

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

JOE TORRES and EUFRASIO ARMIJO,
on their own behalf and on behalf of
a class of similarly situated persons,

Plaintiffs,

vs.

No. CIV-07-_____

VALENCIA COUNTY BOARD OF
COMMISSIONERS; CORNELL COMPANIES,
INC.; MICHAEL OLIVER,
in his individual and official capacities; and
LAWRENCE BARRERAS,

JURY TRIAL REQUESTED

Defendants.

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

Plaintiffs Joe Torres and Eufrasio Armijo, 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 Valencia County Board of Commissioners, Cornell Companies, Inc., Michael Oliver, and Lawrence Barreras (hereinafter “Defendants”). Plaintiffs allege against Defendants upon knowledge as to themselves 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 Joe Torres (“Torres”) is a resident of Belen, New Mexico. Torres brings this action on his own behalf and on behalf of a class of similarly situated persons.

4. Plaintiff Eufrasio Armijo (“Armijo”) is a resident of Belen, New Mexico. Armijo brings this action on his own behalf and on behalf of a class of similarly situated persons.

5. Defendant Valencia County Board of Commissioners (“Valencia 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, Valencia 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, Valencia County was the employer and supervisor of the individually named Defendants. Pursuant to §§ 4-44-19, 33-3-3 through 8, and 33-3-13 NMSA 1978, Valencia County had a statutory obligation to provide for the confinement of prisoners incarcerated under the county’s jurisdiction. Valencia County had a statutory obligation 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.

6. Defendant Cornell Companies, Inc. (“Cornell”) is, on information and belief, a corporation organized under the laws of the State of Delaware, headquartered in Houston, Texas, and doing business in the State of New Mexico. Cornell, between October 15, 2000 and December 31, 2004, operated the Valencia County Detention Center (“VCDC”) under contract

with Valencia County. At all times material hereto, Cornell and its officers, employees and agents acted under color of law and within the scope of their employment.

7. Defendant Michael Oliver (“Oliver”), upon information and belief, is now and at all time material hereto has been a resident of Valencia County, New Mexico. Since approximately January 1, 2005, Oliver has been VCDC Administrator, having been duly appointed to the position by Valencia County. In addition, at all times material hereto, Oliver 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 Oliver relate to the period during which he was VCDC Administrator.

8. Defendant Lawrence Barreras (“Barreras”), upon information and belief, is now and at all time material hereto has been a resident of Valencia County, New Mexico. Between October 2000 and December 31, 2004, Barreras was employed by Cornell as the Warden of VCDC. During the time he was VCDC Warden, Barreras was responsible for the administration of VCDC. At all times material hereto, Barreras was acting privately under color of law, and was acting within the scope of his duties. The allegations herein which pertain to Barreras relate to the period during which he was VCDC administrator.

9. Defendants were responsible for the screening, hiring, training, monitoring, supervision and disciplining of subordinate employees of VCDC, and were the authorities empowering VCDC employees to incarcerate prisoners under the jurisdiction of Valencia County. Defendants were directly responsible for the policy-making activities and the

supervision of subordinate officers of VCDC.

10. Defendants, through their officials, agents, servants, and employees, were involved in and responsible for all the acts hereinafter alleged. At all times material hereto, Defendants, 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 Defendant is responsible for the acts and omissions of the other Defendants, and their agents, officers and employees, as co-conspirators, and in regard to the state law claims under the doctrine of *respondeat superior* and under other doctrines of vicarious liability.

III. **CLAIMS OF THE NAMED PLAINTIFFS**

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

Joe Torres

12. Torres is 48 years old and was born and raised in Belen, New Mexico. He graduated from Belen High School and has a steady work history. Prior to September 3, 2006, he had never been arrested in his life.

13. On September 3, 2006, Torres went to his former girlfriend's home to pick up his daughter. While there, he was arrested for allegedly violating a restraining order and was taken to VCDC.

14. Upon arrival at VCDC, Torres was transferred to the custody and control of Defendants and processed for confinement. After being detained in a holding cell overnight, Torres and three other detainees were taken to a hallway adjacent to the cell blocks for male

inmates. A VCDC corrections officer then called Torres into a laundry area and told him to strip naked. He complied and was visually examined. The officer then told Torres to bend over and cough while the officer visually examined Torres' genital and anal area. Nothing was found during the strip search.

15. Defendants had no valid reason for conducting a strip search of Torres. Nothing in Torres' history, nor the circumstances of his arrest, gave Defendants reasonable suspicion that a strip search of Torres would result in the discovery of contraband or weapons. Rather, Defendants' strip search of Torres was undertaken pursuant to a blanket and indiscriminate policy of strip searching each and every detainee processed at VCDC, in violation of well-settled constitutional law and standards of correctional practice.

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

Eufrasio Armijo

17. Armijo is 65 years old and was born and raised in San Acacia, New Mexico. He attended Albuquerque Technical Vocational Institute and currently is retired from a successful career as a plumber. Prior to May 28, 2004, he had never been arrested in his life.

18. On May 28, 2004, Armijo was stopped at a New Mexico State Police roadblock. Even though he had not consumed any alcohol, he was required to perform field sobriety tests. Armijo was 63 years old at the time and suffered from arthritis and asthma. His age and medical condition made it difficult for him to perform the tests and he stumbled. He was placed under arrest on suspicion of Driving Under the Influence and transported to a police sub-station. Armijo then was subjected to repeated breathalyser tests, all of which confirmed that he had a

zero breath alcohol content. Despite the test results, Armijo was kept in custody and transported to VCDC.

19. Upon arrival at VCDC, Armijo was transferred to the custody and control of Defendants and processed for confinement. He was booked and placed in a holding cell. He was then taken to a separate area adjacent to the holding cell and ordered by a VCDC corrections officer to strip naked. He complied and was visually examined. The officer combed through Armijo's hair, and then told him to bend over and cough, while he was visually inspected. The officer then told Armijo to lift his genitals, also while being visually inspected. Nothing was found during the strip search.

20. Defendants had no valid reason for conducting a strip search of Armijo. Nothing in Armijo's history, nor the circumstances of his arrest, gave Defendants reasonable suspicion that a strip search of Armijo would result in the discovery of contraband or weapons. Rather, Defendants' strip search of Armijo was undertaken pursuant to a blanket and indiscriminate policy of strip searching each and every detainee processed at VCDC, in violation of well-settled constitutional law and standards of correctional practice.

21. Armijo was shocked, repulsed, humiliated, ashamed and distraught at being subjected to this degrading and dehumanizing invasion of his privacy.

IV. CLASS ACTION ALLEGATIONS

22. Paragraphs 1 through 21, above, are incorporated herein by reference as if fully set forth in this paragraph.

23. The strip searches to which Plaintiffs were subjected were 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 Plaintiffs had been arrested, and without Defendants having a reasonable belief that the Plaintiffs possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the searches would produce contraband or weapons.

24. This civil action is brought by Plaintiffs on their own behalf and on behalf of a class of similarly situated persons, pursuant to Fed. R. Civ. P. 23. The class for which Plaintiffs seek certification is defined as follows: all persons who, in the period from April 3, 2004, to the present and continuing until this matter is adjudicated and the practices complained of herein cease, were arrested and subjected to a strip search and/or body cavity search at VCDC pursuant to a policy or practice of conducting strip searches on pre-arraignment arrestees without individualized reasonable suspicion that the search would lead to the discovery of contraband or weapons.

25. Plaintiffs are members of the class they seek to represent, and have standing to bring this action because they were arrested and subjected to a strip search and/or visual body search at VCDC without Defendants having a reasonable suspicion that the searches would be productive of contraband or weapons, as set forth in more detail above.

26. Pursuant to Fed. R. Civ. P. 23, Plaintiffs, individually and on behalf of the members of the class, seek 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) A judicial declaration that the searches complained of herein are unlawful;

(iii) Issuance of a permanent injunction prohibiting Valencia County 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 Plaintiffs and the members of the class for personal and economic injury, and deprivation of statutory and/or common law rights resulting from Defendants' practices.

27. Plaintiffs are unable to state precisely the size of the class. On information and belief, Plaintiffs allege that there often are more than ten persons per day who are arrested and taken into custody at VCDC 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.

28. Questions of law and fact are common to the claims of Plaintiffs and the members of the class, including but not limited to (1) whether Defendants routinely subjected all persons arrested to strip searches and/or body cavity searches; (2) whether persons are subjected to strip searches and/or body cavity searches without there being 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 Defendants 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.

29. 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.

30. There is a well-defined community of interest amongst members of the class. The claims of the Plaintiffs 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 and practice of blanket strip searches of all detainees without reasonable suspicion. Moreover, Plaintiffs' claims are based on the same legal theories as those of the class members.

31. The Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are committed to prosecuting this action, and have retained competent counsel experienced in civil litigation of this nature. Moreover, the interests of Plaintiffs are coincident with, and not antagonistic to, those of the other members of the class.

32. 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.

33. 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 Plaintiffs' rights and the rights of class members, as outlined herein.

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

34. Plaintiffs incorporate by reference into their first cause of action the allegations of paragraphs 1 through 33 above, as fully as if realleged and set forth herein.

35. 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) Plaintiffs' and class members' Fourth Amendment rights to be free from unreasonable searches and seizures; and
- (b) Plaintiffs' 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.

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

37. Prior to the acts and omissions alleged herein, Defendants failed to properly create, adopt and inculcate 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 adequate procedures and policies that would protect the rights of Plaintiffs and class members. These acts and omissions were direct and proximate causes of the injuries

complained of by Plaintiffs herein, as set forth below.

37. Defendants Valencia County, Cornell, Oliver and/or Barreras maintained a custom or policy which permitted or condoned the foregoing violations of Plaintiffs' and class members' constitutional rights.

38. The acts and omissions of the Defendants as set forth above were undertaken under color of state law and operated to deprive Plaintiffs and the members of the class of their federal rights. Defendants Valencia County, Cornell, Oliver and Barreras are liable for damages proximately caused by these acts and omissions. Plaintiffs are also entitled to injunctive relief against Valencia County, including a permanent injunction prohibiting Valencia County from engaging in the unlawful practices and procedures complained of herein.

39. As a direct and proximate cause of Defendants' violations of their constitutional rights, Plaintiffs 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)

40. Plaintiffs incorporate by reference into their second cause of action the allegations of paragraphs 1 through 39 above, as fully as if realleged and set forth herein.

41. The conduct of Defendants, described above, resulted in personal injury and bodily injury to Plaintiffs 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.

42. Oliver and Barreras, as supervisory law enforcement 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, Oliver and Barreras had a duty to properly screen, hire, train, monitor, supervise and/or discipline VCDC employees. Oliver and Barreras knew or reasonably should have known of the information described above.

43. Oliver and Barreras breached the foregoing duties by failing to properly screen, hire, train, monitor, supervise and/or discipline VCDC employees, and by failing to adopt appropriate policies, procedures and protocols, 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 Plaintiffs and members of the class as a result of the misconduct of Defendants, described above.

44. Valencia County is the governmental entity which had immediate supervisory responsibility over the actions of employees and agents of Valencia County, including but not limited to Oliver and Barreras. Therefore, Valencia County is jointly and severally liable for all injuries and damages caused by the negligence of any of its municipal officials or employees under the doctrine of vicarious liability.

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

46. 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.

47. To the extent required, Plaintiffs have given 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.

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

VII.
THIRD CAUSE OF ACTION
(Claims Arising Under New Mexico Common Law)

49. Plaintiffs incorporate by reference into his third cause of action the allegations of paragraphs 1 through 48 above, as fully as if realleged and set forth herein.

50. The acts and omissions of Cornell and Barreras, as set forth above, give rise to liability based on assault, battery, invasion of privacy, and intentional infliction of emotional distress.

51. As a direct and proximate cause of the conduct of Cornell and Barreras, Plaintiffs and members of the class suffered damages as set forth below.

VIII.
FOURTH CAUSE OF ACTION
(Declaratory and Injunctive Relief)

52. Plaintiffs incorporates by reference into their fourth cause of action the allegations of paragraphs 1 through 51 above, as fully as if realleged and set forth herein.

53. Plaintiffs, on behalf of themselves and the members of the class, seek a judgment declaring that Valencia County must cease the activities described herein and enjoining Valencia County from any further strip searches without individualized reasonable suspicion.

54. The constitutional violations alleged herein arise from official policies and practices sanctioned by Valencia County. The harm which the Plaintiffs and the members of the class have sustained are directly traceable to these officially sanctioned policies and procedures.

55. Plaintiffs 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 Valencia County's misconduct unless injunctive and declaratory relief is granted. Plaintiffs and members of the class are in real and immediate danger of sustaining future, direct injury as a result of Valencia County's official policies and practices that are ongoing at the time of this suit.

56. No cognizable burden will be placed on Valencia County 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 Valencia County will cease their illegal policies and practices as alleged herein.

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

IX. DAMAGES

58. Paragraphs 1 through 57, above, are incorporated herein by reference as if fully set forth in this paragraph.

59. As a direct and proximate result of the wrongful and unlawful actions of Defendants, described above, Plaintiffs and the members of the class were injured and have suffered and continue to suffer damages, including but not limited to emotional distress, anguish, suffering, humiliation, deprivation of constitutional rights, and other incidental, consequential, and special damages.

60. Defendants' acts and omissions, as set forth herein, were malicious, reckless, wanton, oppressive, and/or fraudulent, justifying an award of punitive damages against Oliver in his personal capacity, and against Cornell and Barreras, for the purpose of punishment and to deter others from the commission of like offenses.

WHEREFORE, Plaintiffs, on their own behalf, and on behalf of the members of the class represented herein, respectfully pray for and demand 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

COME NOW Plaintiffs Joe Torres and Eufrasio Armijo, by and through their counsel, below-listed, on his own behalf and on behalf of a class of similarly situated persons, and hereby demand 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,

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