

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO.: 19-CVS- 17221

2019 AUG 28 P 2:19

AZUCENA ZAMORANO ALEMAN, Individually )  
and as Administrator of the Estate of )  
RUBIN GALINDO CHAVEZ, )

Plaintiff, )

v. )

CITY OF CHARLOTTE, )  
DAVID GUERRA, individually and officially, and )  
COURTNEY SUGGS, individually and officially, )  
Defendants. )

### COMPLAINT

(Jury Trial Demanded)

The Plaintiffs, complaining of the Defendants and seeking a jury trial, alleges and says:

### PARTIES

1. Plaintiff Azucena Zamorano Aleman (hereinafter "Plaintiff" or "Zamorano") is resident of Mecklenburg County and the duly appointed Administrator of the Estate of Rubin Galindo Chavez. She brings suit on behalf of the Estate as the Administrator and

2. At the time of his death on September 6, 2017, the decedent Rubin Galindo Chavez, (hereinafter "Decedent" or "Galindo"), was twenty-nine years old and a resident of Mecklenburg County, North Carolina.

3. Zamorano and Decedent had been friends since childhood and were in a loving and committed relationship and had a daughter together on May 17, 2017, approximately 3 months and 3 weeks before Galindo was killed. The daughter was named "Ruby" after her father. Zamorano was present just inside the apartment door when Galindo was shot and some of the stray bullets struck the building where

she stood. She then had to step around his dead body as police removed her from the apartment.

4. Defendant City of Charlotte is a municipal corporation organized by charter under Chapter 160A of the North Carolina General Statutes. It maintains and operates pursuant to its charter a police force called the Charlotte-Mecklenburg Police Department ("CMPD"). The City of Charlotte bears legal responsibility for acts and omissions of the CMPD and its police officers that occur in the course of any officer's employment as a CMPD police officer and agent of the City.

5. By ordinance adopted by its elected Council pursuant to N.C.G.S. § 160A-485.5, the City has waived its governmental immunity pursuant to the State Tort Claims Act. That waiver applies to the negligence claims in this case, including the claims for wrongful death and negligence infliction of emotional distress against the two officers in their official capacities and the claim against the City for negligence in training its officers.

6. Upon information and belief, at all relevant times to this action, the Defendant David Guerra was an adult citizen and resident of Mecklenburg County and was employed as a law enforcement officer with the CMPD. He is sued in his official capacity under state law for negligence in the wrongful death of Decedent and for negligent infliction of emotional distress as to Zamorano, the City having waived immunity from those negligence claims. He is also sued in his individual capacity under state law for assault and battery for shooting and killing Decedent. His conduct exceeded the scope of his lawful authority, was intentional, deliberately reckless, exhibited malice and showed willful and wanton disregard for Galindo's rights and safety. Such conduct pierces any public officer immunity he might invoke as to this individual capacity state law claim. He is also sued in his individual capacity under 42 U.S.C. § 1983 for using excessive force that violated Galindo's Fourth Amendment protection from unreasonable seizures.

7. Upon information and belief, at all relevant times to this action, the Defendant Courtney Suggs was an adult citizen and resident of Mecklenburg County and was employed as a law enforcement officer with the CMPD. He is sued in his official capacity under state law for negligence in the wrongful death of Decedent and for negligent infliction of emotional distress as to Zamorano, the City having waived immunity from those negligence claims. He is also sued in his individual capacity under state law for assault and battery for shooting and killing Decedent. His conduct exceeded the scope of his lawful authority, was intentional, deliberately reckless, exhibited malice and showed willful and wanton disregard for Galindo's rights and safety. Such conduct pierces any public officer immunity he might invoke as to this individual capacity state law claim. He is also sued in his individual capacity under 42 U.S.C. § 1983 for using excessive force that violated Galindo's Fourth Amendment protection from unreasonable seizures.

## JURISDICTION & VENUE

8. The State Superior Court has jurisdiction pursuant to N.C. Const. Art. IV, § 12(3) and N.C.G.S. §7A-240 and §7A-243. Plaintiffs seek tort damages in excess of \$25,000. This Court has original jurisdiction under 42 U.S.C. § 1988 for constitutional claims brought pursuant to 42 U.S.C. § 1983.

9. Venue is proper in Mecklenburg County because all parties are located here and incidents described below occurred in the County.

## FACTS

10. Decedent had resided and worked for a number of years in Mecklenburg County without incident.

11. In the spring of 2017, he got into an argument with a person who then accused him of the misdemeanor offense of assault by pointing a gun.

12. Plaintiff appeared in Court on the charge in May and then again on or about August 18, 2017, when the case was continued.

13. Over those months, Plaintiff began experiencing mental health problems.

14. After his August court appearance, members of a police crisis intervention team brought Galindo to a hospital emergency room because he was experiencing delusions that people were following him and asked the police for help.

15. On information and belief, doctors gave him anti-psychotic medications in the hospital and he was discharged.

16. On September 6, 2017, the day he was killed, Galindo and Plaintiff, their 3-month-old daughter, and Plaintiff's other children were at the residence of a friend, along with that friend and her son.

17. Decedent had been drinking and again experienced paranoid thoughts that he was being followed. He called 911 asking for the police to come pick him up again as they had a month before.

18. He stated he was still being followed and that he wanted to surrender his gun, apparently the weapon at issue in the criminal charge.

19. Decedent spoke to a Spanish interpreter on the 911 call. His speech showed that his thought process was confused and that he was mentally distressed.

20. Decedent asked repeatedly if the police were coming to help him, to the point that the dispatcher got exasperated, told him she was ending the call, and hung up.

21. Decedent called again and spoke with a second dispatcher who spoke fluent Spanish.

22. He told the dispatcher that he wanted to surrender her gun, that he had no bullets and wanted to turn it over to police when they arrived.

23. The second dispatcher told Decedent the police were coming and asked him to leave his gun in the apartment and to step outside.

24. There were numerous children in the apartment. Decedent insisted he wanted to surrender the gun to police, stated repeatedly that he did not have any bullets and asked multiple times if the police were there yet.

25. Decedent stated in Spanish he would come outside with the gun with his hands raised in the air., He said, "I go with my hands up but I don't have any bullets".

26. Decedent offered to toss the gun toward the police and repeated he did not have bullets.

27. No one in the apartment was afraid of Decedent. Galindo did not threaten to harm anyone, either in the house or outside it, but asked the police to come help him.

28. He remained in the apartment until the dispatcher told him that the police had arrived to help him.

29. Defendants Guerra and Suggs, along with CMPD Officers Shue, Batson and Thompson, arrived at the scene without a Spanish translator and, on information and belief, did not wait for a Spanish speaking officer who was in route.

30. None of them spoke Spanish. They knew Galindo's name and from the two 911 calls knew that he was not speaking English with dispatchers, calling him Rubin; they knew or should have known from CMPD's involvement with Galindo the prior month that he had mental illness issues and had sought police help just weeks before and was taken to the hospital by police without incident.

31. Instead of waiting for a Spanish speaking officer, the Defendants and other officers conferred and decided to take a paramilitary approach to the situation.

32. Wearing body armor and brandishing assault rifles, the officers took covered positions with weapons trained on the apartment entrance, waiting for Decedent to exit.

33. There were no residents outside in the public space around the apartment, just the officers waiting behind cover for Decedent to come outside.

34. Defendant Guerra placed himself at the corner of a building directly across a paved area from the apartment door. In that covered position, he trained his rifle on the apartment door.

35. Defendant Suggs placed himself in a covered position to the right of the apartment, at approximately 100 degrees to Guerra's position.

36. Told the police had arrived, Galindo exited the apartment, still talking to the second dispatcher on a cell phone.

37. He walked to the end of a short sidewalk out to the paved area

38. Defendant Guerra, covered behind the corner of the building opposite to the apparent Galindo had just exited, assault rifle trained on Decedent, shouted. "Rubin, manos!" which meant "Rubin, hands!" in English.

39. In response, Decedent immediately raised both of his hands up in the air above his head, fully extending his arms.

40. Galindo could not see Defendant Guerra or Defendant Suggs or any of the other officers, as all were behind cover, hidden from his view.

41. Almost instantly, Defendant Guerra, still shielded behind the corner of the building and aiming his assault rifle at Galindo, shouted in English, "drop the gun!"

42. Defendant Guerra did not know how to say the command in Spanish. He also knew that Decedent did not speak English.

43. No one except Galindo was in imminent danger of being shot as stood with his hands high in the air.

44. Before Galindo could comply with the command spoken in English to drop the gun, Defendants shot Galindo in the chest and head and killed him instantly with his hands still raised above his head.

45. It appears from the video and from the limited reports provided that Defendant Guerra inflicted the fatal wounds but, based on reports, Defendant Suggs shot as well and may have inflicted the fatal wound. It appears he shot in reflexive response to Guerra's shots.

46. Several bullets missed Galindo and hit the exterior of the apartment.

47. Plaintiff was just inside the apartment door and could have been hit by the gun fire. She saw Decedent dead on ground, bleeding and started screaming as did the children. She tried to get to Decedent.

48. The officers walked past Decedent without checking his condition and entered the apartment yelling at Plaintiff and the children to come outside. They prevented Plaintiff from tending to Decedent as those in the apartment were brought outside to clear the building.

49. Being in the zone of danger and witnessing the death of the father of her youngest child, has caused Plaintiff to suffer severe, diagnosable emotional distress.

**FIRST CAUSE OF ACTION**  
(Fourth Amendment – 42 U.S.C. § 1983)

50. Plaintiff incorporates by reference all prior allegations.

51. The use of deadly force by Defendants Guerra and Suggs was unreasonable and excessive under the circumstance and violated Decedent's Fourth Amendment right not to be subject to an unreasonable seizure, including the application of excessive force.

52. Defendants Guerra and Suggs were at all times acting under color of state law for purpose of 42 U.S.C. §1983. They are sued in their individual capacities on this claim

53. Defendant Guerra and Suggs acted unreasonably in Guerra giving commands in Spanish to show his hands that Galindo followed, but then shooting at and killing him when he did not immediately respond to a command in English to "drop the weapon" and was shot with his hands still raised. The evidence will show which Defendants fired the fatal shots.

54. Even without a language barrier, the Defendants did not give Galindo enough time to respond to the command to drop the weapon before but shooting him dead. That near immediate use of deadly force to kill Decedent was unnecessary and unreasonable. Decedent did not pose an imminent threat to anyone at the scene, was compliant with commands given in his native language and had his hands raised when shot, and was killed before any person could respond to the command in English, and had not committed any crime at the time he was killed.

55. Plaintiff seeks and is entitled to all available compensatory damages for the Decedent loss of life, the loss of support for his child, and the pain and suffering he experienced in his needless death.

56. Plaintiff seeks punitive damages for the willful and wanton and reckless conduct of these Defendants.

57. He also seeks costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

## **SECOND CAUSE OF ACTION** (Wrongful Death – Negligence)

58. Plaintiffs incorporate by reference all prior allegations.

59. The actions of Defendant Guerra in shooting and killing Decedent breached the duty of care owed to Decedent by a reasonable officer in that circumstance and thus were negligent.

60. Defendants Guerra and Suggs were negligent in approaching Decedent without waiting for a translator, in Guerra giving a fatal command in English when he knew Defendant spoke Spanish, in shooting Decedent without giving him time to respond to that command when Decedent did not pose an imminent threat to anyone. He had his hands raised, all officers were behind cover, and no other persons were in the vicinity. Discovery will show which of the Defendants fatally shot Galindo, but both were negligent in creating the circumstances of his death.

61. To the extent the City claims that Decedent was contributorily negligent, he clearly was in a position of peril from which he could not escape when shot with his hands raised in the air. Defendants Guerra and Suggs had the last clear chance to avoid Decedent's death.

62. Defendants Guerra and Suggs are sued in their official capacity on this claim for negligent, wrongful death. They were acting as agents of the City of Charlotte which is sued on this claim as well.

63. The Defendant City of Charlotte, pursuant to N.C.G.S. § 160A-485.5, has adopted an ordinance waiving its governmental immunity from the negligent acts of its employees to the same extent that sovereign immunity is waived under the State Tort Claims Act as to the negligent acts of state employees. If Guerra and Suggs were state employees, their negligence would be actionable under the State Tort Claims Act. Thus, their negligence is actionable here. The waiver is limited to \$1 million in damages.

64. Plaintiff, in her capacity as Administrator of the Estate, seeks and is entitled to recover all damages for wrongful death allowed by N.C.G.S. § 28A-18-2(b), including punitive damages for willful and wanton conduct of Defendants Guerra and Suggs under N.C.G.S. § 28A-18-2(b)(5).

### **THIRD CAUSE OF ACTION** (Negligent Training)

65. All prior allegations are incorporated by reference.

66. The City has a duty to train the police officers of CMPD to reasonably respond to situations where individuals such as Plaintiff's decedent call the police to ask for help.

67. The City was negligent in training Guerra in the proper procedures for responding to an incident such as this.

68. The officers at the scene should have been trained in approaching Decedent, a person known to CMPD to have mental illness, to recognize that a crisis intervention team or CIT trained officer was needed at the scene. To the extent anyone at the scene had completed CIT training, that training was completely ineffective, a problem known to the CMPD as a result of other incidents involving mentally ill persons.

69. The officers at the scene should have been trained that a Spanish translator was necessary and to not give commands to a known Spanish speaker in English.

70. And Defendants Guerra and Suggs and the others present were improperly trained in the use of deadly force in shooting Decedent without giving sufficient time to respond to the "drop the weapon" command even to an English speaker. Decedent had his hands raised, did not pose an imminent threat to anyone and had not committed a crime. Instead, he had specifically asked the police for help for the second time in three weeks.

71. This negligent training proximately caused the death of Decedent.



72. The Defendant City, pursuant to N.C.G.S. § 160A-485.5, has adopted an ordinance waiving its governmental immunity from its negligence of its employees to the same extent that sovereign immunity is waived under the State Tort Claims Act as to the negligent acts of state employees. The negligence of its police department in training Guerra is actionable here. That waiver of immunity is limited to \$1 million in damages.

73. Plaintiff, in her capacity as Administrator of the Estate, seeks and is entitled to recover all damages, compensatory and punitive, for wrongful death caused by the negligent training, as allowed under N.C.G.S. § 28A-18-2(b)

**FOURTH CAUSE OF ACTION**  
(Negligent Infliction of Emotional Distress)

74. All prior paragraphs are incorporated by reference.

75. Defendant Guerra and Suggs were negligent in causing the death for decedent and also proximately caused Plaintiff to suffer foreseeable severe, diagnosable emotional distress.

76. Plaintiff was in the zone of danger at the time of the shooting, had bullets hit the building where she was located, and witnessed the death of her companion and the father of her youngest child,

77. Plaintiff's close relationship to Decedent and her close physical presence to the negligent shooting death caused her to suffer severe emotional distress and mental anguish which was foreseeable to the Defendants.

78. Plaintiff seeks and is entitled to compensatory damages.

79. Defendants Guerra and Suggs are sued in their official and individual capacities on this claim.

80. As to the official capacity claim, the Defendant City, pursuant to N.C.G.S. § 160A-485.5, has adopted an ordinance waiving its governmental immunity from its negligence of its employees to the same extent that sovereign immunity is waived under the State Tort Claims Act as to the negligent acts of state employees. The negligence of Guerra is actionable here. That waiver of immunity is limited to \$1 million in damages as to Plaintiff's claim.

81. Defendants Guerra and Smith are also sued individually on this claim, as their conduct showed willful and wanton disregard for the rights and well-being of Plaintiff, and the negligent use of force exceeded the scope of their lawful authority, thus piercing any claim to public officer immunity from individual liability.

82. Plaintiff also seeks punitive damages against Guerra and Suggs individually for their willful and wanton conduct, to the extent allowed under Chapter 1D of the General Statutes.

**FIFTH CAUSE OF ACTION**  
**(Assault and Battery)**

83. All prior paragraphs are incorporated by reference.

84. The actions of Guerra and Suggs in shooting Decedent without legal justification constituted actionable assault and battery.

85. The assault and battery caused Decedent's wrongful death. The evidence will show which of the two Defendants fatally shot Galindo.

86. Defendant Guerra and Suggs are sued in their individual capacities on this claim. Their actions displayed willful and wanton disregard of Decedent's rights and well-being and exceeded the scope of their lawful authority, thereby piercing any entitlement to public officer immunity.

87. Plaintiff, in her capacity as Administrator of the Estate, seeks and is entitled to recover all damages for wrongful death allowed by N.C.G.S. § 28A-18-2(b)

88. She also seeks punitive damages for the willful and wanton conduct of Defendant Guerra under N.C.G.S. § 28A-18-2(b)(5).

**JURY DEMAND**

89. Plaintiff requests that all matters be tried before a jury.

**PRAYER FOR RELIEF**

WHEREFORE, upon the trial of this matter, Plaintiff prays that the Court enter judgment in his favor and against Defendants, jointly and severally, as follows:

1. An award of all damages, compensatory and punitive, from the City and the officers officially, allowed by statute for wrongful death on the Second and Third Causes of Action, said damages awarded to Plaintiff as administrator of the Estate;

2. An award of all damages, compensatory and punitive, from the officers officially, allowed by statute for wrongful death on the First and Fifth Causes of Action, said damages awarded to Plaintiff as administrator of the Estate;

3. Compensatory damages to Plaintiff from the City and the officers officially and individually, on the Fourth Cause of Action for the severe emotional distress she suffered as a foreseeable result of witnessing the shooting death of Galindo, the father of their young child.

4. Interest at the state statutory rate on each of the Judgments for Plaintiff as administrator and for herself;

5. The costs and expenses in this action as allowed by statute, including reasonable attorneys' fees under 42 U.S.C. § 1988;

6. Such other and further relief as the Court deems just and necessary.

This the 28th day of August, 2019.



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