

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

SUNDRA COLEMAN; DA-JANAY
BANKS, individually and as the parent
and legal guardian of the minor, A.H.;
and ELIZABETH FIELDS,

Plaintiffs,

v.

Case No. D-202-CV-2024-04976

CITY OF ALBUQUERQUE and
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF BERNALILLO,

Defendants.

COMPLAINT

For most, home is a safe place. Home is often filled with years of warm memories—laughter, birthdays, holidays, and normal days too. The Coleman family home was that kind of place—baby A.H.’s taking his first steps, delicious food in the kitchen, prayers said around the family table, and an abundance of love. Mother and grandmother Sundra Coleman inherited the Coleman family home from her mother after she died. For the five years following her mother’s death, Sundra had saved money and made improvements to it. She took pride in the home she shared with her teenaged daughter Da-Janay Banks and Da-Janay’s infant child, A.H. She was making it their own. Aunt Elizabeth Fields would often come for meals and gatherings—Sundra’s son and extended family, too.

And then all of it was gone. A fifteen-year-old child was dead inside the burned-down home. This tragedy resulted from a SWAT operation by the Albuquerque Police Department and the Bernalillo County Sheriff’s Office.

Since then, for nearly two years, Sundra, Da-Janay, and baby A.H. have been unsheltered. During the day, Sundra goes to work. At night, the three live in Sundra's car. Sundra is still paying the mortgage on her burned-down home. She cannot afford to pay rent too.

The Coleman home didn't have to go up in smoke and the fifteen-year-old child didn't have to die. These tragedies were avoidable.

This lawsuit can't bring back the Coleman family home. It can't return the family photographs, the pots and pans that Sundra's mother cooked with, their family pet, the family jewelry, the carefully folded flag the U.S. government presented to Sundra when her son, a veteran, died. But a lawsuit can help the Coleman family rebuild and repair. And it can send a message to the Defendants: you are responsible for the consequences of your actions.

Plaintiffs Sundra Coleman, Da-Janay Banks, A.H., and Elizabeth Fields state as follows in support of their Complaint against Defendants City of Albuquerque and Board of County Commissioners of the County of Bernalillo:

JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter of this action under Article VI, Section 13 of the New Mexico Constitution, the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3(B) (2021), and the New Mexico Tort Claims Act, NMSA 1978, § 41-4-18.
2. This Court has personal jurisdiction over the Plaintiffs and Defendants.
3. Venue is proper in Bernalillo County, New Mexico, under NMSA 1978, § 38-3-1 (1988).

PARTIES

4. Plaintiff Sundra Coleman is a resident of Bernalillo County, New Mexico.

5. Plaintiff Da-Janay Banks and her minor son, Plaintiff A.H., are residents of Bernalillo County.

6. Plaintiff Da-Janay Banks is the parent and legal guardian of her minor son, Plaintiff A.H., and represents Plaintiff A.H. for purposes of this Complaint.

7. Plaintiff Elizabeth Fields is a resident of Bernalillo County, New Mexico.

8. Defendant City of Albuquerque (“CABQ”) is a governmental entity and “local public body” pursuant to the Tort Claims Act, NMSA 1978, § 41-4-3(C) and a “public body” pursuant to the Civil Rights Act, NMSA 1978, § 41-4A-2.

9. Defendant CABQ is liable for the acts and omissions of its subdivision, the Albuquerque Police Department (“APD”), and APD’s officers pursuant to the Tort Claims Act, Civil Rights Act, and the principles of agency and vicarious liability.

10. Defendant CABQ confirmed receipt of the notice of Plaintiffs’ claims on September 9, 2022, which was within the time limits provided in the Tort Claims Act, NMSA 1978, § 41-4-16, and Civil Rights Act, NMSA 1978, § 41-4A-13.

11. Defendant Board of County Commissioners of the County of Bernalillo (“Bernalillo County”) is a governmental entity and public body pursuant to the Tort Claims Act, NMSA 1978, § 41-4-3, and the Civil Rights Act, NMSA 1978, § 41-4A-2.

12. Defendant Bernalillo County is liable for the acts and omissions of its subdivision, the Bernalillo County Sheriff’s Office (“BCSO”), and BCSO’s officers pursuant to the Tort Claims Act, Civil Rights Act, and the principles of agency and vicarious liability.

13. Defendant Bernalillo County confirmed receipt of the notice of Plaintiffs’ claims on September 21, 2022, which was within the time limits provided in the Tort Claims Act, NMSA 1978, § 41-4-16, and Civil Rights Act, NMSA 1978, § 41-4A-13.

STATEMENT OF FACTS

14. On July 6, 2022, Plaintiff Coleman owned and lived at 8109 San Joaquin Ave. SE, Albuquerque, New Mexico 87108 with her daughter, Plaintiff Banks, and her minor grandson, Plaintiff A.H.

15. Plaintiff Coleman's sister, Plaintiff Fields, owned and maintained a car at 8109 San Joaquin Ave. SE.

16. At approximately 6:30 pm on July 6, 2022, Plaintiff Coleman was napping after a hard day's work, when her daughter, Plaintiff Banks woke her up.

17. Plaintiff Banks looked out Plaintiff Coleman's window and saw officers in the front yard with guns drawn.

18. Plaintiff Coleman went out to the front yard with her hands raised.

19. Plaintiff Banks followed Plaintiff Coleman while carrying her one-year-old son, Plaintiff A.H.

20. Officers pointed their guns at Plaintiff Coleman and Plaintiff Banks, who was still holding her infant son, Plaintiff A.H.

21. Officers kept their guns drawn on the family, including on the infant Plaintiff A.H., while they forced the family away from their home.

22. At the time, unbeknownst to the Coleman family, officers were pursuing a suspect, Qiaunt Kelley.

23. Later, the Coleman family would learn that Kelley and a fifteen-year-old child had covertly entered the Coleman family home.

24. Officers directed Plaintiffs Coleman and Banks to the other side of the street.

25. As Plaintiff Banks attempted to record the incident with her cell phone, an officer grabbed it from her hand and threw it to the ground, breaking it.

26. The officer told Plaintiff Banks that she was not allowed to record.

27. The officer forced Plaintiff Banks to sit on the curb.

28. After Plaintiff Banks repeatedly asked why the officers were detaining the family, the officer handcuffed Plaintiff Banks for saying “one more word.”

29. Officers then handcuffed Plaintiffs Coleman and Banks even though neither Plaintiff was violating any law or about to violate any law, and they had no reason to believe that Plaintiffs were violating or about to violate any law.

30. Leaving Plaintiffs Coleman and Banks in handcuffs, officers proceeded to run background checks on them.

31. After approximately 30 minutes, officers released Plaintiff Coleman.

32. After approximately 30 minutes, Plaintiff Banks started experiencing a panic attack.

33. While Plaintiff Banks suffered a panic attack, officers removed the handcuffs from Plaintiff Banks’ wrists.

34. Plaintiff Coleman then watched as officers began efforts to extract Qiaunt Kelley and a fifteen-year-old minor child from the Coleman home. Kelley and the child had secretly entered Plaintiff Coleman’s home without her knowledge or permission after officers tried and failed to arrest Mr. Kelley on the street.

35. At approximately 8:00 PM, APD activated its SWAT team.

36. Soon after, a BCSO SWAT team arrived as well.

37. The SWAT teams each brought a Rook—a tactical SWAT vehicle that looks like an armored skid steer loader—robots, drones, flash bang grenades, chemical munitions, and multitudes of 40-millimeter ferret rounds, in addition to their normal weapons.

38. APD and BSCO officers proceeded to tear apart Plaintiff Coleman’s property.

39. APD officers used the Rook to move her vehicle, which they did without putting the vehicle in neutral, thereby destroying the transmission.

40. Officers used the Rook to destroy her front door.

41. Officers used the Rook to tear down her chain link fence.

42. Officers used the Rook to uproot and tear down an entire tree.

43. At approximately 11:30 PM, the law enforcement officers fired gas munitions into Plaintiff Coleman’s home to smoke Mr. Kelley and the minor child from the home.

44. At approximately 12:30 AM, officers launched at least three tri-chamber grenades (gas munitions) into the home.

45. Mr. Kelley exited through a backyard entrance and collapsed onto the ground, struggling to breathe.

46. According to police reports, he “appeared to be affected by the chemical munitions.”

47. Another report indicated that Mr. Kelley “remained laying down and would raise his hands.”

48. Officers told him to stand up, which he did, but he promptly fell back to the ground.

49. During these crucial moments, the officers had a prime opportunity to arrest Mr. Kelley while he was stunned and struggling to breathe.

50. They had many tools at their disposal to safely effectuate an arrest, including tasers, rubber bullets, bean bag shot guns, and BoloWrap.

51. Officers did not use any of these tools.

52. Instead, they threw a flash bang grenade towards Mr. Kelley, which caused him to get up and retreat back into the home.

53. After Mr. Kelley re-entered the house, APD and BCSO continued to blanket the home with gas munitions, breaking all the home's windows and their frames.

54. At approximately 1:00 AM, a BCSO officer threw another tri-chamber grenade through a window.

55. This grenade landed on a mattress in one of the bedrooms and began to smolder.

56. At around 1:30 AM, officers used the Rook to lift the roof of the home, deploying additional chemicals into the attic.

57. At around 2:00 AM, officers began to smell smoke but did not call Albuquerque Fire Rescue ("AFR").

58. At 2:30 AM, officers called AFR for standby.

59. At approximately 2:45 AM, officers learned from a robot that was sent into the home that a tri-chamber grenade had landed on a mattress which started to smolder, causing the smoke that officers were smelling outside.

60. In response, the officers used the Rook to make a large hole in the wall.

61. Officers then used the Rook to remove the smoldering mattress from the home.

62. Lapel camera recordings of conversations between the officers demonstrate that they knew that this order was contrary to their training.

63. Some of the officers feared that using the Rook to remove the mattress would cause a fire that could send the home up in flames.

64. But the APD officer operating the Rook did it anyway.

65. As the Rook retrieved the smoldering mattress, it burst into flames, leading to an out-of-control fire that engulfed the Coleman family's entire home.

66. AFR arrived on the scene at approximately 3:15 AM, but it was too late.

67. At 3:16 AM, Mr. Kelley exited the home, surrendered, and told police that a child was still inside.

68. AFR extinguished the fire but not before a young boy perished in the flames.

69. The fire also destroyed the family's home and belongings and Plaintiff Fields's car.

70. The fire also killed the Coleman family's dog.

71. Upon asking officers on the scene what she was supposed to do now that her home was burned to the ground, those officers informed Ms. Coleman that she could "file a claim with the City."

72. In the weeks and months following the destruction of her home, Plaintiff Coleman reached out to Defendant CABQ for help and Defendant CABQ did little to assist the family in their hour of need.

73. Defendant Bernalillo County did nothing.

74. The meager assistance that Defendant CABQ intermittently provided was grossly inadequate and the family has been on their own for close to two years.

75. Plaintiff Coleman and her family were evicted from their apartment in February of this year as they could no longer pay the rent for the apartment on top of the mortgage for their home.

76. The family is now unhoused and living in their car.

77. As of the filing of this Complaint, nearly two years after APD and BCSO set their home on fire, burning it to the ground, the rebuilding of the Coleman family home is still not complete.

78. Further, because APD and BCSO destroyed her car, Plaintiff Coleman was forced to purchase another one.

Count 1
Violation of N.M Const. Art. II, § 10 (Seizures of person)

79. Article II, Section 10 of the New Mexico Constitution establishes that people have a right to be secure in their persons, papers, homes, and effects from unreasonable searches and seizures.

80. Under Section 10, a law enforcement officer violates a person's right to be secure in their person from unreasonable seizure when an officer arrests the person without a warrant or probable cause.

81. "It is well established Article II, Section 10 provides more protection against unreasonable searches and seizures than the Fourth Amendment." *State v. Leyva*, 2011-NMSC-009, ¶ 51, 149 N.M. 435.

82. NMSA 1978, § 41-4A-3 (2021) permits a person who has suffered a deprivation of any right, privilege, or immunity under the bill of rights of the New Mexico Constitution due to the acts or omissions of a public body or person acting on behalf of a public body, to maintain an action for liability and actual damages.

83. At all times pertinent hereto, Defendant CABQ's officers were acting on behalf of and within the scope of authority of a public body, the Albuquerque Police Department.

84. At all times pertinent hereto, Defendant CABQ's officers violated the state constitutional rights under Section 10 of Plaintiffs Sundra Coleman, Da-Janay Banks, and minor child A.H. by pointing guns at them for no reason.

85. At all times pertinent hereto, Defendant CABQ's officers violated the state constitutional rights under Section 10 of Plaintiffs Coleman and Banks by handcuffing them for over 30 minutes without probable cause.

86. As a result of officers' violation of Plaintiffs' state constitutional rights, Plaintiffs suffered harms, including unwanted physical contact and emotional distress.

87. Pursuant to the Civil Rights Act, Plaintiffs are entitled to actual damages and equitable relief (§ 41-4A-3(B)), attorney fees and costs (§ 41-4A-5), and post-judgment interest (§ 41-4A-6) for the harms that resulted from the officers' deprivation of Plaintiffs' civil rights under the New Mexico Constitution.

Count 2
False Imprisonment, Assault, and Battery

88. NMSA 1978, § 41-4-12 waives immunity for law enforcement officers for claims of false imprisonment, assault, and battery that resulted in personal injury while the officers are acting within the scope of their duties.

89. An officer commits false imprisonment when they intentionally confine or restrain a person without their consent and with knowledge that they have no authority to do so.

90. An officer commits a battery if the officer intends to cause a harmful or offensive contact with a third person, or an imminent apprehension of such contact, and such offensive contact occurs.

91. An officer commits an assault if he acts intending to cause a harmful or offensive contact with a person, or an imminent apprehension of such a contact, and the individual is put in such imminent apprehension.

92. At all times pertinent hereto, Defendant CABQ's officers were acting on behalf of and within the scope of their duties for APD.

93. At all times pertinent hereto, Defendant CABQ's officers falsely imprisoned, assaulted, and/or battered Plaintiffs Sundra Coleman, Da-Janay Banks, and minor child A.H. by pointing guns at them, pulling them by the arms, and/or handcuffing them for over 30 minutes without a warrant or probable cause.

94. As a result of officers falsely imprisoning, assaulting, and/or battering Plaintiffs, Plaintiffs suffered harms, including unwanted physical contact and emotional distress.

95. Pursuant to the Tort Claims Act, Plaintiffs are entitled to compensatory damages, nominal damages, and post-judgment interest (§ 41-4-19) for the harms that resulted from the officers falsely imprisoning, assaulting, and/or battering Plaintiffs.

Count 3
Violation of N.M Const. Art. II, § 10 (Seizure of home and effects)

96. Article II, Section 10 of the New Mexico Constitution establishes that people have a right to be secure in their persons, papers, homes, and effects from unreasonable searches and seizures.

97. "It is well established Article II, Section 10 provides more protection against unreasonable searches and seizures than the Fourth Amendment." *State v. Leyva*, 2011-NMSC-009, ¶ 51, 149 N.M. 435.

98. Under Section 10, a law enforcement officer violates a person's right to be secure in their home from unreasonable searches and seizures when an officer causes excessive or

unnecessary destruction of property even during a lawful entry. *See, e.g., United States v. Ramirez*, 523 U.S. 65, 71 (1998).

99. NMSA 1978, § 41-4A-3 (2021) permits a person who has suffered a deprivation of any right, privilege, or immunity under the bill of rights of the New Mexico Constitution due to the acts or omissions of a public body or person acting on behalf of a public body, to maintain an action for liability and actual damages.

100. On July 6, 2022, Defendants' officers excessively and unnecessarily destroyed Plaintiff Coleman's car by using a Rook to move the car when there was absolutely no reason to move the vehicle to effectuate an arrest of Qiaunt Kelley.

101. On July 6, 2022, Defendants' officers excessively and unnecessarily destroyed Plaintiff Coleman's fence when there was absolutely no reason to tear down the fence to effectuate an arrest of Qiaunt Kelley.

102. On July 6, 2022, Defendants' officers excessively and unnecessarily burned down Plaintiff Coleman's home when they fired excessive numbers of chemical rounds into her home without support from Albuquerque Fire Rescue, allowed a chemical round to smolder without contacting Albuquerque Fire Rescue, tore down a wall and lifted the roof, and moved a smoldering mattress without contacting Albuquerque Fire Rescue knowing that it could accelerate and spread a fire.

103. As a result of Defendants' officers' excessive and unnecessary property damage in their efforts to arrest Qiaunt Kelley, officers caused Plaintiff Coleman to lose her car, her home, her fence, and all her belongings.

104. As a result of Defendants' officers' excessive and unnecessary property damage in their efforts to arrest Qiaunt Kelley, officers caused Plaintiffs Banks and minor child A.H. to lose their home and their belongings.

105. As a result of Defendants' officers' excessive and unnecessary property damage in their efforts to arrest Qiaunt Kelley, officers caused Plaintiff Fields to lose her car as well as belongings that she had in the home.

106. For the destruction and loss of property, Plaintiffs are entitled to actual damages, attorney fees and costs (§ 42A-1-25), and post-judgment interest.

Count 4
Violation of N.M. Const. Art. II, § 20 (Taking)

107. The New Mexico Constitution, Article II, Section 20, establishes that a governmental entity shall not take or damage a person's private property for public use without just compensation.

108. When an officer foresees that they will destroy an owner's property in carrying out a governmental project—or the destruction of the owner's property because of the officer's conduct is so obvious to amount to deliberate infliction of harm—the officer has violated the owner's rights under the New Mexico Constitution, Article II, Section 20.

109. NMSA 1978, § 41-4A-3 permits an individual who suffered a deprivation of any right, privilege, or immunity under the bill of rights of the New Mexico Constitution due to the acts or omissions of a public body or person acting on behalf of a public body, to maintain an action for liability and damages.

110. NMSA 1978, § 42A-1-29 further permits an individual to bring a cause of action against any person authorized to exercise the right of eminent domain who has taken or damaged property for public use without making just compensation.

111. On July 6, 2022, Defendants' officers foresaw the damages their actions would have on Plaintiffs' property and/or their actions amounted to the deliberate infliction of harm for the purpose of carrying out their public purpose.

112. Defendants' officers deliberately destroyed Plaintiffs' fence, car, home, and belongings for the purposes of carrying out the governmental project of arresting an individual with a warrant.

113. As a result of this deliberate taking of Plaintiffs' property, Plaintiffs are entitled to just compensation for their property, including, but not limited to, compensation for the loss of Plaintiff Coleman's car, Plaintiff Coleman's fence, Plaintiff Coleman's home, Plaintiff Coleman's belongings, Plaintiff Coleman's credit score, Plaintiff Fields' car, Plaintiff Fields' belongings, Plaintiff Banks' belongings, and Plaintiff A.H.'s belongings.

114. Plaintiffs are further entitled to attorney fees and costs (§ 42A-1-25), interest of 10% from the date the property was damaged to the date of compensation (§ 42A-1-29), and post-judgment interest.

Count 5
Negligent Violation of a Property Right Under NMSA 1978, § 41-4-12

115. Law enforcement officers have a duty to exercise the ordinary care of a reasonably prudent and qualified officer in similar circumstances in the performance of any activity.

116. NMSA 1978, § 41-4-12 waives immunity for law enforcement officers when an officer's breach of their duties results in a violation of a person's property right.

117. Law enforcement officers breached their duty by destroying Plaintiffs' house, cars, fence, and belongings when such destruction was not necessary to effectuate the arrest of Qiaunt Kelley.

118. As a result of their breaches, Defendants' officers violated Plaintiffs' property rights in their home, cars, fence, and belongings.

119. For these violations of Plaintiffs' property rights, Plaintiffs are entitled to compensation for property damage, nominal damages, and post-judgment interest (§ 41-4-19)

REQUEST FOR RELIEF

Plaintiffs Coleman, Banks, A.H., and Fields request that a judgment be entered in their favor against Defendants City of Albuquerque and Board of County Commissioners for the County of Bernalillo for compensatory damages, nominal damages, punitive damages, attorney fees and costs, pre- and post-judgment interest, and such other relief as the Court deems just and proper.

Date: June 12, 2024

Respectfully submitted,

/s/ Sam Walker
SAM WALKER
TYLER ATKINS
ATKINS AND WALKER LAW
Cooperating Attorneys for the
American Civil Liberties Union of
New Mexico Foundation
715 Marquette Ave. NW
Albuquerque, New Mexico 87102
(505) 508-4640
tyler@atkinswalker.com
sam@atkinswalker.com

&

Maria Martinez Sanchez
Kristin Greer Love
ACLU-NM
P.O. Box 566
Albuquerque, NM 87103
(505) 266-5915
msanchez@aclu-nm.org
kglove@aclu-nm.org