

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

ANTOINETTE MARTINEZ, AS AN
INDIVIDUAL AND AS PARENT/NEXT
FRIEND OF J.D.M., A MINOR, J.J.M., A
MINOR, AND S.N.M., A MINOR,

Plaintiffs,

v.

No. 2:20-cv-00252

FRANCISCO ESTRADA and CITY OF LAS CRUCES
D/B/A LAS CRUCES POLICE DEPARTMENT,

Defendants.

**ORIGINAL COMPLAINT FOR DAMAGES
FOR VIOLATIONS OF CIVIL RIGHTS AND STATE TORTS**

Plaintiff Antoinette Martinez, as an individual, and as parent/next friend for J.D.M., a minor, J.J.M., a minor, and S.N.M., a minor, through her attorneys, MCGRAW & STRICKLAND, LLC, (Margaret Strickland) brings this Complaint for Damages for Violations of Civil Rights and State Torts. In support of the Complaint against Defendants, Plaintiffs state the following upon knowledge, information and belief:

I. JURISDICTION AND VENUE

1. This is a civil rights claim brought pursuant to 42 USC § 1983 and 42 USC § 1988. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343. This Court also has supplemental jurisdiction over the state tort claims pursuant to 28 U.S.C. § 1367 because the acts alleged herein arise out the same transaction or occurrence and/or series of transactions or occurrences.

2. All parties reside in New Mexico and the acts complained of occurred exclusively in Dona Ana County, New Mexico. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

II. PARTIES

3. Plaintiff Antoinette Martinez is a resident of Dona Ana County, New Mexico.
4. J.D.M. is the 13-year-old son of Antoinette Martinez. He is a resident of Dona Ana County, New Mexico.
5. J.J.M. is the 13-year-old son of Antoinette Martinez and twin brother of J.D.M. He is a resident of Dona Ana County, New Mexico.
6. S.N.M. is the 15-year-old daughter of Antoinette Martinez and older sister of J.D.M. She is a resident of Dona Ana County, New Mexico.
7. Defendant Francisco Estrada was a law enforcement officer employed by the City of Las Cruces and acting under color of law and in the scope of his employment during all relevant times. He is sued in his individual capacity as to the federal civil rights claims and in his official capacity as to the other claims.
8. Defendant City of Las Cruces (hereinafter the “Las Cruces Police Department”) is an incorporated municipality in Dona Ana County, New Mexico.
9. Defendant Estrada is an agent of the Las Cruces Police Department for purposes of the state claims.

III. FACTS

10. Defendant Francisco Estrada (hereinafter “Defendant” or “Defendant Estrada”) is a law enforcement officer who was entrusted by our local school district to work in Picacho Middle School and protect our children.

11. Defendant Estrada was allowed to lawfully carry his firearm inside the school only because he was working under color of law at the school as a law enforcement officer. But for statutory exceptions, including one for peace officers, carrying a firearm inside a school building is a state felony. NMSA 30-7-2.1
12. Defendant Estrada carried his firearm inside Picacho Middle School as part of his job as a Las Cruces police officer.
13. Part of Defendant's job as a Las Cruces police officer was to safely handle his firearm at all times.
14. Before entrusting a police officer to carry a firearm, Las Cruces Police Department trains its officers in firearm safety including how a firearm works and how to ensure a firearm is unloaded.
15. Firearm safety includes these rules:
 - a. Pointing a firearm in the direction of people involves the immediate threat of deadly force.
 - b. Threat of deadly force should be predicated on at least a perceived risk of injury or danger.
 - c. It is dangerous to practice firearm target shooting in any area not designed for shooting.
 - d. A gun should always be treated as if it is loaded.
 - e. One should never point a gun at anything the person is not willing to destroy.
 - f. When pointing a firearm, one should always be aware of their target and what is behind the target.

- g. One's finger should never be placed on the trigger of a firearm until the decision has been made to fire.
16. The Defendant did not abide by the above firearm safety rules.
 17. On December 4, 2019, Defendant Estrada was called to help discipline Plaintiff¹, a 13-year old child, whom the school believed was using snap-its, the small novelty firecracker from the 1950's that you throw on the ground to make a pop sound.
 18. Defendant Estrada assisted school personnel in seizing the Plaintiff and taking him to the principal's office.
 19. Once in the office, Defendant Estrada interrogated and lectured Plaintiff about his behavior, and the Plaintiff's mother, Antoinette Martinez, was called.
 20. By phone Plaintiff's mother also lectured Plaintiff about his behavior and made plans to come get him from the school.
 21. Plaintiff was told to wait in the principal's office and wait for his mother.
 22. Defendant Estrada then went into his office, which was directly next to the Principal's office, and shared a common wall.
 23. Right after leaving the Plaintiff in the Principal's office, Defendant Estrada put a loaded magazine in his duty firearm.
 24. Defendant racked his gun, thereby putting a bullet in the chamber.
 25. Defendant then fired his gun at a target he had placed on the wall which separated his and the Principal's office.

¹ While there are four Plaintiffs in this matter, for the purpose of readability and less confusion, counsel is referring to Plaintiff J.D.M. when she states "Plaintiff" and Plaintiff Antoinette Martinez, individually, when she refers to "Plaintiff's mom" or "Plaintiff's mother." The other minor children Plaintiffs are referred to by their initials in this Complaint.

26. Defendant knew when he shot the gun that Plaintiff was on the other side of the wall, sitting in the seat in which Defendant had told him to sit and wait for his mother.
27. The bullet from Defendant's gun shot through the wall into the Principal's office, traveling just inches by Plaintiff's head and damaging his hearing.
28. Plaintiff felt a pop inside his ear and then a ringing sensation. Plaintiff's ear immediately began to hurt, and he covered it with his hand.
29. Plaintiff has now lost hearing in that ear.
30. At the time of the incident, one of the other middle-schoolers told J.J.M. that his twin brother, Plaintiff, was the student in the principal's office when the shooting occurred.
31. J.J.M went in a frantic panic trying to find his brother and make sure he was okay.
32. Plaintiff's mother was called and told there had been a shooting at the school involving her son. Her heart pounded as she asked school officials if her son was alive. After a pause, Plaintiff's mother was told her son was alive, but she needed to come right away.
33. Plaintiff's mother was at the movie theater with a client and was so distressed by the call that she fell down as she ran out of the theater and rushed across town to find her son, not knowing what she would find at the school.
34. Plaintiff did not receive appropriate medical care while at the school.
35. Plaintiff's mother took Plaintiff for medical care and then home.
36. Once home Plaintiff's mother found her child was so traumatized by the incident he is unable to return to school and is afraid to leave his home.
37. Plaintiff's mother has been unable to get her child to go back to school or to leave his home. They can no longer go out together as a family, as Plaintiff is traumatized and

scared to leave his home. Plaintiff will now be enrolled in the “homebound” program and no longer able to attend school because of his anxiety and fear related to this incident.

38. Plaintiff’s mother spends much of the rest of her time taking her son to doctors’ appointments and therapy.
39. As a result of Defendant shooting at him, Plaintiff’s hearing was damaged in the ear nearest the bullet.
40. As a result of Defendant shooting at him, Plaintiff now suffers from jaw pain and grinding due to stress and anxiety and is required to get a mouth-guard.
41. In addition to the damage to Plaintiff’s ear and jaw, Defendant’s conduct resulted in Plaintiff and Plaintiff’s mom, suffering damages for emotional distress and loss of consortium.
42. Plaintiff, his mother, and his two siblings, J.J.M. and S.N.M. enjoyed a close familial relationship.
43. Plaintiffs are a tight knit family, the only family the siblings (J.D.M., J.J.M. and S.N.M) have known since birth. Plaintiffs have always shared a home, which they run with each other’s help and support. The siblings spend their time outside of school together and share each vacation, family event, and holiday together. As a family, Plaintiffs are each other’s emotional and day-to-day support system.
44. Prior to the incident that is the subject of this Complaint, Plaintiff and his siblings rarely argued, often spent time going on walks, playing basketball, and playing Xbox and more.
45. After the incident that is the subject of this Complaint, Plaintiff and his siblings now argue often and have crying bouts due to heightened fear, anxiety, and stress, resulting in damaged relationships between each of the siblings.

46. Defendant Estrada was not performing a discretionary function of his job when he decided to target shoot inside the school.

47. On January 23, 2020, Plaintiffs notified both the Police Chief Patrick Gallagher of the Las Cruces Police Department and Mayor of the City of Las Cruces, Ken Miyagishima of their intent to file a civil lawsuit against them based on the Tort Claims Act.

IV. COUNT 1: EXCESSIVE FORCE

Plaintiffs allege and reassert all prior paragraphs of this complaint as though fully set forth herein.

48. Plaintiff J.D.M. has a Fourth Amendment right to be free from excessive force.

49. Defendant used excessive force on Plaintiff while he was seized in the principal's office.

50. Defendant's conduct was malicious, willful, reckless, and/or wanton.

51. Plaintiff's right to be free from excessive force was clearly established as of December 4, 2019.

52. As a direct and proximate result of Defendant's unlawful conduct set forth above, Plaintiff suffered damages.

**V. COUNT 2: DUE PROCESS
(In the Alternative to Count 1)**

Plaintiffs allege and reassert all prior paragraphs of this complaint as though fully set forth herein.

53. Should a court or a jury find that the Fourth Amendment is inapplicable, Plaintiff J.D.M. brings a claim for a violation of his constitutional right to due process, protecting his

bodily integrity from arbitrary government action.

54. Plaintiff had the right to be secure in his bodily integrity.

55. Defendant violated that right with his use of deadly force in arbitrary and conscious disregard of substantial risk of harm to innocent parties.

56. Defendant's actions are conscience shocking.

57. Plaintiff's due process rights were clearly established as of December 4, 2019.

58. Defendant's conduct was malicious, willful, reckless, and/or wanton.

59. As a direct and proximate result of Defendant's unlawful conduct set forth above, Plaintiff suffered damages.

VI. COUNT 3: ASSAULT

Plaintiffs allege and reassert all prior paragraphs of this complaint as though fully set forth herein.

60. Without legal authority, Defendant intentionally acted in such a way toward Plaintiff that he was in danger of receiving an immediate battery.

61. As a direct and proximate result of Defendant's unlawful conduct set forth above, Plaintiff and his mother, Plaintiff Antoinette Martinez, and two siblings, J.J.M. and S.N.M. suffered damages.

VII. COUNT 4: BATTERY

Plaintiffs allege and reassert all prior paragraphs of this complaint as though fully set forth herein.

62. Defendants intentionally and without legal justification or consent caused force to be applied Plaintiff's ear, causing it pain and loss of function.

63. As a direct and proximate result of Defendant's unlawful conduct set forth above, Plaintiff and his mother, Plaintiff Antoinette Martinez, and two siblings, J.J.M. and

S.N.M. suffered damages.

VIII. COUNT 5: NEGLIGENCE
(In the Alternative to Counts 3 and 4)

Plaintiffs allege and reassert all prior paragraphs of this complaint as though fully set forth herein.

64. Should a court or a jury find that the Defendant did not act with the requisite intent needed for counts three and/or four, Plaintiff J.D.M. brings a claim for negligence which resulted in an assault and battery.

65. Defendant owed a duty to act with ordinary care in handling his firearm around others.

66. Defendant breached that duty by failing to follow basic firearm safety as described above and pulling the trigger on a loaded gun while the gun was pointing in the direction of children.

67. Shooting at Plaintiff caused him to be assaulted and battered as described above.

68. The shooting resulted in the Plaintiffs' damages described above.

69. It was foreseeable that Defendant's conduct would result in the Plaintiffs' damages.

70. As a direct and proximate result of Defendant's unlawful conduct set forth above, Plaintiff and his mother, Plaintiff Antoinette Martinez, and two siblings, J.J.M. and S.N.M. suffered damages.

DEMAND FOR JURY TRIAL

71. The Plaintiff demands a trial by jury.

REQUEST FOR RELIEF

72. Wherefore, Plaintiffs pray for judgment as follows:

- a. Compensatory damages in a currently undetermined amount, including, but not

limited to, damages for violations of civil rights, humiliation, emotional distress, and loss of consortium.

- b. Punitive damages in a currently undetermined amount.
- c. Reasonable costs and attorney's fees incurred in bringing this action.
- d. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

"Electronically Submitted"

/s/ Margaret Strickland
Margaret Strickland
McGraw & Strickland, LLC
165 West Lucero Ave.
Las Cruces, NM 88005
(575) 523-4321
Margaret@lawfirmnm.com