

*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

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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.

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LEGAL CLAIMS

53. For plaintiffs' legal claims enumerated below, they reallege Paragraphs 1 through 52 above, as if fully set forth herein.

54. Defendants' policies, practices, acts and omissions complained of herein, and specifically defendants' subjection of plaintiffs to the policy and practice of mail censorship while confined in the New Mexico Boys' School, violate plaintiffs' right to freedom of speech and expression guaranteed by the First and Fourteenth Amendments to the United States Constitution, and the New Mexico Constitution; violate plaintiffs' right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution; and subject plaintiffs to denial of due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution and the New Mexico Constitution.

NO ADEQUATE REMEDY AT LAW

55. As a proximate result of the defendants' policies, practices, acts and omissions complained of herein, and the conditions and circumstances described herein to which plaintiffs are subjected, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described herein. Plaintiffs will continue to be irreparably injured by the policies, practices, acts and omissions of the defendants unless this Court grants the injunctive relief which plaintiffs seek.

ATTORNEYS' FEES AND COSTS

56. This is a civil rights action and plaintiffs are entitled to attorneys' fees and costs under 42 U.S.C. §1988.



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 18<sup>th</sup> day of February, 1982.

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