

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

MU'AMMAR ALI,
ANTHONY THOMPSON, and
VINCENT THOMPSON,

Plaintiffs,

v.

HAL CLAY MUMME, in his individual capacity,
WILLIAM V. FLORES, in his individual capacity,
BOARD OF REGENTS OF NEW MEXICO
STATE UNIVERSITY, and M. STEVE ANAYA,
LAURA M. CONNIFF, ROBERT M. GALLAGHER,
STEVE W. LEWIS, and SHERRI KAMALI,
in their individual capacities.

Defendants.

JURY TRIAL DEMANDED

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS AND BREACH OF CONTRACT

PLAINTIFFS MU'AMMAR ALI, ANTHONY THOMPSON, and VINCENT THOMPSON, through the undersigned counsel, bring this action pursuant to 42 U.S.C. § 1983, seeking damages to remedy violations of their rights secured by the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and Title VI of the Civil Rights Act of 1964. Mr. Ali also seeks damages for breach of implied contract, breach of the implied covenant of good faith and fair dealing, and promissory estoppel, pursuant to New Mexico common law.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. §§ 1983 and 1988, 42 U.S.C. § 2000d, and common law. Supplemental jurisdiction over the pendant state law claims is proper pursuant to 28 U.S.C. §1367(a) and common law.
2. This Court possesses proper subject matter and personal jurisdiction over the parties.
3. Venue is appropriate in this district.
4. Defendants are citizens of and reside in New Mexico.
5. The acts complained of occurred in New Mexico. Plaintiffs' causes of action arose in New Mexico.

PARTIES

6. Plaintiff Mu'Ammar Ali is a citizen of the United States and a resident of California, and at all times relevant herein was a student at New Mexico State University (hereinafter "NMSU").
7. Plaintiff Anthony Thompson is a citizen of the United States and a resident of California, and at all times relevant herein was a student at NMSU.
8. Plaintiff Vincent Thompson is a citizen of the United States and a resident of California, and at all times relevant herein was a student at NMSU.
9. Defendant Hal Clay Mumme is a citizen of the United States and a resident of Las Cruces, New Mexico. He is sued in his individual capacity. At all times relevant herein, Mumme worked as head football coach for NMSU.

10. Defendant William V. Flores is a citizen of the United States and a resident of Las Cruces, New Mexico. He is sued in his individual capacity and was, at all times relevant herein, the Executive Vice-President and Provost of New Mexico State University.

11. Defendant Board of Regents of New Mexico State University is the entity with the power to sue or be sued on behalf of NMSU pursuant to NMSA 1978, § 21-8-1 *et seq.* Defendant Board is a “program or activity receiving Federal financial assistance” as defined by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

12. Pursuant to NMSA 1978, § 21-8-1 *et seq.*, Defendant Board of Regents of New Mexico State University has responsibility for the management and control of NMSU, which is located in Las Cruces, New Mexico.

13. Upon information and belief, Defendant M. Steve Anaya is a citizen of the United States and a resident of Las Cruces, New Mexico. He is sued in his individual capacity. At all times relevant herein, Anaya was the president of the Board of Regents of New Mexico State University.

14. Upon information and belief, Defendant Laura M. Conniff is a citizen of the United States and a resident of Las Cruces, New Mexico. She is sued in her individual capacity. At all times relevant herein, Conniff was the vice-president of the Board of Regents of New Mexico State University.

15. Upon information and belief, Defendant Robert Gallagher is a citizen of the United States and a resident of Las Cruces, New Mexico. He is sued in his individual capacity. At all times relevant herein, Gallagher was a member of the Board of Regents of New Mexico State University.

16. Upon information and belief, Defendant Steve W. Lewis is a citizen of the United States and a resident of Las Cruces, New Mexico. He is sued in his individual capacity. At all times relevant herein, Lewis was a member of the Board of Regents of New Mexico State University.

17. Upon information and belief, Defendant Sherri Kamali is a citizen of the United States and a resident of Las Cruces, New Mexico. She is sued in her individual capacity. At all times relevant herein, Kamali was a member of the Board of Regents of New Mexico State University.

18. With respect to all facts and violations alleged in this complaint, Defendants acted under color of state law.

ALLEGATIONS OF FACT

19. Plaintiffs Mu'Ammar Ali, Anthony Thompson, and Vincent Thompson are Muslims.

20. Plaintiffs Anthony Thompson and Vincent Thompson are twin brothers.

21. Plaintiff Ali served as a tailback for the NMSU football team for the 2002-2003, 2003-2004, 2004-2005, and the 2005-2006 season until his discharge from the team.

22. Plaintiff Anthony Thompson served as a receiver for the NMSU football team during the 2004-2005 and the 2005-2006 season until his discharge from the team.

23. Plaintiff Vincent Thompson served as a running back for the NMSU football team during the 2004-2005 and the 2005-2006 season until his discharge from the team.

24. All Plaintiffs were recruited to the NMSU football team by former NMSU head football coach Tony Samuels.
25. Mr. Ali received a football scholarship each year that he played for the NMSU football team.
26. Former coach Samuels awarded Mr. Ali the football scholarships he received during his time at NMSU.
27. Former coach Samuels told Anthony and Vincent Thompson they would receive athletic scholarships during the 2005-2006 season.
28. Former coach Samuels left NMSU in Fall 2004.
29. Defendant Mumme began as NMSU head football coach in Spring 2005.
30. As the NMSU head football coach, Defendant Mumme began his first practice with the NMSU football team by lecturing his players to develop their "spirituality." Defendant Mumme ordered that news media cameras, present for the first practice, be removed during his lecture regarding the players' spirituality.
31. Defendant Mumme initiated a practice of having players lead the Lord's Prayer after each practice and before each game.
32. The recitation of the Lord's Prayer made the Plaintiffs feel like outcasts, and they chose to pray separately and in accordance with their Islamic faith.
33. Several players expressed concern that the Plaintiffs were praying separately and complained to the coaching staff.
34. After learning that the Plaintiffs were Muslim, Defendant Mumme's treatment of them changed dramatically.

35. For example, Anthony and Vincent Thompson were prohibited from attending camp/spring ball in the spring of 2005.

36. During a conversation in or about July 2005, Defendant Mumme questioned Mr. Ali repeatedly about Islam and specifically, its ties to Al-Qaeda, the terrorist organization behind the attacks of September 11, 2001.

37. Defendant Mumme also questioned Mr. Ali about his thoughts on Al-Qaeda, making Mr. Ali feel uncomfortable that he was being questioned about this terrorist organization apparently because of his religion.

38. On or about September 2, 2005, Anthony and Vincent Thompson were discharged from the team by Defendant Mumme.

39. The explanation given for their release was that they were “troublemakers” and that they had moved their belongings to an empty locker in the locker room without requesting permission to do so.

40. Other non-Muslim players remained on the team despite more serious misconduct, including having been arrested for driving while intoxicated.

41. Plaintiffs Thompson were discharged from the NMSU football team because of their religion.

42. Shortly after their discharge, Plaintiffs Thompson left NMSU and transferred to a junior college in California.

43. In September 2005, Mr. Ali played in the football game against the University of Texas-El Paso. After this game, despite being the star tailback for several years, Mr. Ali was relegated to fifth string and not permitted to travel with the team.

44. On October 9, 2005, Mr. Ali received a message on his answering machine at his home that his jersey was being pulled and that he was discharged from the NMSU football team.

45. Mr. Ali was discharged from the NMSU football team because of his religion.

46. On October 25, 2005, Mr. Ali filed a grievance against Defendant Mumme, alleging religious discrimination, with the NMSU Office of Institutional Equity.

47. Defendant Board of Regents (“Defendant Board”), Defendants Anaya, Conniff, Gallagher, Lewis, and Kamali retained outside legal counsel to investigate Mr. Ali’s grievance.

48. On November 1, 2005, the NMSU football team was called together by the coaching staff at the end of football practice and told that they would be having a team prayer.

49. At that time, assistant football coach Woody Widenhofer derisively stated that Mu’Ammar Ali should lead the team prayer.

50. On November 2, 2005, Mr. Ali amended his grievance by asking that Widenhofer’s comments be investigated.

51. On November 15, 2005, Plaintiffs Thompson also filed a grievance against Defendant Mumme, alleging religious discrimination.

52. On November 21, 2005, Defendants Board of Regents for New Mexico State University, Defendants Anaya, Conniff, Lewis, Gallagher, and Kamali, through their counsel, issued a determination letter stating that their investigation found that Plaintiff Ali had been discharged for performance reasons and that Plaintiffs Thompson were discharged for performance reasons and for rule violations.

Defendants further stated that religion was not a basis for Plaintiffs' discharges from the NMSU football team.

53. In the November 21, 2005 determination letter, Defendant Board, Defendants Anaya, Conniff, Lewis, Gallagher, and Kamali acknowledged that it had instituted a new policy permitting only a "moment of silence" after practices or before athletic games.

54. The reasons proffered by Defendants for Plaintiffs' discharges from the NMSU football team are merely pretextual.

55. On November 28, 2005, pursuant to NMSU's Appeals/Grievance Policy (Chapter 4.05.10), Plaintiffs asked that Defendant Board, Defendants Anaya, Conniff, Lewis, Gallagher, and Kamali reconsider their November 21, 2005 determination.

56. On November 30, 2005, Defendants, through NMSU Executive Vice President and Provost William V. Flores, refused to reverse the November 21, 2005 determination.

57. Mr. Ali reasonably expected to play for NMSU during the 2005-2006 and 2006-2007 seasons. Mr. Ali left NMSU at the end of the Fall 2005 semester.

58. Because of Defendants' actions, Mr. Ali lost at least one full year of playing Division I college football and the scholarship he would be entitled to during his last year, the 2006-2007 season.

59. Because of Defendants' actions, Plaintiffs' Thompson did not receive the scholarships former Coach Samuels had stated they would receive, and they had to

leave NMSU and transfer to a junior college so they could continue to play football during the 2005-2006 season and beyond.

60. Defendants acted collectively to discriminate against Plaintiffs on the basis of their religion.

61. Despite knowledge and adequate opportunity to learn of the misconduct of their agent and employee Hal Mumme and to remedy such misconduct, Defendant Board, Defendants Flores, Anaya, Conniff, Lewis, Gallagher, and Kamali adopted, approved, and ratified the acts, omissions, and misconduct of Defendant Mumme.

62. Defendants' acts proximately caused Plaintiffs damages and injuries, including but not limited to lost scholarships and related pecuniary benefits, moving expenses, lost opportunities, pain and suffering and emotional distress.

COUNT I

VIOLATIONS OF RIGHTS SECURED BY THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983 – DEFENDANT MUMME)

63. Plaintiffs hereby incorporate by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

64. All of the actions taken by Defendant Mumme or those acting on behalf of Defendant Mumme and referred to herein, including the termination of Plaintiffs from the NMSU football team, were done by Defendant Mumme while acting under color or state of law and had the effect of depriving Plaintiffs of rights secured by the Constitution and laws of the United States, specifically the Free Exercise Clause of the First Amendment to the United States Constitution.

65. The treatment that Plaintiffs received and their discharges were carried out by Defendant Mumme in retaliation for the exercise of their civil rights secured by the Free Exercise Clause of the First Amendment to United States Constitution.

66. Defendant Mumme's acts were intentional, malicious, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' constitutional rights.

COUNT II

VIOLATIONS OF RIGHTS SECURED BY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT (42 U.S.C. § 1983 - DEFENDANT MUMME)

67. Plaintiffs hereby incorporate by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

68. Plaintiffs are a member of a suspect class and were unlawfully discriminated against because of their religion, Islam.

69. Plaintiffs were similarly situated in all relevant aspects to other football players on the NMSU football team.

70. Nevertheless, Defendant Mumme discharged Plaintiffs from the NMSU football team because of their religion.

71. All of the actions taken by Defendant Mumme or those acting on behalf of Defendant Mumme and referred to herein, including the termination of Plaintiffs from the NMSU football team, were done by Defendant Mumme while acting under color or state of law and had the effect of depriving Plaintiffs of rights secured by the Constitution and laws of the United States, specifically the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

72. Defendant Mumme's acts were intentional, malicious, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' constitutional rights.

COUNT III

**VIOLATIONS OF RIGHTS SECURED BY THE FREE EXERCISE CLAUSE OF
THE FIRST AMENDMENT**
(42 U.S.C. § 1983 – DEFENDANTS FLORES, ANAYA, CONNIFF, GALLAGHER,
LEWIS, and KAMALI)

73. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

74. At all times relevant herein, Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali were the policy makers for NMSU and supervisor of Defendant Mumme.

75. The acts and omissions of Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali were so culpable as to constitute authorization of, and acquiescence in, the unlawful conduct of Defendant Mumme.

76. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali are vicariously liable for the unlawful acts of Defendant Mumme.

77. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali's acts and omissions constituted a custom, practice, and policy of deliberate indifference to Plaintiffs' constitutional rights secured by the First Amendment.

78. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali's acts were intentional, malicious, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' constitutional rights.

COUNT IV

VIOLATIONS OF RIGHTS SECURED BY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

(42 U.S.C. § 1983 – DEFENDANTS FLORES, ANAYA, CONNIFF, GALLAGHER,
LEWIS, and KAMALI)

79. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

80. At all times relevant herein, Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali were the policy makers for NMSU and supervisor of Defendant Mumme.

81. The acts and omissions of Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali were so culpable as to constitute authorization of, and acquiescence in, the unlawful conduct of Defendant Mumme.

82. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali are vicariously liable for the unlawful acts of Defendant Mumme.

83. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali are vicariously liable for the unlawful acts of Defendant Mumme.

84. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali's acts and omissions constituted a custom, practice, and policy of deliberate indifference to Plaintiffs' constitutional rights secured by the Equal Protection Clause of the Fourteenth Amendment.

85. Defendants Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali's acts were intentional, malicious, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' constitutional rights.

COUNT V

**VIOLATIONS OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
(DEFENDANT BOARD)**

86. Plaintiffs hereby incorporate by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

87. By being discharged from the NMSU football team because of their religion, Plaintiffs were treated less favorably than their non-Muslims counterparts in violation of 42 U.S.C. § 2000d.

88. Defendant Board intentionally, willfully and without justification acted to deprive Plaintiffs of their rights, privileges and immunities secured by them by the laws of the United States, including their right to be free from religious discrimination in programs or activities receiving federal financial assistance.

89. Defendant Board, despite knowledge and adequate opportunity to learn of the misconduct of their agent and employee, adopted, approved, and ratified the acts, omissions, and misconduct of Defendant Mumme.

90. Defendant Board's acts were intentional, malicious, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' rights secured by Title VI.

COUNT VI

**PLAINTIFF ALI'S CLAIM FOR BREACH OF IMPLIED CONTRACT
(DEFENDANTS MUMME AND BOARD)**

91. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

92. Defendants Mumme and Board made an implied agreement with Mr. Ali that he would continue to play for NMSU football and receive a scholarship for the 2006-2007 football season.

93. Defendants Mumme and Board made an implied agreement with Mr. Ali that he would continue to play for NMSU football and receive a scholarship through the 2006-2007 football season unless terminated for poor performance or rule violations.

94. The representations, promises, and conduct of Defendants Mumme and Board, were sufficiently specific so that Mr. Ali had a reasonable expectation that he would play for NMSU football and receive a scholarship through the 2006-2007 football season.

95. Despite the implied contract between Mr. Ali and Defendants Mumme and Board, Defendants discharged Mr. Ali from the NMSU football team for reasons other than poor performance or rule violations, in violation of the implied contract.

96. Mr. Ali exhausted all internal grievance procedures required by the NMSU policies.

97. Defendants' actions were intentional, willful, wanton, and malicious.

COUNT VII

PLAINTIFF ALI'S CLAIM FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (DEFENDANT MUMME AND BOARD)

98. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

99. Pursuant to New Mexico law, the implied agreement between Defendants and Plaintiff Ali included an implied covenant of good faith and fair dealing.

100. Defendants' actions complained of herein were undertaken by Defendants in bad faith with deliberate disregard for the contractual rights of Plaintiff and thus constitute a breach of the implied covenant of good faith and fair dealing.

101. Defendants wrongfully and intentionally breach the implied agreement to the detriment of Plaintiff.

102. Defendants injured the rights of Plaintiff to receive the benefits of the implied agreement.

103. Defendants' actions were intentional, willful, wanton, and malicious.

COUNT VIII

PLAINTIFF ALI'S CLAIM FOR PROMISSORY ESTOPPEL (DEFENDANTS MUMME AND BOARD)

104. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

105. Defendants Mumme and Board made a promise to Mr. Ali that he would continue to play for NMSU football and receive a scholarship for the 2006-2007 football season. which Defendants should have reasonably expected to induce action on the part of the Plaintiff Ali.

106. Plaintiff's reliance on Defendants' promise was reasonable.

107. Defendants are bound to the promise it made to Plaintiff Ali.

108. Defendants' actions were intentional, willful, wanton, and malicious.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. Compensatory against all Defendants jointly and severally, and punitive damages against Defendants Mumme, Flores, Anaya, Conniff, Gallagher, Lewis, and Kamali; Plaintiffs expressly do not seek punitive damages against Defendant Board;
- B. Pre- and post-judgment interest as allowed by law;
- C. Reasonable costs and attorneys fees incurred in bringing this action;
and
- D. Such other relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all counts so triable.

Respectfully submitted,

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