

FIFTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF LEA

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11/30/2017 1:19:10 PM  
NELDA CUELLAR  
Cory Hagedoom

Case No. D-506-CV-2017-01622  
The Honorable Mark Sanchez

JOY MORALES,

Plaintiff,

vs.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS,  
PADRAIG DOWNEY, in his official capacity,  
THE CITY OF HOBBS, HOBBS POLICE DEPARTMENT  
CHIEF CHRIS MCCALL, in his official capacity,  
JAYSON WILLIAM HOFF, DOROTHY APODACA,  
in her official capacity,  
JOHN DOES 1 THROUGH 4, and  
JOHN DOES A THROUGH D,

Defendants.

Request for Jury Trial

**FIRST AMENDED COMPLAINT FOR DAMAGES  
CAUSED BY DEPRIVATION OF CIVIL RIGHTS  
AND OTHER TORTIOUS CONDUCT**

COMES NOW Plaintiff Joy Morales, by and through her counsel, Rothstein Donatelli, LLP, and brings this Complaint For Damages Caused by Deprivation of Civil Rights and Other Tortious Conduct against Defendants pursuant to U.S. Const. amend. IV; U.S. Const. amend XIV; N.M. Const. art II, §10; N.M. Const. art. II, §18; 42 U.S.C. §1983; the New Mexico Tort Claims Act, NMSA 1978, §§41-4-1 *et seq.*; and state and federal common law.

**PARTIES**

1. Plaintiff Joy Morales ("Ms. Morales") is now and at all times material hereto has been a resident of Valencia County, New Mexico.

2. Defendant Lea County Board of County Commissioners (“Lea County”) is a political subdivision of the State of New Mexico. Pursuant to NMSA 1978, §4-46-1, all suits or proceedings against a county are to be brought in the name of the board of county commissioners of said county. At all times material hereto, Lea County was a governmental entity and local public body as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§41-4-3(B) and (C). At all times material hereto, Lea County owned, operated and maintained the Lea County Detention Center (“LCDC”), located in Hobbs, New Mexico, and was the employer and supervisor of persons operating the same, including, but not limited to, Dorothy Apodaca.

3. Defendant Padraig Downey (“Warden Downey”) was, at all times material hereto, a resident of Lea County. At the time of the matters complained of herein, Warden Downey was employed by Defendant Lea County as the Warden of the LCDC and was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§41-4-3(D) and (F)(2). At all times material hereto, Warden Downey was acting under color of law and within the scope of his duties as Warden of the LCDC. At all times material hereto, Warden Downey was responsible for hiring, training and supervising subordinate detention and correctional officers and other employees of the LCDC and was the final decision maker and policy maker for Lea County in regards to matters within the LCDC. In connection with Plaintiff’s claims under 42 U.S.C. §1983, Warden Downey is sued in his official capacity.

4. Defendant City of Hobbs (“Hobbs”) is an incorporated municipality, a body politic, and a municipal corporation under the laws of the State of New Mexico. It is also a governmental entity and local public body as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§41-4-3(B) and (C). As such, Hobbs may be sued in its name and

has the authority to delegate to the Hobbs Police Department and its Chief of Police, Chris McCall, final policy and decision-making authority regarding law enforcement matters.

Defendant Hobbs is also a political subdivision of the State of New Mexico and a “person” under 42 U.S.C. §1983. At all times material hereto, Hobbs was the employer of Defendants Chris McCall and Jayson William Hoff and operated the Hobbs Detention Center in Hobbs, New Mexico (“HDC”).

5. Defendant Hobbs Police Department Chief Chris McCall (“Chief McCall”) was at all times material hereto a resident of Lea County, New Mexico. At the time of the matters complained of herein, Chief McCall was a full-time, salaried law enforcement officer, was employed by Hobbs as its Chief of Police, and was a public employee as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§41-4-3(D) and (F)(2). At all times material hereto, Chief McCall was acting under color of law and within the scope of his duties as Chief of Police of Hobbs. At all times material hereto, Chief McCall was the supervisor of Defendants Jayson William Hoff and Dorothy Apodaca and other unnamed persons. At all times material hereto, Chief McCall was responsible for hiring, training and supervising subordinate law enforcement officers of the Hobbs Police Department and was the final decision maker and policy maker for Hobbs in regards to law enforcement matters. In connection with Plaintiff’s claims under 42 U.S.C. §1983, Chief McCall is sued in his official capacity.

6. Defendant Jayson William Hoff (“Officer Hoff”), upon information and belief, was, at all times material hereto, a resident of Lea County, New Mexico. At the time of the matters complained of herein, Officer Hoff was a full-time salaried law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§44-4-3(D) and (F)(2), and, at all times material hereto, was acting under the color of law and

within the scope of his duties as a law enforcement officer with the Hobbs Police Department. In connection with Plaintiff's claims under 42 U.S.C. §1983, Officer Hoff is sued in his official capacity.

7. Defendant Dorothy Apodaca ("Administrator Apodaca"), upon information and belief, was, at all times material hereto, a resident of Lea County, New Mexico. At the time of the matters complained of herein, Administrator Apodaca was employed by Hobbs as the Administrator of the HDC and was a law enforcement officer and public employee as those terms are defined in the New Mexico Tort Claims Act, §§44-4-3(D) and (F). At all times material hereto, Administrator Apodaca was acting under the color of law and within the scope of her duties as Administrator of the HDC. At all times material hereto, Administrator Apodaca was the supervisor of persons employed at the HDC and was responsible for the hiring, supervision and training of detention officers and supervisors, and preparing policies and procedures for the HDC. In connection with Plaintiff's claims under 42 U.S.C. §1983, Administrator Apodaca is sued in her official capacity.

8. Upon information and belief, Defendants John Does 1 through 4 are and/or were at all times material hereto detention officers ("John Doe Detention Officers") employed by the Hobbs Police Department. After investigation and inquiry, Plaintiff is presently unaware of the identities or exact number of John Doe Detention Officer defendants, and therefore sues these defendants by fictitious names. Plaintiff will amend this complaint once the true identities of these Defendant John Doe Detention Officers are uncovered during formal discovery. At all times material hereto, John Doe Detention Officers were law enforcement officers and public employees as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§41-4-3(D) and (F). At all times material hereto, John Doe Detention Officers were acting under color

of law and within the scope of their duties as detention officers with the Hobbs Police Department. In connection with Plaintiff's 42 U.S.C. §1983 claims, John Doe Detention Officers are sued in their individual capacities only.

9. Upon information and belief, Defendants John Does A through D are and/or were at all times material hereto correctional/detention officers ("John Doe Correctional Officers") employed by Lea County. After investigation and inquiry, Plaintiff is presently unaware of the identities or exact number of John Doe Correctional Officer defendants, and therefore sues these defendants by fictitious names. Plaintiff will amend this complaint once the true identities of these Defendant John Doe Correctional Officers are uncovered during formal discovery. At all times material hereto, John Doe Correctional Officers were law enforcement officers and public employees as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, §§41-4-3(D) and (F). At all times material hereto, John Doe Correctional Officers were acting under color of law and within the scope of their duties as detention officers with Lea County. In connection with Plaintiff's 42 U.S.C. §1983 claims, John Doe Correctional Officers are sued in their individual capacities only.

10. For purposes of Plaintiff's state and common law tort claims, Defendants Lea County, and Hobbs are liable for the acts and omissions of their employees, agents, and contractors under the theory of vicarious liability, *respondet superior*, or aided-in-agency.

#### **JURISDICTION AND VENUE**

11. All of the material acts or omissions of Lea County, Hobbs, Warden Downey, Chief McCall, Officer Hoff, Administrator Apodaca, John Doe Detention Officers and John Doe Correction Officer (collectively "Defendants") complained of herein occurred in Lea County, New Mexico.

12. This Court is a court of general jurisdiction, and as such, has concurrent jurisdiction over the state and federal claims set forth herein. *See Haywood v. Drown*, 556 U.S. 729, 731 (2009); N.M. Cons. art. VI, §3.

13. In connection with Plaintiff's state law claims, the acts and omissions complained of herein that constitute the basis of liability against the Defendants come within the scope of the waiver of immunity contained within the New Mexico Tort Claims Act, NMSA 1978, §41-4-12.

14. In connection with Plaintiff's state law claims, the Defendants received timely written notice pursuant to the New Mexico Tort Claims Act, NMSA 1978, §41-4-16(A).

15. In connection with Plaintiff's state law claims, the Defendants received timely actual notice pursuant to the New Mexico Tort Claims Act, NMSA 1978, §41-4-16(B).

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

##### *The Initial Arrest of Devanne Archibeque and False Charges Against Plaintiff Joy Morales*

16. On February 27, 2014, a woman now known to be Devanne Archibeque was arrested by Arizona Department of Public Safety Officer Douglas Redig ("Officer Redig") for aggravated DUI while traveling on Interstate 40 through Arizona.

17. At said time and place, Devanne Archibeque had an active warrant for her arrest signed by Bernalillo County Metropolitan Court Judge Daniel E. Ramczyk of the Bernalillo County Metropolitan Court in Albuquerque, New Mexico.

18. At said time and place, Devanne Archibeque did not have any identification on her and the vehicle she was driving was registered to an individual named "Tanberg" with a residence of 34 Lockwood Lane in Edgewood, New Mexico.

19. No individual by the name of Tanberg was in the vehicle.

20. Plaintiff Joy Morales was not in the vehicle.

21. There was another woman in the vehicle, and the two travelers informed Officer Redig they were traveling to Las Vegas, Nevada, for the purposes of joining in marriage. Devanne Archibeque was unable to provide officer Redig with a driver's license or other official identification even though she claimed to be en route to be married.

22. Devanne Archibeque misrepresented her identify to Officer Redig, stating that she was "Joy Morales" and provided Plaintiff's date of birth but no further identifying information.

23. Officer Redig then investigated, determined that Joy Morales' New Mexico driver's license was suspended, and issued charges of DUI against Plaintiff Joy Morales rather than the true offender, Devanne Archibeque.

24. Devanne Archibeque was taken to the Yavapai County Jail where she was fingerprinted and booked. No other identifying information was obtained.

25. Two days later, Devanne Archibeque was released by Yavapai County, and the DUI charges filed by Officer Redig against Plaintiff, who was not the driver of the vehicle, were eventually dismissed.

26. In April of 2015, a sworn complaint was filed against Plaintiff in the Seligman Justice Court again falsely charging her with DUI and offense related to Devanne Archibeque's arrest by Officer Redig in February 2014 outlined in paragraphs 20 through 28.

27. Plaintiff was completely unaware of the false charges filed in Seligman Justice Court, and thus did not appear to answer for the charges. A bench warrant was issued based upon public identifying information of Plaintiff (the "Arizona Warrant"). Upon information and belief, no investigation was done as to comparison of the fingerprints of the February 2014 arrestee and public arrest records. Upon further information and belief, the identifying

information placed within the warrant did not accurately describe the individual Officer Redig arrested in February of 2014, now known to be Devanne Archibeque.

*Law Enforcement's Awareness of Stolen Identity Issues  
and Ability to Avoid False Legal Process*

28. Identity theft is increasingly common and is a known issue through the United States and the States of Arizona and New Mexico.

29. Law enforcement officers are aware that persons subject to potential arrest often provide false identifying information to law enforcement.

30. Defendants are aware that persons taken into custody by law enforcement are often misidentified unless adequate steps are taken to confirm their identities.

31. Defendants are aware that a failure to confirm the identity of an individual taken into custody by law enforcement personnel carries a grave risk that criminal prosecution or sanctions will be imposed upon the wrong individual.

32. Defendants are aware that identity theft and mistaken identity may lead to improper warrants being issued against the victim of the same.

33. Persons subjected to arrest by law enforcement are routinely subjected to fingerprinting, photographing, documenting of tattoos, and other physically identifying information such as height and weight. Upon information and belief, this information is widely available to other law enforcement personnel in other jurisdictions through reasonably accessible databases and information sharing networks.

34. Prior to February 2014, upon information and belief, Devanne Archibeque was subjected to arrest on several occasions. Upon information and belief, Devanne Archibeque was subjected to felony arrest in New Mexico in 2000 and 2012, and otherwise subjected to arrest in 2007, 2008, 2011, and 2012.



35. In November 2014, Devanne Archibeque was subjected to a felony arrest and charged with felony forgery in Bernalillo Metropolitan Court Case No. T-4-CR-2014-016821.

36. Upon information and belief, through available arrest records, Devanne Archibeque's true identity was readily available to law enforcement officials in Arizona and New Mexico from February 2014, through all times material hereto.

37. Devanne Archibeque and Plaintiff have differing physical characteristics. Devanne Archibeque is 5'6" tall and weighs 150 to 160 pounds. Plaintiff, on the other hand, is 5'4" and 140 pounds. Devanne Archibeque, at all times material hereto, had a clearly visible and large tattoo on the right side of her neck which can be plainly seen in booking photos. At all times material hereto, Plaintiff did not have a visible neck tattoo. Devanne Archibeque has attached earlobes. Plaintiff, on the other hand, has detached earlobes.

*Plaintiff's Report of Stolen Identity and  
First and Second Arrest on the False Warrant*

38. On February 10, 2014, weeks before Devanne Archibeque's arrest in Arizona, Plaintiff reported the theft of her identity to law enforcement authorities in New Mexico, notifying them that someone had stolen her identity and apparently received a traffic citation and subsequent warrant through the false use of her name.

39. On July 7, 2014, Plaintiff Joy Morales was arrested in New Mexico pursuant to a bench warrant issued by Bernalillo County Metropolitan Court Judge Peg Holguin in regards to a traffic citation filed against Plaintiff Joy Morales on or about December 11, 2013, in Bernalillo County Metropolitan Court Case No. T-4-TR-2013-037846. Plaintiff posted a cash bond and was released the following day. Upon information and belief, Plaintiff was fingerprinted and identified through the typical booking process and that information was shared with law enforcement databases.

40. Bernalillo County Metropolitan Court Case No. T-4-TR-2013-037846 was dismissed on August 14, 2014, by Bernalillo County Metropolitan Court Judge Edward L. Benavidez because it was recognized that Plaintiff was not the individual originally cited in December 2013. The Order Dismissing Criminal Complaint states the fugitive complaint was dismissed with prejudice because the case was an "IDENTITY THEFT CASE." Upon information and belief, New Mexico law enforcement authorities routinely share case disposition information with law enforcement databases.

41. In or around August 2015, Plaintiff was again arrested in Valencia County, New Mexico, and a fugitive complaint was filed against her in Valencia County Magistrate Court Case No. M-59-ER-2015-00010 based upon the Arizona Warrant. Plaintiff was subsequently released, and eventually, in October 2015, Magistrate Judge Tina R. Garcia dismissed the fugitive complaint against Plaintiff due to the identity theft issue.

*Plaintiff's Lea County Arrest and Extradition*

42. On November 20, 2015, Officer Hoff conducted a routine traffic stop on Plaintiff in Hobbs, New Mexico, based upon an alleged "California stop" at a stop sign.

43. Officer Hoff conducted a routine background check and discovered the Arizona Warrant still active against Plaintiff. Based thereon, Officer Hoff arrested Plaintiff and transported Plaintiff to the HDC.

44. Plaintiff protested Officer Hoff's arrest and notified Officer Hoff of her stolen identity. At the time of her arrest in Hobbs, New Mexico, publicly available records, including New Mexico law enforcement and court records, would verify Plaintiff's claims of mistaken identity. Furthermore, a simple comparison of Plaintiff's physical characteristics to the booking

photograph and other booking information related to the Arizona Warrant would verify Plaintiff's claims of mistaken identity.

45. Upon information and belief, Officer Hoff did not undertake a reasonable investigation to determine the validity, or lack thereof, of Plaintiff's credible claims of mistaken identity.

46. While being booked at the HDC, Plaintiff again protested based upon her stolen identity, a fact that had been verified by other New Mexico authorities and affirmatively found by Bernalillo County Metropolitan Court Judge Edward Benavidez as set forth above. Plaintiff requested John Doe Detention Officers compare the arrest records, including fingerprints and booking photos, to verify her claims.

47. Upon information and belief, none of the John Doe Detention Officers, Hobbs, Chief McCall, Administrator Apodaca, or other representatives, employees or agents of Hobbs conducted any reasonable investigation to determine the validity, or lack thereof, of Plaintiff's credible claims of mistaken identity.

48. On November 20, 2015, Officer Hoff swore a Fugitive Complaint against Plaintiff which was filed with the Lea County Magistrate Court on November 23, 2015.

49. On November 23, 2015, Plaintiff was arraigned on the Fugitive Complaint and denied she was subject to extradition pursuant to the fugitive warrant. At said hearing, Plaintiff implored authorities again to compare readily available records to verify her credible claim of mistaken identity. Her pleas were ignored, and a Release Order and Bond was entered in which the Magistrate Judge found no bond was appropriate. Plaintiff was remanded to the custody of the LCDC and again booked.

50. Upon information and belief, on or about November 25, 2015, an electronic version of Plaintiff's fingerprints taken when she was booked in Lea County were sent to Yavapai County for verification. Upon information and belief, Defendants failed to obtain that verification.

51. Upon information and belief, on or about December 2, 2015, a hard copy of Plaintiff's fingerprints taken when she was booked in Lea County were sent to Yavapai County via mail for verification. Upon information and belief, Defendants failed to obtain that verification.

52. On or about December 2, 2015, Plaintiff submitted an "Inmate Request Form" to the LCDC indicating:

Please order the Booking photo + the Fingerprints on This case + you will simply see it was not me.

Identity Theft / False Imprisonment

Order Booking Photo & Fingerprints from Arizona.

Identity Theft.

53. The response to Plaintiff's Inmate Request, approved by Warden Downey, was simply "Talk to your attorney [*sic*]." Upon information and belief, the Defendants did not seek the booking photograph and/or fingerprints from Arizona to verify Plaintiff's credible and continued claims of mistaken identity.

54. Plaintiff continued to protest her innocence and claim mistaken identity, as had previously been verified by other courts and law enforcement agencies in New Mexico. Upon information and belief, neither Lea County, nor Warden Downey, nor John Doe Correctional Officers nor any other person employed by Lea County at the LCDC undertook a reasonable investigation into Plaintiff's credible claim of mistaken identity.

55. Upon information and belief, on or about December 7, 2015, Plaintiff submitted another Inmate Request Form begging for an attorney and noting that she had not spoken with an attorney since her arrest despite Warden Downey's direction to speak with her appointed counsel concerning her valid objections to wrongful arrest and detention. The response to Plaintiff's Inmate Request was simply "Write them a letter."

56. Plaintiff's protestations and Defendants' failure to undertake a reasonable investigation into the same lasted throughout her entire time in custody in LCDC.

57. An Eligibility Determination for Indigent Defense Services was not filed with the Lea County Magistrate Court on behalf of Plaintiff until December 8, 2015. On December 8, 2015, Plaintiff was appointed public defender representation. This was done without contact between Ms. Morales and the public defender.

58. Plaintiff had no contact with an attorney between November 20, 2015, and December 23, 2015, the date of a status conference in regards to the Fugitive Complaint.

59. Between Plaintiff's arrest on November 20, 2015, and December 23, 2015, Plaintiff's family contacted authorities in Lea County concerning the issue of her mistaken identity, including with correspondence and supporting documentation. Defendants still took no action or investigation into Plaintiff's credible claims, including, upon information and belief, failing to conduct a simple examination of readily available booking photographs and fingerprints.

60. On December 21, 2015, the Magistrate Court of Lea County entered an Order of Extension of Time on Extradition extending the time within which Defendants had to complete the extradition of Plaintiff by a period of sixty (60) days. At the time of the entry of said Order, a full month had passed since Plaintiff's arrest in Lea County, during which time the Defendants

could have, and should have, verified the Plaintiff was not the individual properly subject to the Arizona Warrant.

61. On December 23, 2015, Plaintiff appeared for a status conference before the Magistrate Court of Lea County. At said hearing, Plaintiff again protested her detention and extradition and raised the issue of mistaken identity which had previously been verified by other authorities in New Mexico. Again, her protestations fell on deaf ears and she was pressured to accept extradition.

62. Facing the likelihood of continued detention and with no sign that any of Defendants intended to undertake a reasonable investigation or review of reasonably available booking photographs and fingerprints to verify her credible claims of mistaken identity, Plaintiff reasonably believed she had no choice but to waive extradition. Thus, a coerced Waiver of Extradition was entered in the Magistrate Court of Lea County on December 23, 2015.

63. Between November 20, 2015, and December 31, 2015, Plaintiff was subjected to harassment and sexual assault. Much of this occurred in areas of the facility, including Plaintiff's cell, which was largely left open and otherwise allowed viewing inside through a door window, which were observable to the Defendants and/or their representatives.

64. Plaintiff repeatedly requested to be moved to another cell in order to escape the continued harassment and assault. The abuse was noticed by other inmates, who also noted Plaintiff's attempts to procure a transfer to another cell in order to avoid the same. For a significant length of time the Defendants ignored Plaintiff's requests and allowed her to be subjected to repeated harassment and assault while Plaintiff was wrongfully imprisoned by them.

65. Upon information and belief, between November 20, 2015, and December 31, 2015, the Defendants or their agents, representatives or employs, affirmatively coordinated with

the officials in Arizona to arrange the extradition of Plaintiff from Lea County, New Mexico, to Yavapai County, Arizona. During this time period Defendants knew, or should have known, that Plaintiff's identity had not been verified.

66. On December 31, 2015, Defendant Lea County caused Plaintiff to be transported to the airport for transfer to Arizona. Upon information and belief, the Defendants did not undertake any reasonable investigation to verify Plaintiff's credible claims of mistaken identity prior thereto, including a simple examination of readily available booking photographs and fingerprints.

67. Plaintiff continued with her credible claims of mistaken identity and innocence while being transferred from Lea County custody to the custody of representatives from Arizona on or about December 31, 2015. Upon information and belief, the Defendants did not undertake any reasonable investigation to verify Plaintiff's credible claims of mistaken identity during the transfer process, including a simple examination of readily available booking photographs and fingerprints.

68. Finally, on or around January 7, 2016, a simple examination and comparison of readily available booking information, including fingerprints, verified Plaintiff's ongoing credible claims of misidentification.

69. On January 7, 2016, recognizing the misidentification and litany of errors that caused Plaintiff to be unlawfully held in custody for an extended period, all charges against Plaintiff were finally dismissed and Plaintiff was released from custody.

70. The acts and/or omissions of all Defendants caused Plaintiff to be unlawfully held in custody in the HDC and the LCDC from November 20, 2015, until December 31, 2015, a

period of forty-two (42) days. During that time, Plaintiff, a mother, suffered humiliations such as strip searches and other violations.

71. The acts and/or omissions of all Defendants caused Plaintiff to be unlawfully held in custody of Yavapai County from December 31, 2015, until January 7, 2016, a period of seven (7) days.

72. In total, the acts and/or omissions of all Defendants caused Plaintiff to be unlawfully held in custody for a period of forty-nine (49) days.

73. Due to the acts and/or omissions of all Defendants, Plaintiff suffered significant injuries and damages, including, but not limited to, severe emotional and mental distress, the loss of her automobile, the loss of her home, lost income, and the loss of holiday time with her family and son.

**COUNT ONE  
(NEGLIGENCE)**

74. Plaintiff incorporates and re-alleges the allegations in the paragraphs above as if fully set forth herein.

75. The Defendants owed Plaintiff a duty to use reasonable care relative to the conduct and events alleged herein.

76. The Defendants owed Plaintiff a duty to conduct a reasonable investigation to ensure Plaintiff was not imprisoned or held in custody on the basis of mistaken identity.

77. The Defendants owed Plaintiff a duty to verify her credible claims of mistaken identity through reasonably available records such as Bernalillo Metropolitan Court records and booking records.



78. The Defendants breached said duties by failing to conduct a reasonable investigation or otherwise verify or discredit her credible and repeated claims of mistaken identity.

79. The Defendants breached said duties by imprisoning and holding Plaintiff in custody for an extended period without a reasonable investigation.

80. The acts and omissions of the Defendants were unreasonable.

81. Said acts and omissions caused injury to Plaintiff and damages as set forth herein.

**COUNT TWO  
(FALSE IMPRISONMENT)**

82. Plaintiff incorporates and re-alleges the allegations in the paragraphs above as if fully set forth herein.

83. The Defendants, by their acts or omissions, unlawfully imprisoned Plaintiff in violation of the United States Constitution, the New Mexico Constitution, statutory and common law.

84. Said unlawful imprisonment caused injury to Plaintiff and damages as set forth herein.

**COUNT THREE  
(MALICIOUS PROSECUTION)**

85. Plaintiff incorporates and re-alleges the allegations in the paragraphs above as if fully set forth herein.

86. The Defendants, by their acts or omissions, caused criminal proceedings to be instituted or continued or conducted against Plaintiff without probable cause.

87. Said proceedings terminated in Plaintiff's favor.

88. The Defendants acted with malice.

89. Said malicious prosecution caused injury to Plaintiff and damages as set forth herein.

**COUNT FOUR – OFFICER HOFF, HOBBS, AND CHIEF MCCALL  
(§1983 - DEPRIVATION OF CIVIL RIGHTS – UNLAWFUL SEIZURE)**

90. Plaintiff incorporates and re-alleges the allegations in the paragraphs above as if fully set forth herein.

91. Plaintiff has a right to be free from unreasonable searches and seizures pursuant to the Fourth Amendment to the Constitution of the United States.

92. Plaintiff has a right to be free from the deprivation of her liberty without due process, which includes the right to be free from incarceration based on mistaken identity after it was known, or should have been known, that Plaintiff was entitled to release.

93. The arrest and subsequent detention of Plaintiff was effected under the color of law by Defendant Officer Hoff and was under the color of law and pursuant to the policies and procedures of Defendants Officer Hoff, Hobbs and Chief McCall.

94. Said Defendants were and are aware that persons taken into custody by law enforcement officers are often misidentified or provide false identification information to arresting officers.

95. Said Defendants had information reasonably available to them indicating they did not have probable cause or legal justification to effectuate Plaintiff's arrest.

96. Said Defendants had a duty, with information available to them, to obtain the information necessary to determine whether the warrant issued for Plaintiff was erroneously obtained based upon mistaken identity.

97. Said Defendants had a duty to stop preventable harm to Plaintiff through arrest and lengthy detention on the basis of a wrongful warrant and extradition.

98. Said Defendants breached these duties and failed to stop preventable harm to Plaintiff.

99. Said Defendants deprived Plaintiff of the afore-mentioned rights when they intentionally, willfully, maliciously and recklessly caused Plaintiff to be arrested, detained and extradited with deliberate indifference to the likelihood of misidentification of Plaintiff by Arizona authorities seeking her extradition.

100. Said Defendants did not have probable cause to believe that Plaintiff had committed any offense that would properly subject her to arrest or extradition.

101. Said Defendants had good reason to believe Plaintiff was not properly subject to a warrant out of Arizona.

102. Said Defendants deprived Plaintiff of her rights discussed above when they recklessly and with deliberate indifference subjected Plaintiff to arrest without verifying her credible claims of mistaken identity.

103. Said Defendants' recklessness and deliberate indifference caused Plaintiff to suffer unjust and unlawful incarceration for an extended period of time.

104. Said Defendants acted intentionally, willfully, wantonly, recklessly and with malice.

**COUNT FIVE – ALL DEFENDANTS  
(§1983 - DEPRIVATION OF CIVIL RIGHTS – MALICIOUS PROSECUTION)**

105. Plaintiff incorporates and re-alleges the allegations in the paragraphs above as if fully set forth herein.

106. Plaintiff has a right to be free of unreasonable searches and seizures pursuant to the Fourth Amendment of the Constitution of the United States.

107. Plaintiff has a right to be free of any deprivation of her liberty without due process of law, which includes the right to be free from incarceration based on mistaken identity and from continued detention after it was known, or should have been known, that Plaintiff was entitled to release.

108. The arrest and subsequent detention of Plaintiff was affected under color of law and pursuant to the policies and procedures of Defendants.

109. Defendants deprived Plaintiff of these rights when they intentionally, willfully, maliciously and recklessly caused Plaintiff's continued detention by demanding her extradition, effectuating her extradition, and subjecting her to arrest and detention after they knew, or should have known, that Plaintiff was not properly the subject of criminal charges.

110. Defendants' actions were intentional, willful, wanton, reckless and with malice, as they knew, or should have known, there was not probable cause to legally effectuate Plaintiff's arrest, detention and extradition or were deliberately indifferent to the likelihood of an erroneous arrest, extradition and detention.

111. Defendants failed to accord Plaintiff minimum due process appropriate to the circumstances to ensure her liberty was not arbitrarily abrogated.

112. Defendants' actions and omissions caused Plaintiff to suffer unjust and unlawful incarceration for an extended period of time and resulting damages.

**COUNT SIX – HOBBS, CHIEF MCCALL,  
ADMINISTRATOR APODACA, AND LEA COUNTY  
(§1983 – DEPRIVATION OF CIVIL RIGHTS – SUPERVISORY LIABILITY)**

113. Plaintiff incorporates and re-alleges the allegations in the paragraphs above as if fully set forth herein.

114. Defendants Hobbs and Chief McCall are authorized policymakers responsible for creating, and adhering to, policies, procedures, and customs for the Hobbs Police Department and for the screening, hiring, training, retention, supervision, discipline, counseling, and control of Hobbs law enforcement officers and personnel.

115. Defendants Hobbs, Chief McCall and Administrator Apodaca are authorized policymakers responsible for creating, and adhering to, policies, procedures, and customs for the Hobbs Detention Center and for the screening, hiring, training, retention, supervision, discipline, counseling, and control of Hobbs Detention Center officers and personnel.

116. Defendants Lea County and Warden Padraig are authorized policymakers responsible for creating, and adhering to, policies, procedures, and customs for the Lea County Detention Center and for the screening, hiring, training, retention, supervision, discipline, counseling, and control of Lea County Detention Center officers and personnel.

117. Defendants Hobbs, Chief McCall, Administrator Apodaca, Lea County, and Warden Padraig (collectively "Supervisory Defendants") were aware persons taken into custody by law enforcement were often misidentified and arrestees often provided arresting officers with false identification information. Despite this awareness, said Defendants failed to properly train and supervise their employees to implement and maintain proper procedures to stop preventable harm to individuals arrested pursuant to extradition warrants such as requiring some efforts to match the identity of the person in custody with that of the person actually wanted such as the verification of fingerprints and/or booking photographs.

118. The Supervisory Defendants maintained an official policy, custom or practice of enforcing warrants by detaining and extraditing persons without taking proper efforts to ensure that the particular person arrested was actually the person being sought.

119. As a result of the aforementioned policy, practice or custom, the Supervisory Defendants, their agents, representatives, or employees, failed to verify the identity of the individual actually sought despite the circumstances outlined above, thereby causing Plaintiff to be deprived of her liberty for an extended period without due process of law.

120. The risk that persons will be mistakenly arrested, extradited and detained when inadequate steps are taken to match their identity to that of the individual actually sought is a grave risk. Therefore, the need for proper training and procedures to guard against the same is obvious. Despite this risk, the Supervisory Defendants chose to ignore the problem, thereby displaying an official custom, policy or practice which was deliberately indifferent to the rights of Plaintiff and other persons arrested pursuant to warrants.

121. There is a causal connection between the Supervisory Defendants' failure to properly train, supervise, and admonish their employees and the custom, policy or practices outlined above and the violation of Plaintiff's constitutional rights.

122. The custom, policy or practices of the Supervisory Defendants outlined above amount to deliberate indifference.

123. The Supervisory Defendants' acts and omissions were intentional, willful, wanton, and with malice.

124. The Supervisory Defendants' acts and omissions caused Plaintiff to suffer damages.

#### **DAMAGES**

125. The contents of Paragraphs 1 through 165, above, are incorporated hereinto by reference as if set forth in full.

126. As a direct and proximate result of the above-described conduct of Defendants, Plaintiff is entitled to recover damages against Defendants as follows:

- A. Plaintiff endured, and continues to endure intense emotional distress and psychological fear resulting from the incident described above. She is therefore entitled to recover damages in an amount to be determined at trial of this cause.
- B. Plaintiff suffered economic hardship and damages due to the lost earnings, lost earning potential, and lost property resulting from the conduct of Defendants. She is therefore entitled to recover special damages to recoup these costs.
- C. Plaintiff lost enjoyment of life due to emotional injuries and lost familial associations. Therefore, Plaintiff is entitled to such damages as provided for under New Mexico and federal law against Defendants in an amount to be determined at the trial of this cause.

127. Because the conduct of Defendants involved intentional misconduct, recklessness, gross negligence, willfulness, and/or callous indifference to Plaintiff's rights, or because Defendants' conduct was motivated by malice, evil motive, or intent, Plaintiff is entitled to recover awards of punitive and exemplary damages separately against said Defendants in their individual capacities under Plaintiffs' §1983 claims in amounts to be determined at the trial of this cause.

WHEREFORE, Plaintiffs request the following relief against Defendants:

- A. An award of compensatory damages as set forth above;
- B. An award of punitive damages where appropriate, as set forth above;

- C. An award of pre- and post-judgment interest on any amounts recovered herein;
- D. Recovery of the costs of action herein, including attorneys' fees on Plaintiff's 42 U.S.C. § 1983 claims, pursuant to 42 U.S.C. § 1988; and
- E. Such other and further relief as the Court may deem appropriate under the circumstances.

**REQUEST FOR JURY TRIAL**

COMES NOW Plaintiff Joy Morales, by and through her counsel, and requests trial by jury on all issues so triable.

Respectfully submitted,

ROTHSTEIN DONATELLI LLP

/s/ Carolyn M. "Cammie" Nichols

Carolyn M. "Cammie" Nichols  
500 4th Street, N.W., Suite 400  
Albuquerque, NM 87102  
(505) 243-1443  
[cmnichols@rothsteinlaw.com](mailto:cmnichols@rothsteinlaw.com)

Paul M. Linnenburger  
1215 Paseo de Peralta  
Santa Fe, NM 87501  
(505) 988-8004  
[plinnenburger@rothsteinlaw.com](mailto:plinnenburger@rothsteinlaw.com)

*Attorneys for Plaintiff*