



**June 6, 2011**

VIA FIRST CLASS MAIL AND FACSIMILE

Office for Civil Rights, DHHS  
Region VI  
1301 Young Street – Suite 1169  
Dallas, TX 75202  
Fax: (214) 767-0432

Re: Complaint for Specialist Adam Jarrell, New Mexico Army National Guard

To Whom It May Concern:

The following statement is an account of allegations reported to the American Civil Liberties Union of New Mexico (ACLU-NM) by Specialist Adam Jarrell (SPC Jarrell). SPC Jarrell has detailed a pervasive and alarming pattern of discrimination against him because he is African American, which he endured while serving this country in Afghanistan with the New Mexico Army National Guard (NMANG), and retaliation for reporting the same. Further, the NMANG has failed to respond in any meaningful way to SPC Jarrell's several attempts to report the discrimination. Our organization finds the below detailed allegations deserving of investigation and the NMANG's failure to investigate those claims unacceptable.

We write to urge the Office of Civil Rights to finally provide full investigation of SPC Jarrell's allegations and to take appropriate action if necessary. The OCR's involvement in this case would be critical given the extreme difficulty military personnel face in maintaining suit to recover damages from superior officers for alleged constitutional violations. It is also important to note that this matter is urgent because SPC Jarrell may be deployed again with the same individuals that discriminated against him in Afghanistan.

SPC Jarrell has served in the NMANG since 2006. As a part of his service, he has been sent to Germany, responded to several states of emergency, including Hurricane Gustav, and, most recently, he was deployed to Afghanistan for Operation Enduring Freedom. SPC Jarrell is a part of the 920<sup>th</sup> Engineering Unit and is the only African American in his unit out of approximately 216 soldiers. Since enlisting in NMANG, SPC Jarrell has served honorably and has even been recognized several times for outstanding service.<sup>1</sup> The crux of this complaint centers on

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<sup>1</sup> SPC Jarrell has been recognized with the following honors: Afghan Campaign Medal, Two Army Commendation Medals, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Overseas Service Ribbon, Army Reserve Medal with M-Device, and Combat Action Badge.

incidents surrounding SPC Jarrell's honorable service in Operation Enduring Freedom. During that deployment, SPC Jarrell suffered nearly a year of racial discrimination, including the hanging of a noose outside his barrack, racial slurs, and threats to his physical safety. Those in SPC Jarrell's direct chain of command (and higher) fostered the racial discrimination by retaliating against SPC Jarrell for reporting misconduct, disproportionately punishing soldiers, the severity of which depended on race, failing to respond to SPC Jarrell's complaints of racism, and condoning the racist treatment of SPC Jarrell.

On July 7, 2009, SPC Jarrell witnessed Sergeant First Class Botello (SFC Botello) physically abuse two subordinate soldiers. SFC Botello pushed one and forced both to roll around in mud for a prolonged period of time because their uniforms were too clean. Apparently SFC Botello understood the soldiers' cleanliness to mean that they were not working hard enough. SPC Jarrell felt the physical abuse of these two fellow subordinate soldiers was "conduct unbecoming of a non-commissioned officer" and reported SFC Botello's behavior following the proper chain of command through the equal opportunity (EO) complaint process.<sup>2</sup> SPC Jarrell was eventually retaliated against for reporting SFC Botello's inappropriate conduct.

On December 30, 2009, Captain Armijo admonished SPC Jarrell in front of SFC Botello, Non-Commissioned Officer De La Fuente (NCO De La Fuente), and Sergeant Valencia for misplacing one of his firearms within the barracks. During this admonishment, Captain Armijo revealed that he knew SPC Jarrell had submitted a complaint about the July 7, 2009 incident,<sup>3</sup> Sergeant Valencia threatened the physical integrity of SPC Jarrell, and Captain Armijo left it within SFC Botello's discretion to discipline SPC Jarrell. After the admonishment, NCO De La Fuente, when speaking to SFC Botello about SPC Jarrell, referred to SPC Jarrell as a "mayate," asking, "why do mayates always act like that?"<sup>4</sup> When SPC Jarrell expressed his discontent with NCO De La Fuente's use of highly derogatory and racially charged language, those in SPC Jarrell's direct chain of command shockingly condoned it.

Shortly thereafter, SFC Botello ordered SPC Jarrell to complete forty hours of extra duty and confiscated his secondary firearm for the remainder of the deployment, purportedly as punishment for misplacing his firearm in the barracks. This punishment was grossly disproportionate to other soldiers in the unit who had received no discipline for the wrongful discharge of their firearms.<sup>5</sup> This removal of SPC Jarrell's secondary firearm is even more disturbing because SPC Jarrell had been sent on a mission in the Zerok area, one of the most dangerous zones in Afghanistan,<sup>6</sup> without the full protection to which he was accustomed.

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<sup>2</sup> SPC Jarrell attached approximately eleven sworn statements to his EO complaint of fellow subordinate soldiers that witnessed this event and felt that SFC Botello's conduct was improper.

<sup>3</sup> Based on information and belief, it is an egregious violation of military code for a ranking official to disclose to a NCO officer that one of his subordinates made an EO complaint against him or her.

<sup>4</sup> "Mayate" is a slang derogatory term used in the Spanish language to refer to "dark skinned person." It is often thought of as the Spanish counterpart to the word "nigger."

<sup>5</sup> One of the negligent discharges involved a soldier accidentally shooting in the direction of another and nearly making contact with his person.

<sup>6</sup> A simple internet search using the terms "Zerok" and "Afghanistan" will lead to countless videos of and articles detailing attacks on this area, particularly during the timeframe SPC Jarrell was in Afghanistan.

It became increasingly clear to SPC Jarrell that not only was he being retaliated against for reporting SFC Botello's "conduct unbecoming of a non-commissioned officer," but that the disparate treatment was racially motivated. On or about January 5, 2010, when SPC Jarrell returned to his barrack, where he was the sole occupant, to find a noose hanging outside of his door. SPC Jarrell was sickened to see this historical symbol of intimidation and racism and was even more horrified to know that someone in his unit had to have placed it there. NCO De La Fuente was in the area at the time and came over to SPC Jarrell's door to remove the noose. NCO De La Fuente stated that he knew who had hung the noose and that he would take care of the situation. Based on information and belief, NCO De La Fuente, nor any other superior, investigated the incident and no one was ever disciplined for the extremely offensive racist gesture.

For the remainder of his time in Afghanistan, SPC Jarrell served with extreme emotional distress. Emboldened by the explicit approval of this remarkably hostile work environment, racial slurs and jokes became commonplace in SPC Jarrell's unit. One can only imagine the strong bond and trust that must be present between soldiers in a unit charged with carrying out a mission during wartime. Being at war in and of itself creates extreme emotional distress. However, SPC Jarrell faced a duel threat in Afghanistan – both the opposition in the war and those that he was fighting alongside who were relentlessly harassing him because he was the only African American in his unit.

When SPC Jarrell returned to New Mexico, he reported his experience to Command Sergeant Major Bryant.<sup>7</sup> Eventually a meeting was held with SPC Jarrell and a NMANG Commander, who is also a JAG Officer. The clear intent of this meeting was to quiet SPC Jarrell, and not to seriously address the discrimination he suffered in Afghanistan. In this meeting, the Commander outrageously condoned the usage of the word "mayate." He ignored the noose incident and attempted to minimize the use of the plainly derogatory term, claiming it has multiple meanings; in this context, however, its use was clear, and even if it was not, the hanging of a noose is. The Commander's actions in this instance are equally as offensive as an attempt to justify the usage of the "N-word."

Since SPC Jarrell's return to New Mexico, NMANG's outrageous conduct has continued. NMANG is currently processing two separate attempts to discharge SPC Jarrell from duty. The first attempt arose on April 2, 2011, when SPC Jarrell was informed that he will be honorably discharged under medical terms from active duty in the NMANG because he is allergic to bee stings.<sup>8</sup> His allergy to bee stings is documented in his permanent medical file, and the NMANG has therefore known of his allergy for six years. The only explanation for the recommendation that SPC Jarrell be discharged for the allergy is that he is being retaliated against for revealing the extremely racist conditions he was exposed to in Afghanistan. It is striking that NMANG put SPC Jarrell's life in danger countless times, including his deployment in Afghanistan for Operation Enduring Freedom, and then recommended that he be discharged for an allergy to bee stings that he has had his whole life.

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<sup>7</sup> Command Sergeant Bryant is the EO officer for NMANG is tasked with handling EO complaints.

<sup>8</sup> Based on information and belief, someone from SPC Jarrell's unit, without the authority to do so, obtained SPC Jarrell's physical profile, and suggested that SPC Jarrell be discharged from active duty due to his allergy to bee stings.

The second attempt to discharge is a result of continued discrimination by SFC Botello, NCO De La Fuente, and Sergeant Valencia. On several occasions since SPC Jarrell has been back in New Mexico, he has been forced to participate in “drill” sessions<sup>9</sup> with the same soldiers who had discriminated against and threatened him in Afghanistan. And, as above detailed, SPC Jarrell has been forced into these situations despite several attempts to report the serious misconduct of these officers. Most recently, Mr. Jarrell attended a scheduled drill session from May 13 through May 15, 2011. On May 14, 2011, during an instructional phase of the drill session, SFC Botello, NCO De La Fuente, and Sergeant Valencia were also present and all sitting together. SPC Jarrell reports that the three officers stared, pointed, and laughed at him. This conduct continued throughout the instructional phase. Due to the extreme mental anguish it was causing SPC Jarrell to be in the same room with the people who had used racial slurs when referencing him and had either hung a noose in front of his barrack or thought it too inconsequential to investigate, he could no longer tolerate being in the same room as these three officers and elected to leave the drill session. As a result, SPC Jarrell missed five hours of the remaining drill session.

On May 17, 2011, Staff Sergeant Williams informed SPC Jarrell that the NMANG was initiating discharge proceedings because SPC Jarrell left the drill session and was therefore “absent without leave” (AWOL). To this point, NMANG has not followed up with this threat, but if NMANG files its claim to discharge SPC Jarrell he will contest the discharge. SPC Jarrell has served in the NMANG for approximately six years and this latest attempt to discharge him on AWOL status for missing five hours of a three-day-long drill session is obviously another attempt to retaliate against him for exposing the racist work environment. In the civilian world, to ignore reports of harassment by an employee and then continually subject the employee to the alleged perpetrators of the harassment would be sufficient to support charges of a hostile work environment and constructive discharge. But in the armed forces, SPC Jarrell is wholly dependant on his superiors to investigate and take necessary disciplinary action. There must, however, be another means of providing justice to SPC Jarrell.

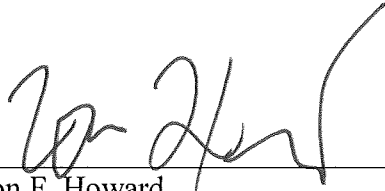
ACLU-NM believes that those responsible at NMANG for facilitating and fostering racial discrimination and retaliating against SPC Jarrell for reporting misconduct should be held accountable. SPC Jarrell has withstood offensive racist language, threats of physical assault by his superiors, countless acts of retaliation, and most egregiously, was confronted with the painful image of a noose hanging outside of his barrack, inciting dreadful thoughts of slavery and the Jim Crow Era. Discriminating against SPC Jarrell because of his race is not just illegal; it is wrong and it goes against everything we stand for as Americans. The United States military is the last place one would expect to find such blatant discrimination.

We look forward to your response to this situation. If our organization can be of assistance in any way please feel free to contact us or SPC Jarrell directly. Thank you in advance for your attention to this matter.

Best regards,

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<sup>9</sup> “Drill” sessions typically consist of three days of training at various locations in New Mexico.



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DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
See OMB Statement on Reverse.



YOUR FIRST NAME Leon		YOUR LAST NAME Howard	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code) 505-266-5915 ext. 1004	
STREET ADDRESS PO Box 566		CITY Albuquerque	
STATE NM	ZIP 87103	E-MAIL ADDRESS (If available) lhoward@aclu-nm.org	

Are you filing this complaint for someone else? ☒ Yes ☐ No  
If Yes, whose civil rights do you believe were violated?

FIRST NAME Adam	LAST NAME Jarrell
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I believe that I have been (or someone else has been) discriminated against on the basis of:

- ☒ Race / Color / National Origin ☐ Age ☐ Religion ☐ Sex  
☐ Disability ☐ Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

New Mexico Army National Guard

STREET ADDRESS 47 Bataan Blvd.		CITY Santa Fe
STATE New Mexico	ZIP 87,508	PHONE (Please include area code)

When do you believe that the civil right discrimination occurred?

LIST DATE(S)

May 2009 - April 2011

Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)

See Attached Document from American Civil Liberties Union of New Mexico

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE

DATE (mm/dd/yyyy)

06/06/2011

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at:

[www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To mail a complaint see reverse page for OCR Regional addresses.

HHS-699 (7/09) (FRONT)

PSC Graphics (301) 443-1090 EF

\* \* \* Communication Result Report ( Jun. 6. 2011 12:18PM ) \* \* \*

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Date/Time: Jun. 6. 2011 12:16PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2010 Memory TX	12147670432	P. 10	OK	

Reason for error  
 m. 1) Hang up or line fail  
 m. 3) No answer  
 E. 5) Exceeded max. E-mail size

E. 2) Busy  
 E. 4) No facsimile connection

**FAX COVER SHEET**

The American Civil Liberties Union of New Mexico  
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DATE: 6/6/2011

TO: Office for Civil Rights, Region VI  
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 RE: Complaint for SPC Adam Jarrell  
New Mexico Army National Guard  
 FROM: Leon Howard, Staff Attorney  
 FAX#: 505-266-5916

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