

Honorable Robert J. Bryan

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASANDRA BRAWLEY, an individual,

Plaintiff,

v.

STATE OF WASHINGTON; WASHINGTON
STATE DEPARTMENT OF CORRECTIONS;
HAROLD CLARKE, former Secretary,
Washington State Department of Corrections,
in his individual and official capacity; ELDON
VAIL, Secretary, Washington State
Department of Corrections, in his individual
and official capacity; RUBEN CEDENO,
Deputy Secretary, Department of Corrections,
in his individual and official capacity; ALICE
PAYNE, Prisons Administrator, in her
individual and official capacity; DOUGLAS
COLE, Superintendent of Washington
Corrections Center for Women, in his
individual and official capacity; BRYDEE
GLASCO, Correctional Officer, Washington
Corrections Center for Women, in her
individual and official capacity; HERBERT
JOY, Correctional Officer, Washington
Corrections Center for Women, in his
individual and official capacity; LEAH
EASON, Correctional Officer, Washington
Corrections Center for Women, in her
individual and official capacity,

Defendants.

NO. C09-5382

AMENDED COMPLAINT FOR
DAMAGES AND DECLARATORY
RELIEF

JURY TRIAL DEMANDED

1 Plaintiff Casandra Brawley alleges as follows:

2 **I. JURISDICTION AND VENUE**

3 1.1 This action arises under the Constitution and laws of the United States,
4 specifically the Eighth Amendment, the Fourteenth Amendment, and 42 U.S.C. § 1983.

5 1.2 This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(4). Further,
6 this Court has jurisdiction to issue declaratory relief under 28 U.S.C. §§ 2201(a) and 2202.
7 This Court has supplemental jurisdiction over Washington State claims under 28 U.S.C. §
8 1367(a).

9 1.3 Venue is proper in the Western District of Washington under 28 U.S.C. §
10 1391(b) because the plaintiff resides in Kitsap County, Washington; some of the defendants
11 reside in or are located in Thurston County, Washington; and the events underlying this
12 action occurred in Pierce County, Washington.

13 **II. PARTIES**

14 2.1 Plaintiff Casandra Brawley is an individual residing in Kitsap County. Ms.
15 Brawley was incarcerated at the Washington Corrections Center for Women ("WCCW")
16 from approximately December 16, 2006, until May 10, 2007.

17 2.2 Defendant Washington State Department of Corrections ("DOC") is an
18 agency of the State of Washington.

19 2.3 Defendant Harold Clarke is the former Secretary of the DOC and was
20 Secretary at all times during the events described herein. In that capacity, Mr. Clarke had the
21 ultimate authority and responsibility for the administration of Washington prison facilities,
22 including the WCCW. On information and belief, Mr. Clarke had the authority to direct the
23 activities of subordinate officers and other employees of the WCCW. On information and
24 belief, in his supervisory role, Mr. Clarke directed and had knowledge of the actions of
25 subordinate officers and other employees of the WCCW. On information and belief, he also
26 had the power to create and implement policies and practices related to the use of restraints

1 on women incarcerated at the WCCW, including pregnant and laboring women. Mr. Clarke
2 is sued in his individual and official capacity.

3 2.4 Defendant Eldon Vail is the Secretary of the DOC. In that capacity, Mr. Vail
4 has the ultimate authority and responsibility for the administration of Washington prison
5 facilities, including the WCCW. On information and belief, Mr. Vail has the authority to
6 direct the activities of subordinate officers and other employees of the WCCW. On
7 information and belief, in his supervisory role, Mr. Vail directs and has knowledge of the
8 actions of subordinate officers and other employees of the WCCW. On information and
9 belief, he also has the power to create and implement policies and practices related to the use
10 of restraints on women incarcerated at the WCCW, including pregnant and laboring women.
11 Mr. Vail is sued in his individual and official capacity.

12 2.5 Defendant Ruben Cedeño is the former Deputy Secretary of the DOC. In that
13 capacity, Mr. Cedeño had responsibility for the administration of Washington prison
14 facilities, including the WCCW. On information and belief, Mr. Cedeño had the authority to
15 direct the activities of subordinate officers and other employees of Washington prisons. On
16 information and belief, in his supervisory role, Mr. Cedeño directed and had knowledge of
17 the actions of subordinate officers and other employees of the WCCW. On information and
18 belief, he also had the power to create and implement policies and practices related to the use
19 of restraints on women incarcerated at the WCCW, including pregnant and laboring women.
20 Mr. Cedeño is sued in his individual and official capacity.

21 2.6 Defendant Alice Payne is the Prisons Administrator at Prisons Command
22 Central for the DOC. On information and belief, Ms. Payne, in that capacity, is responsible
23 for oversight of all DOC facilities in which women are incarcerated, including the WCCW.
24 On information and belief, Ms. Payne has the authority to direct the activities of subordinate
25 officers and other employees of Washington prisons. On information and belief, in her
26 supervisory role, Ms. Payne directs and has knowledge of the actions of subordinate officers

1 and other employees of the WCCW. On information and belief, she also has the power to
2 create and implement policies and practices related to the use of restraints on women
3 incarcerated at the WCCW, including pregnant and laboring women. Ms. Payne is sued in
4 her individual and official capacity.

5 2.7 Defendant Douglas Cole is the Superintendent of WCCW. On information
6 and belief, in that capacity, Mr. Cole has the authority to direct the activities of subordinate
7 officers and other employees of Washington prisons, including the WCCW. On information
8 and belief, in his supervisory role, Mr. Cole directs and has knowledge of the actions of
9 subordinate officers and other employees of the WCCW. On information and belief, he also
10 has the power to create and implement policies and practices related to the use of restraints
11 on women incarcerated at the WCCW, including pregnant and laboring women. Mr. Cole is
12 sued in his individual and official capacity.

13 2.8 Defendant Brydee Glasco is a Correctional Officer at WCCW. On
14 information and belief, in that capacity, Ms. Glasco took part in the transportation of
15 Cassandra Brawley to St. Joseph Hospital. On information and belief, Ms. Glasco shackled
16 Cassandra Brawley, who was nine months pregnant and in labor, with a waist chain attached
17 to hand cuffs for the duration of the transport. On information and belief, Ms. Glasco also
18 shackled Cassandra Brawley to a hospital bed using an ankle restraint attached to her leg
19 while she was in labor. Ms. Glasco is sued in her individual and official capacity.

20 2.9 Defendant Herbert Joy is a Correctional Officer at WCCW. On information
21 and belief, in that capacity, Mr. Joy took part in the transportation of Cassandra Brawley to
22 St. Joseph Hospital. On information and belief, Mr. Joy shackled Cassandra Brawley, who
23 was nine months pregnant and in labor, with a waist chain attached to hand cuffs for the
24 duration of the transport. On information and belief, he also shackled Cassandra Brawley to
25 a hospital bed using an ankle restraint attached to her leg while she was in labor. Mr. Joy is
26 sued in his individual and official capacity.

3.1 In April 2007, Casandra Brawley was incarcerated at the Washington Corrections Center for Women near Gig Harbor, Washington. She was serving a fourteen-month sentence for second degree theft—a nonviolent crime.

3.2 Ms. Brawley had never been convicted of a violent crime. She was an exemplary inmate who was never disciplined for any infraction. She was released after less than seven months, without the need for probation, because her crime was non-violent and she was given credit for good time served.

17 | 3.3 In April 2007, Ms. Brawley was also nine months pregnant.

3.4 At 4:00 a.m. on April 13, 2007, Ms. Brawley's amniotic sac ruptured, causing a slow leak. She immediately asked to be taken to the prison clinic. Instead, she was permitted to talk to a clinic nurse by phone. The nurse told her to go back to bed and report to "sick call" in the morning.

3.5 At “sick call” three and a half hours later, the clinic nurse tested Ms. Brawley to determine whether she was in labor, and decided to send her to St. Joseph Hospital in Tacoma, Washington. During her transportation to St. Joseph, DOC agents kept Ms. Brawley shackled with a chain around her belly (known as a “waist chain”) attached to handcuffs. At the hospital, a certified nurse midwife asked a DOC agent to remove Ms.

1 Brawley's waist chain and handcuffs for the examination. The DOC agent agreed and
2 removed the restraints, but chained Ms. Brawley to a hospital bed by a metal chain ankle
3 restraint, where she remained throughout the examination. After examining her, the certified
4 nurse midwife discharged Ms. Brawley with instructions to return if she had significant water
5 leakage, excessive bleeding, or quick contractions. Ms. Brawley was again restrained with
6 the waist chain and handcuffs and transported back to WCCW.

7 3.6 Because she continued to experience water leakage and believed she was in
8 labor, Ms. Brawley returned to the prison clinic on Saturday, April 14, 2007, where she was
9 allowed to stay overnight—at her insistence—for observation. At 3:00 a.m. on April 14,
10 2007, Ms. Brawley began to have contractions in her lower back and abdomen every eight
11 minutes. She was told – repeatedly and without explanation – that these were the “wrong”
12 kind of contractions. She was released seven hours later.

13 3.7 At 4:00 p.m. on April 15, 2007, Ms. Brawley's contractions were five minutes
14 apart. Because she feared that her reports of her labor would be treated dismissively once
15 again, she waited an hour and a half, then reported her contractions to a corrections officer
16 and asked to be taken to the clinic. She was taken to the clinic and monitored by clinic
17 personnel. After being subjected to what she was told was a routine strip search,
18 Correctional Officers Glasco and Joy shackled her with a waist chain attached to hand cuffs
19 and transported her to the hospital.

20 3.8 When she arrived at St. Joseph Hospital, Correctional Officers Glasco and Joy
21 shackled Ms. Brawley to the hospital bed by one leg, using a metal ankle restraint attached to
22 a metal chain and in direct violation of DOC policy. During this time, Ms. Brawley was
23 having painful and frequent labor contractions. At some point during her labor, Correctional
24 Officer Eason relieved Correction Officers Glasco and/or Joy. After five hours of laboring—
25 in shackles the entire time—Ms. Brawley was given an epidural. Correctional Officer Eason
26 continued to keep Ms. Brawley shackled throughout that medical procedure. After the

1 epidural, Ms. Brawley's temperature was elevated above 100 degrees Fahrenheit. She was
2 given antibiotics, Tylenol and cold compresses, which failed to reduce her temperature.
3 Eventually she was given oxygen. During this process, Correctional Officer Eason failed to
4 free Ms. Brawley of the leg shackle that restrained her to her hospital bed.

5 3.9 A physician then attempted to induce labor by breaking the amniotic sac, but
6 found the sac empty. Left leaking and untreated for two days, her uterus had become
7 infected. The fetal heartbeat was dangerously accelerated, as well. During this process,
8 Correctional Officer Eason kept Ms. Brawley shackled to a hospital bed in direct violation of
9 DOC policy.

10 3.10 At 1:30 a.m. on April 16, 2007, an on-call physician determined that a
11 caesarean section was necessary for the health of both mother and child, and Ms. Brawley
12 consented. It was only then that Correctional Officer Eason and/or other DOC agents freed
13 her from the restraints, because the physician insisted that her restraints be removed before
14 she would perform the surgery. Once the surgery was completed and the baby was delivered,
15 Correctional Officer Eason and/or other DOC agents shackled Ms. Brawley to the bed once
16 again by the metal leg restraint.

17 3.11 Ms. Brawley remained in the hospital for an additional three days, to recover
18 from her c-section surgery and to undergo antibiotic treatment for the infection in her uterus.
19 During her entire hospitalization – even though walking is extremely difficult in the first few
20 days after a caesarean section – Correctional Officer Eason and other DOC corrections
21 officers kept Ms. Brawley shackled to a hospital bed by the metal leg restraint and guarded
22 her 24 hours per day. Her baby, a boy, was also treated with antibiotics in the neo-natal
23 intensive care unit for seven days. Ms. Brawley was able to see him periodically. When she
24 needed to hold her baby or respond to his cries, she had to request that Correctional Officer
25 Eason and/or other DOC corrections officers release her restraints. If she needed to use the
26 bathroom or take slow walks as was recommended by her physician for appropriate recovery

1 from a caesarean section, Correctional Officer Eason and/or other DOC officers shackled her
 2 ankles together by an ankle chain. Other than those brief periods, Correctional Officer Eason
 3 and other DOC officers kept her shackled to a hospital bed throughout her hospital stay.

4 3.12 Ms. Brawley was released from the WCCW on May 10, 2007. She currently
 5 lives with her son, his father, and their new baby born in November of 2008.

6 3.13 Washington State Department of Corrections policy states: "a female offender
 7 shall not be restrained during labor or delivery of an infant."¹

8 3.14 This policy is in apparent recognition that is it dangerous and unnecessary to
 9 shackle laboring incarcerated women. The American College of Obstetricians and
 10 Gynecologists (ACOG) is the foremost national professional association for physicians
 11 practicing obstetrical care. ACOG states: "Physical restraints have interfered with the ability
 12 of physicians to safely practice medicine by reducing their ability to assess and evaluate the
 13 physical condition of the mother and the fetus, and have similarly made the labor and
 14 delivery process more difficult than it needs to be; thus, overall putting the health and lives of
 15 the women and unborn children at risk. . . [t]he practice of shackling an incarcerated woman
 16 in labor may not only compromise her health care but is demeaning and unnecessary. Most
 17 women in correctional facilities are incarcerated for non-violent crimes and are accompanied
 18 by guards when they are cared for in medical facilities. Testimonials from incarcerated
 19 women who went through labor with shackles confirm the emotional distress and the
 20 physical pain caused by the restraints. Women describe the inability to move to allay the
 21 pains of labor, the bruising caused by chain belts across the abdomen, and the deeply felt loss
 22 of dignity."²

23
 24 ¹Amnesty International, State by State Survey of Policies and Practices in the United States,
 25 citing Wash. Dep't of Corrections, Policy on "Use of Restraints," 420.250 (page 5,D),
 available at <http://www.amnestyusa.org/women/custody/states/washington.pdf>.

26 ² Ralph Hale, M.D., Executive Vice President, American College of Obstetricians and
 Gynecologists, *Letter supporting federal legislation to prohibit shackling incarcerated
 pregnant women in labor*, June 12, 2007, available at
http://www.acog.org/departments/dept_notice.cfm?recno=18&bulletin=4631.

1 3.15 Similarly, the American Public Health Association has declared that “women
2 must never be shackled during labor and delivery.”³

3 IV. CLAIMS FOR RELIEF

4 First Claim for Relief—Violation of the United States Constitution

5 The allegations of paragraphs 2.1 through 3.15 above are incorporated herein.

6 4.1 The Eighth Amendment to the United States Constitution prohibits cruel and
7 unusual punishment. This prohibition is extended to state actors by the Due Process Clause
8 of the Fourteenth Amendment.

9 4.2 Defendants Glasco, Joy, and Eason shackled Plaintiff Casandra Brawley in
10 her ninth month of pregnancy, while she was in labor, while she was laboring before delivery
11 of her baby, and immediately after delivery of her baby by caesarean section.

12 4.3 Defendant Department of Corrections’ own policy against shackling pregnant
13 women in labor and delivery demonstrates that the DOC and the other named Defendants
14 understood the dangers inherent in shackling pregnant women in labor and childbirth and,
15 either through negligent training, supervision, enforcement, failure to follow that policy, or
16 all of the above, showed deliberate indifference for the safety and health of Casandra
17 Brawley and her child.

18 4.4 The Defendants’ actions toward Casandra Brawley constitute cruel and
19 unusual punishment, prohibited by the Eighth and Fourteenth Amendments to the United
20 States Constitution.

21 4.5 Casandra Brawley suffered damages as a result of the Defendants’ violation of
22 her right to be free from cruel and unusual punishment.

23 Second Claim for Relief – Violation of Washington State Constitution

24 The allegations of paragraphs 2.1 through 3.15 above are incorporated herein.

25 4.6 The Defendants inflicted cruel punishment on Casandra Brawley in violation
26

³APHA *Standards for Health Services in Correctional Institutions*, 3rd, 108 (2003).

of Article 1, Section 14 of the Washington State Constitution.

4.7 Casandra Brawley suffered damages as a result of the Defendants' infliction of cruel punishment.

V. JURY DEMAND

5.1 Plaintiff hereby demands that this matter be tried to a jury.

VI. PRAYER FOR RELIEF

6.1 A declaratory judgment under 28 U.S.C. § 2201 that the Defendants violated Casandra Brawley's rights under the Eighth and Fourteenth Amendments of the United States Constitution.

6.2 A declaratory judgment under 28 U.S.C. § 2201 that the Defendants violated Casandra Brawley's right under Article 1, Section 14 of the Washington State Constitution to be free of cruel punishment;

6.3 Damages in an amount to be proven at trial;

6.4 Reasonable attorneys' fees and costs under 42 U.S.C. § 1988;

6.5 And for such other relief as the Court deems just and proper.

DATED this 29th day of October, 2009.

PETERSON YOUNG PUTRA

s/Michael S. Wampold

Michael S. Wampold, WSBA No. 26053

Ann H. Rosato, WSBA No. 32888

Ana M. Popp, WSBA No. 39614

Peterson Young Putra

1501 4th Avenue, Suite 2800

Seattle, WA 98101

Ph. 206-624-3800

Email: wampold@pypfirm.com

Email: rosato@pypfirm.com

Email: popp@pypfirm.com

Attorneys for Plaintiff
Cooperating Counsel for Legal Voice

LEGAL VOICE

s/Sara Ainsworth

Sara Ainsworth, WSBA No. 26656

Legal Voice

907 Pine Street, Suite 500

Seattle, WA 98101

Ph. 206-682-9552

Email: sainsworth@LegalVoice.org

Co-Counsel for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below I electronically filed the foregoing to the following e-mail address:

Sara Ainsworth: sainsworth@LegalVoice.org

Gary Andrews: GaryA@ATG.WA.GOV

Dated: October 30, 2009.

s/Elizabeth Chandler
Elizabeth Chandler
Peterson Young Putra
Paralegal