

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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LASHUNDA ADKINS and RONDA ADKINS,

Plaintiffs,

v.

JOHN DESTEFANO; JASON JEMIOLA;  
CHRISTOPHER CACELA; CITY OF NEW HAVEN;  
NEW HAVEN POLICE UNION LOCAL 530,  
COUNCIL 15, AFSCME, AFL-CIO and  
COUNCIL 15, AFSCME, AFL-CIO,

Defendants.  
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FILED

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VERIFIED U.S. DISTRICT COURT  
COMPLAINT, CT.

3:12cv995(VLB)

**JURY TRIAL DEMANDED**

Plaintiffs LASHUNDA ADKINS and RONDA ADKINS through their attorney Michael

A. Deem, Esq., state as follows:

**PRELIMINARY STATEMENT**

1. This is a combined civil rights and personal injury action. The claims arise from the City of New Haven Department of Police Service's ("NHPD") custom and practice of racially profiling motor vehicle drivers.

2. Plaintiffs seek the following relief jointly and severally: compensatory, punitive, and presumed damages; disbursements, costs, and attorneys' fees; and such other and further relief as this court deems just and proper.

**JURISDICTION**

3. This action is brought pursuant to the Civil Rights Act of 1871, 28 U.S.C. §§1331 and 1343, 42 U.S.C. §1983, and the Fourteenth Amendment to the U.S. Constitution.

4. Supplemental jurisdiction pursuant to 28 U.S.C. §1367 exists for claims of recklessness and negligence, and violation of the Connecticut State Constitution, Article I, §§ 7 and 9.

5. Venue is laid within the District of Connecticut in that a substantial part of the events giving rise to the claims occurred within this judicial district.

#### **PARTIES**

6. Plaintiff LASHUNDA ADKINS was at all times relevant herein, a citizen of the United States and resident of New Haven, Connecticut. She is African-American.

7. Plaintiff RONDA ADKINS was at all times relevant herein, a citizen of the United States and resident of New Haven, Connecticut. She is African-American.

8. Defendant JOHN DESTEFANO, since 1989, was the duly elected and acting Mayor of the City of New Haven, and responsible for its day-to-day activities. He is sued individually.

9. Defendants P.O. CACELA and P.O. JEMIOLA, were at all times relevant, employed as sworn members of the NHPD. They are sued individually.

10. Defendant CITY OF NEW HAVEN is a governmental entity created under the laws of Connecticut and is responsible for the actions of the NHPD.

11. Defendant NEW HAVEN POLICE UNION LOCAL 530, COUNCIL 15, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO ("Local 530"), was at all times relevant, the exclusive collective bargaining unit for all sworn uniformed members of the NHPD, up to and including the rank of Major. It is sued as a state actor.

12. Defendant COUNCIL 15, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO (“Council 15”), was at all times relevant, the parent organization of Local 530, whose membership consists exclusively of police officers throughout the state of Connecticut. It is sued as a state actor.

## **FACTUAL ALLEGATIONS**

### **History of Racial Profiling in the State of Connecticut and the City of New Haven**

13. In 1999, the State of Connecticut enacted the Alvin W. Penn Racial Profiling Prohibition Act. (“Penn Act”) The Penn Act prohibits law enforcement agencies from using a person’s race or ethnicity as the sole factor in determining probable cause for an arrest or reasonable suspicion for detention or an investigatory motor vehicle stop. It also requires police departments to (a) adopt written policies prohibiting discriminatory stops, searches, and detentions and (b) collect and provide annual data on traffic stops, offenses, dispositions, and complaints of discriminatory stops to the African-American Affairs Commission (“AAAC”). Police departments’ obligation to submit data ended with their October 1, 2001 submission.

14. In December 2001, the chief state’s attorney published its racial profiling report, based on July 1, 2000 through June 30, 2001 data. The report concluded that “the differences observed in stopping minority drivers, the nature of stops, and dispositions [existed but] were generally small.”

15. On November 21, 2002, members of the NHPD participated in a Community Justice Dialogue Project, sponsored by Community Mediation, Inc., Greater New Haven Branch of the NAACP, and Junta for Progressive Action, to prevent racial profiling. The dialogue brought together citizens of New Haven and NHPD to discuss issues related to racial profiling. A youth forum attended by 200 students who shared their experiences of racial profiling and how it

affected their lives was also held. Eight additional community dialogues were held between October 2002 and January 2003. Additional dialogues were held in four suburbs of the City of New Haven, as well as at Southern State University and Yale University. Each of the dialogues produced specific action plans to reduce racial profiling that would be undertaken in each area.

16. On February 3, 2003, Mr. DeStefano gave a Mayor's State of the City Address. Mr. DeStefano's comments expressly included,

Third, there's no gain, no more important accomplishment of the last several years that we are least able to see roll back than the safety of city streets. The police command staff, the management teams and city residents must move forward with our next phase of community policing irrespective of the cuts we're about to face; our racial profiling initiative and working with police departments throughout the region to prevent abuse. Partnering with the NAACP on their "Stop the Violence" campaign. Working with partners throughout the city to end violence, and our focus on quality of life issues. Working hard, harder than ever before with neighborhoods to problem solve and provide smarter policing.

17. On information and belief, New Haven's racial profiling initiative was part and parcel of the action plans created by the community dialogues to reduce racial profiling in, *inter alia*, the City of New Haven.

18. On May 23, 2003, the Penn Act was amended. It required the police to (1) provide the data on traffic stops and complaints to AAAC, as well as the chief state's attorney; and (2) put AAAC, instead of the chief state's attorney, in charge of reviewing the data and producing the annual reports for the governor and legislature.

19. NHPD has refused or failed to provide AAAC with data on traffic stops in 2003, 2004, 2005, 2006, 2007, and 2008.

20. On January 30, 2009, a protest was held in front of the New Haven police substation on Whalley Avenue regarding racial profiling.

21. On information and belief, the traffic stop data submitted by NHPD for 2009 reveals drastic irregularities with respect to the frequency of stops and professional performance of sworn members of the NHPD. For example, the following total stops were reported to AAAC:

January	31
February	41
March	336
April	322
May	570
June	554
July	509
August	414
September	314
October	88
November	84
<u>December</u>	<u>60</u>
Total	3,323

22. On information and belief, in 2009 black drivers were stopped at a rate approximately 7% higher than their population category, which is statistically significant.

23. On information and belief, the traffic stop data submitted by NHPD for 2010 reveals drastic decreases from total stops conducted in 2009. For example, the following total stops were reported to AAAC:

January	62
February	84
March	91
April	156
May	166
June	107
July	144
August	147
September	43
October	56
November	75
<u>December</u>	<u>92</u>
Total	1,223

24. On information and belief, in 2010 black drivers were stopped at a rate approximately 13% higher than their population category, which is statistically significant.

25. From 2006 through 2010, NHPD experienced a very high rate of turnover in chiefs of the department, five, as well as other management level officials within the department, which should have put Mr. DeStefano on notice that heightened supervision of the NHPD would or might be required, especially in light of the above.

26. On information and belief, the disparity in motor vehicle stops by the NHPD was the result of Mr. DeStefano's highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger was apparent, specifically the violation of federal and state constitutional rights of black drivers within the City of New Haven.

#### **History of the NHPD Contractual Relations with the City of New Haven**

27. On November 15, 2004, defendants City of New Haven, Local 530 and Council 15 entered into a written collective bargaining agreement effective from July 1, 2004 through June 30, 2008 ("Agreement 1").

28. On information and belief, the parties to Agreement 1 intentionally omitted the creation and use of a formal, written performance evaluation system ("PES") from said agreement.

29. On information and belief, all individual members of Local 530 consented to or ratified the terms of Agreement 1.

30. In March 2007, two members of the NHPD Narcotic Squad were indicted and taken into custody by the Federal Bureau of Investigation for accepting bribes from local bail bondsmen and stealing money at crime scenes. The Police Executive Research Forum ("PERF")

was subsequently hired by the City of New Haven to conduct an objective and comprehensive study of specific areas within the NHPD.

31. In November 2007, PERF released the results of said study in the New Haven Police Department Assessment, Final Report of findings pursuant to said contract. Plaintiffs incorporate by reference said Final Report. The Final Report provided, in part,

Findings: The Department does not have an active annual performance appraisal system or any systematic approach to assessment of individual performance [“PES”] beyond the supervisor’s day-to-day review of activity on the job. The Director of Labor Relations for the City of New Haven confirmed that the police department is no different from other departments. Performance appraisals are not protected documents under prevailing freedom of information legislation, leaving individuals and the city vulnerable to disclosure of personal information. This matter is reported to be a major concern to union membership and an issue in labor relations.

A system of annual performance appraisal is a best practice followed by all progressive police agencies. Performance appraisals are opportunities for both employees and supervisors to assess career progression over the past year, set new performance goals and document career interests, training needs and aspirations for the future.

Recommendation: Establish a performance appraisal system. The department should implement a formal, written performance evaluation system to reward superior performance, address substandard performance and to hold personnel accountable for their past performance.

32. On November 17, 2009, defendants City of New Haven, Local 530 and Council 15 entered into a written collective bargaining agreement effective from July 1, 2008 through June 30, 2011 (“Agreement 2”).

33. On information and belief, the parties to Agreement 2 knew of the PERF Final Report, but intentionally omitted the creation and use of a PES from said agreement.

34. On information and belief, all individual members of Local 530 consented to or ratified the terms of Agreement 2.

35. On information and belief, since at least July 1, 2004, NHPD lacked a PES beyond day-to-day review of its sworn uniformed employees' on the job activities, which prevented supervisors and managers from training, supervising, and disciplining employees that engaged in misconduct, specifically racial profiling, and created an atmosphere where police officers could act with concern for the rights of residents of the city.

36. Defendants City of New Haven, Local 530 and Council 15 created a policy, custom or practice of deliberate indifference to the training, supervision and disciplinary needs of its police officers, by formally agreeing to the lack of a PES.

37. Defendants City of New Haven, Local 530 and Council 15's mutual decision to intentionally agree not to implement a PES was highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger was apparent, specifically the violation of constitutional rights of black drivers within the City of New Haven, especially in light of the PERF Final Report, chief state's attorney report in 2003 and Penn Act.

#### **Allegations Specific to Plaintiffs**

38. In about 1952, the City of New Haven enacted local traffic ordinances which regulate vehicles and parking within the city limits. As such, drivers within the city limits are not subject to C.G.S. § 14-251 (Improper Parking). The current traffic and parking regulations are found in Chapter 29, Traffic and Motor Vehicles, of the New Haven Code of Ordinances ("Chapter 29"),

39. On September 2, 2010, at approximately 00:20 a.m., Jemiola and Cacela conducted a motor vehicle stop of the car driven by Lashunda Adkins ("Lashunda"), and in



which her sister Ronda Adkins (“Ronda”) and Albert Eaddy (also African-American) were passengers, without reasonable suspicion or probable cause.

40. Jemiola and Cacela cited Lashunda for violation of C.G.S. §§ 14-251 and 14-230a (Failure to Drive to the Right). The basis of a third citation arose after the vehicle was stopped.

41. On April 25, 2012, Jemiola testified that he authored his police report with the assistance of Cacela, who was standing nearby and provided input as Jemiola wrote the report. Jemiola’s report provides that he and Cacela had “received *numerous anonymous complaints from a known source* over the past several weeks of drug activity in front of 34 Hudson Street[, New Haven, CT].”

42. The tax rolls, land records and engineer’s office of the City of New Haven do not contain any record of a “34” Hudson Street. Jemiola testified that he would be surprised if 34 Hudson Street did not exist because he has driven by the house several times and actually looked at the numbers.

43. Jemiola also conceded under oath that neither C.G.S. § 14-230a nor § 14-230(a) apply to the vehicle or conditions under which Lashunda was driving. Hence, the citation was issued improperly.

44. Jemiola further conceded that he did not know if the gears in Lashunda’s vehicle were ever placed in park, during the period of time for which the citation for allegedly violating C.G.S. § 14-251 was issued.

45. On May 8, 2012, Cacela testified that he and Jemiola knew they did not have reasonable suspicion to stop the vehicle driven by Lashunda for suspected drug activity, but had agreed to stop the vehicle based on the parking and driving violations in hopes of finding something.

46. On information and belief, the allegations of “*numerous anonymous complaints from a known source*” in Jemiola’s report and the citations for violation of C.G.S. §§ 14-251 and 14-230a are pure fabrications, and mere attempts to cover-up their misconduct of racial profiling as well as cover-up the City of New Haven’s custom and practice of racial profiling.

47. On June 28, 2012, Sgt. Dudley, NHPD, testified that he has never received any detailed training regarding Chapter 29, and that he has issued several parking tickets for violation of C.G.S. § 14-251.

48. On information and belief, the City of New Haven has not provided its sworn members with adequate training regarding the provisions of C.G.S. §§ 14-230a and 14-251, Chapter 29 or the interplay between state and local parking laws, which constituted highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger was apparent, specifically the violation of the federal and state constitutional rights of drivers within the City of New Haven.

49. On information and belief, the mutual agreement of the City of New Haven, Local 530 and Council 15 to forego the implementation of a PES created an environment in which even the most junior members of the NHPD felt free to submit fraudulent police reports and issue baseless citations for violations of statutes that do not apply to drivers within the City of New Haven, but which do provide the basis for infringing on the federal and state constitutional rights of individuals. Failure to implement a PES constituted highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger was apparent, specifically the violation of the federal and state constitutional rights of drivers and residents within the City of New Haven.

50. On information and belief, plaintiffs' damages would have been avoided through the implementation of a PES, or proper training regarding the federal and state law governing motor vehicle stops, or proper training and supervision regarding chapter 29.

51. To the extent that defendants' conduct involved discretionary acts and malice, wantonness or intent to injure, said conduct falls within an exception to governmental immunity.

### **DAMAGES**

52. As a direct and proximate result of the said acts of the defendants, plaintiffs suffered the following injuries and damages:

- a. Violation of their rights under the First, Fourth and Fourteenth Amendments to the United States Constitution;
- b. Violation of his rights under the Connecticut Constitution, Article I, §§ 7 and 9, and the laws of Connecticut;
- c. Loss of physical liberty;
- d. Emotional distress and fear of law enforcement personnel; and
- e. Humiliation and embarrassment.

53. The physical, psychological, and economic consequences of the defendants' actions continue to date, and are expected to be perpetual.

### **COUNT I** **§ 1983 Equal Protection Claims for Racial Profiling**

54. All the above paragraphs are incorporated by reference as though fully set forth.

55. By their conduct and under color of law, defendants Jemiola and Cacela intentionally discriminated against plaintiffs on the basis of their race.

56. As a result, plaintiffs were damaged.

**COUNT II**  
**§ 1983 *Monell* Claim**

57. All the above paragraphs are incorporated by reference as though fully set forth.

58. Defendants City of New Haven, Local 530 and/or Council 15, endorsed an official policy by which their policy makers failed to create and implement a PES for the sworn members of the NHPD, and policymakers knew or but for their deliberate indifference should have known that sworn members of NHPD lacked accountability, training or supervision.

59. Defendant City of New Haven's custom and practice of failing to provide needed training and supervision regarding motor vehicle stops, racial profiling and/or Chapter 29 to sworn members of the NHPD was so persistent and widespread that it constitutes a custom or usage and implies the constructive knowledge of policymaking officials of said defendants.

60. Defendant City of New Haven had a custom and practice of racially profiling motor vehicle drivers within its city limits, and denying them their rights under the Penn Act.

61. As a result, plaintiffs were damaged.

**COUNT III**  
**§ 1983 Claim for Supervisory Liability**

62. All the above paragraphs are incorporated by reference as though fully set forth.

63. By his conduct and under color of law, defendant DeStefano agreed and committed to assisting the minority community within the City of New Haven to stop or prevent racial profiling; failed to remedy said wrongs after being informed of same; created a policy or custom under which racial profiling occurred by refusing or failing to comply with the Penn Act, or implement a PES; allowed the continuation of such a custom or policy; supervised his subordinates in a grossly negligent or reckless manner; or displayed deliberate indifference by failing to act on information indicating that unconstitutional acts were occurring.

64. As a result, plaintiffs were damaged.

**COUNT IV**

**Pendent Claims for Violation of the Constitution of the State of Connecticut**

65. All the above paragraphs are incorporated by reference as though fully set forth.

66. The City of New Haven deprived plaintiffs of their rights under Article 1, §§ 7 and 9 of the Constitution of the State of Connecticut, including the right to be free from: unreasonable searches and seizures; and false arrest, detainment or punishment.

67. As a result, plaintiffs were damaged.

**COUNT V**

**Pendent Claims of Recklessness and Negligence**

68. All the above paragraphs are incorporated by reference as though fully set forth.

69. Defendant City of New Haven was reckless or negligent by failing or refusing to: comply with the Penn Act regarding collection and submission of data for motor vehicle stops, despite knowing or having reason to know that racial profiling occurred within the city limits; provide training and supervision as required by said data; provide any detailed training regarding Chapter 29; and implement a PES for sworn members of the NHPD, especially in light of the PERF Report.

70. Defendant's conduct was the direct and proximate cause of plaintiffs' damages as set forth above, and it was foreseeable that the conduct or omissions of sworn members of the NHPD, including Jemiola and Cacela, would place plaintiffs in imminent harm.

71. By reason of the above the City of New Haven is liable under C.G.S. §§ 7-101a and 7-465.

72. Defendants Local 530 and/or Council 15 were reckless or negligent by failing or refusing to: implement or allow the implementation of a PES for sworn members of the NHPD.

73. Defendants' conduct was the direct and proximate cause of plaintiffs' damages as set forth above, and it was foreseeable that the conduct or omissions of sworn members of the NHPD, including Jemiola and Cacela, would place plaintiffs in imminent harm.

WHEREFORE, plaintiffs request the following relief jointly and severally:

1. Compensatory damages against all defendants;
2. Punitive damages against all defendants;
3. Presumed damages against all defendants;
4. Attorney's fees, costs, and disbursements; and
5. Such other and further relief in law or equity as this court deems just and proper.

Dated: July 10, 2012  
Ossining, New York



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**DECLARATION UNDER PENALTY OF PERJURY**

I am a plaintiff in the above entitled action. I have read the foregoing Complaint, and I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on July 10, 2012.

  
LASHUNDA ADKINS

**DECLARATION UNDER PENALTY OF PERJURY**

I am a plaintiff in the above entitled action. I have read the foregoing Complaint, and I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on July 10, 2012.

  
RONDA ADKINS