

**IN THE STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

JOHN DOE,

Plaintiff,

v.

THE NEW MEXICO LAW OFFICES
OF THE PUBLIC DEFENDER and
THE NEW MEXICO PUBLIC
DEFENDER COMMISSION,

Defendants.

Case No. D-101-CV-2024-01556

Jury Trial Demanded

COMPLAINT

1. In 2011, Plaintiff John Doe was arrested in Torrance County, New Mexico for a crime he was alleged to have committed as a minor.¹ On the advice of an attorney assigned to him by the New Mexico Law Offices of the Public Defender (LOPD), Doe pled guilty to a crime that clearly and obviously required him to be released by his 21st birthday. But Doe's first attorney simply ignored this limitation, and failed to object when the court sentenced Doe to an *adult* sentence and *adult* prison, and Doe's second attorney—appointed to help him get out of prison—ignored the mistake too. These errors ultimately forced Doe to spend more than ten years of his life behind bars.

2. Because Doe's attorneys, working on behalf of LOPD and under the supervision of the New Mexico Public Defender Commission (NMPDC), violated Doe's constitutional right to counsel by allowing Doe to receive an incorrect, unlawful sentence, and because LOPD and NMPDC caused the deprivation of this same right by failing to adequately supervise and train Doe's attorneys, Doe brings this action against LOPD and NMPDC under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-1 *et seq.*, to redress LOPD and NMPDC's violation of Doe's rights under the bill of rights of the Constitution of New Mexico.

¹ Doe wishes to proceed under a pseudonym rather than his true name because the documents from Doe's underlying criminal case have been sealed. Doe will—subject to an agreed-upon protective order that ensures his confidentiality throughout the entirety of this case—provide his full name to Defendants during discovery.

Parties

3. Plaintiff John Doe is a 31-year-old resident of New Mexico. He spent the vast majority of his twenties and the beginning of his thirties serving an unlawful sentence in adult prison.

4. Defendant LOPD is an agency of the state of New Mexico. LOPD is responsible for assigning attorneys to criminal defendants who cannot afford representation and for supervising those attorneys' legal work.

5. Defendant NMPDC is an agency of the state of New Mexico. NMPDC is responsible for overseeing LOPD, setting representation standards for LOPD, and providing guidance and support to the chief of LOPD in the administration of LOPD and the representation of indigent New Mexicans by LOPD attorneys and contractors. The specific duties of NMPDC are set forth in NMSA 1978, § 31-15-2.4.

Jurisdiction and Venue

6. This court has jurisdiction over Doe's claims because all of his claims are made pursuant to the New Mexico Civil Rights Act, and that statute provides that such claims may be brought in "*any* New Mexico district court." NMSA 1978, § 41-4A-3(B) (emphasis added). This court also has jurisdiction over Doe's claims because LOPD and NMPDC are headquartered in Santa Fe, which is encompassed by the First Judicial District. *See* NMSA 1978, § 38-3-1(A).

Doe Is Arrested

7. Doe was arrested in Torrance County, New Mexico at the age of 18. Police alleged that Doe had committed sexual assault when he was a minor.

8. Doe was deemed indigent and was therefore entitled to a defense attorney provided by the state.

9. New Mexico's system of indigent defense is administered by LOPD and NMPDC, which have constructed a two-tiered system. Some indigent defendants are appointed a public defender, a salaried state employee who represents only indigent defendants. Other indigent defendants are appointed an attorney working under contract with LOPD and under the supervision of and subject to the standards promulgated by NMPDC. These attorneys are often referred to as "contract counsel."

10. In many of New Mexico's judicial districts, LOPD provides indigent defense through a combination of public defenders and contract counsel. In some judicial districts, however—including the Seventh Judicial District, which encompasses Torrance County—contract counsel, working on behalf of LOPD, are the exclusive providers of indigent defense services.

11. This hybrid system is the creation of LOPD and NMPDC; no federal or New Mexico law mandates either the creation of this two-tiered system or the use of contract counsel to represent indigent criminal defendants.

12. In nearly every way, contract counsel's role within LOPD is identical to that of public defenders. Both are paid with taxpayer funds for their representation of indigent criminal defendants; both are held to the same standards regarding performance and communication with LOPD and NMPDC; both are immune, by statute, from being sued for legal malpractice; and both facilitate LOPD and NMPDC's entire reason for existing—to fulfill their constitutional and statutory

mandate to provide all of New Mexico's indigent criminal defendants an attorney at the state's expense.

13. In one respect, however, contract counsel and public defenders are situated quite differently. While public defenders are salaried employees who represent only indigent criminal defendants, contract counsel are paid a flat, per-case fee and are allowed by statute to maintain a private law practice alongside their work for LOPD.

14. LOPD, under the supervision and oversight of NMPDC, has thus created a system in which the most financially successful contract counsel will be those who take on as many public defense cases as possible and work as little as possible on each indigent client's behalf. Flat-fee pay structures have been shown to have significant negative effects for indigent defendants; these effects derive primarily from a reduction in effort from contract counsel who are paid flat fees rather than hourly rates.

15. LOPD, under the supervision and oversight of NMPDC, compounds these incentives by the rates it pays contract counsel. For example, the current per-case rate for contract counsel representing an indigent juvenile defendant on any charge other than murder is \$300. According to the American Bar Association's study of public defense workloads in New Mexico, competent representation of a client facing charges like those Doe faced requires roughly 177 hours of attorney work. This means that contract counsel competently representing such a client would be paid

roughly \$1.70 per hour for his work on the case—less than one-fifth of New Mexico’s minimum hourly wage.

16. LOPD, under the supervision and oversight of NMPDC, further compounds these economic incentives by awarding contracts to very few attorneys. In 2023, for instance, LOPD relied on the equivalent of 6.5 full-time attorneys (some contract counsel provide indigent defense services on a part-time basis) to represent all of the Seventh Judicial District’s indigent criminal defendants.² These attorneys collectively handled 2,306 cases that year, meaning that the average full-time contract counsel caseload was roughly 355 cases per attorney. Of these roughly 355 cases, roughly 190 were felonies.

17. These caseloads are orders of magnitude above the maximum number of cases experts agree an attorney can competently handle. For example, a 2023 public defense workload study produced by the RAND Corporation and the American Bar Association noted that an attorney “tak[ing] only” felony cases should be assigned, over an entire year, between seven cases (if all of those cases carried a possible sentence of life without the possibility of parole) and 59 cases (if all of those cases were deemed “low”-level felonies). Thus, even in the best-case scenario, Defendants allow the average Seventh Judicial District contract counsel to take over

² LOPD has purportedly destroyed all records made prior to 2017, meaning that any records pertaining to the initial years of the agency’s representation of Doe are allegedly unavailable.

three times the number of felony cases than they should—and they then add to that felony caseload an average of roughly 165 other, lower-level cases.

LOPD Assigns Andres Benavides to Doe's Case

18. Torrance County is in New Mexico's Seventh Judicial District, meaning that all indigent defendants arrested in Torrance County are assigned contract counsel. Andres Benavides, an attorney based in Albuquerque, was assigned by LOPD to Doe's case in April of 2011. In 2010, the year before he accepted Doe as a client, Benavides took on more than 200 new cases.

Benavides Misunderstands the Charge to Which Doe Pleaded Guilty

19. In 2011, Doe, who was 18 at the time, was charged with criminal sexual penetration. He was alleged to have committed this crime when he was a minor.

20. Doe maintained his innocence and rejected an initial offer to plead guilty to the offense of criminal sexual penetration. He continued to maintain his innocence throughout plea negotiations.

21. On October 20, 2011, Doe pleaded guilty to the lesser charge of criminal sexual contact. This charge required, under crystal-clear law, that Doe be adjudicated as a juvenile, that he be released no later than his 21st birthday, and that he be confined to a juvenile facility. Unlike confinement to adult prisons, confinement to a juvenile facility is not meant to be punitive in nature. Instead, juvenile facilities must aim to rehabilitate the children in their care.

22. Under New Mexico's Children's Code, children who are convicted of criminal offenses are categorized in one—and only one—of three ways.

23. First are “serious youthful offender[s].” These are children “fifteen to eighteen years of age who [are] charged with . . . first degree murder.” NMSA 1978, § 32A-2-3(H).

24. Second are “youthful offender[s].” These are children who are both between the ages of fourteen and eighteen years old at the time of their offense and are “adjudicated for at least one” of the thirteen enumerated offenses in NMSA 1978, § 32A-2-3(J). Importantly, “criminal sexual penetration” is one of these thirteen enumerated offenses, but “criminal sexual contact” is not. *See* NMSA 1978, § 32A-2-3(J). “Youthful offender[s]” can be sentenced either as children or as adults. *See* NMSA 1978, § 32A-2-20. Whether they are sentenced as children or adults is determined at an “amenability hearing,” where the court may sentence the child as an adult if it determines that “the child is not amenable to treatment or rehabilitation as a child.” NMSA 1978, § 32A-2-20.

25. Third and finally are “delinquent offender[s].” These are any children who commit a criminal offense that is not covered by the other two categories. “[D]elinquent offender[s]” do not receive amenability hearings because they cannot be sentenced as adults—they are “subject to juvenile sanctions only.” NMSA 1978, § 32A-2-3(C). Further, “delinquent offenders” are entitled to the sealing of all records relating to their offense upon the fulfillment of several simple criteria, and upon sealing the proceedings are treated as if they never occurred. NMSA 1978, § 32A-2-26.

26. Doe pleaded guilty to engaging in “criminal sexual contact” when he was 16 and 17 years old. This meant that Doe was a “delinquent offender” and was ineligible for an adult sentence of any kind. New Mexico law mandated that he be sentenced as a child and released when he turned 21.

27. Benavides did not understand this basic, indisputable, and crucial point of law.

28. Instead, after Doe’s guilty plea, the court proceeded to hold an “amenability hearing” at which it concluded that Doe was not amenable to treatment and would be subject to an adult sentence.

29. When Doe was subjected to amenability testing, neither Benavides nor anyone at LOPD or NMPDC intervened. In fact, Benavides stipulated to the entry of a “Stipulated Order for Amenity Assessment.” Neither Benavides nor anyone at LOPD or NMPDC intervened when the court found that Doe was not amenable to rehabilitation and would therefore be sentenced as an adult.

30. In the months following the guilty plea, Doe’s conviction was repeatedly and inexplicably mischaracterized in court documents signed by Benavides. Doe pleaded guilty to “Criminal Sexual Contact.” However, Doe’s February 2012 judgment and sentence stated that Doe had been convicted of “Criminal Sexual Penetration.” Benavides stipulated to the form of the judgment and sentence. One month later, in March of 2012, the order regarding whether Doe was amenable to treatment as a juvenile stated that Doe had pleaded to “Criminal sexual contact.” But

within two weeks the description had changed again, as Doe's amended judgment and sentence stated that he had pleaded guilty to "Criminal Sexual Penetration."

31. Benavides never raised these discrepancies with the court. This error was critical, because juveniles convicted of criminal sexual penetration are classified as "youthful offender[s]," who can be subjected to adult penalties after an amenability hearing, whereas those convicted of criminal sexual contact can only be treated as "delinquent offender[s]" and must receive a juvenile disposition. *Compare* NMSA 1978, §§ 32A-2-3(A)-(C) & (J).

Doe Receives an Unlawful Adult Sentence

32. On February 23, 2012, Doe was sentenced to three years in adult prison and a parole term of five years to life. Had Doe received the sentence to which the law entitled him, he would have been placed not in adult prison but rather in the custody of the New Mexico Children, Youth and Families Department (CYFD). If CYFD determined that Doe needed to be incarcerated, he would have been housed with other juveniles in a facility "for the care and rehabilitation of adjudicated delinquent children." NMSA 1978, § 32A-2-19(B). CYFD would have been legally prohibited from transferring Doe to an adult penal institution. *See* NMSA 1978, § 32A-2-19(D). Further, a juvenile disposition is not a criminal conviction and does not result in the civil consequences that ordinarily accompany a criminal conviction. *See* NMSA 1978, 32A-2-18. While in CYFD care, Doe would be guaranteed to receive appropriate and individualized educational programs and services, including vocational training. *See* 8.14.3.8 NMAC. He would have remained under CYFD's custody and care until no

later than his 21st birthday, at which point Doe would have fully completed his juvenile commitment and would have been released without a parole term or any supervision. However, because Doe was unlawfully treated as a “youthful offender” and sentenced as an adult, he was deprived of all the benefits of the juvenile justice system.

33. Instead, Doe spent his 21st birthday in adult prison. While there, Doe was beaten, on multiple occasions, by some of the adults he was housed with at the prison.

34. Doe’s adult prison sentence ended, and his parole term of five years to life began, on January 2, 2014. For Doe, however, the beginning of parole did not mean the end of incarceration. The New Mexico Corrections Department places onerous residential requirements on those serving the type of non-custodial parole imposed on Doe. For example, these parolees are required to wear a GPS ankle monitor for the entirety of their parole term and cannot live within 1,000 feet of “an area where children may frequent.” As a result, many cannot find suitable housing before the expiration of their prison sentences. When this happens, these parolees simply remain in prison on so-called “in-house parole.”

35. This is what happened to Doe. Although his prison term ended on January 2, 2014, he was unable to find suitable housing until March 9, 2015, and so he remained in prison on “in-house parole” until that date. Doe resided in outside housing for roughly six months, but on October 29, 2015, he was sent back to prison when he missed a mandatory counseling session. Doe then served “in-house parole”

until March 13, 2019, when he found suitable housing and was released. But roughly six months later, on September 9, 2019, Doe was once again ordered back to prison after being accused of having an unauthorized guest in his home. All told, between 2012 and 2023, Doe spent 3,842 days—roughly ten and a half years—in adult prison, and an additional 414 days on non-custodial parole. Each day of this sentence was unlawful.

**LOPD Assigns Doe Habeas Counsel, Who Fail, for Years, to Notice Doe’s
Unlawful Sentence**

36. While in prison, Doe petitioned for his right to a parole review hearing under NMSA 1978, § 31-21-10.1, the New Mexico statute that provides the procedure for the termination of parole supervision of adults serving his type of sentence. LOPD eventually assigned Doe a lawyer to assist with these efforts, and on March 26, 2020, the managing attorney of LOPD’s Habeas Corpus/Post-Conviction Unit entered an appearance on his behalf.³

37. On June 9, 2020, habeas counsel, Amanda Stephenson, submitted for Doe an amended petition for a writ of habeas corpus, arguing that the state’s failure to grant Doe a parole review hearing violated both his federal and state constitutional rights. She did not argue that Doe’s entire adult sentence was unlawful and that Doe was entitled to immediate release from prison and parole.

³ A second LOPD attorney submitted a notice in the case on October 7, 2022, although it is unclear from the record when he submitted a notice of appearance.

38. Nor did habeas counsel question why Doe's plea agreement had transformed, without his consent, into a judgment and sentence for "criminal sexual penetration," an outcome that Doe had squarely rejected and that carried an exponentially more severe punishment than the offense to which he had actually pleaded guilty. Although Stephenson noted in her amended petition that Doe's "sentence does not accurately reflect the plea agreement," she did not ask the court to take any action in response to this discrepancy, let alone demand the immediate release to which Doe was entitled.

39. Nor did Stephenson or any other LOPD attorney demand Doe's release when, the following year, in January 2021, the court amended Doe's sentence to "accurately reflect [his] plea and disposition agreement reached on October 20, 2011."

The Error of Doe's Unlawful Sentence is Finally Caught

40. The acts and omissions of LOPD, its attorneys, and NMPDC that deprived Doe of his constitutional rights and that give rise to this lawsuit continued into 2022 and 2023.

41. Two and a half years into their representation of Doe, habeas counsel finally recognized that their client was serving an illegal sentence. A November 15, 2022 order from the district court notes that at a conference and a hearing that had taken place earlier that month, counsel for Doe "stated that he had recently noticed that Criminal Sexual Contact of a Minor was not one of the youthful offenses listed in NMSA 1978, § 32A-2-3(J) and" asked to submit "further briefing on whether [Doe's] adult sentence, including parole, is legal."

42. Despite finally recognizing that Doe was entitled to immediate release from custody and parole, Doe's lawyers did not file a habeas petition on these grounds. Instead, in January of 2023, Doe submitted that petition *pro se*, and he was subsequently represented by counsel from the American Civil Liberties Union of New Mexico and (De)Serving Life. On September 25, 2023, the district court vacated Doe's sentence. Specifically, the district court found:

[T]hat [Doe's] adult sentence is illegal. In 2011, [Doe] entered a plea agreement admitting that he committed criminal sexual contact of a minor for acts that occurred when he was sixteen and seventeen years old. Since [Doe] was a child himself, this offense was a "delinquent act" and the maximum consequence he could have faced was a long-term commitment to CYFD custody. As the Court lacked jurisdiction to sentence [Doe], a child, as an adult when he admitted to a "delinquent act," he was ineligible for an adult sentence under the Children's Code.

43. Doe was finally released from prison on October 19, 2023. At a hearing that day, a judge of the district court remarked that she was troubled that the unlawful nature of Doe's sentence had not been caught earlier.

The Harm to Doe

44. As a "delinquent offender," Doe was entitled to serve his sentence in CYFD custody and to be both out of custody and off parole on the day he turned 21 years old.

45. Instead of serving his sentence in CYFD custody, Doe was held in adult prison. While there, he suffered physical attacks. These attacks caused Doe physical harm, and the memory of these attacks continues to cause Doe significant psychological and emotional harm.

46. Instead of being released from custody on his 21st birthday, Doe spent the vast majority of his twenties and the beginning of his thirties in prison. This extreme, prolonged loss of liberty caused Doe significant physical, emotional, and financial harm.

Claims for Relief

Count One: Violation of Doe's Constitutional Right to Counsel Under NMSA 1978, § 41-4A-3 (Deprivation by Persons Acting on Behalf of LOPD and NMPDC)

47. Doe incorporates all prior paragraphs here.

48. Under the New Mexico Civil Rights Act (NMCRA) a “public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall not subject or cause to be subjected any resident of New Mexico or person within the state to deprivation of any rights, privileges or immunities secured pursuant to the bill of rights of the constitution of New Mexico.” NMSA 1978, § 41-4A-3(A).

49. New Mexicans’ constitutional right to counsel is secured by Section 14 of the Bill of Rights of New Mexico, which provides, in part, that in “all criminal prosecutions, the accused shall have the right to appear and defend himself in person, and by counsel.” N.M. Const. art. II § 14. This right to counsel includes the right to effective assistance of counsel. *See State v. Brown*, 2006-NMSC-023, ¶ 16, 139 N.M. 466, 470.

50. “As used in the New Mexico Civil Rights Act, ‘public body’ means [among other things] a state or local government, an advisory board, a commission, an agency

or an entity created by the constitution of New Mexico or any branch of government that receives public funding.” NMSA 1978, § 41-4A-2. LOPD is a “public body” because it is a New Mexico state agency and a branch of government that receives public funding. NMPDC is a “public body” because it is a commission or an entity created by the constitution of New Mexico. N.M. Const. art. VI, § 39.

51. Under the NMCRA, a “person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.” NMSA 1978, § 41-4A-3(B).

52. “Claims brought pursuant to the [NMCRA] shall be brought exclusively against a public body. Any public body named in an action filed pursuant to the [NMCRA] shall be held liable for conduct of individuals acting on behalf of, under color of or within the course and scope of the authority of the public body.” NMSA 1978, § 41-4A-3(C).

53. Benavides and habeas counsel violated Doe’s right to counsel both by allowing him to receive and serve an unlawful adult sentence and by failing, for years, to intervene when they were aware that Doe had been sentenced for a different offense than the one to which he had actually pleaded guilty.

54. Benavides and habeas counsel represented Doe “on behalf of, under color of or within the course and scope of the authority of” LOPD and NMPDC.

55. Because Benavides and habeas counsel violated Doe’s constitutional right to counsel while representing Doe “on behalf of, under color of or within the course and scope of the authority of” LOPD and NMPDC, LOPD and NMPDC are liable to Doe under NMSA 1978, § 41-4A-3.

Count Two: Violation of Doe’s Constitutional Right to Counsel Under NMSA 1978, § 41-4A-3 (Failure to Adequately Train and Supervise)

56. Doe incorporates all prior paragraphs here.

57. Until June of 2023, all of Doe’s criminal defense attorneys practiced under the supervision of LOPD and NMPDC and were required to follow LOPD and NMPDC guidelines. LOPD and NMPDC were aware that Benavides was representing Doe under an economic arrangement that incentivized spending as little time as possible on Doe’s case and were aware, or should have been aware, that Benavides had accepted more than 200 new cases in the year before he took on Doe as a client. Indeed, LOPD, under the supervision and oversight of NMPDC, had designed and implemented the economic arrangement that incentivized Benavides to spend as little time as possible on Doe’s case.

58. None of Doe’s LOPD-assigned defense attorneys evidenced even a basic understanding of New Mexico’s Children’s Code. They should have understood the crucial distinction between the plea deal that Doe rejected and the one to which he eventually agreed.

59. LOPD and NMPDC—despite assigning attorneys to a client charged with having committed serious criminal offenses as a juvenile—failed to train any of Doe’s attorneys in the basics of New Mexico juvenile criminal law and failed to ensure

that any of these attorneys already possessed knowledge that would have obviated the need for such training.

60. LOPD and NMPDC also failed to adequately supervise Doe's lawyers in a way that would have prevented these attorneys from acquiescing to Doe's unlawful sentence and failing to raise it in his habeas petitions.

61. Because LOPD and NMPDC's failure to adequately train and supervise Doe's attorneys caused Doe to be subjected to a deprivation of his constitutional right to counsel, LOPD and NMPDC are liable to Doe under NMSA 1978, § 41-4A-3.

Prayer for Relief

Plaintiff John Doe respectfully requests:

- An award of actual and compensatory damages against LOPD and NMPDC in an amount to be determined by a jury at trial;
- An award of reasonable attorneys' fees pursuant to NMSA 1978, § 41-4A-5;
- Any injunctive relief that this Court deems just and proper; and
- All other relief that this Court deems just and proper.

Respectfully submitted,



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*Application for admission *pro hac vice* forthcoming