

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

EDUARDO LUCERO,  
Plaintiff,

vs.

No. CIV-14-00393-KG-KK

ALBERT OLIVAS, DAVID PENA, DWANE PENA,  
SILVERIO PENA, MICHAEL GILBERT,  
EDDIE ARAGON, JR., GILBERT MARTINEZ,  
MATTHEW STEPHENSON, JOHN DOE, JANE DOE,  
JOHN P. SWEENEY and YOLANDA BERUMEN-DEINES  
each in their individual capacities, and the NEW MEXICO  
CHILDREN, YOUTH AND FAMILIES DEPARTMENT,  
Defendants.

*Consolidated with:*

ISAAC RAMIREZ,  
Plaintiff,

vs.

No. CIV-14-00394-KG-KK

OLIVAS, *et al.*,  
Defendants.

*Consolidated with:*

JACOB GONZALES,  
Plaintiff,

vs.

No. CIV-14-00395-KG-KK

OLIVAS, *et al.*,  
Defendants.

*Consolidated with:*

DANTE WOODS,  
Plaintiff,

vs.

No. CIV-14-00396-KG-KK

OLIVAS, *et al.*,  
Defendants.

PARTIAL SUMMARY JUDGMENT  
AS TO YOUTH CARE SPECIALISTS


This matter comes before the Court upon (1) Defendants Albert Olivas, David Pena,  
Dwane Pena, Michael Gilbert, Gilbert Martinez, and Matthew Stephenson's Youth Care

Specialists’ Motion for Partial Summary Judgment on Plaintiffs’ State Law Tort Claims Under the New Mexico Tort Claims Act, filed July 6, 2017, and (2) Defendant Eddie Aragon Jr.’s Motion for Summary Judgment on All State Tort Claims, filed July 7, 2017. (Docs. 127 and 129). Plaintiffs did not respond to these Motions for Summary Judgment. Notices of Completion of Briefing (Docs. 131 and 132). In fact, in reply to inquiries by the Court, Plaintiffs concede to the Motions for Summary Judgment. *See also* D.N.M. LR-Cv 7.1(b) (“The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.”). Consequently, the Court grants the Motions for Summary Judgment for that reason.

Even so, having reviewed the merits of the Motions for Summary Judgment, the Court determines that as a matter of law Defendants Albert Olivas, David Pena, Dwane Pena, Michael Gilbert, Gilbert Martinez, Matthew Stephenson, and Eddie Aragon, Jr. (collectively, Youth Care Specialists) are not law enforcement officers as defined by the New Mexico Tort Claims Act (NMTCA). NMSA 1978, § 41-4-3(D) (2015 Cum. Supp.). Accordingly, the Youth Care Specialists are immune from suit under the NMTCA and, therefore, entitled to summary judgment on the state law tort claims.

IT IS ORDERED that

1. summary judgment is granted in favor of the Youth Care Specialists as to all the state law tort claims which remain in the consolidated cases; and
2. those state law tort claims are dismissed with prejudice.

  
UNITED STATES DISTRICT JUDGE