

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

JASON KERNS, ARCHIE KERNS and
MARY ANN KERNS,

Plaintiffs,

v.

Civ. No. 07-771

BOARD OF COMMISSIONERS OF
BERNALILLO COUNTY, BERNALILLO COUNTY
SHERIFF DARREN WHITE, in his individual and his
official capacity, BERNALILLO COUNTY SHERIFF'S
DETECTIVES BRIAN LINDLEY, RALPH GONZALES, and
JAMES HAMSTEN, in their individual capacities, BERNALILLO
COUNTY SHERIFF DEPUTIES LAWRENCE KOREN,
SEAN CONNORS, ARON WRIGHT, TIMOTHY HIX,
RHONDA MOYA, in their individual capacities,
ALBUQUERQUE POLICE DEPARTMENT OFFICERS
DREW BADER, MATT THOMPSON, RUSSELL CARTER,
ROBERT JOHNSTON and JAMES MONTOYA,
in their individual capacities, METROPOLITAN FORENSIC
SCIENCE CENTER FIREARM AND TOOL MARK EXAMINER
MIKE HAAG, in his individual capacity, and JOHN DOES 1-10,
in their individual capacities.

**COMPLAINT FOR DAMAGES CAUSED BY THE DEPRIVATION
OF CIVIL RIGHTS AND OTHER TORTIOUS CONDUCT**

Plaintiffs bring this Complaint for damages caused by the violation of their civil and constitutional rights and by other tortious conduct on the part of the Defendants. Plaintiffs file this Complaint under the Constitution of the United States, the federal Civil Rights Act, the New Mexico Tort Claims Act, and State common law tort principles. In support of this Complaint, Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue are proper in the United States District Court for the District of New Mexico. Jurisdiction is provided for Plaintiffs' Civil Rights claims under 28 U.S.C. § 1331 and for their state law claims under 28 U.S.C. § 1367. As all parties listed in the caption of the complaint reside within the District of New Mexico, hence venue in this federal judicial district is proper under 28 U.S.C. § 1391(b)(1).

PARTIES

2. Plaintiff Jason Kerns is an individual who resided in Bernalillo County, New Mexico at the time of the incidents described herein.

3. Plaintiff Archie Kerns is the father of Jason Kerns and also resided in Bernalillo County, New Mexico at the time of the incidents described herein.

4. Plaintiff Mary Ann Kerns is the mother of Jason Kerns and also resided in Bernalillo County, New Mexico at the time of the incidents described herein.

5. Defendant Board of County Commissioners of Bernalillo County (hereinafter "Bernalillo County") is a governmental entity within the State of New Mexico. At all times material to this complaint, Bernalillo County exercised policy-making authority and was the employer of Defendants Darren White, Brian Lindley, Ralph Gonzales, James Hamsten, Lawrence Koren, Sean Connors, Aaron Wright, Timothy Hix, and Rhonda Moya.

6. Defendant Sheriff Darren White was, at all material times, the popularly elected Sheriff and resident of Bernalillo County. In the capacity of Sheriff, Defendant White exercised policy-making authority and was the supervisor of Defendants Brian Lindley, Ralph Gonzales, James Hamsten, Lawrence Koren, Sean Connors, Aaron Wright, Timothy Hix, and Rhonda Moya.

7. Defendant Bernalillo County Sheriff's Detective Brian Lindley (hereinafter "Lindley") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

8. Defendant Bernalillo County Sheriff's Detective Ralph Gonzales (hereinafter "Gonzales") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

9. Defendant Bernalillo County Sheriff's Detective James Hamsten (hereinafter "Hamsten") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

10. Defendant Bernalillo County Sheriff's Deputy Lawrence Koren (hereinafter "Koren") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

11. Defendant Bernalillo County Sheriff's Deputy Sean Connors (hereinafter "Connors") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

12. Defendant Bernalillo County Sheriff's Deputy Aaron Wright (hereinafter "Wright") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

13. Defendant Bernalillo County Sheriff's Deputy Timonthy Hix (hereinafter "Hix") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of his duties.

14. Defendant Bernalillo County Sheriff's Deputy Rhonda Moya (hereinafter "Moya") was, at all material times, a law-enforcement officer of Bernalillo County and, at all material times, acted under the color of state law and within the scope of her duties.

15. Albuquerque Police Department Officer Drew Bader (hereinafter "Bader") was, at all material times, a law-enforcement officer of the City of Albuquerque and, at all material times, acted under the color of state law and within the scope of his duties.

16. Albuquerque Police Department Officer Matt Thompson (hereinafter "Thompson") was, at all material times, a law-enforcement officer of the City of Albuquerque and, at all material times, acted under the color of state law and within the scope of his duties.

17. Albuquerque Police Department Officer Russell Carter (hereinafter "Carter") was, at all material times, a law-enforcement officer of the City of Albuquerque and, at all material times, acted under the color of state law and within the scope of his duties.

18. Albuquerque Police Department Officer Robert Johnston (hereinafter "Johnston") was, at all material times, a law-enforcement officer of the City of Albuquerque and, at all material times, acted under the color of state law and within the scope of his duties.

19. Albuquerque Police Department Officer James Montoya (hereinafter "Montoya") was, at all material times, a law-enforcement officer of the City of Albuquerque and, at all material times, acted under the color of state law and within the scope of his duties.

20. Defendant Metropolitan Forensic Science Center Firearm and Tool Mark Examiner Mike Haag was, at all material times, a law-enforcement officer and, at all material times, acted under the color of state law and within the scope of his duties.

FACTUAL BACKGROUND RELEVANT TO ALL CLAIMS

21. On the night of August 6, 2005, the Bernalillo County Sheriff's helicopter, Metro One, responded to a burglary in progress near the intersection of Golf Course Road and Paradise Boulevard in Bernalillo County, New Mexico.
22. Upon arriving at that location, the Metro One helicopter began to conduct surveillance to locate the burglary suspects.
23. According to the pilot of the helicopter, Chris Holland, the helicopter circled the area at approximately 400 feet above the ground, looking for the burglary suspects.
24. The pilot gauged his altitude upon the data provided to him through an on-board global positioning system monitor inside the helicopter.
25. To effectively view the scene of the burglary, the pilot circled over the intersection of Golf Course Road and Paradise Boulevard.
26. On about the fifth time the helicopter circled over the intersection, the pilot heard a very loud noise and the helicopter began to shake.
27. The helicopter was heading west when the pilot heard the noise inside the aircraft and the helicopter began to shake.
28. Immediately after hearing the noise and feeling the aircraft vibrate, the helicopter began to turn to the right.
29. The pilot knew that there was an emergency of some sort with his aircraft and skillfully executed an emergency landing of the helicopter.
30. The emergency landing completely destroyed the helicopter.
31. The crash landing was witnessed by many individuals in the area.

32. Many of these witnesses had come out of their homes to observe the helicopter before it crash landed.

33. The witnesses were observing the helicopter due to the aircraft's unusually low altitude and the noise it was producing.

34. Many of these witnesses immediately rushed to the scene of the crash landing.

35. Many of these witnesses provided the police with statements detailing their observations.

36. One such witness, Richard Spellman, told the police that he heard what he thought was a gun shot originate from Globus Park just before the helicopter crash landed.

37. Another witness, Philip Solosky, heard a loud, sharp report that he believed to be a gun just before the helicopter crashed.

38. Mr. Solosky lived on Academy, just south-east of Golf Course Road.

39. Sueko Solosky, Philip Solosky's spouse, also reported to law enforcement officers that she had heard a gunshot before the helicopter crash landed.

40. Likewise, David Arnold, who was watching the helicopter from the gas station on the south side of the intersection of Paradise Boulevard and Golf Course Road, told the police that he heard gunshots before the helicopter crash landed.

41. The witnesses who reported hearing a gun shot were all located relatively close to the intersection of Paradise Boulevard and Golf Course Road.

42. Witnesses who were farther away from the intersection did not report hearing a gun shot.

43. George Smith, for instance, reported observing the helicopter from the west side of the golf course, near the club house.

44. Mr. Smith reported to the police that he had heard a strange noise come from the helicopter, as if the engine had broken.
45. Mr. Smith did not report hearing a gun shot or witnessing anybody shoot at the helicopter.
46. Mr. Smith was standing at a spot on the golf course that had a direct line of sight to the rear of the Kerns' residence.
47. The Kerns' residence was built adjacent to the golf course, and the rear of their home faced the west side of the ninth fairway.
48. Mr. Smith was standing close enough to the rear of the Kerns' home to have heard a gun shot if one was indeed fired from that location.
49. Plaintiff Jason Kerns also witnessed the helicopter crash land from the edge of his back yard.
50. After seeing the helicopter go down, Jason Kerns immediately got into his car to drive to the scene of the crash to render assistance.
51. When in route, Jason Kerns called 911 to report the crash landing.
52. When Jason Kerns arrived at the intersection of Paradise Boulevard and Golf Course Road, he could see activity associated with the crash landing site.
53. Based on his observations from the intersection, Jason Kerns parked his car near the scene of the crash landing.
54. Like other witnesses who showed up at the scene of the accident, Jason Kerns provided a statement to the police.
55. Jason Kerns reported to the police that he heard a loud pop sound north of the place where he was standing in his back yard.

56. Jason Kerns reported to the police that after hearing the noise, the helicopter crash landed.
57. Based on Jason Kerns' report, a search team from the Albuquerque Police Department was sent to search the golf course near the Kerns' home.
58. Finding nothing of interest, the search team focused on Jason Kerns' residence.
59. Without permission from Jason Kerns or any other individual associated with the Kerns' home, Albuquerque Police Officers Bader, Carter and Thompson (hereinafter "APD Officers") entered the curtilage of the Kerns' home.
60. The APD Officers did not attempt to make contact with the residents through the main, front door of the house.
61. Instead, the APD Officers walked around to the north side of the residence, where they found a side door that was not locked.
62. APD Officer Bader opened the door.
63. APD Officer Bader and Thompson called into the home.
64. Nobody answered their calls.
65. Despite possessing neither consent to enter the Kerns' residence nor a legal justification to enter the premises, the APD Officers elected to enter the Kerns' home.
66. The APD Officers searched the Kerns' home and determined that Jason Kerns' parents and his girlfriend were asleep.
67. The APD Officers did not notice anything suspicious in the house.
68. Three days later, on August 9, 2005, Bernalillo County Sheriff's Detective Lindley filed with the Second Judicial Court an Affidavit for Search Warrant directed to the Kerns' home.

69. Detective Lindley's affidavit failed to provide sufficient evidence to establish probable cause to search the Kerns' home.

70. In addition, Detective Lindley's affidavit both recklessly misrepresented the truth and omitted key information that would have demonstrated to the Court that there was no probable cause to believe that Jason Kerns' committed any crime.

71. For instance, Detective Lindley's affidavit reports that Jason Kerns stated that he heard a gun shot.

72. Jason Kerns' statement clearly states that he heard a "pop sound."

73. The affidavit also contains the false statement that a "citizen reported that if anybody in the neighborhood was going to shoot down a helicopter it would be the male subject that lives at 9910 Columbus Circle NW."

74. No citizen ever made such a statement.

75. The affidavit indicated that the presence of "Marine Corp. manuals and additional military literature . . . multiple empty military style 'ammo cans'" supports a finding of probable cause to search the Kerns' home.

76. That affidavit failed to mention that the protective sweep of the Kerns's home that had produced the information was illegal.

77. The affidavit states that if one stands in the front of the Kerns' home and faces the residence there is no residence to the north.

78. The affidavit also states that there are no rock beds to the north of the Kerns' home.

79. If one stands in the front of the Kerns' house there is another house immediately to the north and that home is landscaped with river rocks.

80. The affidavit indicates that Jason Kerns ran into the house at 12:30 a.m. after the helicopter crashed and told his father that “Someone just shot down the helicopter.”

81. That statement was recklessly false as the APD Officers who searched the Kerns’ home that night found Archie Kerns asleep in his bed.

82. The search warrant affidavit omits to inform the court that George Smith was standing in a position where, if Jason Kerns had shot at the helicopter from his backyard as alleged in the affidavit, Mr. Smith would have seen or heard the shot.

83. The search warrant affidavit omits material information in that George Smith neither saw a person fire a gun nor heard a gun shot near the rear of the Kerns’ residence.

84. The search warrant affidavit also fails to state that the bullet that destroyed the helicopter’s control pedal entered the front of the helicopter as the helicopter was facing westward.

85. That information would have been critical to a probable cause determination as Jason Kerns’ home was due north of the helicopter when the bullet struck the aircraft, creating the factual impossibility that Jason Kerns fired that shot.

86. Given the reckless disregard for the truth and the omission of information material to the probable cause determination, the Court was misled into approving the search warrant.

87. Had all of the relevant, material information been included in the search warrant affidavit, a reasonable jurist would not have granted Detective Lindley the authority to search the Kerns’ home.

88. When executing the search warrant of the Kerns’ property, the law enforcement officers involved in the search broke and damaged personal property inside the home.

89. The execution of the search warrant resulted in the seizure of a large quantity of material from the Kerns' home, including every firearm owned by the Kerns.

90. One of the firearms seized was a U.S. Marine .45 cal. pistol, a collector's item that had never before been fired.

91. In testing all of the weapons that were recovered from the Kerns' property, the police fired each weapon thereby depreciating the value of the pristine Marine pistol.

92. The firearms seized from the Kerns' home were examined by Mike Haag of the Metropolitan Forensic Science Center.

93. Defendant Mike Haag concluded that one weapon from the Kerns' home, a FN 30-06 caliber rifle, had rifling characteristics consistent with the bullet fragments recovered from the helicopter pilot's leg.

94. Defendant Mike Haag also concluded that the overall widths of the land impressions were "in approximate agreement with those produced by the FN rifle."

95. On August 12, 2005, Bernalillo County Sheriff's Detective Lindley and Deputy Koren flew over the crash site in another helicopter to assess the location of the shooter.

96. The two law enforcement officers had GPS coordinates from the Metro One helicopter.

97. From that data, the two officers knew precisely where the Metro One helicopter was flying when it was shot down.

98. The two officers were able to determine that the Kerns' home was located approximately 1670 feet away from the spot where the helicopter was hovering when it was hit with a bullet.

99. Deputy Koren also knew, from talking with the pilot of the helicopter, the direction the helicopter was facing when it was struck by a bullet.

100. Deputy Koren also knew the trajectory angle of the bullet through the helicopter's cockpit.

101. From that information, Deputy Koren was able to determine the approximate distance at which the rifle, which shot down the helicopter, was fired.

102. Based on information provided by Haag and Koren, in addition to others, Lindley prepared an affidavit for Jason Kerns' arrest on August 15, 2005.

103. According to Lindley's affidavit, based on the ballistics information provided by Haag and the trajectory analysis provided by Koren, there existed probable cause to believe that Jason Kerns shot the helicopter from or near the Kerns' house.

104. The ballistics information provided by Haag as detailed in Lindley's affidavit was recklessly false.

105. The ballistics evidence provided by Haag omitted key information that conclusively showed that the FN rifle seized from the Kerns' home could not have fired the bullet that hit the Metro One helicopter.

106. In fact, the bullet fragments recovered from the pilot's leg showed, undeniably and conclusively, that the bullet that hit the helicopter was fired from a rifle with a barrel manufactured in a pattern of six lands and six grooves.

107. The barrel of the FN rifle seized from the Kerns' home was manufactured with a pattern of four lands and four grooves, conclusively eliminating it as the suspect weapon.

108. In addition, the statement in the affidavit that the land impressions created by the FN rifle were "in approximate agreement" with those found on the bullet fragments was recklessly false.

109. The land impressions on the bullet recovered from the pilot's leg showed that the width of the land impression itself on the bullet fragment was significantly narrower than the land impression produced by the FN rifle.

110. The distance between the land impressions on the bullet fragments recovered from the pilot's leg was also significantly narrower than those produced by the FN rifle.

111. The ballistic information was key to evaluating the purported "match" between the FN rifle and the bullet fragments recovered from the accident, and was omitted from the affidavit by both Haag and Lindley.

112. The trajectory information provided by Koren to Lindley for use in his affidavit for Jason Kerns' arrest was also demonstrably false.

113. Koren claimed, and Lindley reported in his affidavit, that the person who shot the helicopter was standing approximately 1630 feet from the helicopter.

114. The distance information was material to the probable cause determination as Koren estimated the distance from Kerns' home to the helicopter when the helicopter was shot down was 1670 feet.

115. The information Koren provided to the Court through Lindley was designed to impress upon the Judge issuing the arrest warrant that Jason Kerns was the likely shooter because the shooter was estimated to have been standing approximately 40 feet away from the Kerns' home.

116. In fact, the helicopter was flying approximately 400 feet above ground level when it was shot.

117. At that altitude and given the trajectory angle of how the bullet struck the helicopter, all information that was known to Lindley and Koren, the person who shot the helicopter could

not have been standing more than 700 feet away from the helicopter when the helicopter was shot.

118. The true trajectory information would have been known to any person with a basic understanding of mathematics, and the failure to disclose the true distance of the shooter in arrest warrant affidavit shows a reckless disregard for the truth.

119. The omission of the true bullet trajectory information also shows malice on the part of Koren and Lindley.

120. Based on Lindley's recklessly misleading arrest warrant affidavit, Plaintiff Jason Kerns' was arrested on August 15, 2005 and incarcerated until the federal government dismissed the indictment against him in May of 2006.

121. One or more of the Defendant law enforcement officers testified before a federal grand jury or caused to be submitted to that grand jury recklessly false inculpatory information, and at the same time omitted favorable, exculpatory information.

122. The Defendant law enforcement officers deliberately withheld key, material evidence of innocence from the Court, the prosecutors, and the criminal defense team hired to defend Jason Kerns against the charges in the federal indictment.

123. Once the criminal defense team hired by Jason Kerns uncovered the extent of the recklessly provided misinformation by the Defendant law enforcement officers and the material exculpatory information omitted by the Defendant law enforcement officers, the government dismissed the federal indictment against Jason Kerns in May of 2006.

COUNT I

42 U.S.C. § 1983 - ILLEGAL ENTRY WITHOUT A WARRANT

(By All Plaintiffs Against Albuquerque Police Officers Bader, Thompson, and Carter)

124. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.

125. Plaintiffs have, and had, a Fourth Amendment right to be free of unreasonable searches and seizures.

126. Defendants Bader, Thompson, and Carter deprived Plaintiffs of that right when they illegally entered Plaintiffs' home without a warrant or other lawful justification during the night of August 6, 2005 or the early morning of August 7, 2005.

127. The actions of Defendants Bader, Thompson and Carter, as described in the body of the complaint, caused damages, including emotional distress and attorneys' fees and costs, to the above-named Plaintiffs.

128. Defendants' actions were intentional, willful, and wanton, as they knew that they did not have a warrant or other lawful justification to enter Plaintiffs' home.

COUNT II

**42 U.S.C. § 1983 - UNLAWFUL SEARCH AND SEIZURE OF EVIDENCE
AND DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW**

**(By All Plaintiffs Against Bernalillo County Sheriff's Department Employees
Lindley, Gonzales, Hamsten, Wright, Conners, and Hix, Albuquerque
Police Officers Johnston and Montoya)**

129. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.

130. Plaintiffs have, and had, a Fourth Amendment right to be free of unreasonable searches and seizures.

131. Plaintiffs have, and had, a Fourteenth Amendment right against the unlawful deprivation of property without due process.

132. Above listed Defendants deprived Plaintiffs of these rights when they recklessly misrepresented the truth and forwarded deliberate falsehoods, which Lindley incorporated into his August 9, 2005 affidavit for a search warrant for the Kerns' home.

133. Above listed Defendants deprived Plaintiffs of these rights when they omitted key, material information from the body of that search warrant affidavit.

134. The actions of Defendants, as described in the body of the complaint, caused damages, including the loss of the value of the property illegally seized or destroyed, emotional distress, and attorneys' fees and costs, to the above-named Plaintiffs.

135. Defendants' actions were intentional, willful, and wanton, as they knew that they could not legally search the Kerns' home or seize the Kerns' property in the absence of probable cause to believe that evidence of a crime existed in their home.

COUNT III

**42 U.S.C. § 1983 - FALSE ARREST/FALSE IMPRISONMENT
(By Plaintiff Jason Kerns Against Bernalillo County Sheriff's Department
Employees Lindley, Gonzales, Koren, Albuquerque Police Officers Johnston
and Montoya, and Mike Haag)**

136. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

137. Plaintiff has, and had, a Fourth Amendment right to be free of unreasonable searches and seizures.

138. Plaintiff has, and had, a Fourteenth Amendment right to be free of any deprivation of his liberty without due process of law, which included the full disclosure of exculpatory information at all stages of the criminal investigation.

139. Defendants deprived Plaintiff of that right when they filed an affidavit for a warrant for Plaintiff's arrest based on recklessly or deliberately false information, an affidavit that excluded known, exculpatory evidence, thereby misleading the judiciary and the prosecution into believing that there existed probable cause for Plaintiff's arrest.

140. Through the manipulation of the information included in the affidavit for Plaintiff's arrest and the federal grand jury testimony, Defendants caused Plaintiff's incarceration for an extended period of time.

141. The unlawful actions of Defendants, as described in the body of the complaint, caused damages, including emotional distress and attorneys' fees and costs, to the above-named Plaintiff.

142. Defendants' actions were intentional, willful, and wanton, as they knew that they did not have probable cause to legally effectuate Plaintiff's arrest and incarceration.

COUNT IV

42 U.S.C. § 1983 - MALICIOUS PROSECUTION

**(By Plaintiff Jason Kerns Against Bernalillo County Sheriff's Department
Employees Lindley, Gonzales, Koren, Albuquerque Police Officers
Johnston and Montoya, and Mike Haag)**

143. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

144. Plaintiff has, and had, a Fourth Amendment right to be free of unreasonable searches and seizures.

145. Plaintiff has, and had, a Fourteenth Amendment right to be free of any deprivation of his liberty without due process of law, which included the full disclosure of exculpatory information at all stages of the criminal investigation.

146. The unlawful actions of Defendants, as described in the body of the complaint, caused damages, including emotional distress and attorneys' fees and costs, to the above-named Plaintiff.

147. The Defendants' actions were intentional, willful, and wanton, as they knew that they did not have probable cause to legally effectuate, at any time, Plaintiff's prosecution.

COUNT V

**42 U.S.C. § 1983 - MUNICIPAL LIABILITY FOR VIOLATIONS OF FEDERAL
CONSTITUTIONAL RIGHTS**

**(By All Respective Plaintiffs Against Defendants Bernalillo County and Sheriff Darren
White for Each of the Aforementioned Federal Violations)**

148. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.

149. Defendants Bernalillo County and Sheriff Darren White are authorized policymakers for Bernalillo County and are responsible for the hiring, supervision, and training of its employees.

150. The policies, customs, decisions, and practices of Defendants Bernalillo County and Sheriff White created a climate within the County and within the Office of the Sheriff that led the other Defendants to believe that they could act with impunity and in the manner described in this complaint.

151. Bernalillo County and Sheriff White failed to properly train or supervise the Defendant employees of Bernalillo County and other officers under their control.

152. There is a causal connection between the Bernalillo County's and Sheriff White's failure to train and supervise their employees and the violation of Plaintiffs' constitutional rights which amounts to deliberate indifference.

153. The policies, customs, decisions and practices of Bernalillo County and Sheriff White, along with their failure to train and supervise, were willful, wanton, obdurate and in gross and reckless disregard of Plaintiffs' rights.

154. Defendants' violation of Plaintiffs' constitutional rights caused Plaintiffs to suffer property damage, physical injury, emotional distress, and attorneys' fees and costs.

COUNT VI
FALSE DETENTION / ARREST / IMPRISONMENT
(By Plaintiff Jason Kerns Against Bernalillo County Sheriff's Department
Employees Lindley, Gonzales, and Koren, Albuquerque Police Officers Johnston
and Montoya, Mike Haag and Bernalillo County)

155. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

156. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.

157. The Defendants listed under this count intentionally confined and/or restrained Jason Kerns without his consent and with knowledge that they had no lawful authority to do so.

158. The facts available to the Defendants would not warrant a reasonable officer to believe that their actions were appropriate.

159. The Defendant Bernalillo County is directly responsible to the Plaintiff Jason Kerns under the doctrine of *respondeat superior* for the acts of the Defendants.

160. If a jury determines that any of the above-named Defendants falsely detained, arrested, and/or imprisoned Plaintiff Jason Kerns by presenting false or misleading evidence to the judiciary for his arrest, then Defendant Bernalillo County is liable as well.

161. The tortious false detention, arrest, and imprisonment by Defendants was intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiff Jason Kerns' rights.

162. Defendants' false detention, arrest, and imprisonment of Plaintiff Jason Kerns caused him to suffer emotional distress, and caused him to incur attorneys' fees and costs.

COUNT VII
ABUSE OF PROCESS - MALICIOUS PROSECUTION
(By Plaintiff Jason Kerns Against Bernalillo County Sheriff's Department
Employees Lindley, Gonzales, and Koren, Albuquerque Police Officers Johnston
and Montoya, Mike Haag and Bernalillo County)

163. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

164. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.

165. The Defendants listed under this count intentionally caused a criminal prosecution to be initiated against Plaintiff Jason Kerns with knowledge that they had no lawful basis to do so.

166. The facts available to the Defendants would not warrant a reasonable officer to believe that their actions were appropriate.

167. The Defendant Bernalillo County is directly responsible to the Plaintiff Jason Kerns under the doctrine of *respondeat superior* for the acts of the Defendants.

168. If a jury determines that any of the above-named Defendants falsely caused Plaintiff Jason Kerns to be wrongly prosecuted, then Defendant Bernalillo County is liable as well.

169. The unlawful abuse of process resulting in a wrongful prosecution was intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiff Jason Kerns' rights.

170. Defendants' conduct leading to the wrongful prosecution of Plaintiff Jason Kerns caused him to suffer emotional distress, and caused him to incur attorneys' fees and costs.

COUNT VIII

DEPRIVATION OF PROPERTY RIGHTS / TRESPASS

(By All Named Plaintiffs Against Bernalillo County Sheriff's Department Employees Lindley, Gonzales, Hamsten, Wright, Conners, and Hix, Albuquerque Police Officers Johnston, Montoya, Bader, Thompson, and Carter, and Bernalillo County)

171. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.
172. The New Mexico Tort Claims Act has waived Defendants immunity from this claim.
173. The above-named Defendants intentionally entered or remained on the property belonging to Plaintiffs.
174. The actions of the Defendants constitute trespass as the actions were not authorized by law or by the Plaintiffs.
175. The Defendant Bernalillo County is directly responsible to the above-named Plaintiffs under the doctrine of *respondeat superior* for the acts of the Defendant law enforcement officers who acted under the authority of Bernalillo County.
176. If a jury determines that any one of the Defendants trespassed on Plaintiffs' property, or caused others to trespass on Plaintiffs' property, then Defendant Bernalillo County is liable as well.
177. Defendants' trespass was intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' rights.
178. Defendants' trespass on Plaintiffs' property caused them to suffer property loss, emotional distress, and caused them to incur attorneys' fees and costs.

COUNT IX
DEPRIVATION OF PROPERTY RIGHTS / CONVERSION
(By Plaintiffs Against Bernalillo County Sheriff's Department Employees
Lindley, Gonzales, Hamsten, Wright, Conners, and Hix, Albuquerque
Police Officers Johnston and Montoya, and Defendant Bernalillo County)

179. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.
180. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.
181. Defendants unlawfully exercised dominion and control over personal property belonging to Plaintiff.
182. Defendants wrongfully detained Plaintiff's personal property after Plaintiff demanded that it be returned.
183. The Defendant Bernalillo County is directly responsible to the above-named Plaintiffs under the doctrine of *respondeat superior* for the acts of Defendants.
184. If a jury determines that any one of the Defendants converted Plaintiffs' property, then Defendant Bernalillo County is liable as well.
185. Defendants' conversion was intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' rights.
186. The Defendants' conversion of Plaintiffs' property caused loss of the beneficial use of that property, caused the Plaintiffs to suffer emotional distress, and caused Plaintiffs' to incur attorneys' fees and costs.

COUNT X
PERSONAL INJURY, BODILY INJURY, AND LOSS OF FILIAL CONSORTIUM
(By All Named Plaintiffs Against Bernalillo County Sheriff's Department
Employees Lindley, Gonzales, and Koren, Albuquerque Police Officers
Johnston and Montoya, Mike Haag, and Bernalillo County)

187. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.
188. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.
189. The Defendants caused personal injury, bodily injury, and emotional distress to the Plaintiffs due to their loss of society, guidance, and companionship.
190. Plaintiffs' emotional distress was caused by the actions of Defendants in falsely arresting and maliciously prosecuting Plaintiff Jason Kerns.
191. The Defendant Bernalillo County is directly responsible to the above-named Plaintiffs under the doctrine of *respondeat superior* for the acts of Defendants.
192. If a jury determines that any one of the Defendants caused Plaintiffs' personal injury, bodily injury, or loss of consortium, then Defendant Bernalillo County is liable as well.
193. Defendants' intentionally, willfully, wantonly, obdurately, caused the Plaintiffs' injuries in gross and reckless disregard of Plaintiffs' rights.
194. The Defendants' infliction of personal injury, bodily injury, and loss of filial consortium caused the Plaintiffs to suffer emotional distress, and caused Plaintiffs' to incur attorneys' fees and costs.

COUNT XI
VIOLATION OF STATE CONSTITUTIONAL RIGHTS
(By All Plaintiffs Against Bernalillo County Sheriff's Department Employees
Lindley, Gonzales, Hamsten, Wright, Conners, and Hix, Albuquerque
Police Officers Johnston, Montoya, Bader, Thompson, and Carter, and Bernalillo County)

195. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.

196. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.

197. Plaintiff has a right to be free from unreasonable searches and seizures under Article II, § 10 and the right to be free from property and liberty deprivation without due process of law under Article II, § 18 of the N.M. Constitution.

198. Defendants violated these constitutional rights of Plaintiffs as described in the body of the complaint in that they illegally searched Plaintiffs' home.

199. The Defendant Bernalillo County is directly responsible to Plaintiffs under the doctrine of *respondeat superior* for the acts of Defendants.

200. If a jury determines that the any one of the above-named Defendants violated Plaintiffs' constitutional rights, then Defendant Bernalillo County is liable to Plaintiffs as well.

201. Defendants' violation of Plaintiff's constitutional rights were intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiff's rights.

202. Defendants' violation of Plaintiffs' constitutional rights Plaintiffs' to suffer injuries, including emotional distress, and caused Plaintiffs' her to incur attorneys' fees and costs.

COUNT XII
FAILURE TO PERFORM STATUTORY DUTY
(By All Named Plaintiffs Against Bernalillo County Sheriff's Department
Employees Lindley, Gonzales, and Koren, Albuquerque Police Officers Johnston
and Montoya, Mike Haag and Bernalillo County)

203. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.
204. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.
205. Defendants had a statutory duty to investigate, arrest and apprehend the actual person who shot down the Bernalillo County Sheriff's Department helicopter.
206. The above-mentioned Defendants breached this duty when they failed to investigate known evidence that was exculpatory to Plaintiff Jason Kerns, evidence that implicated other individuals known to Defendants and who were present at the scene of the crash landing that night.
207. The Defendant Bernalillo County is directly responsible to Plaintiffs under the doctrine of *respondeat superior* for the acts and/or omissions of the Defendants.
208. If a jury determines that either of the above-named Defendants breached their statutory duty to Plaintiffs, then Defendant Bernalillo County is liable as well.
209. The Defendants' breach of their statutory duty to Plaintiffs was intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' rights.
210. The Defendants' breach of their statutory duty caused Plaintiffs to suffer property loss, emotional distress, and caused them to incur attorneys' fees and costs.

COUNT XIII
NEGLIGENT TRAINING / SUPERVISION
(By All Named Plaintiffs Against Bernalillo County and Sheriff White)

211. Plaintiffs incorporate all of the preceding paragraphs as if fully stated herein.
212. The New Mexico Tort Claims Act has waived Defendants' immunity from this claim.
213. The Defendants Bernalillo County and Sheriff White negligently supervised and trained their Defendant employees.
214. The negligent supervision and training proximately caused subordinate officers to commit the torts of personal injury, bodily injury, false detention/arrest/imprisonment, trespass, conversion, illegal search and seizure, and loss of filial consortium against Plaintiffs.
215. The negligent supervision and training proximately caused subordinate officers to deprive Plaintiffs of their rights, privileges, and immunities secured by the laws and constitutions of the United States and New Mexico.
216. The Defendant Bernalillo County is directly responsible to Plaintiffs under the doctrine of *respondeat superior* for the acts of their Defendants employees and others under their direct supervision and control.
217. If a jury determines that the either of the above-named Defendants' negligent supervision or training caused damages to Plaintiffs, then Defendant Bernalillo County is liable as well.
218. The Defendants' negligent supervision or training caused Plaintiffs to suffer property loss, physical injury, emotional distress, and caused them to incur attorneys' fees and costs.

CLAIM FOR RELIEF

WHEREFORE, for the reasons discussed above, Plaintiffs pray for judgment against the Defendants as follows:

- A. An award of full and fair compensatory and consequential damages against all Defendants, as set forth above;
- B. An award of punitive damages against all Defendants, regardless of whether that individual was acting under the color of state law;
- C. An award of pre- and post-judgment interest on any amounts recovered herein;
- D. An award of the costs of bringing this civil action and reasonable attorneys' fees associated with it;
- E. Such other and further relief as the Court may deem appropriate under the circumstances of this case, including declaratory and injunctive relief.

JURY DEMAND

Plaintiffs also request a jury trial as provided under federal law.

Respectfully submitted,

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