

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-CV-1165

JANE DOE,

I.B. by her mother and next friend, Jane Doe,

Plaintiffs,

v.

APRIL WOODARD, El Paso County Department of Human Services caseworker, individually, and as an agent, employee, and representative of El Paso County,

AMANDA ALBERT, El Paso County Department of Human Services caseworker, individually, and as an agent, employee, and representative of El Paso County,

CHRISTINA NEWBILL, Supervisor, El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

KRYSTAL GRINT, Staff Development and Training Supervisor at the relevant time, El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

MARIAN PERCY, Children, Youth and Family Services Deputy Director, El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

SHIRLEY RHODUS, Children, Youth and Family Services Director, El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

CHRIS GARVIN, Deputy Director, El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

RICHARD BENGTTSSON, Executive Director, El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

JEFF GREENE, County Administrator over El Paso County Department of Human Services, individually, and as an agent, employee, and representative of El Paso County,

EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES, for injunctive relief,

REGGIE BICHA, Executive Director of the Colorado Department of Human Services, in his official capacity, for injunctive relief,

EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS, comprised of Sallie Clark, Darryl Glenn, Dennis Hisey, Amy Lathen, and Peggy Littleton, in their official capacity.

Defendants,

**COMPLAINT AND JURY DEMAND
BY DOE PLAINTIFFS**

Plaintiffs, I.B. and Jane Doe, by and through their undersigned counsel, Telios Law PLLC, allege against Defendants:

I. INTRODUCTION

1. This action seeks to vindicate Plaintiffs' constitutional rights after unconstitutional and retaliatory actions by Defendants.

2. On at least two occasions, a caseworker from the El Paso County Department of Human Services (DHS) strip-searched and/or photographed private areas of I.B.'s person without obtaining consent from her mother, or even notifying her mother, despite the fact that allegations of abuse were known to be likely unfounded.

3. I.B. and Jane Doe bring this action against Defendants for damages for violation of their constitutional rights under the Fourth and Fourteenth Amendments. As a result of Defendants' unlawful actions, Jane Doe and I.B. have suffered psychological distress. I.B. also

seeks injunctive relief against the unconstitutional DHS policies, and to have the photographs of I.B. destroyed.

II. SUBJECT MATTER JURISDICTION

4. This action arises under the United States Constitution, particularly the Fourth and Fourteenth Amendments, and under federal law, particularly 42 U.S.C. §§ 1983 and 1988. This Court has original jurisdiction of this claim under, and by virtue of, 28 U.S.C. § 1331, and 28 U.S.C. § 1343. This Court is authorized to award attorney's fees under 42 U.S.C. § 1988.

III. PERSONAL JURISDICTION

5. This Court has personal jurisdiction over Defendants pursuant to proper service of summons with a copy of this Complaint and the fact that Defendants are geographically located in the state of Colorado.

IV. VENUE

6. Venue is proper in the United States District Court of Colorado under 28 U.S.C. § 1391(b), because all Defendants are residents of the state of Colorado and a substantial part of the events or omissions giving rise to the claims occurred in the state of Colorado.

V. PARTIES

7. Plaintiff, Jane Doe, is a natural person who was at all times relevant to this cause a resident of Colorado Springs, Colorado. She is a disabled veteran of the United States Army, and is now a fulltime mother.

8. Plaintiff, I.B., Jane Doe's daughter, is a natural person who was at all times relevant to this cause a resident of Colorado Springs, Colorado, and was three and four years old at the time of the incidents.

9. Defendant, April Woodard, is a natural person, a caseworker for the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

10. Defendant, Amanda Albert, is a natural person, a caseworker for the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

11. Defendant, Christina Newbill, is a natural person, a supervisor and social worker for the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

12. Defendant, Krystal Grint, is a natural person, Staff Development and Training Supervisor from April 14, 2013 through October 13, 2014, for the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

13. Defendant, Marian Percy, is a natural person, Children, Youth and Family Services Deputy Director of the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

14. Defendant, Shirley Rhodus, is a natural person, Children, Youth and Family Services Director for the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

15. Defendant, Chris Garvin, is a natural person, Deputy Director of the El Paso County DHS since April 21, 2014, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

16. Defendant, Richard Bengtsson, is a natural person, the Executive Director of the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

17. Defendant, Jeff Greene, is a natural person, the County Administrator over the El Paso County DHS, and thus an employee of El Paso County, acting under color of law, including state statutes and local ordinances, regulations, policies, customs, and usages.

18. El Paso County Department of Human Services is an agency under the supervision of El Paso County and the state Department of Human Services, and is sued for injunctive relief.

19. Defendant, Reggie Bicha, is a natural person, the Executive Director of the Colorado DHS, and is sued in his official capacity, for injunctive relief.

20. Defendant, El Paso County Board of County Commissioners, comprised of Sallie Clark, Darryl Glenn, Dennis Hisey, Amy Lathen, and Peggy Littleton, is the governing body of El Paso County. El Paso County DHS is the body of El Paso County that is responsible for investigating child abuse reports and gathering and maintaining records. DHS reports to El Paso County, and is financed by it. El Paso County is a public employer of individual Defendants.

VI. GENERAL ALLEGATIONS

The background for the incident

21. From 2012 through 2014, DHS investigated I.B.'s home around half a dozen times, based on false reports that I.B. was being abused.

22. I.B. lives in a home with her mother, Jane Doe, her younger brother, and her live-in stepfather, mother's boyfriend, who is a military veteran.

23. Each time they visited the house, DHS caseworkers examined the pantry, fridge, kids' room, Jane Doe's room, and spare room, despite the fact that false allegations were of physical abuse.

24. Each time, the report of abuse was false.

25. Each time, either the case was closed as unfounded, or no documentation was kept at all, as only three incidents are recorded in the case files.

26. Even though Jane Doe asked for documentation, DHS personnel never provided her with documentation of the false reports and DHS investigations.

27. Jane Doe finally got information about her own files through a Colorado Open Records Act (CORA) request filed by her counsel, but the files do not contain all the visits that actually happened.

The first allegation from the school in DHS records

28. I.B. attended the Head Start program at Oak Creek Elementary School in Colorado Springs.

29. I.B.'s teacher told I.B.'s stepfather that he looked like a violent person, because, in common with many military personnel, he wore leather gear, rode a motorcycle, and had tattoos.

30. According to DHS records, on November 22, 2013, a report came in that I.B. "had marks that resembled a hand print on her bottom." The reporter also stated that there was a "bruise the size of a dollar bill" on I.B.'s lower back.

31. At the time of the report to DHS, a teacher had observed I.B.'s bottom, as had the behavioral health consultant at the school.

32. I.B. was three at this time.

33. Amanda Albert, a DHS caseworker, also "observed" I.B.'s bottom. She found a rash on I.B.'s bottom that "did not appear as though this mark came from a hand, belt, or other object."

34. Amanda Albert found a very small abrasion in I.B.'s back with a linear welt that looked like a reaction to a band aid.

35. The caseworker also checked I.B.'s younger brother, E.B., for marks or bruises.

36. Jane Doe was not asked for permission for the strip search of either child, nor was she notified that three adults had viewed I.B.'s private areas.

37. In fact, she was never informed about the strip search, even afterwards, and only recently discovered it through a CORA request.

38. The investigation was closed as unfounded on January 30, 2014.

39. Thus, that report was a deliberate false report.

The second allegation from the school in DHS records

40. Another report was called in January 22, 2014, apparently also from the school, related to a bruise on I.B.'s forehead, which was also determined to be unfounded. No further information was provided in the records.

The third allegation from the school in DHS records

41. Several months later, DHS again received a report that I.B. was being abused. According to DHS records, this was December 9, 2014. At this time, I. B. was four.

42. Allegations of abuse included little bumps on I.B.'s face, a bruise about the size of a nickel on her neck, a small red mark on her lower back, two small cuts on her stomach, and bruised knees.

43. According to DHS records, on December 10, Ms. April Woodard, a DHS caseworker, received permission from her supervisor, Ms. Christina Newbill, to view I.B.'s "buttocks, stomach/abdomen, and back so Caseworker could look for marks/bruises."

44. The Oak Creek Elementary health paraprofessional, Doris Swanstrom, met with Ms. Woodard in the nurse's room. Ms. Woodard instructed I.B. to show her buttocks and stomach and back.

45. I.B. states that an adult took off all I.B.'s clothes. The adults viewed I.B. and prepared to take photographs.

46. I.B. told Ms. Woodard she did not want photographs taken. Nevertheless, the caseworker took color photographs of private and unclothed areas of I.B.'s body.

47. I.B. is still upset that photographs of her unclothed body were taken without her consent.

48. Ms. Woodard called on Jane Doe, following up on the report of child abuse. Ms. Woodard also inspected the home.

49. According to DHS records, this happened on December 11, 2014. However, Jane Doe recalls this visit as happening at the time she had just purchased her groceries for Thanksgiving dinner, so DHS records may be in error as to the date.

50. At that time, Ms. Woodard informed Jane Doe, in front of I.B., that she should not ever spank I.B.

51. To this day, I.B. tells her mother, "Mommy, you know you can't spank me because you will get in trouble, and I know that!"

52. Jane Doe was upset that someone kept filing false reports. She asked the DHS caseworker if she could pull her child out of school. The DHS caseworker said that she could, but it would "look suspicious."

53. Ms. Woodard eventually concluded that the marks observed were not consistent with the reporter's statement, and that I.B. gets pretend play mixed up with reality. The case was closed as unfounded on January 5, 2015.

54. Jane Doe thought the incident had been resolved after Ms. Woodard's visit. But about a week after Ms. Woodard visited her home, while driving to school, I.B. said something alarming about her encounter with the caseworker: "Mommy, do you remember when the woman with white hair came to my school? I hope she doesn't come again, because I don't like it when she takes all my clothes off."

55. Jane Doe immediately contacted the school about the incident. No one at the school would admit to a strip search. Jane Doe remained persistent in her search for answers, even going as far as to contact the superintendent. Eventually, she was informed by school officials that it was in fact a DHS caseworker who performed the strip search.

56. Jane Doe attempted to contact Lisa Little, a DHS supervisor whose name is on the Doe 2 files. She never returned the call.

57. Eventually, Jane Doe spoke to Ms. Woodard, who denied having performed a strip search of I.B.

58. A few weeks later, the situation became even more concerning to Jane Doe. I.B. also informed her mother that they had taken pictures of I.B. with her clothes off, even though she told them not to.

59. Jane Doe tried for weeks to get a response from DHS, and was ignored.

60. Around January 28, 2015, Ms. Woodard finally contacted Jane Doe and told her the case was closed. At that time, Jane Doe asked again if Ms. Woodard had searched I.B. under her clothes. Finally, Ms. Woodard admitted that she did undress and photograph I.B. without asking for permission. She insisted that she was well within her right to do so.

61. Ms. Woodard stated to Jane Doe that she and the school nurse observed I.B.'s "buttocks, back, and stomach" due to concerns of physical abuse.

62. Jane Doe asked her Ms. Woodard why she had lied before. Ms. Woodard said it was because she had legitimate concerns for I.B.'s safety, and Jane Doe did not need to know at the time about the strip search.

63. Jane Doe asked about her right as a mother to know or consent to a strip search of her child's private areas.

64. Ms. Woodard informed Jane Doe that if there is suspicion of abuse, those rights are voided.

65. Jane Doe responded by telling Ms. Woodard that she had called a lawyer.

66. The very next day, a different DHS caseworker came to Jane Doe's home, claiming that a report of abuse had been alleged against I.B.'s younger brother. This report was also false.

67. No records of this visit were produced in response to a CORA request.

68. At that time, Jane Doe asked the caseworker what she could do to stop the persistent false reporting and the intrusive investigations. The DHS caseworker simply

responded, “The more it happens, the more it will keep happening.” She also informed Jane Doe that pulling the children out of school would make Jane Doe “look even more guilty.”

69. Just like the numerous other reports lodged against Jane Doe’s children, this report was also unfounded.

70. After this incident, I.B. no longer wished to attend school, and said that she did not feel safe.

Effect on family

71. As a result of Defendants’ actions, I.B. did not feel safe at school.

72. I.B. suffered trauma similar to that suffered by children who are sexually abused, and the trauma is likely to continue.

73. I.B. is still angry and upset at the incident in November or December 2014 and talks about it frequently.

74. She has also experienced an erosion of her natural protective boundaries, including an inappropriate willingness to take off her clothes for strangers.

75. Upon information and belief, color photographs of I.B.’s private areas taken by DHS caseworkers likely exist and are insufficiently secured by DHS.

76. After hiring counsel, I.B. left school, and no longer receives the benefit of Head Start.

77. Jane Doe has suffered distress at the violation of her parental rights. She fears for the safety of her children. She is distressed at the intrusion suffered by them, and at their potential exposure to sexual abuse.

El Paso County and DHS training

78. It is clearly-established law in the Tenth Circuit that the Fourth Amendment applies to caseworkers. It is also clearly-established law that parents and children have Fourteenth Amendment rights.

79. Neither supervisors nor caseworkers have received any training from DHS or El Paso County on Fourth Amendment limitations on search and seizure, as applied to social workers.

80. DHS training materials contain no guidance about constitutional ways to examine children or photograph their private areas. They contain no guidance about parents' and children's constitutional rights not to consent to invasive searches of children.

81. DHS training materials and regulations contain no restrictions on searches of private areas of the body related to the age, gender, or sexual orientation of either the child or the caseworker.

82. Training on how to photograph children consists of instructions to take a color photograph of the body part, as well as a photograph of the child's face, to connect the face and the body part.

83. DHS training materials and regulations contain no guidance about how to secure photographs of private areas of children or to safeguard such photos from making their way into the stream of online child pornography.

84. DHS training is in line with its unwritten policies and customs.

El Paso County and DHS policies and customs

85. DHS policies and customs are the responsibility of both El Paso County DHS and the Board of County Commissioners.

86. DHS personnel have established no written policies or guidelines about strip-searching and photographing children, but have clearly defined unwritten policies and customs. They regularly perform strip searches, which they apparently prefer to call “body audits” or “skin checks.”

87. According to DHS policy and custom, parental consent is not needed. It is routine not to contact or inform parents of the strip search beforehand. Usually, parents will be notified afterwards, but not always.

88. A DHS supervisor testified that under federal law, caseworkers do not need to try to contact parents before investigating a child under the clothing.

89. When abuse is alleged, the child is interviewed without parents present, but normally the interview is not audiotaped or videotaped. If parents later wish to review the interview protocols or know what was said, the only documentation is the brief notes in the DHS file.

90. El Paso County DHS’ unwritten policy and custom is to search any area of a child’s body upon which abuse is alleged. When physical injuries to children’s private areas under clothes are alleged, caseworkers routinely view those private areas.

91. DHS personnel rely on a statute, C.R.S. § 19-3-306, which provides that any social worker who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child.

92. DHS personnel interpret that as permission to strip-search children to make their private areas visible. DHS leadership has provided no constitutional limitations on how DHS interprets the statute.

93. State DHS has stated in Responses to JBC Questions, dated 12-3-2013, “There is no limitation on the taking of the photographs because the purpose is to document injuries, regardless of where the injuries may be.” It also stated, “Workers are trained to collect photographic evidence of physical abuse whenever it is encountered whether it is in ‘private areas’ or areas not covered by clothing.” And it stated, “The Department has not developed specific oversight procedures regarding obtaining photographic evidence of abuse.”

94. DHS personnel also regularly take pictures of “no marks.”

95. If a child is at school when an allegation of a mark on a private area of a child is made, a DHS caseworker visits and carries out the strip search at school.

96. Caseworkers have discretion to request a medical examination for genital searches, but that is not required, as they are permitted to perform such a search themselves. Whether genital searches take place is wholly within the discretion and comfort level of the individual caseworker.

97. Searches of private areas of a child happen dozens, perhaps hundreds, of times a year in El Paso County alone.

98. These searches routinely take place in a casual (rather than clinical or professional) setting: a room in the child’s home, any room provided at school, or available space

in any other setting where the child may be at the time a caseworker makes contact with her. It is DHS protocol to search the children in these environments.

99. DHS policies and customs provide no clinical approach, no special clothing, and no depersonalizing of the child's body parts to be examined, as occurs in a medical examination.

100. DHS policies and customs have no limitations on these searches related to the age or gender of the child.

101. DHS policies and customs have no formal limitations on these searches related to the gender of the social worker and the child. Usually the social worker will be the same gender as the child, or at least one of two people present will be the same gender, but there is no requirement that this be the case. There is no policy or provision to protect children where either the social worker or the child may be same-sex-oriented or transgender.

102. DHS has no policies of the type commonly known as "child protection policies," which define appropriate and inappropriate touching of a child.

103. Usually, the child is told to remove his or her own clothes, though in cases of a small child, sometimes the caseworker will remove the clothes.

104. A DHS caseworker views the area of the child's body and takes color photographs. A color photograph is taken of the area of the child's body implicated by the allegations. An accompanying photo is also taken of the child's face, to provide positive identification for the color photograph of the body part.

105. The photograph is taken of the mark, or of the child's body to show there was "no mark," to have a record that there was no abuse. Pictures of both "marks" and "no-marks," to include private areas under clothes, are taken and stored.

106. Color photographs of children, including of private areas of the child, are taken on cell phones issued by the County.

107. The color photographs stay on the cell phones up to many weeks, until the social worker writes the report on that child.

108. Beyond the basic confidentiality agreement to work at DHS, the policies have no safeguards or protocol in place to prevent color photographs of the private areas of children from being uploaded from cell phones to the Internet, or uploaded or synced to another device, such as a home computer. There is no technology in place to prevent this.

109. DHS policies have no safeguards or mechanism to make sure that color photographs of the private areas of children are permanently deleted from these cell phones.

110. At some point, the color photographs of children's faces and their body parts may be downloaded into electronic files.

111. Commonly, they are printed out, labeled, and kept indefinitely in paper files.

112. These paper files are stored in one or more filing rooms at DHS. Multiple people have access to these files, and therefore to the color photographs. People who have access include all managers, all caseworkers, all case aides, all county attorneys, and anyone who works at DHS.

113. Anyone who has access to the filing room can access and view any of the files and color photographs. Any person could check the file of any child.

114. The photographs are not safeguarded under HIPAA standards, as would take place in a medical examination.

115. Offenders looking for child pornography perform Internet searches using such key phrases as “youth strip search” or “nude strip search.”

Responsibility for DHS training, policies, and procedures

116. The El Paso County Commissioners use county sales tax to fund DHS. The County provides about a quarter of DHS funding. In addition, the County has a Department of Human Services Advisory Commission, which has the mandate to review DHS programs and funding and monitor the implementation of DHS initiatives and mandatory services. Because it uses citizen taxes to fund DHS and has responsibility for oversight, it is responsible for failure to train and policies and customs that violate children’s and families’ rights.

117. El Paso County DHS is responsible in its official capacity for complying with constitutional standards and not injuring children and families.

118. As the County Administrator, Jeff Greene serves on the Advisory Commission as a non-voting member, and is the County official responsible for oversight of El Paso County DHS. He has responsibility for making sure DHS uses tax money in a constitutional way, and for lack of oversight of unconstitutional policies of: searching the private areas of children’s bodies without consent or a court order; taking color photographs of those areas; and failing to safeguard those photographs.

119. The responsibilities of DHS senior personnel are stated in their official job descriptions.

120. Richard Bengtsson, Executive Director of the El Paso County DHS, directs all the programs and services of DHS. He is responsible for developing and implementing departmental goals, objectives, and policies. He oversees all DHS personnel and is supposed to ensure that “qualified, trained people are performing human services functions.” He is responsible for failing to develop and implement constitutional policies, failure to have qualified, trained people in place, and failure to protect children from unconstitutional and harmful actions. He is also responsible for approving of unconstitutional policies of: searching the private areas of children’s bodies without consent or a court order; taking color photographs of those areas; and failing to safeguard those photographs.

121. Chris Garvin, Deputy Director of the El Paso County DHS, is responsible to provide administrative oversight and management for child protection and for training, and has been since April 21, 2014. He also ensures that all programs comply with “established laws and regulations,” interprets and implements policies and procedures, and ensures that DHS provides quality customer services. He is responsible for failing to provide administrative oversight and management of child protection and appropriate training, failing to ensure that programs comply with federal law, and failing to provide quality services to family. This has had the result that personnel are not trained in constitutional policies, and have adopted unconstitutional policies of: searching the private areas of children’s bodies without consent or a court order; taking color photographs of those areas; and failing to safeguard those photographs.

122. Shirley Rhodus, Children, Youth and Family Services (CYFS) Director, is responsible for instruction and training of DHS managers, and updating them in agency

practices, policies and procedures. She develops, implements, and monitors CYFS programs “to ensure compliance with all applicable federal, State and local regulations.” Her job is to develop, establish and communicate policies and procedures, as well as to make sure they are implemented. She is responsible for failing to develop, implement and train in constitutional policies. She is also responsible for approving unconstitutional policies of: searching the private areas of children’s bodies without consent or a court order; taking color photographs of those areas; and failing to safeguard those photographs.

123. Marian Percy, Children, Youth and Family Services Deputy Director, oversees and manages the CYFS division, and is responsible for developing, interpreting and implementing policies. She conducts performance evaluations of subordinates and updates managers in departmental guidelines, procedures, and protocols. She is responsible for failing to develop, implement, and train in constitutional policies. She is responsible for existing unconstitutional policies of: searching the private areas of children’s bodies without consent or a court order; taking color photographs of those areas; and failing to safeguard those photographs.

124. Krystal Grint, Staff Development and Training Supervisor, was responsible for effective training from April 14, 2013 through October 13, 2014. She worked with “subject matter experts, managers, and supervisors from all program areas to determine the need for and effectiveness of training.” She established and maintained training materials related to rules and policies. She was supposed to have a working knowledge of child protection laws, rules, and regulations. She was responsible for failing to establish materials and train in constitutional policies, and for failing to teach caseworkers not to search the private areas of children’s bodies

without consent or a court order; or to take color photographs of those areas; or to fail to safeguard those photographs.

Awareness of the issues

125. In April of 2013, *Doe v. McAfee et al*, 13-CV-01287-MSK-MJW, was filed against defendants who included the El Paso Board of County Commissioners, Richard Bengtsson, Jeff Greene, and Lisa Little, a supervisor with El Paso County DHS. Thus, County and Department leadership were well aware of allegations that their policies were resulting in abuse and endangerment of children.

126. *Doe v. McAfee* alleged that searches under children's clothes, and taking pictures of private areas of children, without consent or a court order, were a violation of constitutional rights.

127. The case also alleged that such actions endanger children.

128. Recently, the DHS Advisory Commission, which acts on behalf of the Board of County Commissioners to oversee DHS, was served a CORA request. It was asked for the following:

129. "Any meeting minutes, recordings of meetings, or other records of the El Paso County Department of Human Services Advisory Commission which reflect discussion or policy making regarding an El Paso County Department of Human Services policy related to investigating child abuse allegations where the child's clothing must be removed to investigate the injury."

130. "Any meeting minutes, recordings of meetings, or other records of the El Paso County Department of Human Services Advisory Commission which reflect discussion or policy

making regarding an El Paso County Department of Human Services policy related to investigating child abuse allegations where clothing is removed and color photographs are taken, including any guidance on how to handle photographs that are taken.”

131. According to the County, no records exist that are responsive to that request.

132. Thus, despite the lawsuit, the issue has not been formally discussed, nor have formal policies been developed, but the custom and informal policy continues to thrive.

VII. CLAIMS FOR RELIEF

First Claim for Relief

Violation of I.B.’s rights under the Fourth Amendment of the U.S. Constitution to be free from unreasonable searches and to personal privacy by Albert.

133. Plaintiffs incorporate here by reference the allegations set forth above.

134. Defendants at all times acted under the color of state law.

135. The Fourth Amendment to the United States Constitution provides that all individuals, including children, have a right to be free from unreasonable searches.

136. Under this standard, state actors, including social workers, may not perform a search of a child unless the constitutional standard of reasonableness is met.

137. It is clearly established law in the Tenth Circuit that there is no “social worker” exception to the Fourth Amendment, and the Fourth Amendment applies to social workers and their investigations.

138. A child has a right to be free from an unreasonable search, just like someone suspected of a crime.

139. Under the Fourth Amendment, there is a reasonable expectation of privacy in the clothed/private areas of a child's person.

140. The search of private areas of a child's person is a severe violation of subjective expectations of privacy.

141. Unless there is an emergency, a child's clothed/private areas may not be searched without parental consent or a court order.

142. Fourth Amendment rights are violated when a government official views, photographs, or otherwise records another's unclothed or partially clothed body without meeting the constitutional standard.

143. Around November 2013, Defendant Albert searched I.B.'s person by viewing I.B.'s unclothed or partially clothed body and taking color photographs of what she observed.

144. Jane Doe did not consent to the search of I.B.'s body, or to having areas of I.B.'s body covered by clothing photographed, nor was there a court order.

145. This violated rights secured to I.B. by the Fourth Amendment of the United States Constitution.

146. In conducting the search, Defendant acted intentionally, willfully, and wantonly, and in heedless and reckless disregard of I.B.'s right to be free from an unreasonable search.

147. I.B. suffered injuries and damages from violation of her rights.

Second Claim for Relief

Violation of I.B.'s rights under the Fourth Amendment of the U.S. Constitution to be free from unreasonable searches and to personal privacy by Woodard and Newbill.

148. Plaintiffs incorporate here by reference the allegations set forth above.

149. Defendants at all times acted under the color of state law.

150. The Fourth Amendment to the United States Constitution provides that all individuals, including children, have a right to be free from unreasonable searches.

151. Under this standard, state actors, including social workers, may not perform a search of a child unless the constitutional standard of reasonableness is met.

152. It is clearly established law in the Tenth Circuit that there is no “social worker” exception to the Fourth Amendment, and the Fourth Amendment applies to social workers and their investigations.

153. A child has a right to be free from an unreasonable search, just like someone suspected of a crime.

154. Under the Fourth Amendment, there is a reasonable expectation of privacy in the clothed/private areas of a child’s person.

155. The search of private areas of a child’s person is a severe violation of subjective expectations of privacy.

156. Unless there is an emergency, a child’s clothed/private areas may not be searched without parental consent or a court order.

157. Fourth Amendment rights are violated when a government official views, photographs, or otherwise records another’s unclothed or partially clothed body without meeting the constitutional standard.

158. Around November or December 2014, Defendant Woodard searched I.B.'s person by viewing I.B.'s unclothed or partially clothed body, and taking color photographs of what she observed.

159. Newbill directed Woodard to perform that search.

160. Jane Doe did not consent to the search of I.B.'s body, or to having areas of I.B.'s body covered by clothing photographed, nor was there a court order.

161. Woodard never even notified Jane Doe afterwards. Indeed, when confronted, she lied to Jane Doe, stating that she had not performed such a search. It took Jane Doe weeks to track down the information after I.B. informed her mother that she had been searched.

162. This violated rights secured to I.B. by the Fourth Amendment of the United States Constitution.

163. In conducting the search, Defendant acted intentionally, willfully, and wantonly, and in heedless and reckless disregard of I.B.'s right to be free from an unreasonable search.

164. I.B. suffered injuries and damages from violation of her rights.

Third Claim for Relief

Violation of Jane Doe's and I.B.'s Fourteenth Amendment constitutional liberty interests and constitutional rights to familial privacy by Albert.

165. Plaintiffs incorporate here by reference the allegations set forth above.

166. Defendant acted at all times under color of state law.

167. Jane Doe and I.B. both had clearly-established constitutional liberty interests in Jane Doe's care, custody, and control of I.B., and in familial association and privacy.

168. Jane Doe and I.B. both had a reasonable expectation of privacy that their familial relationships would not be subject to unwarranted state intrusion.

169. A parent's fundamental liberty interests include the care and management of her child. The child in turn has fundamental liberty interests and a right to have her care directed by her mother.

170. The right to family association includes the right to have medical decisions such as physical examination made by the parent, not the state. The parent has the right to make those decisions, and the child has a right to have these decisions made by her parent, not the state.

171. Around November 2013, Albert searched I.B. without prior notice to Jane Doe, without consent from her, and without ever even notifying Jane Doe afterwards. Jane Doe did not find out about the search until recently.

172. Albert's conduct was willful and wanton, and done heedlessly and recklessly, without any regard for I.B.'s and Jane Doe's constitutional rights, their privacy, or their safety.

173. Jane Doe and I.B. suffered further injuries and damages from violation of their rights.

Fourth Claim for Relief

Violation of Jane Doe's and I.B.'s Fourteenth Amendment constitutional liberty interests and constitutional rights to familial privacy by Woodard and Newbill, and retaliation by Woodard.

174. Plaintiffs incorporate here by reference the allegations set forth above.

175. Defendants acted at all times under color of state law. Woodard searched I.B., and Newbill directed her to perform the search.

176. Jane Doe and I.B. both had clearly-established constitutional liberty interests in Jane Doe's care, custody, and control of I.B., and in familial association and privacy.

177. Jane Doe and I.B. both had a reasonable expectation of privacy that their familial relationships would not be subject to unwarranted state intrusion.

178. A parent's fundamental liberty interests include the care and management of her child. The child in turn has fundamental liberty interests and a right to have her care directed by her mother.

179. The right to family association includes the right to have medical decisions such as physical examination made by the parent, not the state. The parent has the right to make those decisions, and the child has a right to have these decisions made by her parent, not the state.

180. Around November or December 2014, Woodard searched I.B. without prior notice to Jane Doe, and without consent from her. Woodard never even notified Jane Doe afterwards. It took Jane Doe weeks to track down the information, after I.B. informed her mother she had been searched.

181. When asked, Woodard initially lied to Jane Doe about the search, further violating her rights.

182. When Jane Doe found out the truth and said she was talking to an attorney, Woodard retaliated by initiating a search of I.B.'s little brother the very next day.

183. Defendants' conduct was willful and wanton, and done heedlessly and recklessly, without any regard for I.B.'s and Jane Doe's constitutional rights, their privacy, or their safety.

184. Jane Doe and I.B. suffered further injuries and damages from violation of their rights.

Fifth Claim for Relief

Violation of I.B.'s rights under the Fourth Amendment to privacy in her person, and to be free from unreasonable search. Violation of I.B.'s and Jane Doe's rights under the Fourteenth Amendment, to privacy as a family, family association, and care and

management of a child. These violations were caused by governmental customs, policies, or decisions, by individual Defendants Grint, Percy, Rhodus, Garvin, Bengtsson, and Greene in their personal capacity, and by Defendants Grint, Percy, Rhodus, Garvin, Bengtsson, Greene, El Paso County DHS, Bicha, and the El Paso County Board of County Commissioners in their official capacity.

185. Plaintiffs incorporate here by reference the allegations set forth above.

186. Defendants acted at all times under color of state law.

187. As described pursuant to their job descriptions, individual Defendants were personally responsible for implementing and overseeing policies for El Paso County DHS. They were also personally responsible for the unwritten policies and customs that exist in El Paso County DHS.

188. In addition, individual Defendants, Reggie Bicha, El Paso County DHS, and the Board of County Commissioners were responsible for customs, policies, and decisions in their official capacity.

189. DHS has a clear and persistent custom and policy of strip-searching children whenever injuries are alleged, viewing and photographing areas of their bodies normally covered by clothing, without consent by parents or a court order, and often even without notification.

190. These highly private color photographs are taken on cell phones and carried around for weeks on cell phones.

191. Children are taught early that no one should look at or touch (or photograph) their private parts except for health reasons and in a professional medical setting.

192. They are specifically taught not to allow strangers to see or touch their private parts, especially adult strangers. A strip search, which involves exposing one's private parts to adult strangers, is contrary to this training, and creates safety issues for children.

193. Strip searches are demeaning, dehumanizing, and degrading.

194. A strip search during a child abuse investigation is very different from examination of the same part of the body during an annual checkup.

195. Children often experience strip searches as sexual abuse.

196. Nevertheless, Defendants not only personally acquiesced in, were responsible for, and promulgated a custom permitting and encouraging such strip searches, but provided no reasonable limitations and safeguards to such strip searches.

197. Defendants have been on notice for at least two years that a custom and policy had developed where caseworkers were strip-searching and photographing children without proper safeguards, and that there were both constitutional and safety problems with this custom and policy.

198. Yet Defendants remained knowingly and deliberately indifferent to the rights and safety of children and the rights of families. They acquiesced in, were responsible for, and promulgated the custom and policy, without fulfilling their duties to develop constitutional policies or to protect children and keep them safe.

199. The custom and policy had inadequate safeguards for protecting children from the trauma of such a search, often experienced by children as sexual abuse, or from intentional sexual abuse by perpetrators in such circumstances.

200. The custom and policy contained no safeguards or guidelines related to age, gender, or sexual orientation of the child, particularly as it interacts with the gender or sexual orientation of the adult allowed to strip-search and photograph the child.

201. The custom and policy did not contain any safeguards related to chain of custody or confidentiality of the color photographs taken on cell phones of a child's private areas, as would be the case for photographs taken in a medical facility. There are no safeguards to make sure photographs are deleted, or to prevent them from being uploaded to personal electronic devices or the Internet.

202. Color photographs taken of children, including of their bodies under clothing, are not properly secured, but are kept in a file room accessible to everyone who works at DHS.

203. Operating under the custom and policy, caseworkers routinely omitted notifying parents, obtaining consent, obtaining medical orders, or asking parents if they would comply with an official medical examination.

204. Defendants violated rights secured to the Plaintiffs by the Fourth and Fourteenth Amendments of the United States Constitution. Each individual defendant acquiesced in, was responsible for, and promulgated unconstitutional customs and policies, and failed to implement adequate policies.

205. Given that constitutional law, standard public policy, and a reasonable standard of care all hold that government workers and those who work with children should not do informal examinations of children's private areas, this custom and policy exposed children to severe potential danger and to actual trauma.

206. Defendants reasonably knew or should have known that the current inadequate policies and customs would cause their subordinates to inflict constitutional and related injuries. Defendants knew or should have known that this custom and policy was both unconstitutional and endangered children, because of clearly established law, and because of allegations in *Doe v. McAfee*.

207. These customs and policies led to injuries and damages to Plaintiffs.

208. Defendants were personally responsible and responsible in their official capacity.

209. Because of the actions of its agents, including El Paso County DHS, El Paso County employees and the El Paso County Board of Commissioners, and the direct causal link between actions of the County and the deprivation of federal rights, El Paso County was deliberately indifferent to the unconstitutional customs and policies, and is responsible for these injuries and damages.

210. Because of the actions of its agents, Reggie Bicha on behalf of the state DHS, and El Paso County DHS, are subject to injunctive relief.

Sixth Claim for Relief

Violation of I.B.'s rights under the Fourth Amendment to privacy in her person, and to be free from unreasonable search. Violation of of I.B.'s and Jane Doe's rights under the Fourteenth Amendment to privacy as a family, family association, and care and management of a child. These violations were caused by failure to train or supervise, by Defendants Newbill, Grint, Percy, Rhodus, Garvin, Bengtsson, and Greene in their personal capacity, and by Defendants Newbill, Grint, Percy, Rhodus, Garvin, Bengtsson, Greene, El Paso County DHS, Bicha, and the El Paso County Board of County Commissioners in their official capacity.

211. Plaintiffs incorporate here by reference the allegations set forth above.

212. Defendants at all times acted under the color of state law.

213. Defendants had personal responsibility either to train and supervise caseworkers directly or to oversee and provide training and supervision for El Paso County DHS.

214. The training program for protection of children from unconstitutional Fourth Amendment searches and from related trauma and possible sexual abuse was inadequate to train caseworkers and managers to carry out their duties.

215. The training program to protect families' liberty interests in the care, custody, and control of their children was also inadequate.

216. One DHS supervisor testified that she does not even know what the Fourth Amendment says.

217. Strip searches, as performed by caseworkers, are different from medical examinations in context, methodology and safeguards.

218. Given the high probability of constitutional violations, the fact that constitutional violations in fact occurred, the shockingly high rate of child sexual abuse by public employees in public institutions, and the known and present danger of permitting public officials to examine children's private areas, the need for more training and supervision, or different training and supervision, was obvious.

219. Strip searches raise the real possibility of actual child abuse. Child abusers seek situations where they have access to children. Some known offenders have acquired access through government employment to examine or photograph children's naked bodies.

220. Defendants did not train caseworkers on when and how to conduct an examination that does not have abusive overtones, and that would not provide opportunities or temptations for caseworkers who are, or could become, sexual offenders.

221. Photographs of strip searches can be, and sometimes are, used as child pornography. Many pictures of naked children end up on the Internet.

222. Known sexual offenders have used search terms such as “youth strip search” and “nude strip search” to obtain child pornography.

223. Defendants do not train and supervise with a view to protecting the medical privacy of children, or require sufficient safeguards for the color photographs obtained from strip searches.

224. Because this inadequate training and supervision would almost inevitably result in both the violation of constitutional rights and endangering of children, policy makers and supervisors have been deliberately indifferent to the rights of children and families.

225. Defendants reasonably knew or should have known that the current lack of training and supervision would cause their subordinates to inflict constitutional and related injuries, because of allegations in *Doe v. McAfee*, but chose to sit on their hands with deliberate indifference.

226. Defendants were on notice that their inadequate training and supervision might lead to child abuse or otherwise endanger children, because of allegations in *Doe v. McAfee*, yet they continued to act knowingly and with deliberate indifference.

227. Given that constitutional law, standard public policy, and a reasonable standard of care all hold that government workers and those who work with children should not do

informal examinations of children's private areas, this failure to train exposed children to severe potential danger.

228. Defendants violated clearly-established rights secured to the Plaintiffs by the Fourth and Fourteenth Amendments of the United States Constitution. Each individual Defendant personally failed to train and supervise adequately, or possessed personal responsibility for an overall agency failure to inadequately train or supervise.

229. The failure to provide such training and supervision was a cause of injuries and damages to Plaintiffs.

230. Defendants were personally responsible and responsible in their official capacity.

231. Because of the actions of its agents, including El Paso County DHS, El Paso County employees, and the El Paso County Board of Commissioners, and the direct causal link between actions of the County and the deprivation of federal rights, El Paso County was deliberately indifferent to the inadequate training and supervision, and is responsible for these injuries and damages.

232. Because of the actions of its agents, El Paso County DHS and Reggie Bicha are subject to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court award them relief as follows:

Enter judgment on behalf of Plaintiffs and against all Defendants but El Paso County DHS and Reggie Bicha for special and general damages on their claims, to be determined at trial by a jury, including but not limited to expenses incurred, lost income, and pain and suffering;

Enter judgment for injunctive relief against El Paso County DHS and Reggie Bicha that: (1) DHS may not apply its unconstitutional policies to I.B., and any searches or seizures of I.B. must be performed in compliance with the Fourth Amendment; (2) all photographs of I.B. in the possession of DHS must be destroyed; and (3) El Paso County DHS must institute policies and training that will protect I.B.'s constitutional rights and her safety.

Enter judgment on behalf of Plaintiffs and against all individual Defendants acting in their individual capacities for exemplary, punitive and/or treble damages in an amount sufficient to deter similar misconduct, jointly and severally, to be determined at trial by a jury;

Enter judgment for reasonable attorneys' fees and costs incurred in bringing this action in accordance with 42 U.S.C. § 1988, including expert witness fees;

Enter judgment for pre- and post-judgment interest to the extent allowed by law; and

Grant such other and further relief as it deems equitable and just.

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted this 3rd day of June, 2015.

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