

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
8/3/2023 5:35 PM
KATHLEEN VIGIL CLERK OF THE COURT
Mariah Gonzales

No.: D-101-CV-2023-01796

Case assigned to Wilson, Matthew Justin

EVONNE JARAMILLO,

Plaintiff,

v.

NEW MEXICO CORRECTIONS DEPARTMENT;
ROBERT SMITH; WARDEN JESSICA VIGIL-
RICHARDS; AND DOE EMPLOYEES,
STAFF AND AGENTS OF NMCD,

Defendants.

**COMPLAINT FOR VIOLATIONS OF NEW MEXICO TORT CLAIMS
ACT AND THE NEW MEXICO CONSTITUTION**

Plaintiff, Evonne Jaramillo (“Ms. Jaramillo” or “Plaintiff”), by and through her attorneys
Collins & Collins, P.C. (Parrish Collins) and DeLara | Supik | Odegard P.C.
(Alisa Wigley-DeLara) submits this Complaint for Violations of the New Mexico Tort Claims Act
and the New Mexico Constitution.

JURISDICTION AND VENUE

1. All acts complained of herein occurred in Cibola County, New Mexico.
2. A Notice of Claims was sent on May 31, 2022, pursuant to the New Mexico Tort Claims Act (NMSA 1978, § 41-4-16) and the New Mexico Civil Rights Act (NMSA 1978, § 41-4A-1 et seq.).
3. Defendants had actual notice of the claims.
4. Plaintiff exhausted her administrative remedies.

5. Jurisdiction and venue are proper over the New Mexico Corrections Department (“NMCD”) and its employees, staff, and agents pursuant to NMSA §§ 38-3-1 and 41-4-18; Article II, §§ 4, 13, and 18 of the New Mexico Constitution, the New Mexico Tort Claims Act (NMSA 1978, § 41-4-1, et seq.), and the New Mexico Civil Rights Act (NMSA 1978, §§ 41-4A-1 through 41-4A-13).

PARTIES AND CULPABLE ACTORS

6. Ms. Jaramillo was at all relevant times incarcerated at the Western New Mexico Correctional Facility (“WNMCF”), an NMCD prison facility located in the City of Grants, Cibola County, New Mexico.

7. Defendant NMCD is an entity of the State of New Mexico that retains ultimate authority and responsibility over the conditions of confinement of all NMCD inmates, including Ms. Jaramillo. NMCD has its principal place of operations in Santa Fe County, New Mexico.

8. At all relevant times, Defendant Jessica Vigil-Richards was the Warden of the WNMCFD, and upon information and belief, was a resident of Cibola County, New Mexico. . At all relevant times she was the administrative director of the WNMCFD. NMSA 1978, § 33-1-2(E). Defendant Vigil-Richards had oversight authority and final decision-making authority concerning the conditions of confinement of NMCD inmates.

9. At all relevant times, Defendant Robert Smith was a public employee, employed as a corrections officer at the WNMCFD, acting within the scope of his duties, and upon information and belief, was a resident of Cibola County, New Mexico.

10. Upon information and belief, the Doe Defendants are unknown public employees of the NMCD, acting within their scope of duties, employed as corrections officers and administrators who violated Ms. Jaramillo’s constitutional rights.

FACTUAL BACKGROUND

11. In or about January of 2022, Defendant Smith began working as a corrections officer at the WNMCF.

12. Defendant Smith was employed in this capacity until his termination in May of 2022 after he was investigated by the Security Threat Intelligence Unit (“STIU”) of the NMCD for bringing contraband into the WNMCF.

13. During the STIU investigation, it was discovered that Defendant Smith was bringing contraband into the WNMCF to give to female inmates and that he had an improper sexual relationship with one of those inmates.

14. From January of 2022 up to Defendant Smith’s termination and currently, Plaintiff was an inmate at the WNMCF.

15. Ms. Jaramillo was one of the inmates targeted by Defendant Smith, and in or about February of 2022, he started bringing her contraband as “gifts” to include candy, perfume, makeup, cigarettes, food, etc. These gifts were presented to her as bribes to coerce her to do things of a sexual nature for Defendant Smith.

16. Defendant Smith used his power and authority over her with the promise of gifts to control and sexually harass her. He told Ms. Jaramillo that she owed him for the gifts.

17. Defendant Smith also told Plaintiff that she would lose her job in prison if she did not comply with his demands.

18. For instance, Defendant Smith made repeated lewd comments about Ms. Jaramillo’s lips and butt. He would talk repeatedly about oral sex and getting blow jobs.

Defendant Smith made it clear to Ms. Jaramillo that in exchange for his gifts, she was expected to perform a sexual act with him.

19. Defendant Smith was also making similar comments and providing gifts to another female inmate, SBH.

20. At one point, Defendant Smith locked SBH and Ms. Jaramillo into a room and coerced them to expose themselves and to kiss each other.

21. On another occasion, Defendant Smith went into the control box and masturbated while he forced SBH and Ms. Jaramillo to touch each other.

22. Defendant Smith told Ms. Jaramillo that if “you don’t do this then I’m going to make you lose your job.” Defendant Smith also continued to provide Ms. Jaramillo with gifts.

23. Upon information and belief, many of incidents described above were caught on camera.

24. Upon information and belief, SBH was sexually assaulted by Defendant Smith.

25. Ms. Jaramillo believes that she was not sexually assaulted by Defendant Smith because SBH stuck up for her and intervened on her behalf.

26. Ms. Jaramillo was afraid of Defendant Smith and was also afraid to report Defendant Smith. She was aware that officers frequently retaliated against inmates that report abuse.

27. Ms. Jaramillo’s fears were realized. After the STIU began its investigation, the incidents involving Defendant Smith toward Plaintiff became common knowledge among the correctional staff.

28. Ms. Jaramillo became the subject of ongoing retaliation and ridicule by the guards.

29. Ms. Jaramillo was teased by the guards laughing that she would have a positive pregnancy test. She was asked by a correctional officer “what would she do for a piece of pizza?”

30. The ongoing teasing and ridicule by correctional officers continued until there was a scheduled shift change resulting in different officers being assigned to her POD.

31. Ultimately, however, Plaintiff was reprimanded and punished by the NMCD for her purported “role” in Defendant Smith’s sexual misconduct and abuse of authority. She was fired from her prison job after the STIU began its investigation and was told it was for her “horseplay.”

32. NMCD’s punishment of Plaintiff is shocking when it was aware that Defendant Smith was criminally charged with two counts of criminal sexual penetration in the second degree (position of authority over inmate) in violation of NMSA 1978, § 30-09-11(E)(2) and one count of bringing contraband onto prison grounds in violation of NMSA 1978, § 30-22-14(A) as of May 20, 2022.

33. The retaliation and ridicule Plaintiff suffered at the hands of other correctional officers made her feel even more unsafe and victimized.

34. The retaliation and ridicule Plaintiff suffered at the hands of other correctional officers went unchecked and uncorrected by the supervisory personnel of NMCD, including Defendant Vigil-Richards.

35. Defendants NMCD and Vigil-Richards fostered a culture that allowed correctional officers to abuse their positions of authority over the inmates, including Ms. Jaramillo, which in turn, allowed Defendant Smith to prey on Ms. Jaramillo unchecked over the course of several months.

36. Defendants NMCD and Vigil-Richards fostered an environment where inmates, such as Ms. Jaramillo, are punished and retaliated against for reporting abuse by correctional officers at odds with NMCD policy.

37. The actions and inactions of Defendants created an environment where inmates were not safe and in danger of ongoing sexual abuse and victimization.

38. The actions and failures to act by Defendants caused significant harm to Plaintiff and were in violation of her constitutional rights.

A. DEFENDANTS VIOLATED NMCD, RULES, POLICIES, AND PROCEDURES

39. The WNMCF is operated in accordance with all NMCD rules, policies, and procedures.

40. NMCD is responsible for the care, health, and safety of all detainees in its facilities.

41. Defendant Vigil-Richards had oversight responsibility over NMCD employees and agents to ensure compliance with NMCD rules, policies, and procedures.

42. Defendants violated the following NMCD policies, among others:

- CD-032200(G): “Inmates shall be protected from personal abuse, corporal or unusual punishment, humiliation, mental abuse, personal injury, disease, property damage, harassment or punitive interference with the daily functions of living, such as eating and sleeping.”
- CD-150100(A and C): “The NMCD has a ‘zero tolerance’ policy regarding all forms of sexual abuse, sexual misconduct and sexual harassment....Any employee, inmate or other person who in good faith reports abuse or sexual misconduct will not be subject to retaliation by staff or inmates. Information will be kept confidential. Wardens or their designee will monitor those who report sexual abuse or cooperate with investigations for

ninety (90) days and take appropriate steps to protect individuals from retaliation, including periodic status checks on inmates.”

- CD-031800(C): “There is a zero tolerance policy prohibiting any retaliatory acts against anyone who has reported allegations of staff misconduct or criminal acts. Any employee who engages in substantiated retaliatory behavior is subject to dismissal.”
- CD-170100(FF): “All state and private facilities that house state inmates shall follow procedures and practices that are in compliance with Corrections Department policy, ACA, and NCCHC standards.”

43. Under the Prison Rape Elimination Act, adopted by NMCD, there is a recognition of the power differential between corrections officers and inmates such that sexual activity between a correctional officer and an inmate is never consensual.

44. Because the Defendants violated the above policies, Ms. Jaramillo was harmed, and her constitutional rights were violated.

B. NMCD HAS WIDESPREAD PRACTICES OF SEXUAL ABUSE IN ITS PRISONS AND SUCH PRACTICES WERE THE MOVING FORCES BEHIND THE INJURY TO MS. JARAMILLO

45. There is a culture of inmate abuse and sexual misconduct at NMCD’s correctional facilities, particularly the facilities housing female inmates.

46. NMCD has a longstanding practice, directed, supervised and/or ratified by NMCD supervisory personnel, of (1) ignoring sexual abuse and abuses of power by corrections officers/staff directed to inmates, (2) failing to follow its own written policies designed to eliminate the sexual abuse of inmates by staff members, (3) failing to reprimand/terminate corrections officers who have engaged in sexual abuse of inmates, (4) failing to train and educate inmates on PREA, (5) failing to train NMCD staff on NMCD policies, including policies concerning PREA,

(6) failing to maintain the confidentiality of the reports of sexual abuse and/or the investigations of sexual abuse, (7) punishing and reprimanding inmates for reporting sexual abuse, and (8) failing to reprimand NMCD staff members who retaliate against inmates after a report of sexual abuse is made.

47. These practices are clearly illustrated in past court cases throughout the state of New Mexico. In addition, the practices have been extensively and expansively covered by the media.

48. NMCD is aware of its systemic and widespread problems of sexual abuse and victimization of inmates in its correctional facilities. In addition, NMCD can be imputed knowledge from all the cases and media reports documenting the same.

49. Rather than take corrective action, NMCD's systemic and widespread problems of sexual abuse and victimization of inmates continues unabated. The current Secretary of the NMCD Ms. Alisha Tafoya Lucero was asked about the need for additional oversight of NMCD facilities to address inmate complaints in late 2022 and responded that the current level of oversight "is more than enough."

50. NMCD knew of the substantial risk of sexual abuse and victimization of inmates such as Ms. Jaramillo because of these widespread practices.

51. The practices set forth throughout this complaint were the moving forces behind the misconduct at issue in the instant case.

52. As a result of Defendants' unlawful conduct, Ms. Jaramillo suffered harm and her constitutional rights were violated.

53. NMCD is liable for damages caused by its employees and agents while working within the scope of their employment under the doctrine of *respondeat superior*.

**COUNT I: NEGLIGENT OPERATION OF A PUBLIC BUILDING UNDER THE
NEW MEXICO TORT CLAIMS ACT, NMSA § 41-4-6
(AGAINST ALL DEFENDANTS)**

54. Each Paragraph of this Complaint is incorporated as if fully stated herein.

55. In operating the WNMCF, NMCD and the Individual NMCD Defendants were all 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.

56. NMCD has authority and control over all NMCD correctional facilities along with a consequent duty to operate the facility so as not to endanger the health and safety of those utilizing the facility, including inmates.

57. NMCD did not follow their own policies in the operation of the WNMCF related to the sexual abuse and victimization of inmates, such as Ms. Jaramillo. Instead, NMCD adopted and ratified dangerous practices set forth herein leading to rampant sexual abuse and victimization of inmates under the care of NMCD, including Ms. Jaramillo.

58. Defendants' customs and practices created a general condition of unreasonable risk to NMCD's prisoners due to negligent safety practices concerning the identification and management of sexual abuse and victimization of inmates by corrections officers.

59. The NMCD Defendants' practice of breaching their duty in the operation of NMCD facilities caused a foreseeable risk of injury to all inmates. The actions and inactions of the NMCD Defendants outlined above created a specific foreseeable risk to Ms. Jaramillo and was the cause of her injuries.

60. Defendants wholly failed to exercise reasonable care to prevent and correct these dangerous conditions at the WNMCF. Defendants ignored the threats to prisoners' health and safety.

61. At all relevant times, the above-named Defendants were acting within the scope of their duties in the operation and/or maintenance of these facilities, as they were acting in relation to safety policies necessary to protect those who used this public building.

62. The actions or inactions of Defendants caused harm and injury to Ms. Jaramillo entitling her to an award of compensatory damages.

63. Immunity for any “public employee” is waived for these Defendants’ negligence under NMSA § 41-4-6, as all public employee Defendants were acting within the scope of their duties in the operation of the NMCD facilities.

64. Immunity for any “public employee” is waived for these Defendants’ negligence under NMSA § 41-4-6, as Ms. Jaramillo’s injuries arose from an unsafe, dangerous, and defective condition on property owned and operated by the government.

**COUNT II: NEGLIGENCE
(AGAINST DEFENDANT SMITH IN THE ALTERNATIVE)**

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

66. At all relevant times, Defendant Smith was employed in the capacity of a corrections officer.

67. In this capacity, Defendant Smith was responsible for the health, care, and safety of inmates housed at the WNMCF, including Plaintiff, and had a duty to keep all such inmates safe from “personal abuse, corporal or unusual punishment, humiliation, mental abuse, personal injury, disease, property damage, harassment.” CD-032200(G).

68. Defendant Smith breached this duty and was negligent in the care and management of Plaintiff causing her harm and injury.

69. Defendant Smith caused harm to Plaintiff through his sexual abuse, sexual harassment, and victimization of Plaintiff.

70. Defendant Smith caused harm to Plaintiff through his abuse of power, which allowed him to sexually abuse and victimize Plaintiff.

71. Defendant Smith's actions were intentional, willful, wanton and in reckless disregard for the safety and well-being of Ms. Jaramillo, entitling her to an award of punitive damages.

72. To the extent a finding is made that the acts complained of herein were not within the scope of Defendant Smith's duties, Defendant Smith is liable individually for his negligent acts, entitling Plaintiff to an award of compensatory and punitive damages.

**COUNT III: VIOLATION ARTICLE II, §§ 4, 13, AND 18 OF THE NEW
MEXICO CONSTITUTION – NEW MEXICO CIVIL RIGHTS ACT
(AGAINST DEFENDANT NMCD)**

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

74. The New Mexico Constitution decrees that the government may deprive no person of life "without due process of law." N.M. Const. art. II, § 18. Moreover, the New Mexico Constitution guarantees that the enjoyment of "life and liberty" is a "natural, inherent and inalienable" right. N.M. Const. art. II, § 4.

75. The New Mexico Courts view Article II, § 4 as a prism through which we view due process and equal protection guarantees. Article II, § 4 is a vital component of our due process analysis.

76. Article II, § 4 under the New Mexico Constitution provides more expansive guarantees of life and safety than those under the United States Constitution.

77. The facts set forth herein establish a violation of Ms. Jaramillo's inherent inalienable rights to life and safety.

78. In the manner described more fully above, NMCD was aware that Ms. Jaramillo

was at risk for sexual abuse, victimization, and retaliation without appropriate action.

79. Ms. Jaramillo was the victim of sexual abuse and sexual harassment by Defendant Smith.

80. Thereafter, Ms. Jaramillo was the victim of repeated retaliation and harassment after the sexual abuse became known, and she was punished with the loss of her prison job.

81. Defendants failed to provide Ms. Jaramillo with a safe environment, failed to take appropriate and timely action to prevent the sexual victimization and retaliation, and failed to implement and/or follow policies and procedures that would prevent sexual victimization and retaliation in violation of Article II, § 4 of the New Mexico Constitution (“[L]ife and liberty” is a “natural, inherent and inalienable” right), § 13 of the New Mexico Constitution (“[C]ruel and unusual punishment” shall not be “inflicted.”), and Article II, § 18 of the New Mexico Constitution (“No person shall be deprived of life, liberty, or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person.”).

82. Ms. Jaramillo has a fundamental right to bodily integrity, personal safety, privacy, and freedom from unlawful invasion and violation of her person, and not to be subjected to an unsafe environment in which she was vulnerable to physical and emotional injury.

83. NMCD was acting under the color of law and its actions and inactions resulted in cruel and unusual punishment against Ms. Jaramillo concerning the conditions of her confinement.

84. NMCD was acting under the color of law and its actions and inactions implicate Ms. Jaramillo’s substantive due process rights under the New Mexico Constitution. NMCD was abusing its power to the highest degree and wielding it as an instrument of oppression in violation of Ms. Jaramillo’s substantive due process rights.

85. Prior to the events giving rise to Plaintiff's Complaint, NMCD was on notice of the dangerous practices set forth herein leading to rampant sexual abuse and victimization of inmates under the care of NMCD, including Ms. Jaramillo.

86. The NMCD and its respective supervisory personnel maintained and ratified the unconstitutional practices noted above directly resulting in the violation of Ms. Jaramillo's constitutional rights.

87. Defendant's actions and inactions were intentional, conscience-shocking, wanton, arbitrary and capricious, and in gross and reckless disregard of, and deliberately indifferent to Ms. Jaramillo's constitutional rights.

88. Defendant's unconstitutional actions and inactions were the cause of Ms. Jaramillo's injuries entitling her to compensatory damages.

JURY DEMAND

89. Plaintiff respectfully demands a six-person jury on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests judgment as follows:

A. The statutory damages legally allowable under the New Mexico Civil Rights Act against NMCD for "the maximum recovery limit" outlined in NMSA 1978, § 41-4A-6;

B. The statutory damages legally allowable under the New Mexico Tort Claims Act against all Defendants, jointly and severally, in an amount to be determined by this Court;

C. Compensatory and punitive damages against Defendant Smith under New Mexico common law;

D. Costs incurred by Ms. Jaramillo, including pre-judgment and post-judgment interest;

E. Reasonable attorneys' fees; and

F. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

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