

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

06 MAY 16 PM 4:32

CLEVELAND OFFICES

AMBER RODRIGUEZ, on her own
behalf and on behalf of a class of
similarly situated persons,

Plaintiff,

vs.

CIV 06-416

DOÑA ANA COUNTY BOARD OF
COMMISSIONERS; Doña Ana County
Juvenile Detention Center administrator
CHRISTOPHER BARELA, in his individual
and official capacities; former Doña Ana
County Juvenile Detention Center
administrator DAVID WOOLEY, in his
individual and official capacities; former
Doña Ana County Juvenile Detention Center
administrator ALFONSO SOLIZ, in his
individual and official capacities, and former
Doña Ana County Juvenile Detention Center
acting administrator CHERYL ROACH, in her
individual and official capacities,

Defendants.

JURY TRIAL REQUESTED

JUDITH C. HERRERA

Robert H. Scott

**CLASS ACTION COMPLAINT FOR DAMAGES
FOR VIOLATIONS OF CIVIL AND CONSTITUTIONAL
RIGHTS AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Amber Rodriguez, by and through below-signed counsel, bring this Class Action Complaint for Damages for Violations of Civil and Constitutional Rights and for Declaratory and Injunctive Relief against Defendants Doña Ana County Board of Commissioners, Doña Ana County Juvenile Detention Center (hereinafter "DACJDC") administrator Christopher Barela, former DACJDC administrators David Wooley and Alfonso Soliz, and former acting administrator Cheryl Roach (hereinafter "Defendants"). Plaintiff alleges against Defendants upon knowledge as to herself and all matters of public record, and upon information and belief as to all other matters,

as follows:

I.
JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (4). The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

II.
PARTIES

3. Plaintiff Amber Rodriguez (“Plaintiff”) is a resident of Las Cruces, New Mexico. Rodriguez brings this action on her own behalf and on behalf of a class of similarly situated persons.

4. Defendant Doña Ana County Board of Commissioners (“Doña Ana County”) is a political subdivision of the State of New Mexico. Pursuant to § 4-46-1 NMSA 1978, all suits or proceedings against a county are to be brought in the name of the board of county commissioners of that county. At all times material hereto, Doña Ana County was a governmental entity and local public body as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(B) and (C) NMSA 1978, as amended. At all times material hereto, Doña Ana County was the employer and supervisor of the individually named Defendants. Pursuant to §§ 4-44-19, 4-62-1, 7-20E-19, 7-20E-21, 33-3-3 through 8, and 33-3-13 NMSA 1978, Doña Ana County had a statutory obligation to provide for the confinement of prisoners incarcerated under the county’s jurisdiction. Doña Ana County likewise had an obligation under these statutes to appropriate funds and otherwise provide the necessary funding to maintain and operate a facility for the incarceration of prisoners under the jurisdiction of the county.

5. Defendant Christopher Barela ("Barela"), upon information and belief, is now and at all times material hereto has been a resident of Doña Ana County, New Mexico. Since approximately December 11, 2005, Barela has been the DACJDC administrator, having been duly appointed to the position by Doña Ana County. Between February 11, 2004, and August 23, 2004, and between August 23, 2005, and December 11, 2005, Barela was one of two acting DACJDC administrators, having been duly appointed by Doña Ana County. In addition, at all times material hereto, Barela was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and was acting within the scope of his duties as well as under color of law. He is sued both personally and in his official capacity. The allegations herein which pertain to Barela relate to the period during which he was an acting or permanent DACJDC administrator.

6. Defendant David Wooley ("Wooley"), upon information and belief, is now and at all times material hereto has been a resident of Doña Ana County, New Mexico. From August 23, 2004, to August 22, 2005, Wooley was the DACJDC administrator, having been duly appointed to the position by Doña Ana County. During the period Wooley was DACJDC administrator, he was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and was acting within the scope of his duties as well as under color of law. He is sued both personally and in his official capacity. The allegations herein which pertain to Wooley relate to the period during which he was DACJDC administrator.

7. Defendant Alfonso Soliz ("Soliz"), upon information and belief, is now and at all times material hereto has been a resident of Doña Ana County, New Mexico. Between 2000 and

February 10, 2004, Soliz was the DACJDC administrator, having been duly appointed to the position by Doña Ana County. During the period Soliz was DACJDC administrator, he was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and was acting within the scope of his duties as well as under color of law. He is sued both personally and in his official capacity. The allegations herein which pertain to Soliz relate to the period during which he was DACJDC administrator.

8. Defendant Cheryl Roach ("Roach"), upon information and belief, is now and at all times material hereto has been a resident of Doña Ana County, New Mexico. Between February 11, 2004, and August 23, 2004, and between August 23, 2005 and December 11, 2005, Roach was one of two acting DACJDC administrators, having been duly appointed by Doña Ana County. In addition, at all times material hereto, Roach was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§ 41-4-3(D) and (F) NMSA 1978, as amended, and was acting within the scope of her duties as well as under color of law. She is sued both personally and in her official capacity. The allegations herein which pertain to Roach relate to the period during which she was an acting DACJDC administrator.

9. Defendants Doña Ana County, Barela, Wooley, Soliz and Roach were responsible for the screening, hiring, training, monitoring, supervision and disciplining of subordinate employees of DACJDC, and were the authorities empowering DACJDC employees to incarcerate prisoners under the jurisdiction of Doña Ana County. Defendants Doña Ana County, Barela, Wooley, Soliz and Roach were directly responsible for the policy-making activities and the supervision of subordinate officers of DACJDC.

10. Defendants Doña Ana County, Barela, Wooley, Soliz and Roach, through their officials, agents, servants, and employees, were involved in and responsible for all the acts hereinafter alleged. At all times material hereto, Defendants Doña Ana County, Barela, Wooley, Soliz and Roach, individually and/or acting through their agents, officers and employees, acted in concert with one another and pursuant to a common plan and objective, and each of the Defendants is responsible for the acts and omissions of the other Defendants, and their agents, officers and employees, as co-conspirators, under the doctrine of *respondeat superior*, and under other doctrines of vicarious liability.

III. CLAIMS OF THE NAMED PLAINTIFF

11. Paragraphs 1 through 10 above are incorporated herein by reference as if fully set forth in this paragraph.

12. Plaintiff is 19 years old. She lives in Las Cruces, New Mexico. At the time of this incident, Plaintiff was 17 years old and attended Hatch Valley High School. Prior to July 28, 2004, she had never been arrested in her life.

13. On July 28, 2004, Plaintiff was charged with transporting illegal aliens within the United States. She was taken to the DACJDC to be booked. Plaintiff was taken to a room and ordered to disrobe. She asked the officer if that meant all her clothes. The officer replied that she had to take everything off. Plaintiff then removed all her clothing as instructed, leaving her completely naked in front of the guard.

14. While Plaintiff was naked, the officer visually examined her and ordered her to squat and cough. She complied. Nothing was found.

15. Defendants and their employees, agents and representatives had no valid reason for

conducting a strip search of Plaintiff. Nothing in Plaintiff's history, nor the circumstances of her arrest, gave Defendants reasonable suspicion that a strip search of Plaintiff would result in the discovery of contraband or weapons. Rather, the strip search of Plaintiff was undertaken pursuant to a blanket and indiscriminate policy of strip searching detainees processed at the DACJDC, in violation of well-settled constitutional law and standards of correctional practice.

16. Plaintiff was shocked, repulsed, humiliated, ashamed and distraught at being subjected to this degrading and dehumanizing invasion of her privacy.

IV. CLASS ACTION ALLEGATIONS

17. Paragraphs 1 through 16, above, are incorporated herein by reference as if fully set forth in this paragraph.

18. The strip search to which Plaintiff was subjected was performed pursuant to the policies, practices and customs of Defendants of conducting strip searches of all incoming detainees. The searches complained of herein were performed without regard to the nature of the alleged offenses for which Plaintiff and members of the class had been detained, and without Defendants or their employees, agents and representatives having a reasonable belief that the Plaintiff or members of the class possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the searches would produce contraband or weapons.

19. This civil action is brought by Plaintiff on her own behalf and on behalf of a class of similarly situated persons, pursuant to Fed. R. Civ. P. 23. The class for which Plaintiff seeks certification is defined as follows: all persons who, in the period from May 16, 2003, to the present and continuing until this matter is adjudicated and the practices complained of herein cease, were detained and subjected to a strip search and/or body cavity search at the Doña Ana

County Juvenile Detention Center pursuant to a policy, practice or custom of conducting strip searches on incoming detainees without individualized reasonable suspicion that the search would lead to the discovery of contraband or weapons.

20. Plaintiff is a member of the class she seeks to represent, and has standing to bring this action because she was arrested and subjected to a strip search and/or visual body search at the DACJDC in the absence of a reasonable suspicion that the search would reveal the presence of contraband or weapons, as set forth in more detail above.

21. Pursuant to Fed. R. Civ. P. 23, Plaintiff, individually and on behalf of the members of the class, seeks such relief as is just and equitable, including but not limited to:

(i) Complete disclosure of all information within the possession, custody or control of Defendants concerning, relating to or involving the searches complained of herein;

(ii) Judicial declaration that the searches complained of herein are unlawful;

(iii) Issuance of a permanent injunction prohibiting Defendants from engaging in the searches complained of herein; and

(iv) Judgment for compensatory and punitive damages to the fullest extent allowable by law from Defendants in favor of Plaintiff and the members of the class for personal and economic injury, and deprivation of statutory and/or common law rights resulting from Defendants' practices.

22. Plaintiff is not yet able to state precisely the size of the class. On information and belief, Plaintiff alleges that there often are more than 25 persons per month who are detained and booked into the DACJDC and subjected to the searches complained of herein as a result of Defendants' policies, practices, and customs related to said searches. Thus, the class is sufficiently numerous that joinder of all members herein is impracticable. The exact number of class members

will be ascertained through appropriate discovery, from records maintained by Defendants and their agents.

23. Questions of law and fact are common to the claims of Plaintiff and the members of the class, including but not limited to (1) whether DACJDC officers routinely subject persons arrested to strip searches and/or body cavity searches; (2) whether persons are subjected to strip searches and/or body cavity searches in the absence of any reasonable suspicion, based on specific and articulable facts, to believe any particular detainee has concealed drugs, weapons, and or contraband; (3) whether the strip searches are conducted in an area of privacy so that the searches cannot be observed by persons not participating in the searches; (4) whether DACJDC officers may lawfully perform strip searches and/or body cavity searches without reasonable suspicion, based on specific and articulable facts, to believe any particular detainee has concealed drugs, weapons or contraband; (5) whether strip searches and/or body cavity searches may lawfully be conducted in areas where the search can be observed by people not participating in the search; and (6) whether or not Defendants' strip search policy and procedure is in accordance with the State and Federal Constitutions.

24. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

25. There is a well-defined community of interest amongst members of the class. The claims of the named Plaintiff are typical of the claims of the members of the class. The factual bases of Defendants' misconduct are common to all class members and represent a common policy, practice and/or custom of blanket strip searches of detainees without reasonable suspicion.

Moreover, Plaintiff's claims are based on the same legal theories as those of the class members.

26. The named Plaintiff will fairly and adequately protect the interests of the class. Plaintiff is committed to prosecuting this action, and she has retained competent counsel experienced in civil litigation of this nature. Moreover, the interests of Plaintiff are coincident with, and not antagonistic to, those of the other members of the class.

27. The common questions of law and fact herein predominate over questions affecting any individual class member, and class action treatment provides a superior method for the fair and efficient adjudication of the controversy.

28. At all times relevant to the acts alleged herein, and as to every cause of action asserted, Defendants acted fraudulently, oppressively, maliciously, and in knowing and conscious disregard of Plaintiff's rights and the rights of class members, as outlined herein.

V.
FIRST CAUSE OF ACTION
(Civil Rights Violations Under 42 U.S.C. § 1983)

29. Plaintiff incorporates by reference into her first cause of action the allegations of paragraphs 1 through 28 above, as fully as if realleged and set forth herein.

30. The above-described acts and omissions of Defendants were unreasonable, shocking to the conscience, and were committed intentionally, maliciously, willfully and/or with reckless or deliberate indifference, and in violation of the following clearly established constitutional rights of which a reasonable person would have been aware:

(a) Plaintiff's and class members' Fourth Amendment rights to be free from unreasonable searches and seizures; and

(b) Plaintiff's and class members' Eighth Amendment rights to be free from cruel and

unusual punishment and/or Fourteenth Amendment rights to substantive and procedural due process, and to privacy.

31. The above-described acts and omissions of Defendants were motivated by evil motive and intent, and involved recklessness and callous indifference to Plaintiff and class members' federally protected rights, justifying an award of punitive damages.

32. Prior to the acts and omissions alleged herein, Defendants failed to properly create, adopt, inculcate and ensure compliance with appropriate policies and procedures for corrections officers and supervisory personnel employed by them; failed to properly train, monitor, supervise and discipline corrections officers and supervisory personnel employed by them, and failed to otherwise institute and ensure compliance with adequate procedures and policies that would protect the rights of Plaintiff and class members. These acts and omissions were direct and proximate causes of the injuries complained of by Plaintiff herein, as set forth below.

33. Defendants Doña Ana County, Barela, Wooley, Soliz and/or Roach maintained a custom or policy which permitted or condoned the foregoing violations of Plaintiff's and class members' constitutional rights.

34. The acts and omissions of the Defendants as set forth above were undertaken under color of state law and operated to deprive Plaintiff and the members of the class of their federal rights. Defendants Barela, Wooley, Soliz and Roach are liable in their individual and official capacities for damages proximately caused by these acts and omissions. Plaintiff is also entitled to injunctive relief against the Defendants, including a permanent injunction prohibiting Defendants from engaging in the unlawful practices and procedures complained of herein.

35. As a direct and proximate cause of Defendants' violations of her constitutional

rights, Plaintiff and members of the class suffered damages as set forth below.

VI.
SECOND CAUSE OF ACTION
(Claims Arising Under the New Mexico Tort Claims Act)

36. Plaintiff incorporates by reference into her second cause of action the allegations of paragraphs 1 through 35 above, as fully as if realleged and set forth herein.

37. The conduct of Defendants, described above, resulted in personal injury and bodily injury to Plaintiff and members of the class resulting from assault, battery, false imprisonment, and/or deprivation of rights, privileges or immunity secured by the Constitution and laws of the United States and New Mexico.

38. Defendants Barela, Wooley, Soliz and Roach, as supervisors of DACJDC officers, had the duty in any activity actually undertaken by them to exercise for the safety of others that care ordinarily exercised by a reasonable, prudent and qualified law enforcement supervisor in light of the nature of what was being done. In addition, Defendants Barela, Wooley, Soliz and Roach had a duty to properly screen, hire, train, monitor, supervise and/or discipline employees of DACJDC. Defendants Barela, Wooley, Soliz and Roach knew or reasonably should have known of the information described above.

39. Defendants Barela, Wooley, Soliz and Roach breached the foregoing duties by failing to properly screen, hire, train, monitor, supervise and/or discipline employees of DACJDC, and by failing to adopt and ensure compliance with appropriate policies, practices, and customs, by failing to implement appropriate supplemental training, by failing to appropriately discipline subordinate officers, and by failing to take other appropriate and usual supervisory actions to correct the problems and to prevent the harm which resulted to Plaintiff and members of the class

as a result of the misconduct of Defendants, described above.

40. Doña Ana County is the governmental entity which had immediate supervisory responsibility over the actions of employees of the DACJDC, including but not limited to Defendants Barela, Wooley, Soliz and Roach. Therefore, Doña Ana County is jointly and severally liable for all injuries and damages caused by the negligence of any of its officials or employees under the doctrine of vicarious liability.

41. The conduct of Defendants was a direct and proximate cause of the injuries and damages to Plaintiff and members of the class as set forth below.

42. All of the acts or omissions which constitute the basis for liability herein come within the scope of the waivers of immunity contained within the New Mexico Tort Claims Act.

43. To the extent required, Defendants have received written notice of the claims contained herein in compliance with the New Mexico Tort Claims Act, §41-4-16(A)-(C) NMSA 1978, as amended.

44. As a direct and proximate cause of Defendants' conduct, Plaintiff and members of the class suffered damages as set forth below.

VII.
THIRD CAUSE OF ACTION
(Declaratory and Injunctive Relief)

45. Plaintiff incorporates by reference into her third cause of action the allegations of paragraphs 1 through 44 above, as fully as if realleged and set forth herein.

46. Plaintiff, on behalf of herself and the members of the class, seeks a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches without individualized reasonable suspicion.

47. The constitutional violations alleged herein arise from official policies, practices and/or customs sanctioned by Defendants. The harm which the Plaintiff and the members of the class have sustained are directly traceable to these officially sanctioned policies, practices, and/or customs.

48. Plaintiff and members of the class do not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged in this Complaint, and they will suffer irreparable injury as a result of Defendants' misconduct unless injunctive and declaratory relief is granted. Plaintiff and members of the class are in real and immediate danger of sustaining future, direct injury as a result of Defendants' official policies, practices and customs that are ongoing at the time of this suit.

49. No cognizable burden will be placed on Defendants by requiring that no strip searches be undertaken without individualized reasonable suspicion. The public interest would be greatly enhanced by enforcement of policies and practices which adhere to the requirements of the state and federal Constitutions. Absent injunctive relief, there is no guarantee that the Defendants will cease their illegal policies, practices and customs as alleged herein.

50. By reason of the foregoing, Plaintiff and members of the class are entitled to declaratory and injunctive relief as set forth above.

VIII. **DAMAGES**

51. Paragraphs 1 through 50, above, are incorporated herein by reference as if fully set forth in this paragraph.

52. As a direct and proximate result of the wrongful and unlawful actions of

Defendants, described above, Plaintiff and the members of the class were injured and have suffered and continue to suffer damages, including but not limited to distress, anguish, suffering, humiliation, deprivation of constitutional rights, and other incidental, consequential, and special damages.

53. Defendants' acts and omissions, as set forth herein, were malicious, reckless, wanton, oppressive, and/or fraudulent, justifying an award of punitive damages against the individually named Defendants in their personal capacities, for the purpose of punishment and to deter others from the commission of like offenses.

WHEREFORE, Plaintiff, on behalf of herself and the members of the class represented herein, respectfully prays for and demands judgment against the Defendants as follows:

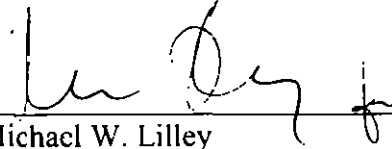
- (a) For judgment against Defendants for compensatory damages, special damages, consequential damages and incidental damages under any or all of the causes of action, in an amount to be determined at the trial of this cause;
- (b) For judgment declaring the rights of the parties;
- (c) For injunctive relief;
- (d) For reasonable attorneys' fees and costs incurred herein;
- (e) For pre-judgment and post-judgment interest in amounts to be determined according to law;
- (f) For an award of punitive and exemplary damages, in an amount to be determined at the trial of this cause; and
- (g) For such other and further relief as the Court deems just and proper.

JURY TRIAL REQUEST

COMES NOW Plaintiff, by and through her counsel, below-listed, on her own behalf and on behalf of a class of similarly situated persons, and hereby demands trial by jury pursuant to the terms and conditions of Fed.R.Civ.P. 38 in regard to all issues in the above-referenced cause.

Respectfully submitted,

LILLEY LAW OFFICES

By: 

Michael W. Lilley
Jess R. Lilley
Marc A. Lilley
1014 S. Main
Las Cruces, NM 88005
(505) 524-7809
(505) 526-2462 (fax)

ROTHSTEIN, DONATELLI, HUGHES,
DAHLSTROM, SCHOENBURG & BIENVENU,
LLP

By: 

Mark H. Donatelli
Robert R. Rothstein
John C. Bienvenu
Post Office Box 8180
Santa Fe, New Mexico 87504-8180
(505) 988-8004
(505) 982-0307 (fax)

Attorneys for Plaintiff and the Class