

Name

Johnnie K. v. Crist



JI-NM-002-001

FILED
UNITED STATES DISTRICT COURT
SANTA FE, NEW MEXICO

FEB 18 1982

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

[Signature] CLERK

BY _____ DEP. CLERK

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JOHNNIE K., a minor,
by and through his Next Friend,
JEANNE STOVER, on behalf of
himself and all others similarly
situated,

CIV 82-0182 HB

Civil Action No.

Plaintiffs,

CIVIL RIGHTS COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES

vs.

(CLASS ACTION)

ROGER W. CRIST, individually and as
Secretary of the New Mexico
Department of Corrections; CELEDONIO
VIGIL, individually and as Director
of the Juvenile Facilities Division
of the New Mexico Department of
Corrections; and ROBERT S. PORTILLOS,
individually and as Superintendent of
the New Mexico Boys' School of the New
Mexico Department of Corrections,

Defendants.

INTRODUCTORY STATEMENT

1. This is a civil rights class action for declaratory,
injunctive, and other equitable relief and damages, brought by a
juvenile confined in the New Mexico Boys' School, on behalf of
himself and all other juveniles similarly situated who are
subjected by defendants to censorship of mail during their
period of confinement in said facility.

2. Plaintiffs bring this action under the federal Civil
Rights Acts, 42 U.S.C. §§1983 and 1988, to redress the
violations by defendants, acting under color of state law, of
plaintiffs' rights under the First, Sixth and Fourteenth
Amendments to the United States Constitution, specifically
plaintiffs' rights to freedom of speech and expression,
effective assistance of counsel, and due process of law.

3. Plaintiffs also bring this action under Article II,
Sections 4, 14, 17, 18 and 23 of the Constitution of the State of

1 New Mexico, and Sections 9-3-3 through 9-3-6 and 33-4-2 NMSA
2 1978.

3 JURISDICTION

4 4. This Court has jurisdiction of this action under 28 U.S.C.
5 §1343(3), this being an action to redress the deprivation, under
6 color of state law, of rights secured by the Constitution of the
7 United States and the Civil Rights Acts, 42 U.S.C. §§1983 and
8 1988.

9 5. This Court also has jurisdiction of this action under 28
10 U.S.C. §1343(4), this being an action to recover damages and to
11 secure declaratory, injunctive, and other equitable relief under
12 Acts of Congress providing for the protection of civil rights,
13 specifically the Civil Rights Acts, 42 U.S.C. §1983 and 1988.

14 6. This Court also has jurisdiction of this action under 28
15 U.S.C. §§2201 and 2202, and Rules 57 and 65 of the Federal Rules
16 of Civil Procedure, this being an action for a declaration of the
17 rights of plaintiffs, and for injunctive and other equitable
18 relief based upon said declaratory judgment, under the Civil
19 Rights Act, 42 U.S.C. §§1983 and 1988.

20 7. This Court also has jurisdiction of this action under 28
21 U.S.C. §1331(a), this being an action wherein the matter in
22 controversy arises under the Constitution and laws of the United
23 States.

24 PLAINTIFFS

25 8. Plaintiff JOHNNIE K. is a juvenile, 14 years of age, and
26 a citizen of the United States. At all relevant times during the
27 events described herein, said plaintiff has been incarcerated in
28 the New Mexico Boys' School, located in Springer, New Mexico.

29 DEFENDANTS

30 9. Defendant ROGER W. CRIST is the Secretary of the New
31 Mexico Department of Corrections, which is the state agency
32 responsible for supervising the activities of the department's

1 Juvenile Facilities Division, the division with direct
2 responsibility for administering and supervising the department's
3 juvenile facilities, including the New Mexico Boys' School at
4 Springer, New Mexico; as well as for administering all laws and
5 exercising all functions formerly administered and exercised by
6 the Corrections and Criminal Rehabilitation Department and for
7 ensuring a comprehensive criminal justice system in New Mexico.
8 As Secretary of said department, defendant CRIST is responsible
9 for managing all operations of said department and administering
10 and enforcing the laws with which he or the department is
11 charged. As such, said defendant also exercises the powers of
12 said department and is responsible under Section 9-3-5 NMSA 1978
13 for exercising general supervisory authority over all employees
14 of said department; for making and adopting such rules and
15 regulations as may be necessary to carry out the duties of said
16 department and its division, including the regulations complained
17 of herein; and for approving any rule or regulation promulgated
18 by the director of any division of said department or superin-
19 tendent of any facility under the control of said department.

20 10. Defendant CELEDONIO VIGIL is the director of the
21 Juvenile Facilities Division of the New Mexico Department of
22 Corrections, the division with direct responsibility for
23 administering and supervising the juvenile facilities of the New
24 Mexico Department of Corrections, including the New Mexico Boys'
25 School at Springer, New Mexico. In that capacity, defendant
26 VIGIL is responsible for making and adopting such rules and
27 regulations as may be necessary to carry out the functions of
28 said division, including the regulations complained of herein;
29 and for supervising and implementing the practices and policies
30 of the Juvenile Facilities Division, including the policy and
31 practice of mail censorship complained of herein.

32 11. Defendant ROBERT S. PORTILLOS is the Superintendent of

1 the New Mexico Boys' School, Springer, New Mexico. In that
2 capacity, defendant PORTILLOS is responsible for making and
3 adopting such rules and regulations as may be necessary to carry
4 out the functions of said facility, including the regulations
5 complained of herein; and for seeing that all rules and
6 regulations of the New Mexico Boys' School are properly enforced
7 and implemented, including the regulatory policy and practice of
8 mail censorship complained of herein.

9 CLASS ACTION

10 12. Plaintiffs bring this action on behalf of themselves
11 and all others similarly situated, pursuant to Rule 23(a), (b)(1)
12 and (b)(2) of the Federal Rules of Civil Procedure. The class
13 consists of all juveniles who are currently, have been during the
14 past four years, and in the future will be confined in the New
15 Mexico Boys' School pursuant to an order of a children's court.

16 13. The members of the class are so numerous that joinder
17 of all members is impracticable. Upon information and belief,
18 more than 560 juveniles were confined in the New Mexico Boys'
19 School from July 1979 to July 1980 and, upon information and
20 belief, similar numbers of juveniles have been confined since
21 that time.

22 14. Because all plaintiffs are subject to the same condi-
23 tions of confinement and policies and practices of defendants,
24 there are questions of law and fact common to the members of the
25 plaintiff class, and the claims of the named plaintiff are
26 typical of the claims of the members of the plaintiff class.

27 15. Plaintiffs' counsel has substantial experience in this
28 type of litigation, and the named plaintiff and his counsel will
29 fairly and adequately protect the interests of the members of
30 the class.

31 16. The prosecution of separate actions by individual
32 members of the class would create a risk of inconsistent or

1 varying adjudications with respect to individual members of the
2 class which would as a practical matter be dispositive of the
3 interests of the other members not parties to the adjudications
4 or substantially impair or impede their ability to protect their
5 interests.

6 17. By their policies and practices, the defendants have
7 acted and continue to act on grounds and in a manner generally
8 applicable to the class, thereby making appropriate final injunc-
9 tive relief or corresponding declaratory relief with respect to
10 the class as a whole.

11 18. Because plaintiffs are incarcerated in the New Mexico
12 Boys' School for short periods of time, the injuries suffered by
13 the named plaintiff and members of the plaintiff class as a
14 result of the policies and practices of defendants complained of
15 herein are capable of repetition, yet may evade review, thereby
16 making class relief appropriate.

17 FACTUAL ALLEGATIONS

18 19. The New Mexico Boys' School is the state institution
19 to which boys under eighteen who have been convicted of any
20 crime or who have been adjudged delinquent are sent by
21 children's court judges for long-term supervision, care and
22 rehabilitation. The New Mexico Boys' School often serves over
23 200 students at any one time.

24 20. Under an administrative directive regarding the sub-
25 ject of mail regulations promulgated on September 1, 1974, and
26 currently in effect at the New Mexico Boys' School, defendants,
27 their agents and employees censor, monitor or interfere with
28 correspondence to and from plaintiffs in several ways.

29 21. Under the administrative directive in effect at the
30 New Mexico Boys' School since September 1, 1974, defendants,
31 their agents and employees restrict the number of letters
32 plaintiffs may write.

1 22. Under the administrative directive in effect at the
2 New Mexico Boys' School since September 1, 1974, defendants,
3 their agents and employees review all of plaintiffs' incoming
4 and outgoing mail and maintain a log on it.

5 23. Under the administrative directive in effect at the
6 New Mexico Boys' School since September 1, 1974, defendants,
7 their agents and employees refuse to deliver any letter to or
8 from plaintiffs if it contains "any material or is so worded
9 that existing postal law may be violated".

10 24. Under the administrative directive in effect at the
11 New Mexico Boys' School since September 1, 1974, defendants,
12 their agents and employees refuse to deliver any letter to or
13 from plaintiffs if it contains "obscenity, lewdness, threats,
14 blackmail attempts, escape plots or statements which may tend
15 to incite race hatred."

16 25. Under the administrative directive in effect at the
17 New Mexico Boys' School since September 1, 1974, defendants,
18 their agents and employees refuse to deliver any letter to or
19 from plaintiffs if it discusses "criminal activities" or "gives
20 false, malicious or libelous information about individuals.

21 26. Under the administrative directive in effect at the
22 New Mexico Boys' School since September 1, 1974, defendants,
23 their agents and employees refuse to deliver any letter to or
24 from plaintiffs if it discusses the "character, crimes, or
25 personal habits of other students."

26 27. Under the administrative directive in effect at the
27 New Mexico Boys' School since September 1, 1974, defendants,
28 their agents and employees refuse to deliver any letter to or
29 from plaintiffs if it "attempts to give instructions or advice
30 about another student or his associates."

31 28. Under the administrative directive in effect at the
32 New Mexico Boys' School since September 1, 1974, defendants,

1 their agents and employees refuse to deliver any letter to or
2 from plaintiffs if it is "not legible, clear, or addressed
3 correctly.

4 29. Under the administrative directive in effect at the
5 New Mexico Boys' School since September 1, 1974, defendants,
6 their agents and employees refuse to deliver any letter to or
7 from plaintiffs if it contains "references, innuendos, or codes
8 which lead the staff to suspect that it might not be proper."

9 30. Under the administrative directive in effect at the
10 New Mexico Boys' School since September 1, 1974, defendants,
11 their agents and employees refuse to deliver any letter to or
12 from plaintiffs if it is not written in English or Spanish and
13 no special permission has been given to correspond in another
14 language.

15 31. Under the administrative directive in effect at the
16 New Mexico Boys' School since September 1, 1974, defendants,
17 their agents and employees refuse to deliver any letter to or
18 from plaintiffs if it contains "information that is considered
19 detrimental to the student or to his program."

20 32. Under the administrative directive in effect at the
21 New Mexico Boys' School since September 1, 1974, defendants,
22 their agents and employees open and censor incoming and outgoing
23 letters to government officials.

24 33. Under the administrative directive in effect at the
25 New Mexico Boys' School since September 1, 1974, defendants,
26 their agents and employees open any letter plaintiffs write to
27 an attorney if defendants, their agents and employees "suspect
28 that it contains matters inconsistent with school rules or not
29 pertinent to the student's case."

30 34. Under the administrative directive in effect at the
31 New Mexico Boys' School since September 1, 1974, defendants,
32 their agents and employees disapprove of any magazine, book,

1 newspaper publication or periodical sent to plaintiffs if the
2 subject nature is "subversive" or "militant".

3 35. Under the administrative directive in effect at the
4 New Mexico Boys' School since September 1, 1974, if defendants,
5 their agents and employees reject a letter to a plaintiff from a
6 person outside the facility, defendants, their agents and em-
7 ployees place a memorandum stating the reason for the rejection
8 in the plaintiff's permanent central file indicating that the
9 plaintiff has received "inappropriate" correspondence.

10 36. Plaintiffs have no control over who sends them mail
11 from outside the facility. However, if such mail is deemed
12 "inappropriate" by defendants, their agents and employees, said
13 defendants put a memorandum indicating such fact in plaintiffs'
14 files. Defendants' placement of this censorship memorandum in
15 plaintiffs' files diminishes plaintiffs' chances of being ad-
16 vanced to the next step of the Phase Program at the New Mexico
17 Boys' School and diminishes plaintiffs' chances of being
18 released from the facility and placed on parole.

19 37. Under the administrative directive in effect at the
20 New Mexico Boys' School since September 1, 1974, defendants,
21 their agents and employees provide no procedure by which
22 plaintiffs can challenge a censorship decision by defendants,
23 their agents and employees.

24 38. Under the administrative directive in effect at the
25 News Mexico Boys' School since September 1, 1974, defendants,
26 their agents and employees spot-check and read or censor all
27 correspondence to or from plaintiffs.

28 39. Under the administrative directive in effect at the
29 New Mexico Boys' School since September 1, 1974, defendants,
30 their agents and employees open all correspondence to or from
31 plaintiffs out of the presence of plaintiffs.

32 40. Defendants have been advised by legal counsel that the

1 mail regulations currently in effect at the New Mexico Boys'
2 School are unconstitutional.

3 41. Defendants have also been advised by the New Mexico
4 Attorney General that the mail regulations currently in effect
5 at the New Mexico Boys' School are unconstitutional.

6 42. Under the administrative directive in effect at the
7 New Mexico Boys' School since September 1, 1974, defendants,
8 their agents and employees prevent plaintiffs from corresponding
9 and communicating with their parents, guardians, family,
10 friends, attorneys, judges and government officials.

11 43. Under the administrative directive in effect at the
12 New Mexico Boys' School since September 1, 1974, defendants,
13 their agents and employees impose a chilling effect on the
14 ability of plaintiffs to correspond and communicate with persons
15 outside the facility.

16 44. Under the administrative directive in effect at the
17 New Mexico Boys' School since September 1, 1974, defendants,
18 their agents and employees undermine the rehabilitation of the
19 plaintiffs confined in the facility.

20 45. Under the administrative directive in effect at the
21 New Mexico Boys' School since September 1, 1974, defendants,
22 their agents and employees promote in plaintiffs the fear of
23 censorship of communication.

24 46. By promulgating the administrative directive in effect
25 at the New Mexico Boys' School since September 1, 1974,
26 defendants, their agents and employees do not provide for the
27 care, protection and wholesome mental and physical development
28 of plaintiffs as required by the legislative purpose section of
29 New Mexico's Children's Code, §32-1-2 NMSA 1978.

30 47. Plaintiff JOHNNIE K. was committed to the New Mexico
31 Boys' School on or about November 12, 1981, and is currently
32 being incarcerated in said facility. The named plaintiff is

1 currently being subjected to the circumstances and conditions
2 complained of herein.

3 48. Defendants regularly subject plaintiffs to the mail
4 censorship policies and practices described above. Defendants
5 have similarly confined and detained juveniles in the New Mexico
6 Boys' School under such conditions in previous years, and
7 defendants will continue to confine juveniles under such
8 conditions in the future unless plaintiffs are granted the
9 relief requested herein.

10 KNOWLEDGE AND INTENT OF DEFENDANTS

11 49. Defendant ROGER M. CRIST is the Secretary of the New
12 Mexico Department of Corrections and as such is responsible for
13 managing all operations of said department and administering and
14 enforcing the laws with which he or the department is charged.
15 As such, said defendant also exercises the powers of said
16 department and is responsible under Section 9-3-5 NMSA 1978 as
17 previously set forth herein. In such capacity, said defendant
18 knew or should have known of the conditions and circumstances
19 alleged herein and should have taken steps to correct said
20 conditions and circumstances. Said defendant's actions or
21 omissions constitute actual approval, or gross negligence,
22 deliberate indifference to, and tacit authorization of, the
23 deprivation of plaintiffs' constitutional and statutory rights
24 complained of herein.

25 50. Defendant CELEDONIO VIGIL is the director of the
26 Juvenile Facilities Division of the New Mexico Department of
27 Corrections, the division with direct responsibility for
28 administering and supervising the juvenile facilities of the New
29 Mexico Department of Corrections, including the New Mexico Boys'
30 School at Springer, New Mexico. In that capacity, defendant
31 VIGIL is responsible for making and adopting such rules and
32 regulations as may be necessary to carry out the functions of

1 said division, including the regulations complained of herein;
2 and for supervising and implementing the practices and policies
3 of the Juvenile Facilities Division, including the policy and
4 practice of mail censorship complained of herein. In such
5 capacity, said defendant knew or should have known of the con-
6 ditions and circumstances alleged herein and should have taken
7 steps to correct said conditions and circumstances. Said
8 defendant's actions and omissions constitute actual approval of,
9 or gross negligence, deliberate indifference to, and tacit
10 authorization of, the deprivation of plaintiffs' constitutional
11 and statutory rights complained of herein.

12 51. Defendant ROBERT S. PORTILLOS is the Superintendent of
13 the New Mexico Boys' School, Springer, New Mexico. In that
14 capacity, defendant PORTILLOS is responsible for making and
15 adopting such rules and regulations as may be necessary to carry
16 out the functions of said facility, including the regulations
17 complained of herein, and for seeing that all rules and regula-
18 tions of the New Mexico Boys' School are properly enforced and
19 implemented, including the regulatory policy and practice of
20 mail censorship complained of herein. In such capacity, said
21 defendant knew or should have known of the conditions and
22 circumstances alleged herein and should have taken steps to
23 correct said conditions and circumstances. Said defendant's
24 actions and omissions constitute actual approval of, or gross
25 negligence, deliberate indifference to, and tacit authorization
26 of, the deprivation of plaintiffs' constitutional and statutory
27 rights complained of herein.

28 52. As a proximate result of the policies, practices,
29 acts, and omissions of defendants complained of herein,
30 plaintiffs have suffered and will continue to suffer serious
31 psychological and emotional injuries.

32

1 a. if it contains "any material or is so worded
2 that existing postal law may be violated";

3 b. if it contains "obscenity, lewdness, threats,
4 blackmail attempts, escape plots or statements which
5 may tend to incite race hatred";

6 c. if it discusses "criminal activities" or
7 "gives false, malicious or libelous information about
8 individuals";

9 d. if it discusses the "character, crimes, or
10 personal habits of other students";

11 e. if it "attempts to give instructions or advice
12 about another student or his associates";

13 f. if it is "not legible, clear, or addressed
14 correctly";

15 g. if it contains "references, innuendos, or
16 codes which lead the staff to suspect "that it might
17 not be proper";

18 h. if it is not written in English or Spanish
19 and no special permission has been given to correspond
20 in another language; and

21 i. if it contains "information that is considered
22 detrimental to the student or to his program."

23 (4) restraining and prohibiting all defendants from
24 opening and censoring any incoming or outgoing letter to
25 any government officials;

26 (5) restraining and prohibiting all defendants from
27 opening any of plaintiffs' letters to or from any attorney;

28 (6) restraining and prohibiting all defendants from
29 disapproving of any magazine, book, newspaper publication
30 or periodical because defendants may find its subject
31 nature "subversive" or "militant";

32 (7) restraining and prohibiting all defendants from

1 rejecting any letter to any plaintiff from persons outside
2 the facility and from keeping in the plaintiffs' permanent
3 central file any record of said rejection;

4 (8) restraining and prohibiting all defendants from
5 spot-checking and reading or censoring all correspondence
6 to or from plaintiffs; and

7 (9) restraining and prohibiting all defendants from
8 opening any correspondence to or from plaintiffs out of the
9 presence of plaintiffs.

10 E. Order the defendants to develop and implement a
11 comprehensive procedure whereby plaintiffs can challenge any
12 opening or censoring of their mail by defendants.

13 F. Order defendants to develop and implement regulations
14 for the correction of the unlawful policies, practices, acts and
15 omissions complained of herein, and to submit said regulations
16 to the court and to the attorneys for plaintiffs for review.

17 G. Issue a judgment assessing general and special damages
18 against the defendants ROGER W. CRIST, CELEDONIO VIGIL and
19 ROBERT S. PORTILLOS for injuries suffered by the named plaintiff
20 as a proximate result of the policies, practices, acts and
21 omissions complained of herein, in an amount to be established
22 by the proof.

23 H. Issue a judgment on behalf of the named plaintiff
24 assessing punitive damages against the defendants ROGER W.
25 CRIST, CELEDONIO VIGIL and ROBERT S. PORTILLOS for injuries
26 suffered by the named plaintiff as a proximate result of the
27 policies, practices, acts and omissions complained of herein, in
28 the amount of \$100,000 against each of said defendants.

29 I. Retain jurisdiction over defendants and each of them
30 until such time as the Court is satisfied that their unlawful
31 policies, practices, acts and omissions complained of herein no
32 longer exist and will not recur.

1 J. Award plaintiffs the cost of this proceeding,
2 attorney's fees, and such other and further relief as to this
3 Court seems just and proper.

4 Dated this 18th day of February, 1982.

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