscated textbooks and laptop. On information and belief, he did these things to intimidate Ms. Ikhinmwin and thereby protect Rendon in furtherance of the conspiracy, or was at least aware of Rendon's conspiracy with officers on the scene and was refusing to aid Ms. Ikhinmwin against it.

39. Ms. Ikhinmwin continued to pursue the charges against Rendon, and a few weeks later, received a voicemail asking her to attend another meeting with SAPD internal affairs. This time she met with Sgt. Solis. He told Ms. Ikhinmwin that he believed she was a liar and internal affairs would not pursue the claim against Rendon. He also displayed a CD which he claimed had a video showing she was lying about the incident, but when she asked him to play the video, he refused. On information and belief, he did these things to intimidate Ms. Ikhinmwin and thereby protect

Rendon in furtherance of the conspiracy, or was at least aware of Rendon's conspiracy with officers on the scene and was refusing to aid Ms. Ikhinmwin against it.

40. Sgt. Solis then intentionally scheduled the Internal Affairs hearing about Ms. Ikhinmwin's complaint against Rendon on a day she was scheduled to appear in court. On information and belief, he did so with the knowledge she could not miss her court date without forfeiting her bond, and that she would therefore be effectively unable to appear at the Internal Affairs hearing, with the result that Internal Affairs would dismiss the complaint against Rendon for lack of evidence. On information and belief, Solis did this to protect Rendon in furtherance of the conspiracy, or was at least aware of Rendon's conspiracy with officers on the scene and was refusing to aid Ms. Ikhinmwin against it.

G. Municipal Liability

41. San Antonio Police Chief William McManus is the final policymaker for the City of San Antonio in the area of law enforcement, having been effectively delegated authority for law enforcement policymaking – including training and discipline – by the city council. He has been San Antonio's Police Chief since 2006, except a brief interlude from December 2014 to October 2015.

42. McManus is aware that the city's training regime needs improvement with respect to use-of-force, and that the current system of training leads to officers using force unnecessarily. In his opinion, training must be updated to show officers they need to slow down and communicate more effectively during encounters on the street, and doing so would reduce instances of unnecessary uses of force.

43. SAPD's inadequate training was the moving force behind Officer Rendon's use of excessive force on Ms. Ikhinmwin.



44. On information and belief, McManus was on notice of the inadequacies in SAPD's training before Rendon's use of excessive force on Ms. Ikhinmwin, and he knew officers were substantially certain to use excessive force in instances like that with Ms. Ikhinmwin if SAPD training was not improved, and yet, he failed to make effort to improve use-of-force training.

#### DAMAGES

45. Ms. Ikhinmwin seeks compensatory and punitive damages.

#### JURY DEMAND

46. Pursuant to Federal Rule of Civil Procedure 38, Ms. Ikhinmwin requests a jury for all issues triable to a jury.

#### ATTORNEY'S FEES

47. Ms. Ikhinmwin is entitled to reasonable attorney's fees, costs, and litigation expenses.

#### CONCLUSION

THEREFORE, Ms. Ikhinmwin respectfully prays this Court grant the following relief:

- A. Award compensatory and punitive damages;
- B. Award reasonable litigation expenses, and court costs; and
- C. Grant all other and additional relief to which she is entitled, at law or in equity.

DATED: March 21, 2016.

Respectfully submitted,

/s/ Brian McGiverin  
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on all counsel of record who have appeared in this matter through the Electronic Case Files System of the Western District of Texas.

/s/ Brian McGiverin

Brian McGiverin