

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

EMMA BORDEGARAY,

Plaintiff,

v.

D-202-CV-2023-04634

No. _____

BOARD OF COUNTY COMMISSIONERS OF
BERNALILLO COUNTY and JOHN DOE
DEPUTIES EMPLOYED AT THE
BERNALILLO COUNTY METROPOLITAN
DETENTION CENTER,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO CONSTITUTION AND
TORT CLAIMS UNDER NMSA 1978, §§ 41-4-6 AND 41-4-12**

COMES NOW, Plaintiff, Emma Bordegaray, (“Plaintiff”), by and through her attorneys
Collins & Collins, P.C. (Parrish Collins) and for her cause of action states as follows:

INTRODUCTION

1. Emma Bordegaray was incarcerated at the Bernalillo County Metropolitan Detention Center (“MDC”) and in the Detox Pod with April Trujillo on November 29 and November 30, 2022.

2. Bernalillo County (“BernCo”) and MDC themselves have a very poor record regarding inmate health and safety. MDC’s own history illustrates BernCo’s utter disregard for the health and safety of its inmates. This is reflected by the fact that despite many avoidable deaths, ongoing lawsuits for those avoidable deaths and the extremely bad press regarding the many deaths at MDC, BernCo chose to do nothing to rein in its medical contractor.¹ As of March 13, 2021,

¹ <https://www.abqjournal.com/2538735/lawsuits-filed-in-deaths-of-two-mdc-inmates.html>,
<https://www.abqjournal.com/2544438/suit-alleges-mdc-guards-negligence-led-to-jail-death-ex-inmates-su.html>.

nine deaths occurred at MDC during the months of January and February of 2021.² This apparently raised no alarms for MDC who continued business as usual. Shockingly, according to the Albuquerque Journal, there have been over 20 inmate deaths at MDC since April 20, 2020.³ This means that since the date of the original article, there had been nine deaths in January and February of 2021, 12 more inmates then died in the custody of MDC.

3. This does not tell the whole story. For each of those deaths, there were many inmates forced to witness the deaths of their cellmates and pod-mates. In the case of Emma Bordegaray, she along with many other inmates were forced to watch the slow, agonizing and easily avoidable death of April Trujillo (“April”) beginning on November 29, 2022 until her death on the morning of November 30, 2022.

PARTIES, JURISDICTION, AND VENUE

4. Emma Bordegaray, (“Emma”) was in the custody of MDC at all times relevant to this Complaint.

5. Defendant Board of County Commissioners of Bernalillo County, New Mexico (“Bernalillo County”) is a political subdivision of the State of New Mexico.

6. The John Doe personnel (Guards and Supervisory Personnel) working at MDC were on duty as April died and as set forth below severely abused both April and Emma with the intention and effect of causing severe emotional distress and physical injuries related thereto.

7. The allegations of this Complaint arise out of conduct occurring at MDC, and pursuant to NMSA 1978, § 4-46-1, Plaintiff’s claims are brought against Bernalillo County.

8. At all times material hereto, Bernalillo County owned, operated, supervised, directed, and controlled MDC, located in Albuquerque, New Mexico.

² <https://www.abqjournal.com/2369430/tragic-and-horrible.html>.

³ <https://www.abqjournal.com/a-timeline-of-people-who-died-in-custody-of-nms-largest-jail>

9. Pursuant to NMSA 1978, §§ 4-44-19, 33-3-3 to 8, and 33-3-13, Bernalillo County was mandated to maintain and operate a facility for the safe incarceration and healthcare of prisoners in its custody.

10. All acts complained of herein occurred in Bernalillo County, state of New Mexico.

11. At all relevant times, Emma was a resident of Bernalillo County, State of New Mexico.

12. A Notice of Claims under the New Mexico Civil Rights Act was sent timely on May 5, 2023.

13. The New Mexico Tort Claims Act does not require notice to individuals such as the John Doe deputies working at MDC.

14. This Court has jurisdiction over the subject matter of and the parties to this action under NMSA 1978, §§ 38-3-1, 41-4-18, and 41-4A-3(B).

STATEMENT OF FACTS

15. At all times relevant to this Complaint, Emma was a 30-year-old female in the custody of Bernalillo County in the MDC detox pod in Albuquerque, New Mexico.

16. Emma was in the same detox pod as April Trujillo beginning on November 29, 2022, and was forced to witness April's slow, agonizing, unnecessary and easily avoidable death on November 30, 2022.

17. Emma's bed mat (commonly referred to as a "boat") was on the floor in the common area of the pod behind April's boat.

18. Emma has suffered severe PTSD, has recurring nightmares, and cries every day since witnessing April's death on November 30, 2022. She states it is one of the most horrific things she has ever experienced.

19. Emma watched April collapse twice between November 29 and November 30, 2022, once when on her way to get dinner and a second time by the water fountain where guards had forced her to crawl to get a drink of water.

20. Emma watched as April appeared to have a seizure and observed a nurse take her blood pressure and tell the guards she was fine and to go back to bed. When April appeared to have a second seizure, a guard told her if she didn't like detoxing, she shouldn't be doing drugs.

21. After her second seizure at the water fountain, Emma states the guards told April to get up and that if she made it to the fountain, she could make it back to her mat. The guards then dragged April and "threw" her on her mat, telling her to stop doing drugs and to take deep breaths.

22. Emma states that MDC guards told April to stop "faking" it and that "nobody dies from detox."

23. Emma watched April vomiting and shaking violently throughout the night of November 29 and into the morning of November 30, 2022.

24. Around 7:00 AM on the morning of November 30, 2022, April sat forward to throw up and fell backwards so violently her head ended up on one side of her mat and her feet on the other so that she was lying horizontally on her boat.

25. Emma states she and three other women called for guards and asked if they could help April, to which the guards responded that they needed to sit down and not touch her.

26. Emma tried to give April CPR when a corrections officer yelled at her, telling her to not touch April and to "sit the fuck down." She remained horizontal on her mat for 15 minutes before medical was called, which happened pretty immediately after a new guard came to the pod at a shift change.

27. A Sergeant arrived along with a medical team, who tried unsuccessfully to get April

to move or talk. They took her blood pressure and Emma heard them say “we need to take her now.”

28. Emma watched as April was given Narcan even though she was not overdosing.

29. Other witnesses to April’s death, including two former combat nurses, told MDC staff not to administer the Narcan.

30. April was put in a wheelchair and Emma watched as she started shaking, gasping for air, and foaming at the mouth.

31. Emma watched as April stopped breathing.

32. According to other witnesses, the guards routinely addressed the sick detoxing women in both a degrading and dehumanizing manner calling them “bitches”, “hoes” And other even more vulgar names. Guards would announce their rounds by stating loudly “hoe check.” Both guards and medical personnel also routinely accused the detoxing women of faking while at the same time telling them if they didn’t like withdrawal to stop using drugs.

33. According to other witnesses, derogatory and inappropriate language was used toward April, Emma, and other detoxing women as April, to their astonishment, was allowed to die throughout the evening of November 29, 2022 up to her death at 8:13 AM on November 30, 2022, under the nose of the guard, despite the pleas from many of the women in the pod to call medical.

34. Immediately following April’s death, the women in the detox pod were taken outside into the freezing cold without time to put on their shoes, coats, or grab blankets. As the women asked for coats, blankets, and shoes, they were told to “shut the fuck up,” that they had no business complaining when someone had just died. One female inmate remarked that the guards had killed April for which she was body slammed to the pavement resulting in injuries

necessitating transfer to the medical unit.

35. Emma asked a guard what time it was and was told she shouldn't be in jail if she wanted to know what time it was. She was also told to get her life together and heard a guard yell in response to another inmate "these bitches are always asking for things."

36. After being threatened while they were freezing outside, the female inmates were taken to solitary confinement in another area of the jail, where they were locked up 23 and a half hours a day with only 30 minutes a day outside. The solitary unit had two dog cages outside. The guards continued to mock the women asking them who wanted to be put in the dog cages first.

37. The women were forced to eat on the bare dirty floor.

38. When the women would speak, they were yelled at to "shut the fuck up" because the dog cages were waiting.

A. Failure to Properly Staff, Train, and Supervise MDC Personnel Working in the Detox Pod

39. Plaintiff incorporates by reference the facts and allegations set out above.

40. There have been numerous detox deaths at MDC since early 2021.

41. MDC is grossly understaffed, placing both inmates and MDC personnel at risk. Due to the shortage of guards, those on duty are overworked, tired, and are commonly working at least 16 hours a day.

42. Throughout the evening of November 29, 2022 up to April's death at 8:13 AM on November 30, 2022, there was only one guard on duty in the detox pod which was particularly dangerous in the detox setting due to the risk of dehydration, other withdrawal complications, and the number of women in the pod.

43. Upon information and belief, MDC personnel, including detox pod guards, have no medical training other than CPR and basic first aid, and receive very little if any training on detox.

If inmates want or need medical attention, the guards are unresponsive and tell the female inmates to submit a medical request via the tablets that are located up in front of the guards' desk.

44. It is common for inmates to get released, some having never had their medical needs addressed. In instances where inmates are able to see a provider, the delay is up to one month due to staffing shortages, even if the provider is seen over Zoom. One witness reported that at the time of April's death, the entire medical department walked out, and no medications were given to anyone for over two days.

45. This includes the MDC personnel manning the detox pod as Emma was forced to watch April slowly die what by all accounts was an agonizing death for April.

46. Bernalillo County knew or should have known of the need to train its employees on its policies and procedures and the appropriate standards in monitoring prisoners and making necessary and timely calls for medical assistance for prisoners in distress. Specifically, Bernalillo County knew of the high number of detox deaths at MDC, the dangers of detox, the importance of hydration and the importance of proper medical equipment, supplies and medications in case a detoxing inmate "crashes". Bernalillo County was on notice that both Centurion and Corizon had slashed equipment, supplies and medications necessary for proper care of detoxing patients. Yet, Bernalillo County did nothing to remedy the situation.

47. Bernalillo County was on notice that both Centurion and Corizon had slashed critical personnel such as EMTs and paramedics necessary for proper care of crashing detoxing patients. Yet, Bernalillo County did nothing to remedy the situation.

48. Bernalillo County was on notice that both Centurion and Corizon lacked trained personnel capable of administering critical medications in case of crashing inmates. Yet, Bernalillo County did nothing to remedy the situation.

49. MDC has a well-established and vile culture of abuse of inmates. Rather than deter such behavior, it is tolerated by supervisory personnel.

50. Bernalillo County and MDC has failed to provide even basic training on communications, empathy, or humane treatment of inmates such as Emma and April Trujillo. Upon information and belief, and as indicated by the calls for “Hoe Check” before rounds by some correctional personnel, of which supervisory personnel are aware, the dehumanization, degradation and terrorizing intimidation witnessed by Emma is systemic standard operating procedure (SOP) at MDC.

51. MDC guards routinely watch entertainment videos on the screens at the guard station when they should have been watching inmates. This is a pervasive practice which MDC supervisory personnel are both aware of and participate in.

52. MDC guards routinely place inmates in the detox pod without proper screening to determine if that is a proper placement.

53. Emma was one inmate who stated she did not need to be in detox. She was neither an addict nor detoxing.

54. MDC is chronically and severely understaffed with guards, placing inmates and guards alike at significant risk of harm. This too is systemic and constitutes standard operating procedure.

B. Deliberately Cruel, Callous, Dehumanizing, Degrading Terrifying and Conscience Shocking Behavior Intended to Inflict Harm

55. The actions and inactions of MDC personnel were cruel, callous, degrading, and conscious shocking.

56. In addition to forcing Emma to witness the slow agonizing death of April as MDC personnel refused to help her get water or even to call medical, MDC personnel deliberately and

with malice degraded, humiliated, and threatened Emma for trying to help April.

57. MDC personnel deliberately and with malice degraded, humiliated, and threatened Emma for simply being in the detox pod, where she did not belong.

58. Emma should never have been in the detox pod to begin with as she was in liver failure when she was sent to MDC, knew she was to be released shortly, and told MDC personnel she was not detoxing from anything and was not going to go through withdrawals.

59. Following April's death, Emma along with other detox pod inmates, were cruelly and maliciously taken outside in the freezing cold morning of November 30, 2022, with no shoes, coats, or blankets.

60. The inmates were then faced with intimidation and threats as they complained of the cold. Some were subjected to physical violence to which Emma and others were witnesses further terrifying Emma and the other women.

61. The actions of MDC personnel toward Emma and other witnesses to April's death was intended to, and had the effect of, terrifying Emma.

C. Damages

62. Watching April die was and continues to be agonizing for Emma.

63. She watched helplessly knowing that April's death could have easily been avoided but for the cruel indifference of MDC personnel.

64. The degrading, dehumanizing and intentionally cruel treatment of April and Emma while in the detox pod had the intended purpose of causing Emma severe emotional distress.

65. The intentionally intimidating and terrifying behavior toward Emma and inmates in the detox pod as well as the brutal physical retaliation against one inmate witness to April's death had the intended purpose of terrifying Emma.

66. As a result of the actions and inactions of the employees and agents of Bernalillo County, Emma has had to seek therapy to deal with the PTSD resulting from watching April die needlessly.

67. Emma cannot stop thinking about April's death. She sees April's face in her mind every day, has recurring nightmares about the incident, and is "not the same person."

68. Emma states that because she has two children to take care of, the only thing she can do to heal is to be in therapy to help cope with the stress and emotions she feels daily.

69. Emma has suffered significant emotional and physical harm including:

- A) Severe aggravation of PTSD, including, nightmares, trouble sleeping, worsening depression, and anxiety.
- B) Emma has recurring horrible nightmares related to her experience in MDC.
- C) Emma reports that she thinks about April every day and cannot think about her without crying.
- D) Emma has suffered severe sleep disruption since witnessing April's tragic death, from not being able to sleep at all to sleeping all day.
- E) Emma states she is often afraid to leave the house since witnessing April's death, because she fears she will be in the wrong place at the wrong time and end up back in MDC.
- F) Every time Emma sees a police officer, she feels extreme anxiety because of her fears of going back to MDC and having to again witness something like what happened to April or having something similar happen to her.
- G) Emma has to take Celexa and Wellbutrin, both antidepressants, and Buspirone, an anti-anxiety medication to help her cope with her continued PTSD, anxiety,

and depression, which are all worse than they have ever been.

H) Emma states that she is “a different person” since watching April die and this has effected her relationship with her fiancé.

CAUSES OF ACTION

COUNT I: VIOLATION OF THE INHERENT RIGHT TO LIFE AND LIBERTY UNDER ARTICLE II, § 4 OF THE NEW MEXICO STATE CONSTITUTION

70. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

71. The New Mexico Constitution states that the enjoyment of “life and liberty” and the pursuit of safety and happiness are “natural, inherent and inalienable” rights. N.M. Const. Art. II, § 4.

72. In this case, as set forth above, both Bernalillo County and Corizon, and their respective agents, employees, and apparent agents, violated Emma’s right to life and liberty as set forth in the New Mexico Constitution.

73. These Defendants are liable to Plaintiff under the New Mexico Civil Rights Act.

74. Plaintiff is entitled to all damages allowed under the New Mexico Civil Rights Act.

COUNT II: VIOLATION OF THE RIGHT TO DUE PROCESS UNDER ARTICLE II, § 18 OF THE NEW MEXICO STATE CONSTITUTION

75. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

76. The New Mexico Constitution states that the government may not deprive any person of life “without due process of law.”

77. In this case, as set forth above, Bernalillo County acting through MDC, its agents, employees, and apparent agents, violated Emma’s right to due process before she was deprived of her life as set forth in the New Mexico Constitution. Through their acts and omissions, they

violated Emma's constitutional rights.

78. These Defendants are liable to Plaintiff under the New Mexico Civil Rights Act.

79. There, Plaintiff is entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT III: POLICY AND PRACTICE OF ABUSE OF WOMEN IN THE DETOX POD
IN VIOLATION OF ARTICLE II, §§ 13 AND 18 OF THE NEW MEXICO STATE
CONSTITUTION AGAINST ALL DEFENDANTS**

80. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

81. As set forth above, during the times pertinent to the complaint, Emma was deprived of her constitutional rights under the New Mexico Constitution.

82. Guards and supervisory personnel customarily terrorized, mocked, degraded and dehumanized women in the detox pod, including Emma.

83. Guards and supervisory personnel ignored women in detox and other MDC inmates when they were clearly in medical distress, even when facing imminent death, as was April.

84. Guards and supervisory personnel routinely watched videos rather than protecting the health and safety of inmates under their watch. They did so even when inmates were literally dying, as was April, and other inmates have died under similar conditions.

85. Guards and supervisory personnel, as a result of standard operating procedures and customs, felt free to psychologically and physically threaten women in detox.

86. The moving force behind this deprivation were policies, practices, customs, and patterns adopted and ratified by all Defendants.

87. These policies, practices, customs, and patterns caused a violation of Emma's constitutional rights under the New Mexico Constitution.

88. Moreover, Defendants failed to intervene to protect Emma's rights, which was a

cause of Plaintiff's injuries and damages under the New Mexico Civil Rights Act.

89. Plaintiff is entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT IV: VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS
GUARANTEED UNDER ARTICLE II, §§ 18 OF THE NEW MEXICO
STATE CONSTITUTION AGAINST ALL DEFENDANTS**

90. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

91. Article II, Section 18 of the New Mexico State Constitution guarantees a fundamental right to be protected against the unlawful invasion of a person's personal safety and bodily integrity. Substantive due process rights include the rights to personal autonomy, bodily integrity, self-dignity, and self-determination.

92. In this case, as set forth above, Bernalillo County and Corizon, and their agents, employees, and apparent agents, violated Emma's substantive due process rights under the New Mexico Constitution.

93. Moreover, Defendants failed to intervene to protect Emma's rights, which was a cause of Plaintiff's injuries and damages.

94. Plaintiff is therefore entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT V: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ARTICLE II, §§ 4, 8, 13, 18 OF THE NEW MEXICO STATE
CONSTITUTION**

95. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

96. In violation of the New Mexico Constitution, Article II, §§ 4, 8, 13 and 18, both BernCo and Corizon, acting by and through their respective employees, agents, and contractors engaged in inexplicable dehumanizing, degrading and intentionally cruel, callous, and wanton

abuse of Emma as she watched April die helplessly and needlessly.

97. The only purpose for this behavior was the intentional infliction of emotional distress on Emma and the other inmates who tried to help April.

98. All acts complained of herein were authorized, participated in, or ratified by Defendants BernCo, Corizon, and/or their administrators, managers, supervisors, officers, directors, or shareholders.

99. As a result of the foregoing, Emma suffered serious injuries, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT VI: NEGLIGENT OPERATION OF A PUBLIC BUILDING UNDER
NMSA 1978, § 41-4-6 AGAINST BERNALILLO COUNTY AND ITS
EMPLOYEE, STAFF AND AGENT JOHN DOE GUARDS AND MDC
SUPERVISORY PERSONNEL**

100. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

101. At all relevant times, Defendant Bernalillo County, acting through its employees, agents, apparent agents, or contractors, who were acting within the scope of their employment, agency, apparent agency, or contract, was negligent in the operation of MDC.

102. In operating MDC, Defendant Bernalillo County was under a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

103. Defendant Bernalillo County has ultimate authority and control over MDC, along with a consequent duty to operate the facility so as not to endanger the health and safety of those utilizing the facility, including prisoners.

104. Defendant Bernalillo County failed to enforce any standards of care related to

humane treatment of patients in the detox unit. Instead, Bernalillo County implemented and ratified abusive, inhumane and dangerous practices leading to extreme medical neglect of prisoners in the custody and care of Bernalillo County, including Emma.

105. Defendant Bernalillo County's customs and practices created a general condition of unreasonable risk to prisoners at MDC due to negligent safety practices in identifying and addressing the medical needs of prisoners.

106. Defendant Bernalillo County's practice of breaching its own written policies and procedures and practice of breaching its duties in the operation of MDC caused a foreseeable risk of injury to all prisoners, created a specific foreseeable risk to Emma, and was the cause of April's injuries.

107. Defendant Bernalillo County failed to exercise reasonable care to prevent and correct these abusive, inhumane and dangerous conditions at MDC, and in doing so ignored threats to prisoner's health and safety.

108. At all relevant times, Defendant Bernalillo County, acting through its employees, staff, and agents, was acting within the scope of its duties in the operation and/or maintenance of MDC, as it was acting in relation to safety policies necessary to protect those who used this public building.

109. Specific to Bernalillo County, immunity for any "public employee" is waived under NMSA 1978, § 41-4-9 as Emma's injuries arose from the unsafe, dangerous, and defective conditions of a property owned and operated by Bernalillo County and these "public employees" were acting within the scope of their duties.

110. As a result of the acts and omissions of Defendant Bernalillo County, Emma suffered injury, emotional distress, and pain and suffering, for which Plaintiff is entitled to

damages.

**COUNT VII: VIOLATION OF CONSTITUTIONAL AND STATUTORY RIGHTS
UNDER NEW MEXICO LAW NMSA 1978, § 41-4-12 AGAINST
BERNALILLO COUNTY AND ITS EMPLOYEES, STAFF AND
AGENT JOHN DOE GUARDS AND MDC SUPERVISORY
PERSONNEL**

111. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

112. MDC guards and supervisory personnel are “law enforcement officers” under NMSA § 41-4-12.

113. At all relevant times, Defendant Bernalillo County, acting through its employees, agents, apparent agents, or contractors, who were acting within the scope of their employment, agency, apparent agency, or contract, was negligent in its failure to protect the physical and mental health and safety of Emma Bordegaray.

114. As a result of the acts and omissions of Defendant Bernalillo County, Emma suffered injury, emotional distress, and pain and suffering, for which Plaintiff is entitled to damages.

WHEREFORE, Plaintiff requests judgment as follows:

- A. Compensatory damages in an amount to be determined by this Court as adequate for injuries to Plaintiff including physical and emotional pain and suffering.
- B. Punitive damages as determined at trial.
- C. Costs incurred by Plaintiff, including pre-judgment and post-judgment interest; and
- D. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

COLLINS & COLLINS, P.C.

/s/ Parrish Collins _____

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