

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

EMELI NAJERA as Personal Representative
to the Estate of OSCAR NAJERA, deceased,

Plaintiff,

No.

v.

NEW MEXICO LAW ENFORCEMENT
ACADEMY BOARD and
LEA DIRECTOR KELLY ALZAHARNA,

Defendants.

COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT

PRELIMINARY STATEMENT

Some law enforcement agencies and officers enjoy trust and power they have not earned. To ensure officers do deserve the immense power they wield and can fairly be considered professionals, at a minimum, agencies must: 1) take seriously pre-hiring screening; 2) follow the law applicable to law enforcement agencies and adopt policies that reflect that law; 3) train officers not only on those policies but also how to use the weapons with which they are entrusted; and, 4) hold officers accountable if and when the first three fail. Professional law enforcement agencies take these basic precautions because no one wants their next-door neighbor to simply throw on a uniform, grab a gun, and decide who will be charged with a crime and who lives and dies.

Since Sheriff Mike Herrington took office, the Chaves County Sheriff's Office ("CCSO") has failed to fulfill the most basic components of a well-operated department, staffed with professionals. It enthusiastically hires known "problem cops" from other departments. It fails to certify its officers in firearms use, much less train them in decisional shooting or de-escalation of persons with mental illnesses or brain injuries. The training and practices it does have in place do

not reflect the law it is sworn to uphold. As a result, CCSO deputies have used more deadly force under Sheriff Herrington than under any other sheriff previously.

The New Mexico Law Enforcement Academy Board (hereinafter “LEA”) should serve as a failsafe against rouge departments and unqualified officers. It has the power to both ensure agencies are adequately training officers and it can take action against an officer’s certification when they have proven themselves unfit for service. Time and time again, however, the LEA refuses to police the police, helping propel New Mexico to the second-highest fatal police shooting rate in the United States.

The killing of Oscar Najera is the culmination of CCSO’s and the LEA’s failures. On June 27, 2021, Chaves County Sheriffs’ Deputies Ricardo Delgado and Raul Ramos shot and killed Mr. Najera without justification. Mr. Najera was unarmed, made no threats to officers, physical or verbal, and he was surrendering. Deputy Delgado’s explanation for shooting an unnamed man has varied from statement to statement. Deputy Ramos shot because he wrongly believed Oscar Najera was shooting when in fact Deputy Delgado had opened fire. Deputy Delgado’s history in his short time as an officer should have precluded him from carrying a badge. Both deputies were plainly unfamiliar with firearms and when they could lawfully use force.

Plaintiff Emeli Najera, as Personal Representative for the wrongful death claims of Oscar Najera, through his attorneys, Ives & Flores, P.C. (Laura Schauer Ives, Adam C. Flores, and Alyssa Quijano) and the American Civil Liberties Union of New Mexico (Leon Howard and Maria Martinez Sanchez), states the following as her complaint against the above-named defendants:

JURISDICTION, VENUE AND PARTIES

1. Jurisdiction and venue are proper in Santa Fe County.

2. Plaintiff Emeli Najera is Oscar Najera's sister and has been duly appointed the Personal Representative for the Estate of Oscar Najera to investigate and bring claims against those agencies and individuals responsible for the wrongful death of Oscar Najera ("Oscar").

3. Oscar was a resident of the State of New Mexico in the County of Chaves.

4. Defendant New Mexico Law Enforcement Academy Board ("LEA" or "Board") is an instrumentality of the executive branch of state government. NMSA 1978, § 9-19-18 (1989). The LEA is composed of the attorney general and one municipal police chief, one sheriff, one state police officer, one attorney employed by a district attorney's office, one certified police chief of a New Mexico Indian tribe or pueblo, one certified New Mexico police officer holding the rank of sergeant or below, and two citizen-at large members. NMSA 1978, § 29-7-3(B), (C) (2015). Actions of the LEA are controlled by a majority vote of the board. *See* NMAC § 10-29.1.8.

5. Thus, certified law enforcement officers control the LEA by holding six (6) of the nine (9) positions on the Board. And all members of the Board, including its citizen-at large members, are vested by law with the power to "maintain order," within the meaning of NMSA 1978, §§ 41-4-3 and -12.

6. The LEA's statutory responsibilities include supervising the police academy, § 29-7-3(A), developing and implementing law enforcement training for officers statewide, prescribing courses of instruction and qualifications for instructors, adopting and publishing rules and regulations implementing the Law Enforcement Training Act, and granting, denying, renewing, suspending, and revoking peace officer certification for cause, § 29-7-4(B), (C), (F), and (G). The LEA exercises supervisory authority over every law enforcement officer statewide.

7. The LEA is also responsible for appointing a director of the law enforcement academy who also serves as executive secretary to the Board. By regulation, the LEA director is responsible for

performing all duties delegated by the Board and those duties “customarily exercised by the chief executive officer of a state agency.” NMAC § 10-29.1.8(C).

8. The director’s duties have included ensuring that all police officers in the State of New Mexico are properly trained in accordance with the constitutional standards that govern law enforcement. The director issues law enforcement certification to police officers statewide. NMSA 1978, § 29-7-5 (2003). The LEA director is vested by law with the power to “maintain order,” within the meaning of NMSA 1978, §§ 41-4-3 and -12.

9. At all times material, Defendant Kelly Alzaharna (hereinafter “Defendant Alzaharna”) served as LEA director.

FACTS

Hiring, Retention, and Training at the Chaves County Sheriff’s Office

10. Sheriff Mike Herrington (hereinafter “Sheriff Herrington”) was elected as the Chaves County Sheriff in 2018.

11. Since Sheriff Herrington took office, Chaves County Sheriff’s Office (hereinafter “CCSO”) deputies have shot at and killed more people than under any other previous CCSO sheriff.

12. CCSO hires personnel from other agencies—the Roswell Police Department in particular, which is also located in Chaves County—who have histories of dishonesty and unjustified uses of force.

13. For example, the Roswell Police Department terminated then Officer Michael Burkowski (hereinafter “then Officer Burkowski” or “Deputy Burkowski,” depending on the date) on August 3, 2018, for lying about his relationship with a sexual assault victim, collecting evidence without

a search warrant, destroying evidence, and participating in an investigation despite his supervisor's express order not to do so.

14. Soon thereafter, the CCSO hired Deputy Burkowski.

15. In response, the Roswell Police Chief prohibited Deputy Burkowski from participating in any investigations in his jurisdiction.

16. The Roswell Police Department also referred then Officer Burkowski to the LEA alleging he had committed acts that indicate a lack of good moral character, or that constitute dishonesty or fraud, and that adversely affect his ability to perform his duties as a police officer on September 7, 2018.

17. CCSO Deputy Colter Childress, who conducts background checks for CCSO, wrote the LEA in support of Deputy Burkowski, alleging that the Roswell Police Department was overzealous in its discipline of officers.

18. In another instance, the Roswell Police Department had recommended CCSO Deputy James Johnson (hereinafter "Deputy Johnson") be terminated at least four times before he finally was.

19. CCSO hired Deputy Johnson after the Roswell Police Department terminated him for insubordination, following a myriad of dishonest acts.

20. The Roswell Police Chief prohibited Deputy Johnson from participating in any investigations within Roswell city limits to protect the integrity of investigations and prosecutions in his jurisdiction.

21. Deputy Ricardo Delgado (hereinafter "then-Officer Delgado," "Delgado," or "Deputy Delgado," dependent on the date) was also previously and briefly employed as an officer at the Roswell Police Department.

22. On May 23, 2020, then-Officer Delgado used excessive force against a woman, Ms. Olivas.

23. Then-Officer Delgado's excessive use of force was clearly captured on multiple video recordings.

24. Ms. Olivas was handcuffed when then-Officer Delgado dragged her out of his police unit by her hair, slammed her face into the pavement, then knelt on the back of her neck for approximately three (3) minutes. She suffered physical injuries, including a broken nose.

25. The Roswell Police Department investigated then Officer Delgado's actions.

26. During that investigation, then-Officer Delgado admitted the force he used against Ms. Olivas had been unnecessary.

27. The Roswell Police Department found this incident was "a clear example of how officers should not conduct themselves" and sustained the excessive use of force allegations against then-Officer Delgado.

28. In addition, the Roswell Police Chief was so concerned about then-Officer Delgado's abuse of his authority, he referred then-Officer Delgado's actions to the Office of the District Attorney for criminal charges.

29. Then-Officer Delgado agreed to resign from the Roswell Police Department in lieu of termination on June 25, 2020.

30. The very next day, Delgado applied to the CCSO.

31. In his application, Delgado indicated he left his position at the Roswell Police Department for "better opportunities." This statement was false.

32. Roswell Police Department reported Delgado's misconduct to the LEA on June 29, 2020.

33. Allegations against Delgado included committing acts that indicated a lack of good moral character that adversely affected his ability to exercise the duties of a police officer.

34. Despite Delgado's dishonesty in his application, history of excessive force, and pending allegations with the LEA, CCSO hired him as a deputy.

35. Only a few months after he was hired (and only approximately 3 months before he shot Oscar), Deputy Delgado was accused of additional misconduct which must have been sustained, as CCSO placed him on unpaid administrative leave for a total of eighty (80) hours.

36. Deputy Raul Ramos (hereinafter "Deputy Ramos") graduated from the law enforcement academy in August of 2020.

37. Deputy Ramos was also previously employed at Roswell Police Department prior to his employment with the CCSO, but only for a month.

38. It is unclear why Deputy Ramos left the Roswell Police Department so quickly.

39. CCSO hired Deputy Ramos in April 2019.

40. In his short time at the CCSO, Deputy Ramos has been involved in multiple shootings.

41. Only three (3) months before shooting Oscar, Deputy Ramos was involved in another shooting where the victim was killed.

42. Without investigation, Sheriff Herrington immediately declared that shooting justified and, on information and belief, failed to provide Deputy Ramos any critical incident review.

43. In fact, since Sheriff Herrington took office, Sheriff Herrington's practice has been to immediately and without investigation declare CCSO shootings justified, usually on Facebook and usually in the comments section.

44. Compounding its problematic hiring practices, since Sheriff Herrington took office, CCSO has not provided its deputies with even the most basic training that is required by state law.

45. The Law Enforcement Training Act requires that law enforcement officers complete biennium training, which must include at least forty (40) hours of academic instruction within each twenty-four (24) month period. NMSA 1978 § 29-7-7.1(A).

46. Four (4) hours of this training must include firearms training on agency approved weapons, including duty handguns. 10.29.7.8(A)(6) NMAC. Two (2) hours must include training on dealing with persons with mental health issues and brain injuries. 10.29.7.8(A)(9) NMAC; NMSA 1978 § 29-7-7.5.

47. The legislature enacted the Law Enforcement Training Act to ensure law enforcement officers are equipped with the training and experience necessary to safely conduct their duties while armed with a firearm and to ensure the safety of all who encounter law enforcement.

48. Each officer must complete their first training course no later than twelve (12) months after graduation from basic law enforcement training. *Id.*

49. Law enforcement officers must also requalify on their weapons every year and report those scores to the LEA. 10.29.9.14(E) and (F) NMAC.

50. Only one CCSO law enforcement officer—out of dozens—has been certified to carry a firearm under Sheriff Herrington’s watch.

51. Only four (4) CCSO law enforcement officers have completed in-service, day and night, firearm training or decisional shoot training, as required by NMAC 10.29.2.8(6).

52. None of Sheriff Herrington’s deputies have completed training in interaction with persons with mental impairments, as required by to Section 29-7-7.5 NMSA 1978.

53. Deputy Delgado had not been qualified to use his firearm since 2019.

54. From the time Deputy Delgado graduated from the Basic Police Officer Academy to the time he killed Oscar, he had not received any training required by New Mexico statutes and regulations.

55. The Law Enforcement Training Act requires officers obtain certification within twelve months of hire as law enforcement or they must forfeit their position. NMSA 1978 § 29-7-6(B).

56. Deputy Ramos did not timely obtain his certification, waiting eighteen months, instead of twelve.

57. Still, Sheriff Herrington and Chavez County allowed him to perform law enforcement duties without certification.

58. In addition, CCSO either did not provide or report any field officer training for Deputy Ramos. He is also not qualified on the use of his service weapon.

59. Since Sheriff Herrington took office, the minimal training CCSO has provided its law enforcement officers is far below what is required by law.

60. As described above, Sheriff Herrington ratifies deadly force without investigation, which sets policy and emboldens deputies, who learn any choice they make in the field will not be questioned.

61. In addition to CCSO ratifying unjustified uses of force, the undersheriff, Charles Yslas (hereinafter “Undersheriff Yslas”) owns Warrior1 Consulting & Training (hereinafter “Warrior1”), a business dedicated to self-defense and firearm training.

62. Warrior1’s creed is:

THIS IS MY LIFE !!! If someone tries to steal MY LIFE, they must fight me for it! I know that I have only one life & I will fight, to the death if need be, to defend my life or the life of another. If I am in fear for my life, I will strike fast & hard; I will explode, summoning ALL my strength & will power. I will utilize anything & everything necessary to defeat my attacker. I will NOT fight fair; I will cheat, & I WILL FIGHT TO WIN! I am willing

& fully capable of doing anything necessary to defend my life or the life of another..... and I WILL !!!

– Undersheriff Charles Yslas

“Warrior1 Creed” (<http://www.warrior1consulting.com/warrior1-creed/>, accessed January 4, 2022)

63. Upon information and belief, Undersheriff Yslas instills this creed into CCSO deputies.

64. As a result, civilian encounters with CCSO are unnecessarily escalated as officers are specifically trained to suspect that every encounter is a deadly force counter and encouraged to “strike fast & hard” and “not fight fair” on Undersheriff Yslas’s advice and training.

65. State law provides for oversight of law enforcement when a department fails to do so itself. But that oversight has failed, too.

LEA

66. The LEA is responsible for approving both the New Mexico Law Enforcement Academy (“Academy”) training, any department provided training, and law enforcement compliance with statutory training requirements. In addition, the LEA oversees the certification, suspension, and decertification of law enforcement officers across New Mexico.

67. To achieve law enforcement certification, an applicant must successfully complete the Academy (with few exceptions).

68. The LEA must approve the curriculum taught in the Academy to ensure it complies with state law and reflects the values and professionalism New Mexico seeks to instill in its law enforcement officers.

69. The LEA is also responsible for approving any law enforcement agency’s internal training if an agency chooses to provide it. The LEA does so to ensure law enforcement training is uniform and accurately reflects state and federal law.

70. The LEA did not approve any training the CCSO may have provided its deputies. But it also appears the CCSO did not comply with any state mandated training.

71. Law enforcement agencies throughout the state must submit training compliance reports to the LEA.

72. The LEA is responsible for reviewing those reports and assessing law enforcement compliance with state statutes mandating certain types of training, including in-service, day and night firearm training or decisional shoot training; interaction with persons with mental impairments; and legal updates on federal and state law.

73. For some time, however, nearly half of the state's departments, have not bothered to file training compliance reports detailing their personnel's training to the LEA.

74. In September of 2019, Attorney General Hector Balderas specifically instructed the new LEA director, Defendant Alzaharna, to complete a comprehensive analysis of law enforcement agencies throughout the state to determine agency compliance with NMSA 1978, Section 29-7-7.1 and provide a written report to the LEA so that the LEA could determine any necessary actions. The Attorney General also instructed the LEA director to issue notices of non-compliance to agencies who were out of compliance.

75. Aside from quickly gathering statistics two days prior to a LEA meeting, the LEA director has failed to conduct a thorough audit or take any necessary actions against non-compliant agencies.

76. In addition to approving and overseeing statewide law enforcement training, the LEA is responsible for enforcing NMSA 1978, Section 29-7-6, ensuring all law enforcement officers meet the basic qualifications for certification.

77. When certifying officers, the LEA is obligated to ensure each “is of good moral character” and has met all requirements for certification.

78. Once certified, the LEA has the authority to suspend or revoke the certification of any officer.

79. Grounds for suspension or decertification include committing acts that indicate a lack of good moral character, constitute dishonesty or fraud, adversely affect an officer’s ability to exercise the duties of a police officer, or acts of violence or brutality which indicate that the officer has abused his authority as an officer. NMAC § 10.29.1(D)(4) to (5).

80. The LEA has completely failed to meet its statutory mandate.

81. According to an investigation conducted by KOB News, by September 2020 the LEA had a backlog of police misconduct investigations, with at least 130 active cases.

82. The Roswell Police Chief spoke out about the backlog, which included the excessive force case against Deputy Delgado, stating with frustration, “Because the state isn’t tracking this, they’re getting hired elsewhere.”

83. As described above, Deputy Delgado was referred to the LEA for his use of unnecessary and excessive force against Ms. Olivas.

84. Deputy Delgado was among officers hired elsewhere pending the backlog of LEA investigations.

85. Along with the referral, the LEA was provided copies of body camera and two views of sally port footage of Deputy Delgado’s use of force against Ms. Olivas, body camera footage of Deputy Delgado with Ms. Olivas at the hospital after his use of force, photographs of Deputy Delgado after the incident, a copy of the internal affairs interview of Deputy Delgado, Roswell

Police Department's internal affairs investigative report, the sustained complaint against Deputy Delgado, incident and use of force reports related to the incident, and various other documents.

86. On April 7, 2021, the LEA dismissed its case against Deputy Delgado, citing "totality of the circumstances and lack of available evidence."

87. According to one LEA member, Santa Fe County Sheriff Adan Mendoza (hereinafter "Sheriff Mendoza"), the LEA never reviews video and relies solely on the written reports.

88. In addition, Sheriff Mendoza explains the LEA only has authority to discipline law enforcement who have utilized excessive force if that force is grossly excessive or shocks the conscious of the LEA members.

89. In the same meeting it voted to dismiss its case against Deputy Delgado, the LEA voted to dismiss cases against 10 other officers.

90. Included in these dismissals were Albuquerque Police Department Officer Keith Sandy, whose referral to the LEA stemmed from the infamous killing of James Boyd for which he was criminally charged, and Fred Duran, an officer on Second Judicial District Attorney Raul Torrez's list of "problem officers."

91. The LEA routinely dismisses serious referrals.

92. For example, in November of 2020, the deputy chief of the Portales Police Department referred an officer who continues to be under investigation for criminal sexual contact of a minor for displaying "numerous signs indicative of a child predator" and advised the LEA that "[t]hese warning signs cannot be ignored and must be taken seriously." Initially, the LEA lost all of the information that had been included in the referral and then failed to interview anyone from the Portales Police Department prior to dismissing the referral.

93. Though the Portales Police Department had terminated the officer following their own internal investigation and the officer remains under investigation for criminal sexual contact of a minor, another agency hired him in part because the LEA had not taken any action against his certification.

94. In another instance, the Roswell Police Department referred then Officer Michael Burkowski to the LEA for initiating an investigation into an alleged sexual assault involving his girlfriend's juvenile sister without his supervisor's permission. Then Officer Burkowski lied to his supervising officers when asked about the nature of his relationship with the victim's sister. And he also lied when he stated he was uninvolved in the investigation. He refused to set up a forensic interview with the victim, "dumped" her cell phone, and obtained incriminating evidence without a search warrant.

95. The Roswell Police Department referred Officer Burkowski to the LEA alleging he had committed acts that indicate a lack of good moral character, or that constitute dishonesty or fraud, and that adversely affect his ability to perform his duties as a police officer on September 7, 2018.

96. Without consulting anyone at the Roswell Police Department, the LEA took no action against then Officer Burkowski because he purportedly did not violate a "board rule."

97. The LEA's failures have allowed many problem officers to remain certified, untrained, and able to continue committing violent crimes against the public.

The Killing of Oscar Najera

98. In 2016, when Oscar Najera ("Oscar") was 20 years old, he stepped in between a friend and a man that was threatening his friend with a gun at a party. The man with the gun shot Oscar in his face and another woman. They both lived. The man pleaded guilty to two counts of battery with a deadly weapon and was sentenced to 8 years in prison.

99. After being shot in the face, Oscar was hospitalized for several months and nearly died. He also suffered from, and was being treated for, Post Traumatic Stress Disorder and exhibited symptoms of a brain injury up until the time of his death.

100. Despite these hardships, Oscar worked fulltime and was expecting his first child at the time of his death.

101. On June 27, 2021, Deputies Delgado and Ramos shot and killed an unarmed Oscar.

102. That afternoon, at 4:54 p.m., Oscar's girlfriend called 911 to report an alleged domestic incident between her and Oscar that had taken place earlier that day.

103. Oscar's girlfriend alleged she and Oscar had an argument concerning Oscar wanting to break up with her in which he threatened her with her own gun.

104. She also claimed Oscar ordered her to go to the bank to withdraw money, but that Oscar went inside to put a shirt on before going to the bank, leaving both her and her gun outside.

105. At that time, Oscar's girlfriend stated she went to her neighbor's home, and Oscar drove off in a vehicle that they had historically shared but was registered to her.

106. CCSO personnel responded to the 911 call and spoke to Oscar's girlfriend in person and told her the Roswell Police Department would be taking over the case because they had a larger criminal investigation division and CCSO did not have resources to handle the case.

107. Nevertheless, CCSO deputies continued searching for Oscar.

108. The total absence of appropriate law enforcement training at CCSO is evident in the investigation and killing that followed.

109. CCSO deputies discovered the car registered to Oscar's girlfriend at a convenience store in Roswell later that afternoon.

110. When they arrived at the convenience store, Deputy Ramos went to the vehicle to see if Oscar was in it.

111. Deputy Ramos made no attempt to verify if the weapon Oscar was alleged to have had was in the vehicle or not.

112. Later investigation found Oscar's girlfriend's gun was in plain sight on the passenger-side floorboard of the vehicle.

113. Deputy Ramos then interviewed an individual who had been seen speaking with Oscar.

114. This individual told Deputy Ramos where Oscar had gone. Deputy Ramos did not ask the individual whether Oscar was armed.

115. Deputy Ramos then saw Oscar running towards the park, near Evergreen Street, at 5:37 p.m.

116. Deputy Ramos radioed Oscar's location to other deputies in the area. Again, Deputy Ramos made no mention of whether Oscar was armed.

117. CCSO deputies Hendrix, Sanchez, and Ramos saw Oscar run through the park and into a yard. None of the deputies chasing Oscar saw him with a weapon or announced that he had a weapon.

118. The deputies initially chasing Oscar did not draw their guns.

119. Deputy Hendrix deployed his TASER but missed Oscar completely.

120. Deputy Hendrix radioed to other deputies at the scene, including Deputies Ramos and Delgado, that Oscar was heading towards Evergreen Street.

121. Officer Hendrix did not announce to the other deputies that Oscar appeared to be armed at that time, either.

122. When Deputies Delgado and Ramos heard Deputy Hendrix's radio call-out, they drove down the road to intercept Oscar at the location described.

123. Deputy Ramos told Deputy Delgado to jump in the bed of his truck, then the pair sped down Evergreen to apprehend Oscar. Deputy Ramos did not engage his emergency lights.

124. Deputies Delgado and Ramos spotted Oscar in a front yard on Evergreen and abruptly stopped the truck.

125. At the time deputies located Oscar, he was wearing a t-shirt and thin athletic shorts and walking.

126. The deputies immediately began yelling commands at Oscar: "Let me see your fucking hands! Let me see your hands!" and "Show me your hands! Get on the ground!"

127. The deputies did not take cover and instead raced at Oscar with their guns drawn.

128. Oscar complied with the officers' commands, and held his hands up, open and above his head.

129. Oscar continued to hold his hands in the air. The deputies continued to race at him.

130. Then, clearly terrified by the two men racing at him with guns drawn, Oscar first moved his left hand from over his head, outstretched it with his palm facing towards the deputies in a defensive posture, and then put both hands downward and bent his knees as he attempted to comply with the deputies demands for him to get on the ground.

131. Oscar was not given a chance to comply.

132. Only seven (7) seconds after pulling up in their unit, without warning, without identifying themselves as police, without facing any apparent deadly threat, without waiting for Oscar to get down on the ground, without giving Oscar any additional commands or stating that he was going to shoot him if he failed to comply, Deputy Delgado shot at Oscar eight (8) times.

133. As soon as he heard gunshots, Deputy Ramos “honestly thought [he] was being shot at” and fired three (3) shots at Oscar. He did so without accounting for each shot and assessing whether Oscar was an immediate threat at the time he shot him.

134. The deputies’ explanations for shooting Oscar have varied.

135. Initially and on scene, Deputy Delgado claimed Oscar pulled something out of his pocket, so he had to “engage.”

136. Whereas, in his interview with the New Mexico State Police, Deputy Delgado explained that he did not in fact see Oscar pull anything out of his pocket and that he shot because he “could see [Oscar’s] shoulder area, and [he] could see that [Oscar] was putting his hand down. So [he] couldn’t see what his hand was going to grab but [he] could see the majority of [Oscar’s] arm.”

137. Deputy Ramos, on the other hand, claims he shot Oscar because Oscar reached with both of his hands into his pockets and made a so-called furtive movement, but he also explained that he shot because he feared for his life when he heard gunshots.

138. Deputy Ramos’s explanation of who he believed was shooting has also varied. Ultimately, he admitted he did not know who was shooting, Deputy Delgado or Oscar.

139. Immediately following the shooting, Deputy Ramos did not attempt to provide Oscar medical care because he wrongly believed he may have been shot.

140. Deputy Delgado did approach Oscar as Oscar died on the ground.

141. With his final breaths, Oscar told Deputy Delgado, “I didn’t have a gun! I didn’t have a gun! I didn’t have a gun.”

142. Oscar did not, in fact, have a gun.

143. Oscar had not reached into his pockets.

144. The deputies' rushed approach of Oscar, failure to deescalate, and failure to accurately assess whether Oscar was a threat of immediate and deadly harm are indicative of a lack of judgment, training, and familiarity with firearms necessary for law enforcement to safely perform their duties.

145. Deputies Delgado and Ramos's did not respond to Oscar as they would or should have had CCSO bothered to train them pursuant to state law and regulation.

146. Following the shooting, officers found Oscar's girlfriend's gun in the vehicle at the convenience store, registered to and owned by her.

147. Within approximately twenty (20) minutes of the shooting, Sheriff Herrington, his deputy chief, and Deputies Delgado and Ramos all met behind closed doors at CCSO headquarters.

148. On information and belief, it is the pattern and practice of CCSO to fail to maintain the integrity of their personnel's statements and independent recollection when a deputy has killed a citizen.

149. Months later, the CCSO deputy sheriff took to Facebook to claim Deputies Delgado and Ramos were justified in shooting Oscar because "[Oscar] rapidly lower[ed] his hands and shove[d] them into his pockets, creating a furtive movement, appearing to retrieve a weapon. At this point, [Oscar] rapidly draws his hand out of his front pocket, hand clutched, in a furtive movement, giving deputies the belief that he...is clutching a weapon..."

150. Not only is the CCSO deputy chief's statement inconsistent with the lapel video of the incident, it is inconsistent with his own deputies' statements.

151. The deputy chief also misrepresented Oscar's criminal history in his Facebook post.

152. An autopsy was conducted and revealed seven (7) bullets struck Oscar: two in his back, one in his right shoulder, one through his right wrist, one in each thigh, and one in his chest.

153. All bullets entered from right to left or back to front, indicating Oscar was facing away from Delgado and Ramos when he was shot.

154. The manner of death was determined to be homicide, and his death was caused by multiple gunshot wounds.

155. Based on the autopsy, the bullet that killed Oscar entered his right back and lodged in his chest.

COUNT I: NEGLIGENCE RESULTING IN BATTERY

All previous paragraphs are incorporated herein.

156. On June 27, 2021, CCSO deputies unlawfully shot and killed Oscar, resulting in a battery and his wrongful death. .

157. The killing was foreseeable within a culture of excessive force and the department-wide ignorance of constitutional standards that govern law enforcement.

158. Although CCSO and its officers are responsible for Oscar's death, the law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, contributed to the killing by failing to uphold their duties to ensure officers are appropriately instructed, trained and certified, and that their certifications are suspended or revoked when warranted.

159. The law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, have an ordinary common-law duty "in any activity actually undertaken to exercise for the safety of others that care ordinarily exercised by a reasonably prudent and qualified officer in light of the nature of what is being done," *Weinstein v. City of Santa Fe ex. rel. Santa Fe Police Dept.*, 1996-NMSC-021, ¶ 22, 916 P.2d 1313 (citation omitted), which includes a duty to

exercise appropriate supervision and oversight to prevent batteries by other law enforcement officers, *see Ortiz v. New Mexico State Police*, 1991-NMCA-031, ¶ 12, 814 P.2d 117.

160. The law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, have a duty imposed by law to suspend or revoke a peace officer's certification for any cause set forth in the provisions of the Law Enforcement Training Act, NMSA 1978 §§ 29-7-1, *et seq.* These provisions include any requirement for certification prescribed by regulations created by the LEA.

161. The law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, have a duty imposed by law to review law enforcement compliance with statewide training requirements.

162. The law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, have a duty imposed by law to ensure that law enforcement officers are trained to use constitutionally-acceptable force and avoid committing civil batteries.

163. As described throughout this Complaint, and as will be revealed in discovery, the law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, systematically breached these duties by failing to engage in meaningful oversight over police departments and police officers, including the same CCSO deputies who killed Oscar.

164. The breach of these duties contributed to Oscar's battery and wrongful death.

165. The LEA is vicariously liable for the negligence of its director, board members, and staff, who were law enforcement officers operating within the scope of their duties.

COUNT II: DEPRIVATION OF STATUTORY RIGHTS RESULTING IN WRONGFUL DEATH

All previous paragraphs are incorporated herein.

166. The New Mexico Tort Claims Act waives immunity for “wrongful death . . . resulting from . . . failure to comply with duties established pursuant to statute . . . when caused by law enforcement officers while acting within the scope of their duties.” NMSA 1978 § 41-4-12 (2020).

167. The law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, have various statutory duties, including those described above, that relate to the exercise of training and oversight of law enforcement officers statewide.

168. The law enforcement officers staffing the LEA, including, but not limited to Defendant Alzaharna, breached their duties, foreseeably resulting in a culture of excessive force, ignorance of constitutional standards, and employment of law enforcement officers who should not have been certified or whose certifications should have been revoked at CCSO.

169. The breach of these duties contributed to Oscar’s battery and wrongful death.

170. The LEA is vicariously liable for the acts and omissions of its director, board members, and staff, who were law enforcement officers operating within the scope of their duties.

COUNT III: NEGLIGENT OPERATION OF A BUILDING

All previous paragraphs are incorporated herein.

171. All Defendants were acting in the course and scope of their duties when they failed to act and/or made safety policy decisions related to the training, certification, oversight, and revocation of certification for law enforcement officers statewide.

172. All Defendants had a duty to maintain the safety of the Cibola County Sheriff’s Office.

173. The failure to ensure adequate training, discipline, and supervision of law enforcement officers at CCSO constituted a policy that created a dangerous condition at the Sheriff's Office and on the physical premises where Oscar was killed.

174. The breach of these duties contributed to Oscar's wrongful death.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this honorable court:

- A. Award damages to make Plaintiff whole,
- B. Award post-judgment interest as permitted by law, and
- C. Award all other relief this Court deems just and proper.

Respectfully Submitted,

IVES & FLORES, PA

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