

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

PRISON LEGAL NEWS, a project of
the HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

COUNTY OF BERNALILLO;
PHILLIP GREER, Chief of Corrections, in his official
capacity;
RAMON RUSTIN, Former Chief of Corrections,
individually;
DONALD VIGIL, Assistant Chief of Corrections, in his
individual and official capacity;
VIRGINIA CHAVEZ; Assistant Chief of Operations, in
her individual and official capacity;
TOM SWISSTACK, Deputy County Manager for Public
Safety, in his individual and official capacity;
DOES 1-10, in their individual and
official capacities,

Defendants.

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER
THE CIVIL RIGHTS ACT 42
U.S.C. §1983 AND DAMAGES**

JURY TRIAL DEMANDED

I. INTRODUCTION

1. PRISON LEGAL NEWS (“PLN” or “Plaintiff”) brings this action to enjoin Defendants’ censorship of books mailed to people in their custody at the Metropolitan Detention Center (“MDC”). Defendants’ mail policies and practices unconstitutionally prohibit delivery of books, including Plaintiff’s books, to pre-trial detainees and other prisoners at MDC in violation of the First Amendment to the United States Constitution. Defendants’ policies and practices also deny Plaintiff and other senders of censored mail due process of law by failing to provide notice of and an opportunity to challenge each instance of censorship as required by the Fourteenth Amendment to the United States Constitution.

II. JURISDICTION AND VENUE

2. This action is brought pursuant to 28 U.S.C. § 1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Venue is proper under 28 U.S.C. § 1391(b). On information and belief, at least one Defendant resides within this judicial district, and the events giving rise to the claims asserted herein all occurred within this judicial district.

4. Plaintiff's claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the Plaintiff by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and laws of the United States.

5. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

6. Plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

7. Plaintiff is informed, believes, and based thereon alleges that in engaging in the conduct alleged herein, Defendants acted wantonly and/or with the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to unjust hardship in conscious disregard of Plaintiff's constitutional rights.

8. As a result of the forgoing, Plaintiff seeks exemplary and punitive damages

against the individual Defendants.

III. PARTIES

9. PLN is a wholly owned project of the Human Rights Defense Center, a not-for-profit Washington charitable corporation recognized under § 501(c)(3) of the Internal Revenue Code with principal offices in Lake Worth, Florida. In addition to publishing and distributing books of interest to prisoners, PLN publishes *Prison Legal News: Dedicated to Protecting Human Rights*, a sixty-four (64) page black-and-white monthly journal of corrections news and analysis.

10. Defendant, County of Bernalillo, is a municipality and governmental entity organized and existing under the laws of the State of New Mexico. Defendant County of Bernalillo is responsible for the training, supervision, acts, omissions, conduct, policies (written or unwritten), patterns, practices, customs and procedures of the public employees acting within the course and scope of their duties at MDC during all times relevant hereto.

11. Defendant, Chief of Corrections, Phillip Greer, currently serves as a final policy maker for MDC. Defendant Greer oversees, plans, coordinates, and evaluates all MDC policies and practices at issue, and is chiefly responsible for its implementation. Defendant Greer also formulates programs and/or policies to alleviate any actual or foreseeable deficiencies with the policies and practices at MDC. He is sued in his official capacity only.

12. Defendant, Former Chief of Corrections Ramon Rustin, was a final policy maker for the MDC. This Defendant was personally involved in the adoption and/or implementation of the mail policies at issue. Defendant Rustin held the same title and performed the analogous duties of the present Chief of Corrections, Defendant Greer, *supra*. He is sued in his individual

capacity only.

13. Defendant, Assistant Chief of Corrections, Donald Vigil is responsible for the implementation of inmate policies at MDC, including the inmate mail policies challenged herein, and for the hiring, screening, training, retention, supervision, discipline, counseling, and control of the personnel at MDC who interpret and apply the mail policy for inmates. He is sued in his individual and official capacities.

14. Defendant, Assistant Chief of Operations, Virginia Chavez, manages the operations of non-security services at MDC including but not limited to: finance, human resources, contract compliance, case management, medical and psychiatric services, food services, information technology, in-house programs, and mail services. She is sued in her individual and official capacities.

15. Defendant, Deputy County Manager for Public Safety, Tom Swisstack, is responsible for the oversight and coordination of the Metropolitan Detention Center, to include any programs or services related to inmate mail or policies related to the same. He is sued in his individual and official capacities.

16. The true names and identities of Defendants DOES 1 through 10 are presently unknown to PLN. Each of Defendants DOES 1 through 10 are or were employed by and are or were agents of Defendants when some or all of the challenged inmate mail policies and practices were adopted and/or implemented. Each of Defendants DOES 1 through 10 are or were personally involved in the adoption and/or implementation of the mail policies for inmates, and/or are or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of MDC staff who interpret and implement these inmate

mail policies. They are sued in their individual and official capacities. PLN will seek to amend this Complaint as soon as the true names and identities of Defendants DOES 1 through 10 have been ascertained.

17. At all times material to this action, the actions of all Defendants as alleged herein were taken under the authority and color of state law.

IV. FACTUAL ALLEGATIONS

18. PLN distributes approximately fifty (50) different books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. These books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics.

19. PLN distributes its books to prisoners in approximately 2,400 correctional facilities located across all fifty states, including the Federal Bureau of Prisons and the New Mexico Department of Corrections.

20. PLN engages in core protected speech and expressive conduct on matters of public concern, and its books cover topics such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoner rights. Plaintiff's books, as described above, contain political speech and social commentary, which are entitled to the highest protection afforded by the U.S. Constitution.

A. Censorship and Lack of Due Process

21. Defendants have censored PLN's books mailed to people held in custody at MDC, by refusing to deliver the books and, in some instances, by returning the books to PLN's

offices via the “Return To Sender” service of the United States Postal Service. Defendants continue to censor PLN’s books.

22. Defendants have censored PLN’s books on at least eighty-four (84) occasions from June 2012 to the present, including the items identified below.

23. Among the books censored by Defendants are: *Protecting Your Health & Safety: A Litigation Guide for Inmates* (“PYHS”), *Prisoner Diabetes Handbook: A Guide to Managing Diabetes – for Prisoners, by Prisoners* (“PDH”), and *The Habeas Citebook: Ineffective Assistance of Counsel* (“*The Habeas Citebook*”). PLN is the exclusive distributor of PYHS and also distributes PDH for the Southern Poverty Law Center, which publishes both books. PYHS explains the legal rights of prisoners regarding their health and safety including the right to medical care and the right to be free from inhumane treatment, among others. PDH is a handbook designed to educate people who have diabetes about how they can manage their medical condition while incarcerated. *The Habeas Citebook* is published and distributed by Plaintiff, and describes the procedural and substantive complexities of federal *habeas corpus* litigation with the goal of assisting prisoners in the process of identifying and litigating claims involving ineffective assistance of counsel. *The Habeas Citebook* is also a valuable resource for pre-trial detainees involved in active litigation of pending criminal charges.

Protecting Your Health and Safety

24. Since June 2012, at least forty-three (43) copies of PYHS were individually addressed and mailed by PLN to people incarcerated at MDC, including:

Date Mailed:

June 7, 2012

Prisoner:

Shane Sanders

	Shane Swann Earl Mayfield Sheronda Hobbs Joey Morrison
June 19, 2012	Joseph Gilstrap Wendell Gunthorpe Xavier Thompson
July 17, 2012	Julius Edwards Michael Gray Justin Johnson Darryl Roybal
September 4, 2012	Ronald Brewington
September 7, 2012	Mark Brown Memori Hardwick
September 18, 2012	Jonathan Danielson Joe McDonald William Moulton
November 19, 2012	Aaron Yazzie Joseph Watts Chad Kersten Lasha Knight James Kohut Andrew Olivas
November 28, 2012	Zach Pagett Edward Patterson Jeffrey Campbell Robert Carr Jim Hartley
August 18, 2014	Jimmy Willeto Harry C. Williams Alfonso R. Thompson Carlos L. Smith Jay Cee X Smith Clive D. Phillips John A. Martin

Aaron B. James
Roby W. Brown

August 19, 2014

Bruce S. Arnold
Nathaniel Avery
Jacob L. Caddell
Iyesha A. Calderon
Christopher M. Gamble

25. Forty-two (42) of the above-listed copies of *PYHS* were sent back to PLN by return mail, at PLN's expense, indicating various reasons for the return including the following: (1) "RETURN TO SENDER"; (2) "UNAUTHORIZED"; and (3) "NO BOOKS." One (1) copy of *PYHS* sent to Shane Swann on June 7, 2012 was not returned to PLN. However, PLN received correspondence from Mr. Swann confirming that he did not receive *PYHS*.

Prisoner Diabetes Handbook

26. In February 2013, PLN mailed an individually addressed copy of *PDH* to Ronald Brewington who was incarcerated at MDC. Defendants censored this book by refusing to deliver it to Mr. Brewington and returning it to PLN after marking: (1) "RETURN TO SENDER"; (2) "UNAUTHORIZED"; and (3) "NO BOOKS!!," on the outside of the package.

The Habeas Citebook

27. Since July 2014, PLN mailed individually addressed copies of *The Habeas Citebook* to the following forty (40) prisoners at MDC, which were subsequently censored:

Date Mailed:

July 11, 2014

Prisoner:

Bruce S. Arnold
Nathaniel Avery
Jacob L. Caddell
Iyesha A. Calderon
Christopher M. Gamble

August 18, 2014

Jimmy Willetto
Harry C. Williams
Alfonso R. Thompson
Carlos L. Smith
Jay Cee X Smith
Clive D. Phillips
John A. Martin
Aaron B. James
Roby W. Brown

September 19, 2014

Matthew Harris
Clive D. Phillips
Dale G. Jones
Dean R. Jones
Marie L. Jones
Aaron Bradley James
Benny L. James
Henry R. Jameson
Ronald I. Johnson
Melissa Martin
Phillip Martin
Alfred C. Martinez
Angel S. Martinez
Jeffery A. Moore
Jay Cee Xavier Smith
Alfonso R. Thompson
Keith L. Thompson
Timothy J. Wilson
Tyrone White

December 1, 2014

Luis C. Grajeda
Timothy Carrera
Matthew E. Baker
Leonard Allred
Oscar Carbajal
Joey L. Franklyn
Kevin Anderson

28. All of the above copies of *The Habeas Citebook* were sent back to PLN by return mail, at PLN's expense, indicating various reasons for the return including the following: (1) "RETURN TO SENDER"; (2) "UNAUTHORIZED"; "NO BOOKS; and/or NO

CARDBOARD”

29. In all the above instances of censorship, Defendants failed to provide due process notice to PLN of the reason for rejecting PLN materials by, among other inadequacies, failing to explain the penological justification for their censorship decisions, failing to identify the specific mail policy they relied on, stating different reasons for censoring identical items of mail, and otherwise failing to give meaningful notice of the censorship. With all of the rejected materials, Defendants did not provide any further information to PLN other than what is noted above. At no time did Defendants provide an opportunity for PLN to appeal the rejection of its mail.

30. MDC’s mail policy 15.03 states:

The Facility allows inmates to receive magazines, newspapers and periodicals that are generally available to the public, but must be received through the mail from the publisher. Hardcover books or any other type of books are not allowed to be mailed in, even through the publisher.

The policy further requires that:

The Mail Clerk responsible for receiving mail shall return any printed materials and publications (i.e. Magazines, newspapers, periodicals), which are unauthorized or of questionable nature back to the sender...Books are automatically returned to sender.

31. MDC’s mail policy fails to require that notice of censorship be given to either the intended recipient or the sender of a censored book, nor does it provide an avenue by which the censorship decision can be appealed.

32. Defendants’ conduct prohibiting PLN from mailing its publications to inmates confined at MDC violates the First Amendment. Defendants’ policies, practices and customs have a chilling effect on PLN’s future speech and expression directed toward people confined there. Defendants’ policies, practices and customs are unconstitutional both facially and as

applied to PLN.

33. PLN publishes and distributes content concerning the rights of inmates and the means by which they may obtain relief from unconstitutional conditions of confinement. As a result, PLN is informed and believes that Defendants have retaliated against PLN by refusing to deliver PLN's written materials to inmates held at the jails.

34. Due to Defendants' actions as described above, Plaintiff has suffered damages, and will continue to suffer damages, including, but not limited to: the violation of the Plaintiff's constitutional rights; the impediment of Plaintiff's ability to disseminate its political message; frustration of Plaintiff's non-profit organizational mission; diversion of resources; loss of potential subscribers and customers; an inability to recruit new subscribers and supporters; the loss of reputation; and the costs of printing, handling, mailing, and staff time.

35. Defendants' actions and inactions were and are motivated by ill motive and intent, and were and are all committed under color of law with reckless indifference to PLN's rights.

36. Defendants, and other agents of MDC, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure PLN.

37. Defendants' unconstitutional policy, practices, and customs are ongoing, continue to violate PLN's rights, and are the moving force behind the constitutional violations. As such, PLN has no adequate remedy at law.

38. PLN is entitled to injunctive relief prohibiting Defendants from refusing to deliver publications and books from *Prison Legal News* and other publishers without any legal

justification, and prohibiting Defendants from censoring mail without due process of law.

V. CLAIMS

Count I – 42 U.S.C. § 1983
Violation of the First Amendment

39. Each paragraph of this Complaint is incorporated as if restated fully herein.

40. The acts described above constitute violations of Plaintiffs rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at MDC, and the rights of prisoners confined at MDC, under the First Amendment of the United States Constitution.

41. Plaintiff has a constitutionally protected liberty interest in communicating with incarcerated individuals by sending books to them via U.S. Mail, a right clearly established under existing case law.

42. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

43. Plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, and those policies were the moving force behind the violations.

44. The acts described above have caused damages to Plaintiff, and if not enjoined, will continue to cause damage to Plaintiff.

45. Plaintiff seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. Plaintiff seeks punitive damages against the individual Defendants in their individual capacities.

Count II – 42 U.S.C. § 1983
Violation of the Fourteenth Amendment

46. Each paragraph of this Complaint is incorporated as if restated fully herein.

47. The acts described above constitute violations of Plaintiffs rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at MDC, and the rights of prisoners confined at MDC, under the Fourteenth Amendment of the United States Constitution.

48. Plaintiff has a right under the Due Process Clause of the Fourteenth Amendment to receive notice and an opportunity to object and/or appeal Defendants' decisions to prevent PLN's books from reaching prisoners at MDC.

49. Defendants' policy and practice when censoring *PYHS*, *PDH* and *The Habeas Citebook*, or any other books fails to provide Plaintiff or other senders with individualized notice of the censorship or an opportunity to be heard.

50. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

51. Plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, and which were the moving force behind the same.

52. The acts described above have caused damages to Plaintiff, and if not enjoined, will continue to cause damage to Plaintiff.

53. Plaintiff seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. Plaintiff seeks punitive damages against the individual

Defendants in their individual capacities.

Injunctive Allegations

54. Defendants' unconstitutional policies and practices are ongoing and continue to violate Plaintiff's constitutional rights and the rights of other correspondents and prisoners. As such, there is no adequate remedy at law.

55. Plaintiff is entitled to injunctive relief prohibiting Defendants from refusing to deliver or allow delivery of *PYHS*, *The Habeas Citebook*, *PDH*, or any other books without legal justification. Plaintiff is also entitled to injunctive relief prohibiting Defendants from censoring mail without due process of law.

VI. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests relief as follows:

56. A declaration that Defendants' policies and practices violate the Constitution.
57. Nominal damages for each violation of Plaintiff's rights by the Defendants.
58. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.
59. Compensatory damages in an amount to be proved at trial.
60. Punitive damages against the individual Defendants in an amount to be proved at trial.
61. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988, and under other applicable law.
62. Any other such relief that this Court deems just and equitable.

Respectfully Submitted,

/s/Laura Schauer Ives

Laura Schauer Ives, NM Bar No.: 12463

lsi@civilrightslawnewmexico.com

Kennedy, Kennedy & Ives, LLC

1000 2nd Street NW

Albuquerque, NM 87102

/s/Bruce E. H. Johnson

Bruce E. H. Johnson*, WA Bar No.: 7667

brucejohnson@dwt.com

Angela Galloway*, WA Bar No.: 45330

angelagalloway@dwt.com

Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200

Seattle, WA 98101

/s/ Lance Weber

Lance Weber*, Fla. Bar No.: 104550

lweber@humanrightsdefensecenter.org

Sabarish Neelakanta*, Fla. Bar No.: 26623

sneelakanta@humanrightsdefensecenter.org

Human Rights Defense Center

PO Box 1151

Lake Worth, FL 33460

(561) 360-2523

**Admission Applications Pending*

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PRISON LEGAL NEWS, a project of the HUMAN RIGHTS DEFENSE CENTER

(b) County of Residence of First Listed Plaintiff Florida (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SEE ATTACHMENT

DEFENDANTS

COUNTY OF BERNALILLO; PHILLIP GREER; RAMON RUSTIN; DONALD VIGIL; VIRGINIA CHAVEZ; TOM SWISSTACK; DOES 1-10

County of Residence of First Listed Defendant Bernalillo County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. Section 1983. Brief description of cause: First Amendment relating to prisoners

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/05/2015 SIGNATURE OF ATTORNEY OF RECORD /S/ LAURA S. IVES

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ATTORNEYS FOR PLAINTIFF

/s/Laura Schauer Ives

Laura Schauer Ives, NM Bar No.: 12463

lsi@civilrightslawnewmexico.com

Kennedy, Kennedy & Ives, LLC

1000 2nd Street NW

Albuquerque, NM 87102

/s/Bruce E. H. Johnson

Bruce E. H. Johnson*, WA Bar No.: 7667

brucejohnson@dwt.com

Angela Galloway*, WA Bar No.: 45330

angelagalloway@dwt.com

Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200

Seattle, WA 98101

/s/ Lance Weber

Lance Weber*, Fla. Bar No.: 104550

lweber@humanrightsdefensecenter.org

Sabarish Neelakanta*, Fla. Bar No.: 26623

sneelakanta@humanrightsdefensecenter.org

Human Rights Defense Center

PO Box 1151

Lake Worth, FL 33460

(561) 360-2523

**Admission Applications Pending*