

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

GABRIEL ARMENDARIZ, RYAN DIMAS,
FREDDIE DOMINGUEZ, PEDRO ESQUIBEL,
JOSE MACIAS, ALEX MALDONADO,
and CARLOS MALDONADO,

Plaintiffs,

v.

GEO GROUP, INC., a Florida corporation,
WARDEN TIMOTHY HATCH,
DEPUTY WARDEN C. MICHAEL MARTIN,
DEPUTY WARDEN JOHNNY JOHNSON,
FIRE SAFETY DIRECTOR MONTOYA,
LIEUTENANT HERNANDEZ,
SERGEANT JOHN GALLAGHER,
SERGEANT JONES, SERGEANT MARQUEZ,
SERGEANT MAYNES, CORRECTIONS OFFICER
BLACK, CORRECTIONS OFFICER CRUMPTON,
CORRECTIONS OFFICER PADILLA,
CORRECTIONS OFFICER SENKEVICH,
CORRECTIONS OFFICER ZANGERLY,
and JOHN DOE(S), in their individual capacities,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS,
TORT CLAIMS, AND DAMAGES

COME NOW PLAINTIFFS GABRIEL ARMENDARIZ, RYAN DIMAS,
FREDDIE DOMINGUEZ, PEDRO ESQUIBEL, JOSE MACIAS, ALEX
MALDONADO, and CARLOS MALDONADO, through the undersigned counsel, and
respectfully submit this Complaint for Civil Rights Violations, Tort Claims, and
Damages. This civil rights action for money damages arises under the Fourth, Eighth and
Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 for civil
rights violations. State common law tort claims are brought as well based on the same

allegations giving rise to the federal constitutional claims raised herein. As set forth with greater particularity below, Plaintiffs allege that the Defendants, at the Northeast New Mexico Detention Facility (hereinafter NENMDF), deprived them of their constitutional rights and committed common law torts by locking them in a cold shower room with almost no clothing for approximately five hours, videotaping them while nude, taunting and teasing them, and permitting tear gas to infiltrate and affect them while trapped in the shower. Such conduct constitutes deliberate indifference to Plaintiffs' right to be free to from cruel and unusual punishment.

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. Plaintiffs have exhausted all statutory pre-conditions to filing suit. Venue is proper in this district because the acts complained of herein occurred in Union County, New Mexico. Plaintiffs' causes of action arose in New Mexico.

PARTIES

2. Plaintiff Gabriel Armendariz is a citizen of the United States and a resident of Doña Ana County, New Mexico.

3. Plaintiff Ryan Dimas is a citizen of the United States and a resident of Santa Fe County, New Mexico.

4. Plaintiff Freddie Dominguez is a citizen of the United States and a resident of Doña Ana County, New Mexico.

5. Plaintiff Pedro Esquibel is a citizen of the United States and a resident of Guadalupe County, New Mexico.
6. Plaintiff Jose Macias is a citizen of the United States and a resident of Union County, New Mexico.
7. Plaintiff Alex Maldonado is a citizen of the United States and a resident of Union County, New Mexico.
8. Plaintiff Carlos Maldonado is a citizen of the United States and a resident of Lea County, New Mexico.
9. Defendant Geo Group, Inc. (“Geo”) is a Florida corporation, which, at all times relevant, was licensed to do business in the State of New Mexico and acted under the color of state law. Geo operated NENMDF at all times relevant herein under contracts with the New Mexico Department of Corrections, Union County, and the Town of Clayton.
10. Defendant Timothy Hatch is, and was at all times relevant herein, Warden of NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Hatch is sued in his individual capacity. Defendant Hatch is a resident of Union County.
11. Defendant C. Michael Martin is, and was at all times relevant herein, Deputy Warden of NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Martin is sued in his individual capacity. Defendant Martin is a resident of Union County.
12. Defendant Johnny Johnson is, and was at all times relevant herein, Deputy Warden of NENMDF and acted under the color of state law and within the scope of his

duties, and within the course and scope of his employment. Defendant Johnson is sued in his individual capacity. Defendant Johnson is a resident of Union County.

13. Defendant Fire Safety Director Montoya is, and was at all times relevant herein, a fire safety employee at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Montoya is sued in his individual capacity. Defendant Montoya is a resident of Union County.

14. Lieutenant Hernandez is, and was at all times relevant herein, a Lieutenant at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Hernandez is sued in his individual capacity. Defendant Hernandez is a resident of Union County.

15. Defendant Sergeant John Gallagher was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Gallagher is sued in his individual capacity. Defendant Gallagher is a resident of Union County.

16. Defendant Sergeant Jones was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Jones is sued in his individual capacity. Defendant Jones is a resident of Union County.

17. Defendant Sergeant Marquez was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of her duties, and within the course and scope of her employment. Defendant Marquez is sued in her

individual capacity. Defendant Marquez is, upon information and belief, a resident of Union County.

18. Defendant Sergeant Maynes was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Maynes is sued in his individual capacity. Defendant Maynes is a resident of Union County.

19. Defendant Corrections Officer Black was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Black is sued in his individual capacity. Defendant Black is a resident of Union County.

20. Defendant Corrections Officer Crumpton was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Crumpton is sued in his individual capacity. Defendant Crumpton is a resident of Union County.

21. Defendant Corrections Officer Padilla was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of her duties, and within the course and scope of her employment. Defendant Padilla is sued in her individual capacity. Defendant Padilla is a resident of Union County.

22. Defendant Corrections Officer Senkevich was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant

Senkevich is sued in his individual capacity. Defendant Senkevich is a resident of Union County.

23. Defendant Corrections Officer Zangerly was at all times relevant herein, a corrections officer at NENMDF and acted under the color of state law and within the scope of his duties, and within the course and scope of his employment. Defendant Zangerly is sued in his individual capacity. Defendant Zangerly is a resident of Union County.

24. Upon information and belief, Defendants John Does are and/or were at all relevant times herein, employees, agents, and/or corrections officers employed by Defendant Geo Group at NENMDF. Plaintiffs are presently unaware of the identities of Defendant John Does and therefore sue these Defendants by fictitious names. Plaintiffs will amend this complaint once the true identities of these Defendants are discovered. Defendants Does are sued in their individual capacities.

FACTS PERTINENT TO ALL COUNTS

25. At all times material, all Plaintiffs were post-conviction New Mexico Department of Corrections prisoners held at NENMDF.

26. At all times material, all Plaintiffs were housed in E pod at NENMDF.

27. At all times material, Defendants Geo, Hatch, Martin, Johnson, and any other Defendant with supervisory duties had common-law and statutory duties to maintain and operate NENMDF. These Defendants had the further duty to properly train and supervise detention officers employed at the detention facility.

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

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

30. At all times material, Defendants Geo, Hatch, Martin, Johnson, Hernandez and any other Defendant with supervisory duties knew or should have known that NENMDF was unsafe in that it lacked sufficient physical, procedural, and regulatory safeguards in the event of an altercation, disturbance, fight, riot, etc. These Defendants ignored this threat to detainees and prisoners, including Plaintiffs, that existed because of the lack of such safeguards.

31. On December 10, 2008, at approximately 4:00pm, an inmate in D pod, the pod directly next to E pod but without direct access to E pod, caused a disturbance and broke a window in D pod causing the facility to lock down all of the inmates.

32. When the lockdown was initiated, all of the Plaintiffs were in a shower room in E pod showering.

33. While the Plaintiffs were showering, Defendants Hatch, Martin, Johnson, Montoya, Jones, Marquez, Maynes, Crumpton, Padilla, and Does came into E pod and ordered that the pod be locked down as well.

34. Defendant Marquez had a video recorder and was filming the nude plaintiffs in the shower room.

35. Plaintiffs attempted to hurry up, wash off soap or shampoo, and dry off so that they could return to their cells as soon as possible.

36. Plaintiffs had been explicitly warned by NENMDF personnel not to leave the shower area nude, because of the occasional presence of female corrections officers.

37. Plaintiffs Esquibel, Macias, and Carlos Maldonado had left the shower room and were headed back to their cells when they were told by Defendants Hatch, Martin, and Jones to turn around and go back into the shower room.

38. Defendant Martin slammed Plaintiff Carlos Maldonado's cell door shut directly in front of him, and ordered him to return to the shower room.

39. Defendant Hatch then ordered Defendant Jones to lock all of the plaintiffs in the shower room. Defendant Jones did so.

40. The Plaintiffs were locked in the cold shower room with little or no clothing. Some of the Plaintiffs had boxer shorts on and some had only small towels. Plaintiffs Dominguez and Esquibel were locked in the shower area completely nude.

41. Plaintiffs asked to be let out or alternatively to be able to get adequate clothing. Defendants present in the pod denied both requests.

42. Immediately after they were locked in the shower room, Defendant Marquez put the video recorder up to the steel grated door to the shower room and began filming the Plaintiffs.

43. While she was filming them, Marquez giggled and danced.

44. Plaintiffs were locked in the shower room for approximately five hours.

45. During this time, they continuously asked to be let out from the shower room but Defendants and other staff at NENMDF refused to let them out.

46. Tear gas was employed in D pod in an attempt to deal with the inmate causing a disturbance. The tear gas wafted into the shower room through ventilation shafts where the Plaintiffs were locked up and affected the Plaintiffs.

47. Because of the gas, the Plaintiffs experienced skin and ear irritation and one plaintiff with asthma issues, Ryan Dimas, had trouble breathing.

48. Plaintiff Dimas requested access to his inhaler but was denied by various Defendants.

49. The situation in D pod was resolved within approximately two hours.

50. After the situation in D pod was resolved, Defendant Hernandez, a Lieutenant, and other Defendants told Plaintiffs that they had lost the key to the shower room and could not unlock the door to let Plaintiffs out.

51. After Plaintiffs had been informed that the key was lost and the situation in D pod had been resolved, they remained in the shower room for approximately another three hours.

52. During this time the Plaintiffs repeatedly informed Defendants, especially Defendant Hernandez, and other staff members, that they were cold, suffering from the effects of the tear gas used in D pod, and needed to use the bathroom. Defendants ignored these concerns and instead taunted Plaintiffs.

53. In response to Plaintiff Dimas's request to use the bathroom, Defendant Jones told Mr. Dimas to defecate in the shower drain.

54. At no time did Defendants or other staff at NENMDF offer to pass Plaintiffs additional clothing through the food port in the door or through an open hole in a side wall. Plaintiffs repeatedly asked various Defendants for additional clothing.

55. During this entire incident, various Defendants, including, Crumpton, Hernandez, Jones, Marquez, Maynes, Padilla, Zengerley, and Does, came by and taunted the inmates

by, for example, referring to them as “shower boys” in a derogatory manner and otherwise laughing and joking at their distress of being locked in the shower room.

56. Defendant Maynes told Plaintiffs he would let them out “in a minute” and then seconds later laughed and said he was “just messing with them.”

57. Ultimately, Defendant Hernandez came to the shower room door and informed Plaintiffs that since the key was lost that if they wanted to get out of the shower room they would have to crawl through a small hole in the wall that led out into the pod.

58. The hole was approximately the size of one cinder block.

59. The sides of the hole were covered with dirt, mold, hair, and other unsanitary items and the sides were rough and jagged.

60. A few weeks before the incident, by memorandum issued throughout the facility, NENMDF informed its staff and inmates about the dangers of staph and mersa, two highly contagious bacterial strains that are often found in showers and bathrooms in detention facilities.

61. There was an outbreak of staph in a pod at NENMDF in the Fall of 2008.

62. Plaintiffs decided to crawl out of the shower room through the small hole rather than stay in the shower room for an indefinite period of time waiting to see if Defendants could, or would, locate a key.

63. The Plaintiffs’ decision to crawl through the hole rather than wait in the shower room without sufficient clothing and without toilet facilities was coerced by Defendants.

64. Plaintiffs crawled through the hole and struggled to get out.

65. Plaintiffs Amendariz, Dimas, Dominguez, Esquibel, Macias, and Alex Maldonado scratched themselves while crawling out of the hole.

66. Defendants laughed at and taunted Plaintiff Alex Maldonado when he became momentarily stuck in the hole.

67. As a result of the scratches and the dirt, mold, hair, etc. within the hole, Plaintiffs Amendariz, Dimas, Dominguez and Alex Maldonado, developed infections or other skin conditions.

68. Defendants failed to treat these infections even after these Plaintiffs made multiple requests for medical attention.

69. Plaintiff Dimas continues to have breathing problems as a result of his prolonged exposure to tear gas in the shower room.

70. Plaintiff Dimas submitted repeated requests for treatment of a foot rash, suffered as a result of his time locked in the shower room and having had to crawl through the hole to get out; the requests were ignored. When Dimas was seen in medical in January 2009 for an unrelated condition and asked that the rash be examined, he was declined treatment and told to fill out another medical request.

71. After Plaintiffs crawled out of the shower room, they were covered with filth from the hole.

72. Plaintiffs asked Defendants for access to another shower to wash off the filth but they were denied and required to go back to their cells.

73. The Plaintiffs were locked down for three or four days thereafter, and not permitted to shower during this entire period.

74. Within minutes of crawling out of the showers, various Defendants, including Defendant Hernandez, arrived in E pod with the key to the shower room and opened the shower door to allow a different group of inmates in to shower.

75. Plaintiffs filed timely grievances regarding the claims set forth herein and fully exhausted them.

76. After Plaintiffs filed grievances, the inmates who served as Plaintiffs' legal representatives were removed from their pods.

77. After Plaintiffs filed grievances, Plaintiffs Armendariz, Dimas, and Alex Maldonado were stripped searched by Defendants Senkevich and Black without reasonable suspicion and in retaliation for having filed grievances and otherwise complaining regarding their treatment.

78. Defendant Gallagher ordered Defendants Senkevich and Black to strip-search Plaintiffs Armendariz, Dimas, and Alex Maldonado.

79. All Plaintiffs were subsequently disciplined for allegedly failing to get out of the shower in a timely manner.

80. Plaintiffs Armendariz, Dominguez, and Esquibel were placed in Segregation on February 6, 2009, as a result of the disciplinary action.

81. Plaintiffs Armendariz, Dominguez, and Esquibel were placed in Segregation because they were the three Plaintiffs who organized the grievance petitions regarding their treatment and in retaliation for their having done so.

82. Plaintiffs Armendariz, Dominguez, and Esquibel were placed in Segregation even though other Plaintiffs had accumulated more disciplinary points than they had.

83. In addition to the abovementioned physical injuries suffered as a result of this incident, all Plaintiffs suffered emotional, mental, and physical suffering.

COUNT I

(42 U.S.C. § 1983 – EIGHTH AND FOURTEENTH AMENDMENTS)

84. Paragraphs 1 through 83 are reiterated and incorporated by reference.

85. At all time material, Plaintiffs had the right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments.

86. Defendants Hatch, Martin, Johnson, Hernandez, Gallagher, Jones, Black, Marquez, Maynes, Padilla, Montoya, Senkevich, Zangerly, Crumpton, and Does' above-described actions on December 10, 2008, constituted deliberate indifference to Plaintiff's Eighth Amendment rights to be free from cruel and unusual punishment.

87. Defendants Geo, Hatch, Martin, Johnson, Hernandez and any other Defendants with supervisory duties failed to adequately train and supervise detention officers at NENMDF, 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.

88. Defendants Hatch, Martin, Johnson, Hernandez, Gallagher, Jones, Black, Marquez, Maynes, Padilla, Montoya, Senkevich, Zangerly, Crumpton, and Does' above-described actions were intentional, malicious, sadistic, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs constitutional rights.

89. Defendants' acts and omissions proximately caused Plaintiffs damages and injuries, including pain and suffering, and psychological and emotional distress.

COUNT II

(42 U.S.C. § 1983 – FOURTH AMENDMENT)

90. Paragraphs 1 through 89 are reiterated and incorporated by reference.

91. Plaintiffs Armendariz, Alex Maldonado, and Dimas have a Fourth Amendment right to be free from unreasonable searches and seizures.

92. Defendants Gallagher, Senkevich, and Black violated this right when they strip searched Plaintiffs Armendariz, Alex Maldonado, and Dimas without reasonable suspicion or without cause to believe that these Plaintiffs possessed contraband.

93. Defendant Gallagher, Senkevich, and Black above described actions were intentional, malicious, sadistic, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs Armendariz, Alex Maldonado, and Dimas' constitutional rights.

94. Defendants Geo, Hatch, Martin, Johnson, and any other Defendant with supervisory duties failed to adequately train and supervise detention officers at NENMDF, 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.

95. Defendants' acts and omissions proximately caused Plaintiffs Armendariz, Alex Maldonado, and Dimas' damages and injuries, including pain and suffering, and psychological and emotional distress.

COUNT III

(TORT - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

96. Paragraphs 1 through 95 are reiterated and incorporated by reference.

97. Defendants intentionally inflicted emotional distress upon Plaintiffs. Defendants' extreme and outrageous conduct intentionally or recklessly caused emotional distress and physical harm to Plaintiffs.

98. Defendants' acts and omissions directly and proximately caused Plaintiffs damages and injuries, including pain and suffering, and psychological and emotional distress.

99. Defendants Geo and Warden Hatch are liable under the theory of *respondeat superior* for the above-described conduct of the other Defendants, which they committed in the scope of their duties and employment as detention officers whom Defendant Geo employed.

COUNT IV

(TORT – ASSAULT)

100. Paragraphs 1 through 99 are reiterated and incorporated by reference.

101. Defendants Gallagher, Black, and Senkevich, who strip-searched Plaintiffs Armendariz, Dimas, and Alex Maldonado are liable to these Plaintiffs for assault.

102. Defendants Gallagher, Black, and Senkevich's acts and omissions directly and proximately caused Plaintiffs Armendariz, Dimas, and Alex Maldonado damages and injuries, including pain and suffering, and psychological and emotional distress.

103. Defendants Geo and Warden Hatch are liable under the theory of *respondeat superior* for the above-described conduct of the other Defendants, which they committed in the scope of their duties and employment as detention officers whom Defendant Geo employed.

COUNT V

(TORT – NEGLIGENCE)

104. Paragraphs 1 through 103 are reiterated and incorporated by reference.

105. Defendants had a duty to exercise reasonable care for Plaintiffs' safety in the maintenance and operation of NENMDF.

106. Defendants had a duty to construct and maintain safe conditions for all inmates at NENMDF.

107. Defendant Geo, Hatch, Martin, Johnson, Hernandez and any Defendant with supervisory duties had a duty to adequately train and supervise detention officers at NENMDF and to institute and enforce physical, procedural, and regulatory safeguards to protect detainees and prisoners in the event of an altercation, disturbance, fight, riot, etc.

108. The above described actions of Defendants were a breach of that duty and constitute negligence.

109. Defendants' acts and failures to act constitute negligence, gross negligence, or recklessness toward Plaintiffs.

110. Defendant Geo knew or should have known that its failure to properly train and supervise detention officers at NENMDF, its failure to institute and enforce physical, procedural, and regulatory safeguards to protect detainees and prisoners in the event of an altercation, disturbance, fight, riot, etc., and its failure to construct and maintain safe conditions for inmates constituted a dangerous condition on the premises thereof and a foreseeable and pervasive risk of harm to detainees and prisoners housed therein, including Plaintiffs.

111. Defendants' acts and omissions proximately caused Plaintiffs damages and injuries, including pain and suffering, and psychological and emotional distress.

112. Defendants Geo and Hatch are liable under the theory of *respondeat superior* for the above-described conduct of the other Defendants, which they committed in the scope of their duties and employment as detention officers whom Defendant Geo employed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. Compensatory and punitive damages against all Defendants jointly and severally;
- 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,

/s/ George Bach 6.17.09

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