

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

ROMAN GALLARDO,

Plaintiff,

v.

CV 08 005 JAP/LCS

THE CITY OF ALBUQUERQUE,  
BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF BERNALILLO, and  
RONALD C. TORRES, Director  
of the Metropolitan Detention Center,  
in his individual capacity,

**JURY TRIAL DEMANDED**

Defendants.

**FIRST AMENDED COMPLAINT FOR CIVIL RIGHTS  
VIOLATIONS, TORT CLAIMS, and DAMAGES**

**NATURE OF THE ACTION**

COMES NOW PLAINTIFF ROMAN GALLARDO, through the undersigned counsel, and respectfully submits this Complaint for Civil Rights Violations, Tort Claims, and Damages. This civil rights action for money damages arises under the Eighth Amendment to the United States Constitution and 42 U.S.C. §1983. State common law tort claims are brought as well based on the same allegations giving rise to the federal constitutional claim raised herein. As set forth with greater particularity below, Mr. Gallardo, a former inmate at Metropolitan Detention Center (MDC), alleges that Defendants failed to protect him from physical and sexual assault when they knew that Mr. Gallardo was at risk of being assaulted by another inmate known to be dangerous. Plaintiff alleges that Defendants Board of County Commissioners of the County of Bernalillo (Board) and the City of Albuquerque (City) negligently failed to adequately train and supervise its staff at MDC and are otherwise liable for Plaintiff's damages.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action and over the parties. Jurisdiction is proper pursuant to 28 U.S.C. §§1331 and 1343(3) and (4), and common law. Supplemental jurisdiction over the pendant state law claims is proper pursuant to 28 U.S.C. §1367(a) and common law. Venue is proper in this district because the acts complained of herein occurred in Bernalillo County, New Mexico. Plaintiff's cause of action arose in New Mexico.

PARTIES

2. Plaintiff Roman Gallardo is a citizen of the United States and a resident of Bernalillo County, New Mexico. Mr. Gallardo was incarcerated in MDC at the time of the incidents described herein. Mr. Gallardo is not incarcerated now.

3. The City of Albuquerque is the proper party subject to suit regarding claims and as such is properly subject to suit in this Court. Defendant City is a political subdivision of the State of New Mexico and a "person" under 42 U.S.C. § 1983.

4. Defendant Ronald C. Torres is the Director of MDC. Defendant Torres is sued in his individual capacity. Upon information and belief, Defendant Torres is a resident of Bernalillo County, New Mexico. Defendant Torres acted at all material times under the color of state law and within the scope of his duties.

5. Defendant Board of County Commissioners of the County of Bernalillo (hereinafter defendant "Board") is the proper party subject to suit regarding claims against Bernalillo County, New Mexico, NMSA § 4-46-1 (1978), and as such is properly subject to suit in this Court. Defendant Board is a political subdivision of the State of New Mexico and a "person" under 42 U.S.C. § 1983.

FACTS PERTINENT TO ALL COUNTS

6. MDC is currently operated exclusively by Bernalillo County. At the time of the incident giving rise to this lawsuit, the City of Albuquerque was jointly responsible for the operations at MDC. On July 1, 2006, Bernalillo County became the sole operator of MDC.
7. Mr. Gallardo was incarcerated at MDC beginning on or about February 13, 2005.
8. Mr. Gallardo is an openly gay man. While he was incarcerated at MDC, other inmates and custody officers knew that he was gay and ridiculed him on a daily basis. Defendants and other detention officers did not take steps to protect Mr. Gallardo from such treatment.
9. While Mr. Gallardo was incarcerated at MDC, he was placed in a cell with Nicklas Trujeque on January 4, 2006.
10. While Mr. Gallardo was in the cell with Nicklas Trujeque on January 4, 2006, Nicklas Trujeque physically assaulted and raped Mr. Gallardo.
11. Defendant Torres and his staff knew that Nicklas Trujeque was a dangerous inmate prone to sexually attacking other inmates.
12. Nicklas Trujeque had previously raped another inmate in MDC on or about July 8, 2005. This inmate shall be identified herein as "Inmate Doe."
13. On August 22, 2005, Inmate Doe's attorney sent a letter to Harry Tipton, the previous director of MDC, and Defendant Torres informing them that his client had been raped by Nicklas Trujeque and that the rape was encouraged and enabled by an unknown MDC detention officer. Said letter also warned Defendant Torres that Inmate Doe was the subject of ongoing retaliation and harassment after the rape had occurred.

14. On August 24, 2005, Inmate Doe's attorney sent a Tort Claims Notice letter to the City of Albuquerque, Albuquerque Mayor Martin Chavez, and Bernalillo County Clerk Mary Herrera, informing them, among other things, of Inmate Doe's rape by Nicklas Trujeque and his intent to sue Defendants.

15. Defendants knew that Nicklas Trujeque was a dangerous individual and Defendants were on notice of Inmate Doe's rape allegations at the time that Nicklas Trujeque assaulted and raped Mr. Gallardo.

16. At all times material, Defendants had common-law and statutory duties to maintain and operate MDC. These Defendants had the further duty to properly train and supervise detention officers employed at MDC.

17. At all times material, Defendants either had been assigned the duty or had assumed the duty to operate the detention facility.

18. At all times material, Defendants had the duty to keep safe and secure all detainees.

19. At all times material, Defendants knew that MDC was unsafe in that it lacked sufficient physical, procedural, and regulatory safeguards to prevent the sexual assault of Mr. Gallardo. Defendants ignored the threat of sexual abuse to Mr. Gallardo that existed because of the lack of such safeguards.

20. Defendants failed to take action to prevent Nicklas Trujeque's sexual assault of Mr. Gallardo.

21. Despite their knowledge of MDC's dangerous conditions, and as a result of such dangers, including but not limited to the foreseeable and pervasive risk to Mr. Gallardo, Defendants did nothing to protect Mr. Gallardo from the harm inflicted upon him by

Nicklas Trujeque, who was able to commit acts of sexual violence against Mr. Gallardo as a direct result of Defendants' failures and acts of omission.

22. At all times relevant, Defendants failed to properly supervise detention officers.

23. Defendants had the duty and responsibility for the hiring, retention, training, supervision, control and discipline of MDC detention officers. Defendants knew of the alleged misconduct by Nicklas Trujeque, but through deliberate indifference and with reckless disregard for the rights of Mr. Gallardo, failed to take adequate steps to properly train, investigate, discipline, and otherwise supervise detention officers in order to prevent incidents of sexual assault and thereby protect Mr. Gallardo from harm. Defendants acts and omissions constituted official custom or policy for Defendant Board and City.

24. These supervisory failures were so reckless or deliberately indifferent as to render future misconduct of the type alleged herein not only foreseeable but virtually inevitable. This supervisory misconduct was a direct and proximate cause of and constituted an affirmative link to the injuries complained of by Mr. Gallardo.

25. If the actions of Defendants described above were not reckless or undertaken with deliberate indifference, they were negligent and their conduct was a direct and proximate cause of Mr. Gallardo's injuries.

26. As a result of Defendants' unlawful actions, Mr. Gallardo has suffered and continues to suffer physical injury, invasion of his bodily integrity, and severe psychological and emotional distress.

COUNT I  
EIGHTH AMENDMENT TO THE U.S. CONSTITUTION  
(42 U.S.C. § 1983)

27. Paragraphs 1 through 26 are reiterated and incorporated by reference.
28. At all times relevant herein, Defendants were policy makers of MDC and supervisors of all detention officers at MDC.
29. Defendants knew or were consciously indifferent to the pervasive and unreasonable risk of sexual assault and battery that Nicklas Trujeque posed to Mr. Gallardo. These Defendants knowingly placed Mr. Gallardo in a dangerous situation.
30. Defendants took insufficient steps to prevent the rape and sexual assault of Mr. Gallardo.
31. Defendants owed Mr. Gallardo an affirmative duty to secure him from dangerous and unlawful situations such as that described here.
32. The acts and omissions of Defendants were so culpable as to constitute authorization of, and acquiescence in, the rape and sexual assault of Mr. Gallardo.
33. Defendants are vicariously liable for the acts and omissions of their staff and employees.
34. Defendant's failure to adequately train and supervise detention officers at MCDC, and their failure to institute and enforce adequate procedural safeguards against conduct such as that complained of here, constituted a custom, practice, and policy of deliberate indifference to Plaintiff's constitutional rights.
35. Defendants' acts were intentional, malicious, sadistic, willful, wanton, obdurate, and in gross and reckless disregard of Mr. Gallardo's constitutional rights.

36. Defendants' acts and omissions proximately caused Mr. Gallardo's damages and injuries, including pain and suffering, invasion of bodily integrity, and severe psychological and emotional distress.

COUNT II  
NEGLIGENT OPERATION OF MDC  
(NEW MEXICO TORT CLAIMS ACT)

37. Paragraphs 1 through 36 are reiterated and incorporated by reference.

38. Defendants knew or should have known that their failures to properly supervise detention officers in the MDC constituted a dangerous condition on the premises thereof and a foreseeable and pervasive risk of harm to detainees housed therein, including Mr. Gallardo.

39. Defendants' acts and omissions directly and proximately caused Mr. Gallardo's injuries, for which Mr. Gallardo is entitled to compensatory damages in such sums as will be proven at trial.

40. Defendants' conduct constituted negligence in the operation of the detention facility, creating a condition in the facility which poses a danger to those present and for which immunity has been waived under NMSA 1978, Section 41-4-6, (1989 Repl. Pamp.).

PRAYER FOR RELIEF

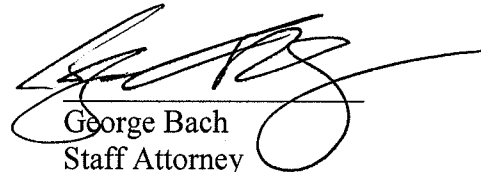
WHEREFORE, Plaintiffs pray for judgment as follows:

- A. Compensatory damages against all Defendants jointly and severally, and punitive damages severally against Defendant Torres; Plaintiff expressly does not seek punitive damages against Defendant Board or City;
- B. Trial by jury on all issues so triable;

- C. Pre- and post-judgment interest as allowed by law;
- D. Reasonable costs and attorneys fees incurred in bringing this action; and
- E. Such other relief as the Court deems just and proper.

Respectfully submitted,

Kari Morrissey  
Cooperating Attorney for the  
ACLU of New Mexico  
201 12<sup>th</sup> St. NW  
Albuquerque, NM 87102  
(505) 244-0950  
Facsimile (505) 244-0952



George Bach  
Staff Attorney  
ACLU of New Mexico  
P.O. Box 566  
Albuquerque, NM 87103  
(505) 243-0046  
Facsimile (505) 266-5916