

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

JUSTIN ALLEN,

Plaintiff,

D-202-CV-2024-08578

v.

CITY OF ALBUQUERQUE,

Defendant.

COMPLAINT FOR DEPRIVATIONS OF CIVIL RIGHTS

Plaintiff Justin Allen brings this Complaint for deprivations of his civil rights.

Introduction

On February 13, 2024, Justin Allen stood on an Albuquerque public sidewalk and told unhoused people about their rights. The unhoused people were living on the sidewalk because they had no other place to go. At the time, Mr. Allen did not know the unhoused people he was speaking to, but he cared about their safety and well-being. Mr. Allen's concern stemmed from his personal experience: he was kicked out of his stepfather's home for being gay. As a teenager and young adult, Mr. Allen experienced housing instability, homelessness, and periods of incarceration. But he was determined to turn his life around. He earned a bachelor's degree in American studies from the University of New Mexico. Now Mr. Allen works to restore voting rights and fight against injustices for currently and formerly incarcerated people.

That February day, City of Albuquerque Solid Waste workers wanted to clear the sidewalk where Mr. Allen was standing and force the unhoused people to move on. But Mr. Allen said that doing so would violate the law. Mr. Allen was right. At the time, a preliminary injunction barred the City of Albuquerque from forcibly moving or otherwise punishing

unhoused people for being on public property outdoors if they had nowhere else to go. The preliminary injunction also prohibited the City from seizing and destroying their belongings without process.¹

The Albuquerque Solid Waste workers did not like Mr. Allen’s message, so they retaliated against him. Upon information and belief, Solid Waste workers used Mr. Allen’s license plate number to obtain his home address. A Solid Waste worker told the unhoused people they should go to “██████████”—Mr. Allen’s home address—and said they would be safe there. Mr. Allen did not ask or want the City workers to share his home address with a group of then-strangers on a street corner—or tell them to go to that address. Immediately following the incident, Mr. Allen and another community activist reported the retaliation to an Albuquerque police officer.

Ultimately, Mr. Allen’s speech kept the unhoused people safe that day. The Albuquerque Solid Waste workers left without clearing the small encampment. But the City’s retaliation against Mr. Allen deprived him of his right to speak freely and his dignity. This retaliation chills speech—dissuading “a person of ordinary firmness” from exercising their constitutionally protected speech rights to inform unhoused people about their rights.² As a direct result of

¹ See *Williams, et al. v. City of Albuquerque*, D-202-CV-2022-07562 (Preliminary Injunction, entered Sept. 21, 2023, effective Nov. 1, 2023, vacated May 17, 2024).

² In federal courts, a First Amendment retaliation claim is established when (1) “the plaintiff was engaged in constitutionally protected activity;” (2) “the defendant’s actions caused the plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity;” and (3) “the defendant’s adverse action was substantially motivated as a response to the plaintiff’s exercise of constitutionally protected conduct.” *Worrell v. Henry*, 219 F.3d 1197, 1212 (10th Cir. 2000). Mr. Allen brings this Complaint exclusively under state law. His constitutional claim arises exclusively from the New Mexico Bill of Rights. Section 17’s free speech protections in the New Mexico Bill of Rights extend beyond those afforded by the First Amendment—and beyond those protected in *Worrell*. *City of Farmington v. Fawcett*, 1992-NMCA-075, ¶ 32, 114 N.M. 537, 843 P.2d 839. Mr. Allen urges that under Section 17 of the New Mexico Bill of Rights, he should not have to show that the “defendant’s adverse action was substantially motivated as a response to [his] exercise of constitutionally protected conduct,” the third element of a First-Amendment-retaliation claim under Tenth Circuit law.

Defendant's conduct, Mr. Allen has suffered and continues to suffer emotional pain and suffering, the loss of dignity, and the risk of further harm caused by Defendant's sharing of his personal information.

Jurisdiction and Venue

1. This Court has jurisdiction over Plaintiff's claims arising under the New Mexico Civil Rights Act. NMSA 1978, § 41-4A-3(B) (2021).

2. This district is the proper venue for Plaintiff's claims. NMSA 1978, § 41-4A-3(B) (2021) and § 38-3-1(A) (1875, as amended through 1988).

The Parties

3. Plaintiff Justin Allen is a resident of Albuquerque, New Mexico.

4. Defendant City of Albuquerque ("City") is a "public body" under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-2 (2021).

General Allegations

5. On February 13, 2024, at around 1:00pm, Albuquerque Police Department ("APD") officers and Albuquerque Solid Waste Department ("Solid Waste") workers gathered on Tennessee Street Southeast near Central Avenue Southeast.

6. APD cruisers, a Solid Waste dump truck, and other City vehicles were also parked along Tennessee Street Southeast.

7. The APD officers and Solid Waste workers were trying to clear a small encampment of unhoused people from a public sidewalk on Tennessee Street Southeast behind the former Fair 'N' Square grocery store.

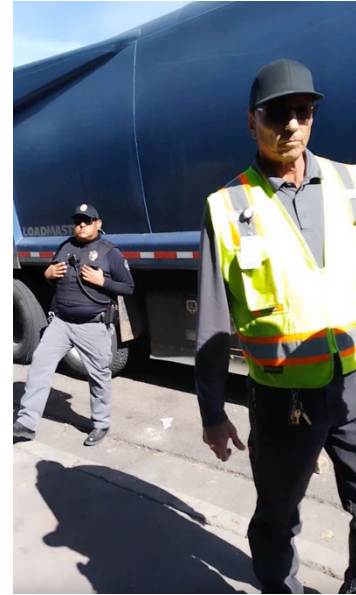
**Images from February 13, 2024,
Unlawful Attempted Encampment Clearing,
Tennessee Street SE, near Central Avenue SE**



Small encampment of unhoused people behind Fair 'N' Square grocery store, Tennessee St. SE, near Central Ave. SE, facing north



Police and Solid Waste workers standing near City dump truck at attempted encampment clearing, Tennessee St. SE, facing south



Albuquerque Police officer and Solid Waste Worker #2 standing near dump truck at attempted encampment clearing, Tennessee St. SE, facing northeast

8. Community organizer Justin Allen noticed the City's encampment clearing operation and parked his car.

9. After exiting his car, Mr. Allen approached the unhoused people, APD officers, and Solid Waste workers.

10. Mr. Allen began filming the encounter.

11. Mr. Allen told the APD officers and Solid Waste workers that it was "against the law" for them to clear the encampment.

12. Mr. Allen told the APD officers and Solid Waste workers to “call ACS”—Albuquerque Community Safety.³

13. Mr. Allen said that the unhoused people were “not bothering anybody on the sidewalk.”

14. Mr. Allen then told the APD officers and Solid Waste workers that “as of November 1,” they could no longer force involuntarily unhoused people to move from a public sidewalk that they were not obstructing.⁴

15. Mr. Allen also told the unhoused people that the City was not “allowed to” clear the encampment because it was “against the law for [the City] to be moving [unhoused people] off the sidewalk.”

16. Mr. Allen was correct.

17. Months before—on September 21, 2023—the Second Judicial District entered a preliminary injunction barring the City from violating the constitutional rights of unhoused people.

18. The preliminary injunction prohibited the City from forcibly moving or otherwise punishing unhoused people for being on public property outdoors if they had nowhere else to go.

³ Albuquerque Community Safety describes itself as “a cabinet-level public safety department, meaning we operate independently from and in collaboration with APD and AFR. What makes ACS different is our use of a public health model with a non-law enforcement-led response. ACS allows 911 dispatch to send trained professionals with backgrounds in behavioral and mental health and social services to non-violent and non-medical calls. The goal is to deliver the right response at the right time and to improve access to the broad range of social services from government and community-based organizations.” City of Albuquerque, Albuquerque Community Safety, “Our Role,” <https://www.cabq.gov/acs/our-role/> (last visited October 30, 2024).

⁴ See *Williams, et al. v. City of Albuquerque*, D-202-CV-2022-07562 (Preliminary Injunction, entered Sept. 21, 2023, effective Nov. 1, 2023) (The district court later vacated a modified version of this preliminary injunction on May 17, 2024); see also ACLU of New Mexico, “Court gives City of Albuquerque Six Weeks to Comply with Order Protecting the Legal Rights of the Unhoused,” (Sept. 21, 2023), <https://www.aclu-nm.org/en/press-releases/court-gives-city-albuquerque-six-weeks-comply-order-protecting-legal-rights-unhoused>.

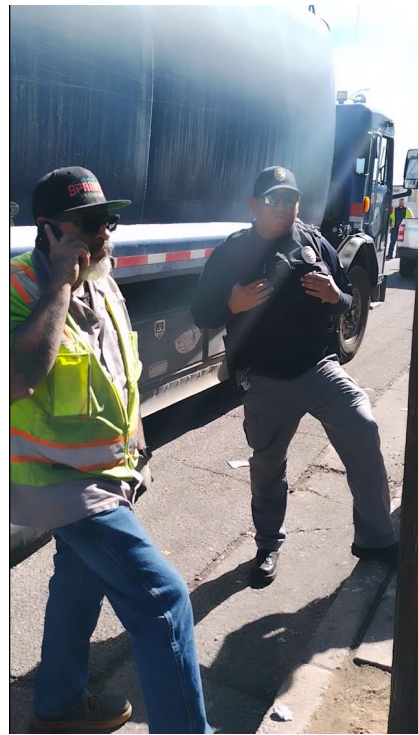
The preliminary injunction also prohibited the City from seizing and destroying their belongings without process.⁵

19. The preliminary injunction in *Williams* was still in effect on February 13, 2024—the day when Mr. Allen witnessed the City’s attempted encampment clearing. A modified version of this preliminary injunction was later vacated on May 17, 2024.

20. After Mr. Allen informed the unhoused people of their rights under the *Williams* preliminary injunction, a Solid Waste worker (“Solid Waste Worker #1”) made a phone call.



Solid Waste Worker #1 standing near dump truck at attempted encampment clearing, Tennessee St. SE, facing southeast



Solid Waste Worker #1 standing near dump truck, making a phone call, with an APD officer at attempted encampment clearing, Tennessee St. SE, facing southeast

21. Speaking into a cell phone, Solid Waste Worker #1 claimed that the unhoused people did not “want shelter.”

⁵ *Williams*, D-202-CV-2022-07562 (Preliminary Injunction, entered Sept. 21, 2023, effective Nov. 1, 2023, vacated March 17, 2024).

22. Mr. Allen told Solid Waste Worker #1 that the unhoused people were “not bothering anybody on the sidewalk. This is public property. They’re not obstructing traffic.”

23. A second Solid Waste worker (“Solid Waste Worker #2”) yelled at Mr. Allen to “take [the unhoused people] to [Mr. Allen’s] house” several times.

24. As he recorded the encounter, Mr. Allen observed, the City was “just using harassment and intimidation to remove [the unhoused people] daily.”

25. During the encounter, Solid Waste Worker #1 walked to Mr. Allen’s parked car.

26. Solid Waste Worker #1 looked at Mr. Allen’s license plate.

27. Upon information and belief, Solid Waste Workers #1 and #2 used Mr. Allen’s license plate number to obtain his home address.

28. Solid Waste Worker #2 walked towards Mr. Allen and said, “do your job,” and repeatedly told Mr. Allen to “take [the unhoused people] to your house.”

29. Solid Waste Worker #2 then told Mr. Allen to “look up the City ordinance. It will answer your dumb questions.”

30. In response to Solid Waste Worker #2’s comments, a nearby APD officer said “12-2-7”—the ordinance that prohibits obstructing movement.

31. Solid Waste Worker #2 loudly repeated the ordinance number—“12-2-7”—to Mr. Allen.

32. At the time, the preliminary injunction in *Williams* prohibited the City “from enforcing, or threatening to enforce . . . any statutes and ordinances against involuntarily unhoused people that prohibit a person’s presence in, or the presence of a person’s belongings

on, outdoor public property”—unless the involuntarily unhoused person posed an “immediate threat to the safety of any person.”⁶

33. Mr. Allen told Solid Waste Worker #2 that he would not have been standing on the sidewalk if he “didn’t know the law.”



Feb. 13, 2024 - Solid Waste Worker #2 and Albuquerque Police Officer standing in front of a City dump truck at the attempted encampment clearing, Tennessee St. SE, near Central Ave. SE

34. Mr. Allen told the small group of unhoused people, “It’s against the law what they’re doing. I’m telling you, it’s against the law.”

35. After an unhoused person told him that the City had destroyed their belongings, Mr. Allen offered to help the person file a report.

36. Soon after, Solid Waste Worker #2 told the unhoused people to go to “██████████,” telling them they would be “safe” there.

37. The unhoused people were confused and asked what that address was.

⁶ *Williams*, D-202-CV-2022-07562 (Preliminary Injunction, entered Sept. 21, 2023, effective Nov. 1, 2023, vacated March 17, 2024) at 001-002.

38. Mr. Allen said that the address was his home address.

39. Mr. Allen did not give the Albuquerque Solid Waste workers his home address.

40. Mr. Allen did not ask the Albuquerque Solid Waste workers to obtain his home address and share it with a group of then-strangers on a street corner.

41. Nevertheless, the Albuquerque Solid Waste workers retaliated against Mr. Allen for his speech—disclosing his home address.

42. Immediately following the incident, Mr. Allen and another community activist approached an Albuquerque Police officer and reported the retaliation incident.

43. Mr. Allen reported that Solid Waste Worker #2 “just gave [Mr. Allen’s] street address to the unsheltered folks and said go to [REDACTED].”

44. The community activist accompanying Mr. Allen added that the Solid Waste Worker #1 “took down” Mr. Allen’s license plate and then “looked ... up” Mr. Allen’s license plate number to obtain his address.



Feb. 13, 2024 – Mr. Allen and another community activist reporting to an Albuquerque Police officer that an Albuquerque Solid Waste worker told unsheltered people to go to Mr. Allen’s home address

45. Mr. Allen has suffered emotional harm because of the misconduct of the City's employees. He fears that strangers, including Solid Waste Workers #1 and 2 and Albuquerque Police Department officers, know his home address.

46. As a direct and proximate result of the acts and omissions of Defendant, Mr. Allen suffered and continues to suffer emotional pain and suffering.

47. As a direct and proximate result of the acts and omissions of Defendant, Mr. Allen suffered and continues to suffer a loss of dignity.⁷

48. Finally, as a direct and proximate result of the acts and omissions of Defendant, Mr. Allen continues to suffer the risk of further harm because the Defendant's employees shared his home address with strangers on a street and told them to go there.

Cause of Action

Count I – Violation of Article II, Section 17 (Speech) of the New Mexico Constitution Actionable under the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3 (2021)

49. Plaintiff realleges and incorporates by reference all the above paragraphs and subparagraphs as if they were fully set forth herein.

50. The New Mexico Civil Rights Act waives a public body's sovereign immunity for civil rights claims. When a "public body or person acting on behalf of, under color of or within the course and scope of the authority of the public body" deprives a person of their "rights, privileges or immunities secured by the bill of rights of the constitution of New Mexico," the public body is liable. NMSA 1978, §§ 41-4A-3, 41-4A-9 (2021).

⁷ Constitutional violations harm dignity. Dignitary harm is an "distinct[]" injury—in addition to emotional, physical, or property damages and other harms—stemming from the violation of one's constitutional rights. Michael L. Wells, *Compensatory Damages and Dignitary Harm in the Upcoming Restatement of Constitutional Torts*, Hous. L. Rev. (forthcoming), Univ. of Ga. Sch. of L. Research Paper Series, Paper No. 2024-1 (2024); see also *F.A.A. v. Cooper*, 566 U.S. 284, 300 (2012) ("[S]pecific proof of emotional harm is not required to recover general damages for dignitary torts.") (citing D. Dobbs, *Law of Remedies* § 7.3, 513, 529 (1973)).

51. Article II, Section 17 provides that “[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” N.M. CONST. art. II, § 17.

52. The New Mexico Supreme Court has interpreted Section 17 more expansively than the First Amendment to the U.S. Constitution.⁸

53. Mr. Allen was engaged in constitutionally protected activity under Section 17—speaking on a public sidewalk.

54. “Time out of mind public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum.” *Frisby v. Schultz*, 487 U.S. 474, 480 (1988) (internal punctuation and citation omitted).

55. People acting on behalf of, under color of, or within the course and scope of the authority of the City of Albuquerque deprived Mr. Allen of his right to speak on a public sidewalk by retaliating against him. *See* NMSA 1978, § 41-4A-3(A) (2021).

56. The Defendant’s actions—retaliating against Mr. Allen by sharing his home address with strangers on a public sidewalk and urging the strangers to go to that address—caused Mr. Allen emotional harm and suffering and deprived him of his dignity.⁹ These injuries would chill a person of ordinary firmness from continuing to engage in speech on a public sidewalk.

57. The Defendant’s retaliation immediately followed Mr. Allen’s speech about unhoused people’s rights and was substantially motivated as a response to Mr. Allen’s speech.

⁸ *Fawcett*, 1992-NMCA-075, ¶ 32.

⁹ *See Worrell*, 219 F.3d at 1212.

Prayer for Relief

Plaintiff respectfully requests the following relief against Defendant:

1. Compensatory damages, including damages for emotional distress.
2. Pre-judgment and post-judgment interest as allowed by law.
3. Reasonable attorneys' fees and costs of suit as provided by NMSA 1978, § 41-4A-5 (2021).
4. Such other and further relief as the Court deems just and proper.

DATE: October 31, 2024

Respectfully submitted,

/s/ *Kristin Greer Love*

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