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Attorneys for Plaintiff
Yursil Kidwai

YURSIL KIDWAI, on behalf of himself and
others similarly situated,

Plaintiffs,

- vs -

HUDSON COUNTY PROSECUTOR'S
OFFICE, ESTHER SUAREZ, JANE
WEINER, ASHLEY RUBEL (a/k/a Ashley
Thormann), LESLIE MURPHY, JULIA
MEDINA, RONALD EDWARDS, HUDSON
COUNTY DEPARTMENT OF
CORRECTIONS & REHABILITATION,
HUDSON COUNTY CORRECTIONAL
FACILITY, JOHN DOES 1-10,

Defendants.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Civil No. _____

COMPLAINT

Plaintiff Yursil KIDWAI, through his attorneys, Hartmann Doherty Rosa Berman & Bulbulia, LLC, on behalf of himself and other similarly situated current and former inmates at the Hudson County Correctional Facility, alleges as follows by way of complaint against the individual defendants listed above, in their individual and official capacities, and against the defendant official agencies listed above:

1) Since at least in or about May 2020, the Hudson County Prosecutor's Office, the Hudson County Department of Corrections & Rehabilitation, the Hudson County Correctional

Facility, and the individual named Defendants violated the constitutional rights of Plaintiff and, upon information and belief, one or more other inmates incarcerated at the Hudson County Correctional Facility, by secretly monitoring, reviewing, digesting, sharing and otherwise using the substance of inmates' privileged attorney-client telephone calls to investigate and prosecute the inmate's criminal case.

2) The unconstitutional conduct alleged herein was committed by the individual Defendants pursuant to a policy, custom, or practice of the agency Defendants.

3) Defendants attempted to keep the conduct alleged herein secret because Defendants knew and understood that the conduct was unconstitutional.

JURISDICTION

4) This Court has jurisdiction over this matter under 42 U.S.C. § 1983.

PARTIES

5) Plaintiff Yursil Kidwai is an individual who currently is incarcerated at Avenel, New Jersey and who, at all relevant times, was incarcerated at the Hudson County Correctional Facility.

6) Defendant Esther Suarez is, and was at all relevant times, the Hudson County Prosecutor.

7) Defendant Jane Weiner is presently a New Jersey Superior Court judge and was, at all relevant times, Assistant Chief Hudson County Prosecutor.

8) Defendant Ashley Rubel (a/k/a Ashley Thormann) was at all relevant times a detective with the Hudson County Prosecutor's Office.

9) Detective Julia Medina was at all relevant times a detective with the Hudson County Prosecutor's Office.

10) Defendant Leslie Murphy was at all relevant times a detective sergeant with the Hudson County Prosecutor's Office and the supervisor of Defendant Rubel and Defendant Medina.

11) Defendant Ronald Edwards was, at all relevant times, the Director of Hudson County's Department of Corrections and Rehabilitation ("HCDC&R"), and responsible for the policies, customs, and practices at the Hudson County Correctional Facility which, upon information and belief, permitted sharing with Defendant Hudson County Prosecutor's Office recorded inmate attorney-client telephone calls to be used in connection with the prosecution of the inmates whose attorney-client conversations were recorded, in violation of the inmates' clearly established constitutional rights.

12) Defendant Hudson County Prosecutor's Office ("HCPO"), which employs approximately 70 assistant prosecutors and more than 100 detectives, had a policy, custom, or practice of using Hudson County Correctional Center inmates' recorded attorney-client telephone calls in connection with the prosecution of the inmates whose attorney-client conversations were secretly monitored, recorded and digested, in violation of the inmates' clearly established constitutional rights.

13) Defendant Hudson County Department of Corrections and Rehabilitation ("HCDC&R") had a policy, custom, or practice of monitoring and recording inmates' attorney-client telephone calls and sharing those recordings with Defendant HCPO so they could be used in connection with the prosecution of the inmates whose attorney-client conversations were recorded, in violation of the inmates' clearly established constitutional rights.

14) Defendant Hudson County Correction Facility ("HCCF") is a subagency of Defendant HCDC&R, and had a policy, custom, or practice of monitoring and recording inmates' attorney-client telephone calls and sharing those recordings with Defendant HCPO so they could

be used in connection with the prosecution of the inmates whose attorney-client conversations were recorded, in violation of the inmates' clearly established constitutional rights.

15) John Does 1-10 are such other officials employed by the agency Defendants who participated in and/or authorized the misconduct alleged in this Complaint but whose identities presently are unknown to Plaintiff.

CLASS ALLEGATIONS

16) Plaintiff Kidwai is authorized to sue as a representative party on behalf of all members because:

- (a) upon information and belief, other inmates at HCCF were subjected to the same constitutional deprivations as he, and the class is so numerous that joinder of all members is impracticable;
- (b) the questions of law and fact implicated by Plaintiff's claims are common to all such inmates;
- (c) Plaintiff's claims are typical of the claims of the class because they arise from the same practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory; and
- (d) Plaintiff, through counsel, will fairly and adequately protect the interests of the class.

17) Prosecuting separate actions by individual class members would prejudice Defendants by creating a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the monitoring, recording, sharing, and use of inmate attorney-client telephone conversations by Defendants.

18) Prosecuting separate actions by individual class members would prejudice individual class members by creating a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

19) Defendants have acted on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole.

20) Questions of law and/or fact common to the class members predominate over any questions affecting only individual members and a class action is superior to other available methods to fairly and efficiently adjudicated the controversy.

CLEARLY ESTABLISHED CONSTITUTIONAL LAW

21) It is clearly established law that criminal defendants have a constitutional right under the Sixth Amendment to the effective assistance of counsel. *See, e.g., Glasser v. United States*, 315 U.S. 60, 62 (1942).

22) It is clearly established law that the right to effective assistance of counsel is infringed when a state actor intercepts confidential attorney-client communications and relays information about defense strategy to the prosecution for use against the defendant at trial. *See Weatherford v. Bursey*, 429 U.S. 545, 554 (1977).

23) It is clearly established law that the Fourth Amendment protects individuals from unreasonable searches and seizures, including of their telephone communications. *See Katz v. United States*, 389 U.S. 347, 360–61 (1967); *United States v. United States District Court*, 407 U.S. 297, 313 (1972).

24) It is clearly established law that even incarcerated individuals have an objectively reasonable expectation of privacy in their attorney-client telephone communications and retain the right to be free from unwarranted government searches and seizures of their communications with their attorneys. *See Pell v. Procunier*, 417 U.S. 817, 822 (1974).

25) It is clearly established law that obtaining evidence by outrageous government conduct violates due process. *Rochin v. California*, 342 U.S. 165 (1952).

FACTS

26) In or about May 2020, Yursil Kidwai was incarcerated at HCCF after having been charged with a criminal offense in Hudson County, New Jersey.

27) At all relevant times while incarcerated at the HCCF, Kidwai was represented by counsel.

28) New Jersey law prohibits monitoring legal telephone calls between inmates and their attorneys, “except to determine the identity of the party called.” N.J.A.C. 10A:6-2.8(b).

29) While he was incarcerated, Kidwai’s legal telephone calls with his attorneys were secretly monitored and recorded by Defendant HCCF, either as part of its practice, custom or policy and/or in cooperation with, or at the direction of, Defendant HCPO, as part of its practice, custom or policy.

30) Defendant HCCF shared Kidwai’s privileged legal telephone conversations with Defendant HCPO and, in particular, with the prosecutors responsible for prosecuting Kidwai’s criminal case.

31) Defendant Ashley Rubel reviewed and digested Plaintiff’s privileged legal telephone calls, and shared a written summary of the privileged conversations with Defendants Weiner and Murphy.

32) Defendant Weiner was aware of, directed, supervised, approved, and/or otherwise participated in Defendant Rubel’s unconstitutional conduct.

33) Defendant Leslie Murphy was aware of, directed, supervised, approved, and/or otherwise participated in Defendant Rubel’s unconstitutional conduct.

34) All the above conduct was done in secret because Defendants knew and understood that the described conduct was unconstitutional.

35) Defendants intentionally withheld from Plaintiff's attorney information relating to the alleged unconstitutional conduct.

36) Defendant learned of Defendants' unconstitutional conduct only when Defendant HCPO inadvertently produced in discovery copies of Defendant Rubel's memorandum to Defendant Weiner and Defendant Murphy digesting the substance of Plaintiff's attorney-client telephone calls.

37) HCCF recorded at least one other inmate's (and likely other similarly situated inmates') privileged attorney-client telephone calls and shared those recorded privileged communications with Hudson County prosecutors who used the information to prosecute the inmate whose attorney-client telephone calls were being recorded.

38) Upon information and belief, Defendants did not disclose to other class members or their attorneys, as part of discovery or otherwise, that their attorney-client conversation were used against them in connection with their prosecutions, in violation of the class members' right to substantive and/or procedural due process under the Fourteenth Amendment.

39) Upon information and belief, all the above conduct was done in conformance with Defendant HCPO's established practice, custom and/or policy.

40) Upon information and belief, all the above conduct was done in conformance with Defendant HCDC&R's established practice, custom and/or policy.

41) Upon information and belief, all the above conduct was done in conformance with Defendant HCCF's established practice, custom and/or policy.

42) Defendant Julia Medina used information obtained from the unconstitutional conduct alleged herein to, among other things, certify to a court under penalty of law – in support of a civil forfeiture application – that funds seized from Plaintiff “were utilized in the furtherance

of an unlawful activity,” or that the seized property “has become and/or was intended to become, an integral part of the illegal activities,” even though such certifications were knowingly false and resulted in Plaintiff’s having to incur additional expense to obtain the ultimate release of the seized funds.

43) Defendant Suarez is and was responsible for setting the policies, customs, and practices of HCPO, including the policy, custom, or practice at issue here, specifically, the secret monitoring and recording of inmate-attorney communications and use of them in connection with the prosecution of those inmates.

44) Defendant Edwards was responsible for setting the policies, customs, and practices of HCDC&R and HCCF, including the policy, custom, or practice at issue here, specifically, the secret monitoring and recording of inmate-attorney communications, sharing them with HCPO, and use of them in connection with the prosecution of those inmates.

45) Upon information and belief, Defendant Suarez, by virtue of her position, knew of and authorized: (a) the unconstitutional conduct alleged herein, and/or (b) the unconstitutional practice, custom and/or policy pursuant to which the unconstitutional conduct alleged herein took place.

46) Upon information and belief, Defendant Edwards, by virtue of his position, knew of and authorized: (a) the unconstitutional conduct alleged herein, and/or (b) the unconstitutional practice, custom and/or policy pursuant to which the unconstitutional conduct alleged herein took place.

47) Defendants’ conduct violated Plaintiff’s clearly established constitutional rights.

48) Any reasonable official should have known that secretly monitoring and recording Plaintiff’s and class members’ attorney-client calls, sharing them with the prosecution team, and/or

using their substance to prosecute the at-issue inmate and/or failing to disclose such conduct to class members' defense attorneys would violate the Fourth Amendment, the Sixth Amendment, and the Fourteenth Amendment.

49) Defendants deliberately interfered with and violated Plaintiff's and other class members' Sixth Amendment right to counsel.

50) Defendants deliberately violated Plaintiff's and other class members' Fourth Amendment right to be free of unreasonable searches and seizures.

51) Defendants deliberately violated Plaintiff's and other class members' Fourteenth Amendment right to due process.

52) At all times, Defendants were acting under color of state law.

53) As a result of Defendants' unconstitutional conduct, Plaintiff and class members suffered monetary and other injuries.

54) Punitive damages are warranted because Defendants' reprehensible conduct was motivated by actual malice, evil motive or intent and/or was intentional and/or involved reckless or callous indifference to the constitutionally protected rights of Plaintiff and other class members, and is necessary to ensure that Defendants will not repeat the unconstitutional conduct.

FIRST CAUSE OF ACTION

(42 U.S.C. § 1983 – Violation of Constitutional Rights)

55) Plaintiff incorporates by reference all the prior allegations set forth above.

56) Defendants Suarez, Weiner, Rubel, Murphy, Medina, Edwards and others whose identities presently are unknown, conspired to, and did, deprive Plaintiff and the other class members, under color of state law, of rights, privileges and immunities secured by the Constitution and laws in violation of 42 U.S.C. § 1983.

57) At all times, the individual Defendants acted under color of state law.

58) While acting under color of state law, secretly intercepting, monitoring and recording attorney-client telephone calls, sharing them with the prosecution team, and using them to prosecute Plaintiff and class members, violated Plaintiff's and class members' clearly established Fourteenth Amendment right to due process.

59) While acting under color of state law, secretly intercepting, monitoring and recording inmates' attorney-client telephone calls, sharing them with the prosecution team, and using them to prosecute Plaintiff and class members, violated Plaintiff's and class members' clearly established Sixth Amendment rights.

60) While acting under color of state law, secretly intercepting, monitoring and recording inmates' attorney-client telephone calls, sharing them with the prosecution team, and using them to prosecute Plaintiff and class members, violated Plaintiff's and class members' clearly established Fourth Amendment rights.

61) Each individual Defendant is personally responsible for all acts committed in furtherance of the conspiracy.

62) As a result of Defendants' violation of Plaintiff's constitutional rights, Plaintiff and other class members were injured.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 – Failure to Train)

63) Plaintiff incorporates by reference all the prior allegations set forth above.

64) As a result of the conduct alleged above, Plaintiff and class members were deprived of their Fourth Amendment right against unreasonable searches and seizures, Sixth Amendment right to the effective assistance of counsel, and Fourteenth Amendment right to due process.

65) The individual Defendants at all times acted under color of state law.

66) HCPO's procedures, HCD&R's procedures, and HCCF's procedures were not adequate to train their respective prosecutors, investigators, and correctional officers to handle the usual and recurring but sensitive situation of inmate-attorney telephone calls in a manner that protected inmates' Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights.

67) HCPO, HCD&R, and HCCF were deliberately indifferent to the known or obvious consequences of their failure to train their respective personnel adequately with respect to the treatment of privileged attorney-client communications.

68) HCPO's, HCD&R's, and HCCF's failure to provide adequate training caused the deprivation of Plaintiff's and class members' constitutional rights by the individual Defendants, that is, the Defendant agencies' failure to train was so closely related to the deprivation of rights as to be the moving force that caused Plaintiff's and the class members' injuries.

69) As a result of the Defendant agencies' failure to train, Plaintiff and other class members were injured.

THIRD CAUSE OF ACTION

(42 U.S.C. § 1985 – Conspiracy to Violate Civil Rights)

70) Plaintiff incorporates by reference all the prior allegations set forth above.

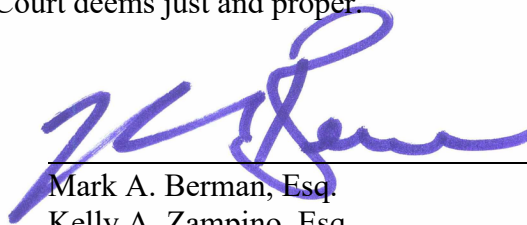
71) Defendants Suarez, Weiner, Rubel, Murphy, Medina, Edwards and others whose identities presently are unknown, conspired, while acting under color of state law, to deprive Plaintiff and the class members of the equal protection of the laws, or of equal privileges and immunities under the laws, in violation of 42 U.S.C. § 1985.

72) As a result of Defendants' conduct, Plaintiff and other class members were injured.

RELIEF REQUESTED

WHEREFORE, the Court should enter judgment against Defendants and in favor of Plaintiff:

- (a) declaring Defendants' conduct to have been in violation of the Fourth Amendment, the Sixth Amendment and/or the Fourteenth Amendment;
- (b) enjoining Defendants from monitoring and/or reviewing and/or using the substance of conversations between inmates at the Hudson County Correctional Facility and their attorneys;
- (c) enjoining Defendant agencies to implement training, policies and procedures sufficient to ensure that the unconstitutional conduct does not recur;
- (d) awarding Plaintiff compensatory damages jointly and severally against all Defendants or, in the alternative, nominal damages;
- (e) awarding Plaintiff punitive damages against the individual Defendants;
- (f) awarding Plaintiff attorney's fees, costs, and pre- and post-judgment interest; and
- (g) awarding such other relief as the Court deems just and proper.



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