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OCT 15 2009

*Guarita M. Duran*  
CLERK DISTRICT COURT

*Deana Rad*

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

ANGELICKA SERNA,

Plaintiff,

v.

CV 2009 12072

THE BERNALILLO COUNTY  
SHERIFF'S OFFICE,  
DEPUTY VERONICA QUINTANA,  
DEPUTY CHARLES TUBERVILLE,  
SGT. SHEILA CUNNINGHAM,  
JOHN DOE(S), and JANE DOE(S), all in their  
individual capacities,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW PLAINTIFF, through the undersigned counsel, and brings this action pursuant to the United States Constitution, New Mexico common law, 42 U.S.C. § 1983, the Americans with Disabilities Act (hereinafter "ADA"), 42 U.S.C. § 12131 *et seq.*, and § 504 of the Rehabilitation Act, 29 U.S.C. § 794. As alleged with greater particularity below, Plaintiff, a hearing-impaired individual, alleges that the individual Defendants violated her Due Process and Free Speech rights under the United States Constitution and discriminated against her in violation of the ADA and Rehabilitation Act during an encounter on November 27, 2008. The individual Defendants coerced Ms. Serna by threatening to take her infant child away from her and interacted with Plaintiff without using a certified sign language interpreter even though Plaintiff requested the assistance of a qualified sign language interpreter. Her fiancé was ultimately arrested due to this coerced statement. Ms. Serna was

unable to communicate or clarify issues with the individual Defendants due to the lack of a certified sign language interpreter. Bernalillo County Sherriff Office's standard operating procedures regarding the use of sign language interpreters violate the ADA and the Rehabilitation Act. Plaintiff seeks injunctive relief to remedy the procedure's unlawful provisions.

#### JURISDICTION, VENUE, AND PARTIES

1. Jurisdiction of this Court is invoked pursuant to the United States Constitution and New Mexico common law. This action seeks injunctive relief pursuant to NMRA, Rules 1-057 and 1-066, and this Court's inherent power in equity. All acts complained of occurred in Bernalillo County, New Mexico.
2. Venue is proper pursuant to NMSA 1978, § 38-3-1 (1988).
3. Plaintiff Angelicka Serna is a resident of Bernalillo County. Ms. Serna is hearing-impaired and is a disabled individual as defined by the ADA.
4. Defendant Veronica Quintana is, and was at all times relevant herein, a Bernalillo County Sheriff's Deputy. Defendant Quintana acted under the color of state law and within the scope of her duties. Defendant Quintana is sued in her individual capacity. Upon information and belief, Defendant Quintana is a resident of Bernalillo County.
5. Defendant Charles D. Tuberville is, and was at all times relevant herein, a Bernalillo County Sheriff's Deputy. Defendant Tuberville acted under the color of state law and within the scope of his duties. Defendant Tuberville is sued in his individual capacity. Upon information and belief, Defendant Tuberville is a resident of Bernalillo County.

6. Defendant Sheila Cunningham, is, and was at all times relevant herein, a Sergeant with Bernalillo County Sheriff's Office. Defendant Cunningham acted under the color of state law and within the scope of her duties. Defendant Cunningham is sued in her individual capacity. Upon information and belief, Defendant Cunningham is a resident of Bernalillo County.
7. Upon information and belief, Defendants John Does are and/or were at all relevant times, Bernalillo County Sheriff's deputies. Plaintiff is presently unaware of the identities of Defendants John Does and therefore sues these Defendants by fictitious names. Plaintiff will amend this complaint once the identities of these Defendants are discovered. Defendants Does acted under the color of state law and within the scope of their duties. Defendants Does are sued in their individual capacities.
8. Upon information and belief, Defendants Jane Does are and/or were at all relevant times, Bernalillo County Sheriff's deputies. Plaintiff is presently unaware of the identities of Defendants Jane Does and therefore sues these Defendants by fictitious names. Plaintiff will amend this complaint once identities of these Defendants are discovered. Defendants Does acted under the color of state law and within the scope of their duties. Defendants Does are sued in their individual capacities.
9. Defendant Bernalillo County Sheriff's Office (BCSO) is the proper party subject to suit regarding these claims and as such is properly subject to suit in this Court. Defendant BCSO is a political subdivision of the State of New Mexico. Defendant BCSO is a "public entity" as that term is defined in the ADA, 42 U.S.C. § 12131(1)(A), (B). Upon information and belief, Defendant BCSO receives federal financial assistance and is subject

to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

ALLEGATIONS OF FACT

10. Ms. Serna is engaged to be married to Jose Herrera, both hearing-impaired individuals.
11. Ms. Serna and Mr. Herrera have an infant son, Selestino, together.
12. Ms. Serna, although hearing-impaired, has an extremely limited ability to verbalize simple words and phrases.
13. To date, Ms. Serna and Mr. Herrera share the responsibility of raising their infant son, reside together in the same residence, and are engaged to marry.
14. Ms. Serna, Mr. Herrera, and their infant son were at a social gathering on the evening of November 26, 2008 that lasted into the early morning hours of November 27, 2008. The social gathering occurred at the El Pueblo apartments located on El Pueblo Road NW in Albuquerque.
15. Mr. Herrera's half-brother, Louis Herrera, was present at this social gathering and was intoxicated.
16. At some point during the evening, an altercation broke out between people at the above-mentioned apartment and a neighboring apartment.
17. The people from a neighboring apartment attempted to forcefully enter the apartment where the above-mentioned social gathering was taking place.
18. Attendees of the social gathering blocked the people from the neighboring apartment from entering.
19. Ms. Serna and Jose Herrera were caught in the middle of the altercation.

20. Ms. Serna was upset by this altercation and sought comfort from Jose Herrera. Ms. Serna was shaking and crying. Jose was trying to comfort her by hugging her.
21. During the commotion after the altercation, Louis Herrera tackled Jose Herrera because, in his intoxicated state, he thought that Jose Herrera was hurting Ms. Serna. Louis Herrera's tackle caused Jose Herrera and Ms. Serna to fall to the ground.
22. This fall left both Jose Herrera and Ms. Serna scratched and bruised, although Ms. Serna did not notice the scratches at the time of the fall.
23. Ms. Serna and Jose Herrera then decided to leave with their son because they feared the altercation between the two apartments would break out again and because they were upset at Louis Herrera. The couple then began to walk out of the apartment complex.
24. An unknown person called either 911 or BCSO about the altercation.
25. Defendants Quintana, Tuberville, Cunningham, John Does, and Jane Does responded to the call and encountered Ms. Serna, Jose Herrera, and their child as they were trying to leave.
26. Because the individual Defendants encountered Ms. Serna and Jose Herrera first and saw their minor injuries, they began to question them.
27. Jose Herrera returned to inside the apartment and Ms. Serna remained outside as the Defendants directed them to do so.
28. Ms. Serna requested a qualified sign language interpreter when the Defendant deputies began speaking with her.
29. Defendant Deputies attempted to use Louis Herrera to communicate with

Ms. Serna. Louis Herrera is not a certified sign language interpreter and he has an extremely limited ability to communicate with sign language.

30. Louis Herrera was intoxicated when Defendants attempted to use him as a sign-language interpreter.

31. Defendant Deputies were aware that Louis Herrera was intoxicated.

32. Defendant Deputies were not aware, at any material time, that Louis Herrera had tackled Ms. Serna and Mr. Herrera and had caused their injuries.

33. During this attempt to communicate with Ms. Serna, Defendant Deputies attempted to pressure Ms. Serna to state that Jose Herrera had battered her.

34. Ms. Serna was able to understand that the Defendant Deputies were attempting to pressure her to tell them that Jose Herrera battered her.

35. Ms. Serna denied that Jose Herrera battered her and repeatedly attempted to communicate to Defendant Deputies to the best of her ability that Jose had not hit her.

36. Ms. Serna was not able to adequately describe what occurred due to the absence of a certified sign language interpreter and/or the fact that Louis Herrera possibly had a motivation not to inform the Defendant Deputies that he had caused the injuries.

37. Defendant Deputies did not accept Ms. Serna's denials.

38. Defendant Deputies told Ms. Serna that if she did not tell them that Jose Herrera had battered her that they would take her baby away from her.

39. A Defendant male deputy communicated to Ms. Serna that they would take her baby away through basic hand gestures.

40. Ms. Serna was able to understand this message and began to cry.

41. Afraid that Defendant Deputies would take her baby away from her, and unable to explain in any detail what actually occurred, Ms. Serna told Defendant Deputies that Mr. Herrera had hit her. She only told Defendants Deputies this because they coerced her and she would not have made this statement otherwise.
42. Defendants Deputies then approached Jose Herrera and arrested him. Mr. Herrera was not given a chance to communicate with Defendant Deputies through the use of a qualified sign language interpreter or even his brother, Louis Herrera.
43. The police report regarding this incident does not mention that Ms. Serna is hearing-impaired. To the contrary, in the police report Defendant Deputies' description of this incident implies that communications with Ms. Serna was conducted verbally and without any impediments.
44. Defendant BCSO's standard operating procedures (Regulation 336.00) regarding communications with hearing-impaired suspects, victims, and witnesses fail to meet the legal requirements under the ADA and the Rehabilitation Act for providing qualified sign language interpreters to hearing-impaired individuals.
45. BCSO Regulation 336.00 violates the ADA and the Rehabilitation Act insofar as it fails to guarantee certified sign language interpreters in encounters or investigations with hearing impaired individuals when the deputy becomes aware of facts that could lead to the arrest, seizure, or search (whether of the person, automobile, or residence) of either the hearing-impaired individual or another person of interest.
46. The guaranteed use of a certified sign language interpreter is not necessary if exigent circumstances are present. Once, and if, exigent circumstances are resolved or cease to exist,

the deputy has a duty under the ADA and Rehabilitation Act to use a certified sign language interpreter to interview or interrogate hearing-impaired individuals.

47. Even though Regulation 336.00 is legally deficient under the ADA and Rehabilitation Act, Defendant Deputies nevertheless disregarded it when they failed to provide a qualified sign language interpreter as requested by the Plaintiff.

48. Defendants' actions proximately caused Plaintiff's damages.

49. Plaintiff has suffered irreparable harm, including violations of constitutional rights, emotional distress, psychological abuse, and other harms that entitle her to damages.

50. Defendant Quintana, Tuberville, Cunningham, John Does, and Jane Does' above described actions were intentional, malicious, sadistic, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiff's constitutional rights.

#### COUNT I

#### VIOLATIONS OF RIGHTS SECURED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION SUBSTANTIVE DUE PROCESS (42 U.S.C. § 1983)

51. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

52. The above-mentioned actions taken by Defendant Deputies, specifically coercing a statement from Ms. Serna by threatening to take her child away and not using a qualified sign language interpreter, "shocks the conscience" and violates Ms. Serna's substantive due process rights under the Fourteenth Amendment to the U.S. Constitution.



53. In addition, the above-mentioned actions taken by the Defendant Deputies violate Ms. Serna's substantive due process rights to intimately associate with her child and the father of her child under the Fourteenth Amendment to the U.S. Constitution.

## COUNT II

### VIOLATIONS OF RIGHTS SECURED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

54. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

55. The above-mentioned actions taken by Defendant Deputies violated Plaintiff's First Amendment right not to speak.

56. Defendant Deputies compelled Ms. Serna, in violation of her First Amendment rights, to state that Jose Herrera battered her. Ms. Serna did not desire to make this statement but was compelled to do so because of the Defendants' coercive statements and actions.

## COUNT III

### VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT BY ALL DEFENDANTS

57. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

58. Plaintiff, as a hearing-impaired individual, has a disability and is a qualified individual for purposes of the ADA.

59. Defendants' above described actions excluded Plaintiff from understanding or being able to communicate with the Defendant Deputies without receiving the benefit of a qualified sign language interpreter.

60. Defendants failed to provide Plaintiff with a reasonable accommodation.
61. Defendants' acts and omissions, as stated herein, constitute violations of 42 U.S.C. § 12132 of the ADA.
62. Defendant BCSO's standard operating procedure regarding encounters with hearing impaired individuals, Regulation 336.00, violates the ADA.

COUNT IV  
VIOLATIONS OF THE REHABILITATION ACT  
BY ALL DEFENDANTS

63. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.
64. Because BCSO receives federal financial assistance, Defendants are subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.
65. Section 504 prohibits recipients of federal financial assistance from discriminating against qualified individuals with disabilities.
66. Defendants' violations of the ADA, as set forth above, also violate Section 504 of the Rehabilitation Act, by failing to provide Plaintiff with a qualified sign language interpreter.
67. Defendants' acts and omissions, as stated herein, constitute violations of the Rehabilitation Act.
68. Defendant BCSO's standard operating procedure regarding encounters with hearing impaired individuals, Regulation 336.00, violates the Rehabilitation Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Compensatory damages against all Defendants jointly and severally;

- B. Punitive damages against Defendants Quintana, Tuberville, Cunningham, John Does, and Jane Does;
- C. Permanently enjoin Defendant BCSO, its subordinates, agents, employees and all others acting in concert with them, from continuing to follow its current standard operating procedure, Regulation 336.00, regarding communications with hearing-impaired suspects, victims, and witnesses.
- D. Issue an injunction ordering Defendant BCSO to adopt a new standard operating procedure concerning encounters with hearing impaired individuals that complies with the requirements of the ADA and the Rehabilitation Act;
- E. Trial by jury on all issues so triable;
- F. Pre- and post-judgment interest as allowed by law;
- G. Reasonable costs and attorneys fees incurred in bringing this action pursuant to 42 U.S.C. § 1988, the ADA, and the Rehabilitation Act; and
- H. Such other relief as the Court deems just and proper.

Respectfully submitted,

 10/15/2009

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