

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

SHERESE CRAWFORD,

Plaintiff,

Cause No.

vs.

**BERNALILLO COUNTY BOARD OF
COMMISSIONERS, a governmental entity
of the State of New Mexico,
Deputy Sheriff LEONARD ARMIJO of the
Bernalillo County Sheriff's Department,
individually, and
Deputy Sheriff PATRICK RAEL of the
Bernalillo County Sheriff's Department,
individually,**

Defendants.

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

INTRODUCTION

Alone, law enforcement should never consider race in determining if and when it will wield its immense power. Racial profiling is neither effective nor informed and law enforcement is weakened when relying on it. Equally significant, the practice divides communities and those subject to it experience fear, anger, and humiliation. Selective enforcement and the targeting of persons based solely on race does violence to our promise of equality; it is the "New Jim Crow."

In this case, Bernalillo County Sheriff's Department ("BCSO") deputies repeatedly reminded Plaintiff, Ms. Sherese Crawford ("Ms. Crawford"), an African-American woman on temporary assignment in New Mexico as an Immigration and Customs Enforcement ("ICE") Deportation Officer, that the color of her skin, not the reality of whether she has violated the law, dictates how law enforcement will treat her. On three separate occasions, BCSO deputies targeted

and stopped her while she traveled for work on Interstate 40 without cause. They did so in coordination with Ms. Crawford's own employer. All three times, the deputies let Ms. Crawford go without a ticket—indeed, without even a warning—because she had broken no law. All three times, deputies stopped Ms. Crawford because she is African-American.

Ms. Crawford, by and through her counsel, Laura Schauer Ives, Joseph Kennedy, and Adam Flores of KENNEDY KENNEDY & IVES, and María Martínez Sánchez and Kristin Greer Love of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NEW MEXICO, brings this Complaint to vindicate her rights under the New Mexico Tort Claims Act and Article II, Sections 10 and 18 of the New Mexico Constitution.

JURISDICTION AND VENUE

1. Ms. Crawford brings her claims in this Complaint under Article II, Sections 10 and 18 of the New Mexico Constitution; the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-12 (waiver of immunity for torts committed by law enforcement officers), and 41-4-4 (indemnity).

2. This Court has jurisdiction over this action under NMSA 1978, § 41-4-4 (2001).

3. This Court is the proper venue for Ms. Crawford's claims because the Defendants violated Ms. Crawford's rights in Bernalillo County. NMSA 1978, § 38-3-1 (1988).

PARTIES

4. Ms. Crawford is a 38-year-old African-American woman. She currently resides in Richmond, Virginia. During the 28-day period in the spring of 2017, in which BCSO deputies unlawfully stopped and racially targeted her three times, she was working in New Mexico as an ICE Deportation Officer on temporary assignment from New York.

5. Bernalillo County Board of Commissioners ("Bernalillo County") is a political subdivision of the State of New Mexico. It is responsible for overseeing and operating BCSO and

for employing, training, and overseeing BCSO deputies. Bernalillo County is a governmental entity subject to suit under state law. *See* NMSA 1978, § 4-46-1 (2014).

6. Leonard Armijo (“Deputy Armijo”) is a BCSO deputy sheriff, a position that he held when he racially profiled and stopped Ms. Crawford on April 5, 2017. At all times relevant to this Complaint, Deputy Armijo was an employee of Bernalillo County and acting within the scope of his employment.

7. Patrick Rael (“Deputy Rael”) is a BCSO deputy sheriff, a position that he held when he racially profiled and stopped Ms. Crawford on April 15, 2017, and May 3, 2017. At all times relevant to this Complaint, Deputy Rael was an employee of Bernalillo County and acting within the scope of his employment.

FACTUAL ALLEGATIONS

8. Ms. Crawford is a professional, accomplished, and law-abiding woman.

9. Ms. Crawford works as a deportation officer for ICE, a federal agency of the U.S. Department of Homeland Security.

10. Ms. Crawford was in Bernalillo County on temporary assignment from New York.

11. As part of the conditions of her work detail in New Mexico, ICE provided Ms. Crawford with a rental car.

12. Between April 5, 2017, and May 3, 2017—a span of just 28 days—BCSO Deputies Armijo and Rael targeted and stopped Ms. Crawford three times while she traveled for work.

13. The deputies were driving their BCSO patrol units all three times that they stopped Ms. Crawford.

14. During at least one of the BCSO deputies’ stops of Ms. Crawford, an ICE agent was also present.

15. ICE agents cannot enforce New Mexico traffic law.
16. When purporting to enforce state traffic laws, BCSO deputies must follow the New Mexico Constitution.
17. Deputies Armijo and Rael did not have reasonable suspicion or probable cause to stop Ms. Crawford.
18. They targeted and stopped her each time because of her race.
19. Each of the three times that the BCSO deputies targeted and stopped Ms. Crawford:
 - a. Ms. Crawford was driving from the Cibola County Correctional Center in Milan, New Mexico, to the ICE Field Office in Albuquerque, New Mexico, through the predominantly white, Hispanic, and Latino county of Bernalillo;
 - b. Ms. Crawford was driving a rental car that her employer, ICE, had provided her;
 - c. Ms. Crawford had not broken any laws;
 - d. The deputies let her go without a ticket—indeed, without even a warning—because she had broken no law;
 - e. And, the deputies stopped Ms. Crawford because she fit a racial profile.
20. Even if Deputies Armijo and Rael somehow had objectively valid cause for the stops and Ms. Crawford had committed minor traffic violations, the three stops were pretextual.
21. On information and belief, Deputies Armijo and Rael were stopping vehicles for minor traffic violations that matched a profile which included race for their actual purpose of drug interdiction and/or immigration enforcement.

22. Our courts have acknowledged that the traffic code is so extensive and detailed that “virtually the entire driving population is in violation of some regulation as soon as they get in their cars, or shortly thereafter.” *State v. Ochoa*, 2009-NMCA-002, ¶ 17, 146 N.M. 32.

23. According to the latest U.S. Census, only 3.4 percent of the population in Bernalillo County is Black or African-American. 84.6 percent of the population in Bernalillo County is white, including people who identify as Hispanic and/or Latino. *Quick Facts: Bernalillo County, New Mexico*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/map/bernalillocountynewmexico/RHI225216#viewtop> (last visited Nov. 14, 2017).

24. In other words, of every 1,000 people in Bernalillo County, only 34 people are African-American.

25. In pulling over Ms. Crawford, an African-American woman, without reasonable suspicion or probable cause three times in a period of 28 days, the BCSO deputies engaged in a pattern of racist and racially selective policing that causes profound emotional damage to people of color, particularly Black people.

26. “Racially disproportionate policing is endemic” throughout the United States. Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CAL. L. REV. 125, 128 (2017).

27. When police engage in racially disproportionate or racially selective policing, they force people of color—particularly Black people—to interact with police more frequently than the police interact with white people.

28. What is more, “racial inequality within . . . [law] enforcement reinforces the vulnerability of persons of color and replicates historical injuries caused by explicitly racist

practices.” Darren Lenard Hutchinson, *Continually Reminded of Their Inferior Position”: Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23, 34 (2014).

April 5, 2017; Unlawful Stop and Racial Profiling by Deputy Armijo

29. On April 5, 2017, Deputy Armijo stopped Ms. Crawford who was driving westbound on Interstate 40 near Mile Marker 137 in Bernalillo County.

30. One of Ms. Crawford’s colleagues, ICE Agent Edward Guedel, was in the vehicle with Deputy Armijo when he stopped Ms. Crawford.

31. When Deputy Armijo stopped Ms. Crawford, he ordered that the stop not be put out over the radio.

32. Deputy Armijo claimed that he had stopped Ms. Crawford because he had searched a database for her license plate number, and the license plate had come back as a “skip plate,” indicating that the vehicle was stolen—a highly unlikely claim, given that Ms. Crawford was driving a rental car.

33. Deputy Armijo asked Ms. Crawford for her license and her rental agreement.

34. Deputy Armijo ordered Ms. Crawford out of her vehicle and to walk with him to his patrol unit.

35. After Deputy Armijo searched her license and rental information, he returned her paperwork and told her she was free to leave.

36. Deputy Armijo did not give Ms. Crawford a ticket or even a warning because she had broken no law.

37. Given that Deputy Armijo knew Ms. Crawford was in a rental car despite having claimed that her tags did not reflect the car’s registration, Ms. Crawford was concerned that he had targeted her because of her race.

38. Ms. Crawford contacted an ICE supervisor in Albuquerque. The ICE supervisor advised Ms. Crawford that the sheriff's deputy had likely stopped her because she fit a profile: she is African-American and was driving a rental car.

39. Deputy Armijo illegally pulled over Ms. Crawford because of her race.

April 15, 2017; Unlawful Stop and Racial Profiling by Deputy Rael

40. On April 15, 2017, just ten days later on the same stretch of Interstate 40 near Mile Marker 147, another Bernalillo County Sheriff's Deputy, Patrick Rael, stopped Ms. Crawford.

41. Deputy Rael did not identify himself to Ms. Crawford.

42. Deputy Rael claimed that Ms. Crawford had been tailgating.

43. Ms. Crawford explained to Deputy Rael that he could not have observed her tailgating given his car's position and hers.

44. Ms. Crawford gave Deputy Rael her license and her rental agreement.

45. When Deputy Rael looked at Ms. Crawford's license, he asked if "we" (BCSO) had pulled her over the week before. Deputy Rael said that he remembered Ms. Crawford's name because an ICE officer and a sheriff's deputy had said that she had an "attitude."

46. Deputy Rael then told Ms. Crawford that she was free to leave.

47. Deputy Rael did not give Ms. Crawford a ticket or even a warning because she had broken no law.

48. Deputy Rael illegally pulled over Ms. Crawford because of her race.

May 3, 2017; Unlawful Stop and Racial Profiling by Deputy Rael

49. On May 3, 2017, Ms. Crawford was driving westbound in the right lane on Interstate 40.

50. Deputy Rael was in the median in his unmarked unit.

51. A semi-truck was in front of Ms. Crawford.
52. Farther ahead, another unit was performing a traffic stop on the right side of the interstate.
53. Ms. Crawford and the semi-truck driver moved to the left lane to pass and avoid the traffic stop.
54. When the highway opened up to three lanes, Ms. Crawford moved to the middle lane.
55. Deputy Rael, who was still in the median, pulled onto the highway and got behind the semi-truck in the left lane.
56. Ms. Crawford continued to travel in the middle lane.
57. Ms. Crawford was traveling at about 65 miles per hour and the semi-truck began to pass her in the left lane.
58. Deputy Rael switched from the left lane to the middle lane behind Ms. Crawford and turned on his lights.
59. Deputy Rael stopped Ms. Crawford, this time near Mile Marker 144.
60. Ms. Crawford pulled over to the median.
61. When Deputy Rael approached Ms. Crawford's vehicle, he did not identify himself, just as he had failed to identify himself the first time he pulled her over.
62. Deputy Rael appeared to be surprised to be seeing Ms. Crawford again.
63. Deputy Rael briefly explained that he had stopped Ms. Crawford because, he claimed, she was driving too slowly and he could not get around the semi-truck.
64. Deputy Rael then walked back to his unit and left.
65. Deputy Rael illegally pulled over Ms. Crawford because of her race.

FAILURE TO TRAIN AND/OR SUPERVISE

66. Ms. Crawford's experience with BCSO in and of itself establishes that BCSO has an unconstitutional policy of racial profiling and/or pretextually stopping motorists for minor traffic violations with the actual intent of investigating other crimes for which deputies do not have reasonable suspicion or probable cause.

67. Ms. Crawford complained about all of the stops to BCSO's Internal Affairs Unit, alleging that she had been racially profiled.

68. Despite the impossibility that BCSO's repeated stops of Ms. Crawford, which resulted in no citations or warnings, were motivated by anything but race, BCSO's Internal Affairs Unit did not substantiate Ms. Crawford's allegations.

69. On information and belief, the BCSO sheriff, Sheriff Manuel Gonzales, reviews and approves his Internal Affairs Unit's findings.

70. Bernalillo County, by and through its policymakers, must discipline, not encourage or ratify, the unconstitutional conduct of its employees.

71. Because BCSO did not substantiate Ms. Crawford's allegations, Deputies Armijo and Rael were following Bernalillo County policy when they seized Ms. Crawford without reasonable suspicion or probable cause.

72. Because BCSO did not substantiate Ms. Crawford's allegations, Deputies Armijo and Rael were following Bernalillo County policy when they stopped Ms. Crawford three times because she fit a racial profile.

73. Because BCSO did not substantiate Ms. Crawford's allegations, Deputies Armijo and Rael were following Bernalillo County policy when they stopped Ms. Crawford three times

for minor traffic violations with the intent of investigating drug trafficking and/or immigration violations.

74. Bernalillo County's policies must be constitutional.

75. Bernalillo County's policy that allows seizure without reasonable suspicion or probable cause, racial profiling, and pretextual stops of motor vehicles violates the New Mexico Constitution.

76. Bernalillo County's failure to adopt constitutional policies is negligent.

77. Deputies Armijo and Rael were also following Bernalillo County training when they stopped Ms. Crawford three times.

78. Bernalillo County must train its employees to follow the New Mexico Constitution, including Deputies Armijo and Rael, even if its employees are working in coordination with a federal agency.

79. Bernalillo County must train its deputies that they must have reasonable suspicion and/or probable cause to seize a motorist, the unlawfulness of targeting people for law enforcement stops because of their race, as well as the unlawfulness of pretextual stops.

80. Bernalillo County's training is negligent.

81. Law enforcement agencies supervise, in part, through policy and discipline if a deputy violates that policy.

82. With indifference to the rights of people to be free from racism and other unconstitutional conduct by law enforcement, Bernalillo County has encouraged, tolerated, ratified, caused, and/or acquiesced to its deputies' racism and other unconstitutional conduct by:

- a. Adopting unconstitutional policies;

- b. Its failure to train, supervise, and discipline deputies in order to prevent unconstitutional conduct by deputies;
- c. Its failure to adequately investigate and substantiate allegations of unconstitutional conduct by deputies;
- d. Its failure to adequately discipline deputies who engage in unconstitutional conduct; and
- e. And, its failure to deter deputies from engaging in unconstitutional misconduct through deficient, defective, and ineffective investigatory and disciplinary procedures.

83. BCSO's policies are so prevalent and widespread that they put Bernalillo County policymakers on actual and implied notice that such policies existed and exist in full force and effect.

CLAIMS FOR RELIEF

COUNT I

*Article II, Section 10, of the New Mexico State Constitution,
and § 41-4-12 NMSA 1978,*

Unlawful Seizures (Against all Defendants)

84. Ms. Crawford realleges paragraphs 1 through 83 as though they were fully set forth herein.

85. Article II, Section 10, of the New Mexico Constitution provides greater protection for motorists than its federal counterpart.

86. Ms. Crawford has the right under the New Mexico Constitution to be free from unlawful seizure, which includes warrantless, pretextual stops. N.M. CONST. art. II, § 10; *Ochoa*, 2009-NMCA-002, ¶ 42.

87. “New Mexico courts have rejected ‘the notion that an individual lowers his expectation of privacy when he enters an automobile.’” *Ochoa*, 2009-NMCA-002, ¶ 20, quoting *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15.

88. Each time BCSO deputies stopped Ms. Crawford constitutes three separate occurrences under the Tort Claims Act.

89. BCSO Deputies Armijo and Rael violated Ms. Crawford’s rights three times because they thrice stopped her without reasonable suspicion or probable cause.

90. BCSO Deputies Armijo and Rael violated Ms. Crawford’s rights three times in thrice targeting her because of her race.

91. BCSO Deputies Armijo and Rael violated Ms. Crawford’s rights three times when they thrice seized her for alleged, minor traffic violations with the actual intent to investigate a different crime for which they did not have reasonable suspicion or probable cause.

92. The totality of circumstances in every one of BCSO Deputies Armijo and Rael’s stops of Ms. Crawford demonstrate that BCSO Deputies Armijo and Rael’s intent in stopping Ms. Crawford was pretextual.

93. BCSO Deputies Armijo and Rael stopped Ms. Crawford three times on a “hunch.”

94. BCSO Deputies Armijo and Rael did not warn, cite, and/or arrest Ms. Crawford as a result of any of the three stops.

95. Other than her race and that she was traveling on an interstate in a rental car, BCSO Deputies Armijo and Rael did not have any information about Ms. Crawford, much less any information that would have provided them with reasonable suspicion or probable cause relating to another alleged offense.

96. Deputies Armijo and Rael's demeanor and statements during the three stops belied their real intent.

97. Deputies Armijo and Rael's stated reasons for stopping Ms. Crawford were not necessary for the protection of traffic safety.

98. Bernalillo County is vicariously liable for the unlawful actions of Deputies Armijo and Rael.

99. As a proximate result of Deputies Armijo and Rael's actions, Defendants injured Ms. Crawford, causing her to suffer anguish, embarrassment, emotional injuries, mental injuries, and psychological injuries.

COUNT II

*Article II, Section 10, of the New Mexico State Constitution,
and § 41-4-12 NMSA 1978,*

Negligence Resulting in Unlawful Seizures (Bernalillo County)

100. Ms. Crawford realleges paragraphs 1 through 99 as though they were fully set forth herein.

101. Ms. Crawford has the right under the New Mexico Constitution to be free from unlawful seizure, which includes warrantless, pretextual stops. N.M. CONST. art. II, § 10; *Ochoa*, 2009-NMCA-002, ¶ 42.

102. "New Mexico courts have rejected 'the notion that an individual lowers his expectation of privacy when he enters an automobile.'" *Ochoa*, 2009-NMCA-002, ¶ 20, quoting *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 15.

103. Each time BCSO deputies stopped Ms. Crawford constitutes three separate occurrences under the Tort Claims Act.

104. Deputies Armijo and Rael's repeated stops of Ms. Crawford without cause indicate that the deputies were acting pursuant to Bernalillo County policy.

105. BCSO's failure to discipline Deputies Armijo and Rael indicates that the deputies were acting pursuant to Bernalillo County policy when they stopped Ms. Crawford on three separate occasions.

106. BCSO's supervisors, including Sheriff Gonzales and his law enforcement command staff, have a duty to adopt constitutionally adequate policies.

107. BCSO supervisors negligently adopted inadequate policies.

108. BCSO's supervisors, including Sheriff Gonzales and his command staff, have a duty to adequately train, supervise, and discipline BCSO deputies.

109. In adopting and ratifying unconstitutional policies allowing its employees to stop motorists without reasonable suspicion, racially profile motorists, and/or pretextually stop motorists, BCSO supervisors violated the New Mexico Constitution's guarantee against unlawful seizure.

110. In failing to train, supervise, and discipline BCSO deputies, BCSO supervisors proximately caused Ms. Crawford's injuries.

111. Defendants directly and proximately caused Ms. Crawford to suffer anguish, embarrassment, emotional injuries, mental injuries, and psychological injuries.

112. Bernalillo County is vicarious liable for the acts and omissions of its BCSO supervisors.

COUNT III

*Article II, Section 18, of the New Mexico State Constitution,
and § 41-4-12 NMSA 1978,*

**Equal Protection
(Against all Defendants)**

113. Ms. Crawford realleges paragraphs 1 through 112 as though they were fully set forth herein.

114. Article II, Section 18, of the New Mexico State Constitution affords equal protection of the law and prohibits discrimination on the basis of race.

115. Racial profiling is discrimination on the basis of race.

116. Race is a suspect classification and any discrimination on the basis thereof should be afforded the strictest scrutiny.

117. The Fourteenth Amendment of the Federal Constitution prohibits discrimination on the basis of race. However, the federal test for racial profiling is so burdensome for plaintiffs to satisfy, they seldom succeed.

118. Federal law as it relates to racial profiling is flawed.

119. There are distinctive state characteristics that support departure from federal precedent.

120. New Mexico courts have already afforded more protection under Article II, Section 18 of the New Mexico Constitution than federal courts have provided under the Fourteenth Amendment to the United States Constitution.

121. Deputies Armijo and Rael unconstitutionally profiled Ms. Crawford on the basis of race when they stopped her three times as part of a profile that targets black motorists driving rental cars.

122. Each time deputies stopped Ms. Crawford constitutes three separate occurrences under the Tort Claims Act.

123. Bernalillo County is vicariously liable for Deputies Armijo and Rael's having racially profiled Ms. Crawford on three separate occasions.

124. As a proximate result of Deputies Armijo and Rael's actions, Defendants injured Ms. Crawford, causing her to suffer anguish, embarrassment, emotional injuries, mental injuries, and psychological injuries.

CLAIM IV

*Article II, Section 18, of the New Mexico State Constitution,
and § 41-4-12 NMSA 1978,*

**Equal Protection
(Against Bernalillo County)**

125. Ms. Crawford realleges paragraphs 1 through 124 as though they were fully set forth herein.

126. Article II, Section 18, of the New Mexico State Constitution affords equal protection of the law and prohibits discrimination on the basis of race.

127. Racial profiling is discrimination on the basis of race.

128. Race is a suspect classification and any discrimination on the basis thereof should be afforded the strictest scrutiny.

129. The Fourteenth Amendment of the United States Constitution prohibits discrimination on the basis of race. However, the federal test for racial profiling is so burdensome for plaintiffs to satisfy, they seldom succeed.

130. Federal law as it relates to racial profiling is flawed.

131. There are distinctive state characteristics that support departure from federal precedent.

132. New Mexico courts have already afforded more protection under Article II, Section 18 of the New Mexico Constitution than federal courts have provided under the Fourteenth Amendment to the United States Constitution.

133. Deputies Armijo and Rael unconstitutionally profiled Ms. Crawford on the basis of race when they stopped her three times when they considered race in determining who they would stop.

134. Each time BCSO deputies stopped Ms. Crawford constitutes three separate occurrences under the Tort Claims Act.

135. Deputies Armijo and Rael's repeated racial profiling of Ms. Crawford indicates that the deputies were acting pursuant to Bernalillo County policy.

136. BCSO's failure to discipline Deputies Armijo and Rael indicates that the deputies were acting pursuant to Bernalillo County policy when they stopped Ms. Crawford on three separate occasions.

137. BCSO supervisors, including Sheriff Gonzales and his law enforcement command staff, have a duty to adopt constitutionally adequate policies.

138. BCSO supervisors negligently adopted inadequate policies.

139. BCSO supervisors, including Sheriff Gonzales and his law enforcement command staff, have a duty to adequately train, supervise, and discipline BCSO deputies.

140. In adopting and ratifying unconstitutional policies allowing its employees to racially profile motorists, BCSO supervisors are violating the New Mexico Constitution's guarantee against equal protection.

141. In failing to train, supervise, and discipline BCSO deputies, BCSO supervisors proximately caused Ms. Crawford's injuries.

142. Defendants directly and proximately caused Ms. Crawford to suffer anguish, embarrassment, emotional injuries, mental injuries, and psychological injuries.

143. Bernalillo County is vicariously liable for the acts and omissions of its BCSO supervisors.

CONCLUSION

WHEREFORE, Plaintiff Sherese Crawford respectfully asks that this Court enter judgment in her favor and against Defendants, and grant:

- (a) Compensatory damages in an amount to be determined at trial;
- (b) Pre and post-judgment interest at the lawful rate;
- (c) Any further relief that this Court deems just and proper; and any other relief allowed by law.

Respectfully submitted by:

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