

**FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE**

**AARON DAUGHERTY and
BRYCE FRANKLIN,**

Plaintiffs,

v.

No.

NEW MEXICO CORRECTIONS DEPARTMENT,

Defendant.

COMPLAINT FOR VIOLATIONS OF CIVIL RIGHTS

Plaintiffs Aaron Daugherty and Bryce Franklin bring this lawsuit to vindicate their right under the New Mexico Constitution to purchase and receive books, magazines, and publications while they are incarcerated and to due process of law.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to Article II, Sections 4, 17, and 18 of the New Mexico Constitution, Article VI, Section 13 of the New Mexico Constitution, the Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 through -15 (1975), and the New Mexico Civil Rights Act, NMSA 1978, Sections 41-4A-1 through -13 (2021).

2. Both Plaintiffs have exhausted their remedies through the New Mexico Corrections Department grievance process. *See* NMSA 1978, § 33-2-11(B).

3. This Court has personal jurisdiction the Plaintiffs and Defendants.

4. Venue is proper in the County of Santa Fe because the New Mexico Corrections Department is headquartered in Santa Fe.

PARTIES

5. Plaintiff Aaron Daugherty is currently incarcerated in the New Mexico Corrections

Department's Southern New Mexico Correctional Facility ("SNMCF") in Las Cruces, New Mexico.

6. Plaintiff Bryce Franklin is a New Mexico prisoner who is currently incarcerated in the Saguaro Correctional Center in Eloy, Arizona through New Mexico's Interstate Corrections Compact. Until January 2026, Mr. Franklin had been held in the New Mexico Corrections Department's Penitentiary of New Mexico ("PNM") in Santa Fe, New Mexico.

7. Per the Interstate Corrections Compact, Mr. Franklin remains under the jurisdiction of the New Mexico Corrections Department and may be returned to New Mexico at any time.

8. Defendant New Mexico Corrections Department ("NMCD") is an executive department of the State of New Mexico and is a "public body" as defined in the New Mexico Civil Rights Act. NMSA 1978, § 41-4A-2 (2021). It operates all prison facilities in the state except the Otero County Prison Facility. NMCD is responsible for establishing, monitoring, and enforcing overall operations, policies, and practices of the New Mexico state prison system.

FACTUAL ALLEGATIONS

9. Plaintiff Aaron Daugherty is an avid reader of books, both fiction and nonfiction, magazines, and newspapers.

10. His parents were educators and strongly enforced the importance of reading.

11. Mr. Daugherty also grew up without television, so books were his primary entertainment; he never lost this habit, and he still often keeps his TV off in favor of reading during his downtime.

12. Prior to NMCD's new publications restrictions at issue in this lawsuit, Mr. Daugherty read over 200 magazines per year, approximately 150 of which he purchased via subscription or through vendors.

13. In particular, he loves magazines that give him a chance to learn, such as Scientific American, History Today, National Geographic, Reason, Popular Science, Time Magazine, and Smithsonian Magazine.

14. These magazines helped Mr. Daugherty expand his world, exercise his mind, and stay productively engaged.

15. Mr. Daugherty has a particular passion for astronomy, and some of his fondest memories are of gazing at the night sky.

16. Mr. Daugherty's subscription to Astronomy magazine was one of his favorites; it allowed him to envision the week he plans to spend sleeping outside under the stars when he is released from incarceration.

17. Keeping up with the latest news of the cosmos and seeing the beautiful celestial pictures helped Mr. Daugherty to stay centered, calm, and thinking about things bigger than himself and about the positive future he hopes to create.

18. Additionally, when Mr. Daugherty was allowed to purchase or have family purchase books for him, he would read between 25 and 30 books per year, both fiction and nonfiction.

19. In addition to contemporary nonfiction books such as astronomy books, biographies, and books by authors like Malcolm Gladwell, Mr. Daugherty enjoys science fiction and fantasy books such as The Wheel of Time series, the Dresden Files, and The Stormlight Archive.

20. When Mr. Daugherty was able to purchase books, he and fellow book readers would purchase their own books, then pass them around to let others read before eventually donating them to the prison library.

21. Mr. Daugherty was recently promoted at his job in the SNMCF dog program, but still only makes \$1 per hour at his prison job (one of the highest possible pays).

22. This limited income must cover his purchase of food from the canteen, hygiene supplies, warm clothing and shoes, dues to participate in self-help groups, phone calls and messages with family.

23. For this reason, his own funds to purchase publications, when allowed, were very limited.

24. Before NMCD's changed the rules and stopped allowing family members to purchase publications for their incarcerated loved ones, Mr. Daugherty's family and friends used to purchase books or magazines subscriptions for him to show their love and support and to feed his love of learning.

25. For example, Mr. Daugherty's father used to purchase Mr. Daugherty's subscription to Reason and Astronomy magazines.

26. Mr. Daugherty also used to love conversations with his Uncle James about articles he'd read in the magazines Uncle James purchased for him.

27. Similarly, Mr. Daugherty and his brother have the same taste in books, and they would talk about the details and nuances of them with each other. This was especially important during the time that Mr. Daugherty's brother was also in prison. For the brothers, reading and "nerding out" about fantasy books together felt like a little slice of normalcy; it reminded them that they were real people with names, instead of feeling only like an "inmate" with a number.

28. When Mr. Daugherty became romantically involved with another bookworm, the two would have "book dates": they would take turns choosing a book, then both read at 10pm Monday, Wednesday, and Friday nights, completing an agreed-upon number of chapters.

29. These book dates allowed Mr. Daugherty and his girlfriend to experience doing the same thing at the exact same time, even though he was in prison. It built intimacy and gave them something in common to talk about when they spoke.

30. Mr. Daugherty's ability to read the same books and magazines as his family members and loved ones was a crucial part of Mr. Daugherty's ability to maintain those positive relationships in his life. They kept him feeling connected and motivated to continue improving himself.

31. Plaintiff Bryce Franklin is also an avid reader.

32. When they were available to him, Mr. Franklin read an average of two to three books per week. Some weekends, Mr. Franklin read all weekend and finished four to six books.

33. Mr. Franklin reads a large range of books; in fiction, he most enjoys fantasy books, followed by horror and science fiction.

34. He also enjoys thrillers by authors such as John Grisham and James Patterson.

35. When reading nonfiction, Mr. Franklin most often picks books centering on world mythology and ancient tradition, such as Norse, Hopi, Egyptian, and Zulu.

36. Mr. Franklin also used to purchase books for school classes he was taking.

37. Finally, Mr. Franklin is an advocate in the courts for incarcerated people's rights and often reads law books to deepen his understanding.

38. Reading books and newspapers helps Mr. Franklin stay connected to his family and to the outside world.

39. For example, he used to participate in a program called Fathers as Readers.

40. In Fathers as Readers, incarcerated men would purchase a book and read it aloud, recording it on CD, then send it to a son or close relative.

41. When this program was allowed, Mr. Franklin would purchase books to read to his nephew.

42. As his nephew got older, he started having difficulty reading. Mr. Franklin bought matching books for himself and his nephew so that it would motivate his nephew to read and have something in common to talk about with Mr. Franklin.

43. Similarly, books have allowed Mr. Franklin and his mom to stay connected over the thirteen years he has been incarcerated.

44. His mom used to purchase Mr. Franklin the same book she was reading on her Kindle, giving them something to talk about and bond over.

45. Mr. Franklin also used to have a subscription to the newspaper from his hometown in Grants, New Mexico.

46. Reading about the goings-on in his hometown and the accomplishments of people he grew up with helped Mr. Franklin feel connected to his community.

47. Finally, Mr. Franklin also uses reading to help him stay out of trouble while incarcerated; when he is angry and considering inappropriate behavior, reading is a diversion and a way to redirect his energy.

48. Reading provides an escape from his circumstances and his often-hostile living environment.

49. Family connections are two-way: Mr. Franklin and Mr. Daugherty have both seen how the people who love them benefit from their ability to access a broad catalogue of books.

50. It is also well established that incarcerated individuals who maintain relationships with family and community are less likely to recidivate.

51. Prior to 2022, individuals in NMCD custody could order books from publishers

such as Barnes and Noble, Amazon, and Edward R. Hamilton.

52. Additionally, family members could send books to incarcerated loved ones through the mail, so long as the package was shipped directly from the publisher or vendor.

53. On December 29, 2021, NMCD issued a memo announcing several changes to the way incoming mail to incarcerated individuals would be handled.

54. The memo announced that beginning in February 2022, personal mail would no longer be accepted at state-run facilities and would instead be sent to a third party in Florida for scanning.

55. The memo stated that “magazines w[ould] not be accepted” because they are “incapable of running through the scanner.”

56. It further announced that “[p]ackages to inmates w[ould] not be accepted.”

57. The memo did not say anything specific about books or publications other than magazines.

58. The memo was not memorialized in official NMCD policy.

59. To this day, contents of the memo are not memorialized in official NMCD policy.

60. Nonetheless, the December 2021 memo has been enforced as to personal mail, magazines, and packages, including those containing books sent straight from a publisher or vendor.

61. NMCD did not provide notice to incarcerated individuals or their families or give them an opportunity to submit comment about this significant change the mail system.

62. As of April 2022, NMCD’s official correspondence policy, which also governs what publications incarcerated individuals may access, said that incarcerated individuals could receive books and magazines “directly from the publisher or vendor.” NMCD Policy CD-151201 (version

revised April 2022).

63. The policy was revised on September 27, 2023, but still stated that incarcerated individuals would be “allowed to receive publications when received directly from the publisher or vendor.” NMCD Policy CD-151201 (version revised Sept. 27, 2023).

64. However, in May 2025, NMCD’s correspondence policy was updated to state that incarcerated individuals “will be allowed to receive publications when received directly from *approved vendors*,” pursuant to mail rejection procedures outlined in the policy. NMCD Policy CD-151201 (version revised May 27, 2025), available at <https://www.cd.nm.gov/wp-content/uploads/2025/06/CD-151200.pdf> (emphasis added).

65. Neither incarcerated individuals nor their families were given any notice or opportunity to be heard on the changes to the official publication policy.

66. To date, NMCD has not provided Plaintiffs with the updated 2025 policy.

67. NMCD policies are available on tablets that all incarcerated individuals receive, but the correspondence policy currently available on the tablets is from 2022.

68. The correspondence policy does not list what vendors have been approved for incarcerated people to order from.

69. The correspondence policy does not explain how incarcerated individuals can learn what publications vendors are approved or how to ascertain what inventory is available through approved vendors.

70. The rejection procedures outlined in CD-151201 state that “[m]ail enclosures, packages, photos and publications will be rejected if they are detrimental to internal security of the institution or other legitimate penological interests,” then lists a non-exclusive list of content that will be rejected, including any item that “violates facility rules and regulations.” *Id.*

71. The policy states that “[r]ejection of publications will require review by the publication review panel, consisting of three staff members designated by the Deputy Director of Adult Prisons,” which will determine “whether the rejected material poses a security risk detrimental to penological interests.” *Id.*

72. According to policy, individuals whose publications have been rejected will be informed of the rejection and may contest the rejection through the grievance process.

73. NMCD’s correspondence policy also states that “[i]nmate housed in Level I, II, and III facilities, may access newspaper publications at the facility library during normal business hours.” *Id.*

74. With respect to incoming packages, the policy states that incarcerated individuals will be allowed to receive packages assuming several conditions have been met, including that “[a]pproval for receipt of said packages has been given in advance by a Deputy Warden or designee.” *Id.*

75. The policy does not make clear whether a deputy warden must approve each type of package for each individual person or whether this provision allows a deputy warden to prohibit *all* packages containing otherwise allowed items, such as books or publications, from the deputy warden’s facility.

76. In other words, it is not clear from NMCD policy whether individual facilities may restrict receipt of publications further than allowed under the rest of the correspondence policy.

77. The policy also requires that a package “has been sent directly from the vendor and purchased through the business office.” *Id.*

78. The policy does not make clear whether this provision is applicable to any package containing publications.

79. However, since the December 2021 memo, family members have not been allowed to order publications to be sent from the vendor to incarcerated individuals.

80. Similarly, February 2022, NMCD has not allowed Mr. Franklin to order books, magazines, or newspapers from any publisher or source.

81. Mr. Daugherty had been able to order from two vendors, Books N Things and Edward R. Hamilton, until summer 2024.

82. However, since then Mr. Daugherty has not been able to successfully order any publications.

83. Despite multiple requests and grievances, neither Plaintiff has been provided with a list of approved vendors from which they may order books, magazines, and newspapers.

84. Although it is not written in policy, NMCD staff have also told Plaintiffs that their family members are no longer allowed to order books for them.

85. It is important that Plaintiffs' families and friends be allowed to purchase books and publications for them because they work for at *most* \$1 per hour (when allowed to have a job), making it difficult to regularly afford books and magazine or newspaper subscriptions.

86. Additionally, the process for incarcerated individuals to order books can be cumbersome, slow, and limiting.

87. When allowed, the process by which incarcerated individuals could submit orders for publications varied between different prison facilities and was often very slow.

88. There was also no way for an individual to track whether their order had been submitted or had gotten lost somewhere in the process, which was a frequent occurrence.

89. Because NMCD only processes funds from incarcerated individuals' accounts via check, the vendors from which individuals could order even when technically approved by NMCD

was already artificially limited.

90. In other words, if an approved vendor at the time – such as Barnes and Noble – did not accept orders sent by mail and paid for with a paper check, incarcerated individuals simply could not order from that vendor.

91. For these reasons, often the only way Plaintiffs' families and friends could read the same books they were reading, was to purchase them through a large vendor to be sent directly to Plaintiffs.

92. Since February 2022, books ordered by Plaintiffs' family members and friends have been rejected by prison staff at their respective prison facilities.

93. In summer of 2025, partly in an attempt to confirm the publications rules still not clearly outlined in the policy to which he had access, Mr. Franklin asked a friend to order several books, *Condo Buying & Ownership Made Simple* from Barnes and Noble, and several books about financial management from Books N Things Warehouse, Inc.

94. However, when his orders arrived at PNM, they were rejected by the facility and returned to the sender before Mr. Franklin had any opportunity to object or appeal.

95. In July 2025, Mr. Franklin submitted a grievance about the facility rejecting these books from Barnes and Noble and Bargain Books without cause or an opportunity for Mr. Franklin to be heard.

96. In response to his grievance about this rejection, facility staff told him that he was only allowed to order from the vendor Books N Things.

97. The response did not cite any NMCD policy or directive to support the idea that Mr. Franklin was only allowed to order from Books N Things.

98. The response also did not make note of the fact that several of the books Mr.

Franklin's friend ordered for him were in fact from Books N Things.

99. In an October 2025 grievance,¹ Mr. Franklin wrote that incarcerated individuals “are only being permitted to order books from one vendor. Staff don't have [a] catalogue to order from that vendor.”

100. In another October 2025 grievance, Mr. Franklin said that incarcerated individuals were not being allowed to purchase books directly from publishers.

101. He further stated that “I have asked multiple staff and no one knows any vendor I can purchase books from.”

102. In response to Mr. Franklin's grievances, PNM staff stated that “The ordering process and the list of allowable items are being managed in accordance with established facility policy. At this time, only approved items may be ordered through the designated channels.”

103. The response did not explain what items were approved or how to order them through “designated channels.”

104. The response did not explain to what “established facility policy” it was referring.

105. On November 26, 2025, NMCD Deputy Secretary Gary Maciel wrote NMCD's official response to Mr. Franklin's grievance.

106. The letter reads:

This correspondence is in response to your grievance appeal concerning the procedure for ordering books. You specifically requested the ability to order directly from publishers/bookstores or to be provided with a catalog from approved vendors.

Initial investigation indicated that the response provided by Inmate Advocate R. Salazar was accurate. Upon further review of current policies, it has been confirmed that an official book catalog does not from approved vendors [sic]. Due to institutional security protocols, the NMCD restricts book purchases to specific, pre-approved vendors only.

¹ Mr. Franklin also submitted multiple grievances about NMCD's mail memo and new practices with respect to publications in 2021 and 2022, shortly after the changes began.

All inmates have access to the facility library. Inmates may submit a request for a specific title, which the library staff can attempt to obtain from another facility within the system via inter-facility loan.

107. Again, the response did not identify any “specific, pre-approved vendors” or explain how Mr. Franklin could learn the inventory of or order from said vendors.

108. Mr. Franklin interpreted this confusing response as meaning that there was no available mechanism to purchase books and publications from an approved vendor or otherwise.

109. Even if Mr. Franklin had been allowed to order books from Books N Things, as a facility employee had previously told him, the vendor’s inventory is limited and, alone, would be insufficient to satisfy his constitutional right to access publications while incarcerated.

110. Mr. Daugherty has received similar responses to his grievances.

111. In response to a grievance Mr. Daugherty filed in June 2025, prison officials cited to policy that “there is no limit on the... length, language, content, or source of mail or publications, except when reasonable belief that limitation is necessary to protect public safety or institutional order and security,” then informed Mr. Daugherty that “due to a high volume of security safety with publications through the mail, SNMCF will not allow it.”

112. Mr. Daugherty likewise interpreted this response to mean that individuals in SNMCF are not allowed to purchase or receive publications.

113. Ultimately, neither Plaintiff has been able to discern, despite diligent attempts, precisely what is allowed under NMCD’s current policies, practices, and customs.

114. NMCD staff have also directed Mr. Daugherty to the prison’s library.

115. The libraries at PNM and SNMCF are extremely limited and do not provide sufficient access to publications.

116. The nonfiction books are particularly outdated, with computer books from the early

aughts, medical books from the 1980s and '90s, and science books from the 1980s to early aughts.

117. Additionally, the library features a set of encyclopedias from the year 2000.

118. People incarcerated in SNMCF can order nonfiction books on Inter-Library Loan (“ILL”), but the available catalogue for such books is from 2005-2006.

119. Without the specific title, author, and ISBN, individuals cannot obtain books through ILL, meaning that the latest options meaningfully available through ILL are from 20 years ago.

120. Additionally, books regularly go missing from the library, with little accountability for their care and return.

121. The limited availability of library books and inability to predict which books will be available make it impossible for Plaintiffs to share their reading experience with loved ones outside the prison as they once did.

122. Recently, NMCD provided incarcerated individuals with access to e-books on their tablets.

123. However, the only books available are those in the public domain, meaning there are no books written within the last 100 years.

124. Upon information and belief, SNMCF has no budget allocated to replace or add books to its library.

125. Upon information and belief, in recent years SNMCF leadership has rejected attempts by outside entities to donate books to the prison’s library.

126. The SNMCF library also features a limited selection of magazines and three newspapers: Albuquerque Journal, Santa Fe New Mexican, and USA Today.

127. Individuals classified as Level III or lower in SNMCF custody can access the

library approximately 10-12 hours per week, depending on staff availability.

128. However, in 2023, when Mr. Franklin was also incarcerated in SNMCF while classified as Level IV, he was not permitted to access the library.

129. The library at PNM, where Mr. Franklin was most recently incarcerated, is similarly extremely limited, with many outdated books.

130. For example, Mr. Franklin was often frustrated because the library would contain a random few books out of a series, meaning he could not follow plot lines across books.

131. Both Mr. Franklin and Mr. Daugherty are serving long prison sentences.

132. Mr. Daugherty is sentenced to no less than 60 years in prison.

133. When he has access to publications, he reads up to 30 books a year and has monthly subscriptions to numerous magazines.

134. Mr. Franklin is serving a sentence of 30 years to life.

135. When he has access to publications, he reads more than 100 books a year and has subscriptions to various magazines and his hometown newspaper.

136. Prison libraries do not have enough books or sufficient variety to meet Plaintiffs' needs.

137. In the future, both Mr. Franklin and Mr. Daugherty will have the opportunity to seek discretionary parole from the New Mexico Adult Parole Board.

138. Upon information and belief, the Parole Board assesses participation in educational programs, self-education, and other types of rehabilitative activities in deciding whether to grant parole.

139. Upon information and belief, NMCD's new publication rules have not been applied in a uniform or consistent manner.

140. For example, although staff have given Mr. Daugherty the impression that he may not receive any publications, some individuals in SNMCF and in other NMCD facilities have been allowed to receive the subscription publication Prison Legal News.

141. Plaintiffs have been provided with no explanation as to why some individuals have been allowed to receive Prison Legal News, while Plaintiffs may not have access to magazines of their choice.

142. NMCD has impermissibly restricted publications access through some combination of official policy, public memo, unwritten and/or secret policy, informal custom and outdated systems.

143. Since 2022, Plaintiffs have been unable to access news and literature as they used to, which has caused harm to them, their learning and person growth, and their relationships with their loved ones.

COUNT I

Violation of Article II, Section 17 of the New Mexico Constitution (Free Speech)

144. Plaintiffs incorporate all proceeding paragraphs as if fully stated herein.

145. The New Mexico Civil Rights Act, NMSA 1978, §§ 41-4A-1 through -13 (2021) provides that individuals may bring suit against government entities for violations of the New Mexico Bills of Rights.

146. Article II, Section 17 of the New Mexico Constitution provides that “every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.”

147. This right to speak and publish freely intrinsically includes the right to read.

148. Under Article II, Section 17, individuals held in NMCD custody have the right to access and read publications such as books, magazines, and newspapers that are not, by virtue of

their content, a danger to the safe operation of prisons.

149. Restrictions on the right to access and read publications must be extremely narrowly drawn.

150. Article II, Section 17 protects this right to a greater extent than does the First Amendment to the United States Constitution.

151. NMCD's policy, practice or custom of prohibiting individuals in its custody from purchasing publications, including books, magazines, and newspapers is facially invalid under Article II, Section 17.

152. NMCD's policy, practice or custom of prohibiting Mr. Daugherty and Mr. Franklin from purchasing publications violates their constitutional right to free speech under Article II, Section 17.

153. NMCD's policy, practice or custom of prohibiting incarcerated individuals' family members or friends to order books for them directly from publishers or vendors is facially invalid under Article II, Section 17.

154. NMCD's policy, practice or custom of prohibiting Plaintiffs' family members or friends to order books for them directly from publishers or vendors violates their constitutional right to free speech under Article II, Section 17.

155. NMCD's prison libraries, even if Plaintiffs were able to access them regularly, do not provide sufficient materials to satisfy their legal right to read.

156. NMCD has no legitimate reason to prohibit Plaintiffs from purchasing all publications, even those sent directly from publishers or vendors.

157. NMCD's policies, practices and/or customs restricting Plaintiffs' access to publications are overly broad and prohibit or infringe upon constitutionally protected conduct.

158. Plaintiffs are harmed by NMCD's prohibitions on purchasing books, magazines, newspapers, and other publications.

159. Plaintiffs are entitled to damages compensating them for this harm.

160. Plaintiffs are entitled to a declaration that NMCD's policy, practice and/or custom of prohibiting incarcerated individuals from purchasing books, magazines, and newspapers directly from the publisher or vendor is facially unconstitutional under Article II, Section 17 of the New Mexico Constitution.

161. Plaintiffs are entitled to a declaration that NMCD's policy, practice and/or custom of prohibiting incarcerated individuals' loved ones from purchasing books, magazines, and newspapers to be send to incarcerated individuals directly from the publisher or vendor is facially invalid under Article II, Section 17 of the New Mexico Constitution.

162. Plaintiffs are entitled to a declaration affirming that NMCD violated their right to access and read publications under Article II, Section 17 of the New Mexico Constitution.

163. Plaintiffs are entitled to an injunction preventing NMCD from further violating their rights under Article II, Section 17.

COUNT II
Violation of Article II, Sections 17 & 18 (Void-for-Vagueness)

164. Plaintiffs incorporate all proceeding paragraphs as if fully stated herein.

165. NMCD's policies and practices related to receipt of publications by incarcerated individuals are unconstitutionally vague because they do not provide Plaintiffs with adequate notice as to how they may access publications, from what sources they may access publications, or what publications will be prohibited.

166. For example, Plaintiffs have been unable to ascertain whether the official NMCD policy, the December 2021 memo, unwritten policy dictated by facility wardens, or some other

unknown rule governs their receipt of access to publications.

167. NMCD's policies and practices related to receipt of publications by incarcerated individuals are unconstitutionally vague because they encourage arbitrary, capricious, and/or discriminatory enforcement.

168. NMCD has applied its policies and practices related to receipt of publications to Plaintiffs in an arbitrary and capricious manner that violates their rights under the New Mexico Constitution.

169. Plaintiffs are harmed by these deprivations.

170. Plaintiffs are entitled to damages to compensate them for this harm.

171. Plaintiffs are entitled to a declaration that NMCD's policies related the receipt of publications by incarcerated individuals unconstitutionally vague under Article II, Sections 17 and 18 of the New Mexico Constitution.

172. Plaintiffs are entitled to a declaration that NMCD's enforcement of its policies related to the receipt of publications by incarcerated individuals is arbitrary and capricious in violation of the New Mexico Constitution.

173. Plaintiffs are entitled to an injunction preventing NMCD enforcing its unconstitutionally vague policies.

COUNT III

Violation of Article II, Section 18 of the New Mexico Constitution (Procedural Due Process)

174. Plaintiffs incorporate all proceeding paragraphs as if fully stated herein.

175. Article II, Section 4 of the New Mexico Constitution provides that all persons "have certain natural, inherent and inalienable rights," among which is the right "of acquiring, possessing and protecting property..."

176. Article II, Section 18 of the New Mexico Constitution provides that "[n]o person

shall be deprived of life, liberty or property without due process of law.”

177. The New Mexico Constitution provides for greater due process rights than does the Fourteenth Amendment to the United States Constitution.

178. Plaintiffs have a protected property interest in the right to purchase and obtain books, magazines, newspapers, and other publications.

179. Therefore, before NMCD can withhold access to or delivery of publications, Plaintiffs must be provided due process, including notice and an opportunity to be heard.

180. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it changed its policies and practices to prohibit them from ordering publications to be shipped directly from any publisher or vendor.

181. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it changed its policies and practices to prohibit family members and friends from ordering publications to be sent directly from the publisher or vendor to them.

182. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it changed its rules to allow ordering from only “approved vendors.”

183. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it eliminated all “approved vendors” and prohibited them from ordering publications from any source.

184. NMCD violated Plaintiffs’ due process rights when it changed the correspondence rules, without notice or an opportunity to be heard, to limit the sources from which Plaintiffs could receive publications.

185. NMCD violated Plaintiffs’ due process rights when it changed the correspondence rules, without notice or an opportunity to be heard, to prohibit Plaintiffs from purchasing of any

publications, no matter the source.

186. NMCD violated Plaintiffs' due process rights when it changed its policies and procedures, without notice or an opportunity to be heard, to prohibit family and friends from ordering books and publications to be sent to Plaintiffs directly from the vendor or publisher.

187. Plaintiffs are harmed by these deprivations.

188. Plaintiffs are entitled to damages to compensate them for this harm.

189. Plaintiffs are entitled to a declaration affirming that NMCD violated their right to due process under Article II, Section 18 of the New Mexico Constitution.

190. Plaintiffs are entitled to an injunction remedying the violation of their due process rights.

COUNT IV

Violation of Article II, Section 18 of the New Mexico Constitution (Procedural Due Process)

191. Plaintiffs incorporate all proceeding paragraphs as if fully stated herein.

192. Plaintiffs have a protected liberty interest the ability to access and read books, magazines, newspapers and other publications.

193. Therefore, before NMCD can withhold access to or delivery of publications, Plaintiffs must be provided due process, including notice and an opportunity to be heard.

194. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it changed its rules and prohibited them from ordering publications to be shipped directly from any publisher or vendor.

195. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it changed its rules to allow ordering from only "approved vendors."

196. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it eliminated all "approved vendors" and prohibited them from ordering publications from any

source.

197. NMCD did not provide Plaintiffs with notice or an opportunity to be heard when it changed its rules to prohibit family and friends from sending them publications shipped directly from publishers or vendors.

198. NMCD violated Plaintiffs' due process rights when it changed the correspondence rules, without notice or an opportunity to be heard, to limit the sources from which Plaintiffs could receive publications.

199. NMCD violated Plaintiffs' due process rights when it changed the correspondence rules, without notice or an opportunity to be heard, to prohibit the purchase of any publications, no matter the source.

200. NMCD violated Plaintiffs' due process rights when it changed the correspondence rules, without notice or an opportunity to be heard, to limit the sources from which Plaintiffs could receive publications.

201. Plaintiffs are harmed by these deprivations.

202. Plaintiffs are entitled to damages to compensate them for this harm.

203. Plaintiffs are entitled to a declaration affirming that NMCD violated their right to due process under Article II, Section 18 of the New Mexico Constitution.

204. Plaintiffs are entitled to an injunction remedying the violation of their due process rights.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. Declaratory judgments addressing violations of the New Mexico Constitution alleged in this Complaint;

2. Permanent injunctions halting and/or remedying violations of the New Mexico Constitution alleged in this Complaint;
 3. Damages to compensate Plaintiffs for each violation of their constitutional rights by Defendant;
 4. Reasonable attorneys' fees and costs pursuant to NMSA 1978, Section 41-4A-5;
- and
5. Such further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Lalita Moskowitz

Lalita Moskowitz
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
P: (505) 266 5915 ext. 1015
F: (505) 266 5916
lmoskowitz@aclu-nm.org

&

Meg Sparrow
Smith & Marjanovic Law
6731 Academy Rd NE
Suite B
Albuquerque, NM 87109
P: (505) 510 4440
meghan@legalthelpnm.com