

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

JULIAN ROMERO,

Plaintiff,

v.

No. D-101-CV-2023-01572

NEW MEXICO CORRECTIONS DEPARTMENT, Case assigned to Mathew, Francis J.

Defendant.

CIVIL RIGHTS COMPLAINT

COMES NOW, Plaintiff, Julian Romero, by and through his attorney Collins & Collins, P.C. (Parrish Collins), and brings this Complaint to redress violations of the New Mexico Constitution.

PARTIES, JURISDICTION, AND VENUE

1. Julian Romero is, at times relevant to this Complaint, incarcerated at the Central New Mexico Correctional Facility's ("CNMCF") Long-Term Care Unit ("LTCU"), an NMCD prison located in Los Lunas, New Mexico.

2. Upon information and belief, Julian is currently hospitalized at the University of New Mexico Hospital ("UNMH") in Albuquerque, New Mexico. He remains in NMCD custody.

3. The New Mexico Corrections Department ("NMCD") is an agency of the State of New Mexico and thereby is both a local public body as defined in NMSA 1978, Section 41-4-3(C) and a public body as defined in NMSA 1978, Section 41-4A-2.

4. NMCD owns, operates, supervises, and has control over CNMCF and its employees.

5. NMCD acted and continues to act through its employees, staff, and agents.

6. Notices of Claims were timely sent on March 22, 2023, and May 4, 2023, meeting the notice requirements under both the New Mexico Tort Claims Act and the New Mexico Civil Rights Act. **Ex. 1.**

7. Further, Defendant NMCD had actual notice of the claims as Plaintiff's counsel has been in contact with NMCD RMD Counsel Mary T. Torres and Central New Mexico Correctional Facility Warden Robert Nilius regarding Plaintiff's claims.

8. It is unclear whether Plaintiff is physically able to exhaust his administrative remedies pursuant to NMSA 1978, § 33-2-11 as Plaintiff has been hospitalized for months and has not had contact with his attorney or his spouse.

9. Jurisdiction and venue are proper over the New Mexico Corrections Department ("NMCD") and its employees, staff, and agents pursuant to NMSA 1978 Section 41-4A-3(B).

FACTUAL BACKGROUND

10. Julian was, at times relevant to this action, a 42-year-old man, who is currently incarcerated at CNMCF in NMCD's custody.

11. Upon information and belief, prior to his incarceration at CNMCF, Julian was in the custody of the Rio Arriba County Detention Center in Tierra Amarilla, New Mexico.

12. Upon information and belief, Julian was in and out of Presbyterian Hospital in Espanola with debilitating spinal abscesses in June and July 2022 while in the custody of Rio Arriba County.

13. Upon information and belief, at some point in or around July 2022, Julian was released from custody and underwent treatment for complications from the aforementioned spinal abscesses.

14. Upon information and belief, Julian was rearrested and re-entered Rio Arriba County's custody in February 2023.

15. Upon information and belief, at this time Julian was still being treated for complications related to his spinal abscesses and had an open sore on his left leg that was actively being treated with antibiotics.

16. Upon information and belief, Julian was transferred to CNMCF's LTCU after re-entering custody.

17. Upon information and belief, he was transferred to the University of New Mexico Hospital on February 22, 2023.

18. Upon information and belief, Julian needed amputation surgery on his left leg at this time.

19. Julian has been unable to speak to his wife and Power of Attorney, Juliet Padilla, since his rearrest in February 2023.

20. Julian has also been unable to speak with his attorney, Parrish Collins.

COUNT I: INTERFERENCE WITH SPOUSAL COMMUNICATION IN VIOLATION OF ARTICLE II, SECTION 18 OF THE NEW MEXICO CONSTITUTION

21. Each paragraph of this Complaint is incorporated as if fully restated herein.

22. In accordance with U.S. Constitutional protections, the New Mexico State Constitution guarantees the fundamental right to marriage.

23. This constitutionally protected relationship extends to individuals who are incarcerated.

24. NMCD's failure to allow Julian to speak with his wife interferes with his fundamental right to marriage and to maintain his constitutionally protected relationship with his wife.

25. There is no rational reason related to penological interests to continue to prevent Julian from speaking to his wife for over four months while he receives critical medical care.

26. Julian's right to marriage is being unconstitutionally infringed upon due to NMCD's actions.

27. NMCD should be enjoined from continuing to violate Julian's constitutional right.

COUNT II: INTERFERENCE WITH SPOUSAL COMMUNICATION IN VIOLATION OF ARTICLE II, SECTION 13 OF THE NEW MEXICO CONSTITUTION

28. Each paragraph of this Complaint is incorporated as if fully restated herein.

29. The New Mexico State Constitution protects individuals against cruel and unusual punishment.

30. This protection extends to the deleterious effects which flow from denial of the right to speak with your spouse.

31. Further, this protection extends to the cruel and unusual effects which flow from the denial of the right to speak with your spouse while you are undergoing serious medical procedures.

32. NMCD's refusal to allow Julian to speak with his wife amounts to cruel and unusual punishment.

33. NMCD should be enjoined from continuing to inflict cruel and unusual punishment on Julian.

COUNT III: INTERFERENCE WITH ATTORNEY-CLIENT COMMUNICATION IN VIOLATION OF ARTICLE II, SECTIONS 14 & 17 OF THE NEW MEXICO CONSTITUTION

34. Each paragraph of this Complaint is incorporated as if fully restated herein.

35. The New Mexico State Constitution guarantees prisoners the right to access the courts.

36. This right extends to the right of a prisoner to speak to an attorney.

37. NMCD's refusal to allow anyone, including Julian's attorney, to speak to him, constitutes a violation of Julian's right to access the courts.

38. NMCD should be enjoined from continuing to infringe on Julian's right to access the courts.

**COUNT III: ALIENATION OF AFFECTION IN VIOLATION OF NEW MEXICO
COMMON LAW**

39. Each paragraph of this Complaint is incorporated as if fully restated herein.

40. Julian and his wife have a loving and affectionate relationship.

41. The love and affection of this relationship is being alienated and destroyed due to lack of communication.

42. NMCD's refusal to allow Julian to speak with his wife, despite numerous requests for information and actual knowledge of his desire to speak with his wife, is the controlling cause of this alienation.

43. NMCD's refusal to allow Julian to speak with his wife amounts to tortious alienation of affection.

44. NMCD should be enjoined from continuing its tortious alienation of affection between Julian and his wife.

RELIEF REQUESTED

WHEREFORE Plaintiff requests judgment as follows:

- A. An injunction ordering NMCD to allow Julian to speak to his wife;
- B. An injunction ordering NMCD to allow Julian to speak to his attorney;
- C. Reasonable attorneys' fees; and
- D. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

COLLINS & COLLINS, P.C.

/s/ Parrish Collins

Parrish Collins

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Attorney for Plaintiff

COLLINS & COLLINS, P.C.
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March 22, 2023

**NOTICE OF TORT CLAIMS AND DELIBERATE INDIFFERENCE CLAIMS UNDER THE
NEW MEXICO CIVIL RIGHTS ACT**

Via Fax and Email

New Mexico Corrections Department
P.O. Box 27116
Santa Fe, NM 87502-0116
Fax: (505) 827-8533
**Email: Trisha.Cox@state.nm.us and
Brianne.Bigej@state.nm.us**

Via Fax

Detention Center Administrator
#2 Main St. Bldg 2
Tierra Amarilla, NM 87575
Fax: 575-588-7791

Via Fax and Email

Office of General Counsel
New Mexico Corrections Department
P.O. Box 27116
Santa Fe, NM 87502-0116
Fax: (505) 827-8533
**Email: Trisha.Cox@state.nm.us and
Brianne.Bigej@state.nm.us**

Via Fax

Health Services Administrator
c/o Wence Asonganyi
New Mexico Corrections Department
P.O. Box 27116
Santa Fe, NM 87502-0116
Fax: (505) 826-8533

Rio Arriba Risk Management
P.O. Box 127
Tierra Amarilla, NM 87575
Fax: (505)-588-0461

Via Fax and Email

Risk Management Claims Bureau
P.O. Box 6850
Santa Fe, NM 87502
Fax: (505) 827-2969
Email: PAC.claims@state.nm.us

Via Fax

Rio Arriba County Clerk
7th Main Street
Tierra Amarilla, NM 87575
Fax 505-753-1258

Via Fax

Warden's Office
c/o Warden Robert Nilius
Central New Mexico Correctional Facility
P.O. Drawer 1328
Los Lunas, NM 87502-0116
Email: Robert.Nilius@cd.nm.gov

Via Fax

Statewide Grievance Manager
New Mexico Corrections Department
P.O. Box 27116
Santa Fe, NM 87502-0116
Fax: (505) 827-8533

Via Fax

NMCD Bureau Chief
New Mexico Corrections Department
P.O. Box 27116
Santa Fe, NM 87502-0116

Via Fax

Office of the Secretary
Alisha Tafoya Lucero
P.O. Box 27116
Santa Fe, NM 87502-0116
Fax: (505) 827-8533

Fax: (505) 827-2969

Via Email

Rio Arriba County Manager
1120 Industrial Park Rd.
Española, NM 87532
Email: TCampos@rio-arriba.org

Via Fax

Wexford Health Sources, Inc.
c/o Risk Management Department
501 Holiday Drive, Suite 300
Pittsburgh, PA 15220
Fax: (412) 937-8874

Our Client: Julian Romero (NMCD#54947)
Subject: Notice of Claims and Preservation of Evidence
Defendants: New Mexico Corrections Department (NMCD), Wexford Health Sources,
Rio Arriba County, Vital Core Health Strategies, Rio Arriba County Detention Center
Date of Incidence: Ongoing
Location of Interest: Rio Arriba County Adult Detention Center, Central New Mexico
Correctional Facility (“CNMCF”).

Notice of Claims and Demand for Preservation of Evidence Under Penalty of Spoliation

Gentlemen\Mesdames:

We are writing on behalf of the above captioned client and matters. This letter is intended to provide written notice to the above captioned parties under the Tort Claims Act (NMSA 1978, §§ 41-4-1 to – 4-27) and the New Mexico Civil Rights Act regarding the actions and inaction of Rio Arriba County Adult Detention Center, Vital Core Health Strategies, LLC, New Mexico Corrections Department (NMCD), Wexford Health Sources, Inc., and the State of New Mexico (and their employees, staff contractors and other agents) for the reckless, deliberately indifferent disregard for the civil rights and safety of Julian Romero outlined below.

Facts:

Mr. Romero was in and out of Presbyterian Espanola with debilitating spinal abscesses in June through July of 2022. During this time, Mr. Romero was in custody of Rio Arriba County Adult Detention Facility (“RACADF”). On or around the month of July 2022, Mr. Romero was released from custody and underwent treatment for the complications from his spinal abscesses.

Mr. Romero was rearrested and booked at RACADF in February 2023. At the time, he was still being treated for the complications from his spinal abscesses and had an open sore on his left leg that was being treated with antibiotics.

According to Mr. Romero's wife, her husband's condition deteriorated rapidly after being rearrested. Upon information and belief, Mr. Romero was transferred to CNMCF Long Term Care Unit ("LTCU") for treatment. As Mr. Romero's condition deteriorated, he was transferred to an outside hospital where he reportedly needed amputation surgery on his left leg. Mr. Romero's wife is his appointed Power of Attorney but has been able to speak to him since his rearrest in February 2023.

Preservation of Evidence:

Under the laws prohibiting spoliation of evidence, please take all necessary steps to preserve the following evidence associated with the subject incident:

1. All recorded calls involving Julian Romero as a party to the call.
2. The full and complete inmate file for Julian Romero to include all grievance and disciplinary files.
3. All of Julian Romero's personal belongings, including the contents of their cell.
4. All booking and intake documents for Julian Romero.
5. All medical records obtained or otherwise received for Julian Romero.
6. All requests by NMCD and RAC, its staff, agents, or contractors, for Julian Romero's medical records from any outside medical providers.
7. All correctional officer daily logs for the duration for January 1, 2023 and ongoing for any officer assigned to any cell(s), pod(s) or unit(s) where Julian Romero was housed.
8. All cell check logs for checks on Julian Romero for January 1, 2023 and ongoing.
9. All recorded calls involving Julian Romero as a party to the call.
10. All RHU logs for all units, pods and cells in which Julian Romero was housed at any time during his incarceration with NMCD and RAC.
11. All video of for all units, pods and cells in which Julian Romero was housed at any time during his incarceration with NMCD and RAC along with all video of the hallways leading to and from those units, pods and cells.
12. All video from and of the control booth or desk from which cameras are monitored in the pod in which Julian Romero was housed.
13. For March 7, 2023 and ongoing, all video of any incident between Julian Romero and RAC staff, employees, agents, contractors or other agents that generate any kind of report or result in disciplinary, reclassifications or transfer.

14. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:

- a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
- b. "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
- c. "photograph" means a photographic image or its equivalent stored in any form.

15. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic records must be maintained and preserved even if there are hard copy printouts of said records.

16. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with or related to Julian Romero.

Please also preserve all items above in the original electronic format in which they are entered, created, stored, maintained, and archived.

Please contact us should you have any questions. Thank you for your consideration of this matter.

Sincerely,

COLLINS & COLLINS, P.C.

/s/ Parrish Collins

Parrish Collins

PC/gs