IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No._____

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, INC., a Colorado not-for-profit corporation and
TAYLOR S. PENDERGRASS,

Plaintiffs,

v.

LOU VALLARIO, in his official capacity as Sheriff of Garfield County, Colorado

Defendant.

DECLARATION OF TAYLOR S. PENDERGRASS

Taylor Scott Pendergrass, under penalty of perjury, states as follows:

1. I am an attorney licensed in the State of Colorado, and employed as a staff attorney by the American Civil Liberties Union of Colorado. I work under the supervision of ACLU Legal Director Mark Silverstein. The ACLU's mission is to protect, defend, and extend the civil rights and civil liberties of all people in Colorado through litigation, education, and advocacy. Most of my work for the ACLU Legal Department is done on behalf of the American Civil Liberties Union Foundation of Colorado, a 501(c) (3) corporation that carries out the ACLU's litigation and public education programs. In this declaration, I refer to the two organizations collectively as "ACLU."

2. As an attorney working in the ACLU's Legal Department, my job includes reviewing and investigating requests for legal assistance, writing advocacy letters,

participating in the ACLU's litigation (with the ACLU Legal Director as well as volunteer cooperating attorneys who agree to take on cases pro bono for the ACLU), and educating the public about civil rights and civil liberties and the protections and guarantees of the constitutions of the United States and the State of Colorado.

3. As part of my job with the ACLU, I am currently involved in an active investigation of allegations that prisoners are subjected to serious violations of constitutional rights in the Garfield County Jail. Because of the Sheriff's policy that is challenged in this case, I was prevented from conducting confidential interviews with three prisoners on June 15 and 16, each of whom had previously made written communications to the ACLU indicating their interest in ACLU legal assistance. I plan on traveling to Garfield County again on Tuesday, June 27, 2006 to conduct additional interviews, thus requiring emergency temporary injunctive relief from this Court to ensure that I will be able to conduct interviews with all prisoners who wish to speak with me.

I. The ACLU's investigation of allegations of dangerous and/or abusive jail practices at the Garfield County Jail

4. Based on reviewing jail documents, letters from prisoners and former prisoners, and interviews with at least some current prisoners, the ACLU is investigating complaints of alleged jail practices that include, but are not limited to, the following:

- Abusive and unjustified use of the restraint chair as punishment, often for too long, and without appropriate involvement of medical personnel.
- Unjustified and abusive threats to use pepper spray on prisoners, and abusive use of pepper spray for minor infractions or minor noncompliance.

- Abusive use and threats to use the pepperball guns, including shooting multiple pepper pellets through the food slot into prisoners' tiny cells, aiming at the prisoners' bodies, and unjustifiably delaying any opportunity to wash off the pepper dust, all without adequate medical involvement.
- Abusive or unjustified threats to shock prisoners with tasers and unjustified use of tasers.
- Forcing maximum-security prisoners to take their limited recreation time before sunrise, with no shoes, in sub-zero winter temperatures.
- Forcing prisoners to wear an electroshock belt, which permits a deputy to administer a 50,000-volt electric shock by pushing a remote control button, while traveling to and from court and while participating in court hearings.
- Failure to draft and distribute any written policies that govern jail officers' use of force, and failure to draft and distribute written policies that regulate or restrict the use of tasers, pepperball guns, or the restraint chair.
- Unjustifiable delay of medical attention and decontamination of prisoners who have been subjected to pepper spray or the pepperball pellets, in some cases forcing them to remain strapped in the restraint chair while contaminated with pepper spray or pepper dust.
- Lack of adequate healthcare, including medical care, mental health care, dental services, and necessary prescription drugs.

- Denial of healthcare (medical, mental health, dental, or prescription drugs) because prisoners do not have enough money in their accounts for the payment or co-payment.
- Arbitrary imposition of harsh disciplinary measures for minor infractions, without a hearing or other due process and without following the Inmate Handbook.
- Arbitrary imposition of dietary restrictions and confiscation of bedding as summary punishment for minor infractions, without due process and without following the Inmate Handbook.
- Unjustified interference with prisoners' ability to conduct confidential communications with attorneys, such as:
    - Opening incoming legal mail outside the presence of the prisoner;
    - Insisting on inspecting the contents of prisoners' outgoing legal mail as a condition of mailing it;
    - Refusing to provide sufficient postage for indigent prisoners to send out legal mail;
    - Refusing to permit a prisoner to telephone his attorney and refusing to provide a writing instrument so the prisoner could write to his attorney.
- Denying religious diets to prisoners for unjustifiable reasons.
- Failing to respond to prisoners' written grievances or otherwise failing to respond adequately to prisoners' attempt to access the grievance process.

II. The ACLU and its staff advocate for prisoners' rights

5. The ACLU of Colorado receives approximately two thousand written requests for legal assistance each year. At least half of these requests come from Colorado prisoners held in various jails and prison facilities throughout the state. The ACLU of Colorado has a long history of advocating, both in court and out of court, for the rights of prisoners. Numerous published court decisions reflect the ACLU of Colorado's litigation efforts on behalf of prisoners. This includes the landmark decisions in the well-known *Ramos* case (see, e.g., *Ramos v. Lamm*, 485 F. Supp. 122 (D. Colo. 1979)) as well as additional decisions such as *Shook v. El Paso Bd. of County Comm'rs*, 386 F.3d 963 (10th Cir. 2005) (reversing district court's finding that the Prison Litigation Reform Act was intended to alter class certification requirements); *Beerheide v. Suthers*, 286 F.3d 1179 (10th Cir. 2002) (ACLU filed an *amicus curiae* brief in support of plaintiffs' successful challenge to Department of Corrections policy charging prisoners more for kosher meals); *M.M. v. Zavaras*, 139 F.3d 798 (10th Cir. 1998) (challenging Department of Correction's denial of funds to indigent prisoner seeking an abortion); *Diaz v. Romer*, 961 F.2d 1508 (10th Cir. 1992) (challenging Department of Corrections policy of segregating HIV-positive prisoners); *Shook v. El Paso Bd. of County Comm'rs*, 216 F.R.D 644 (D. Colo. 2003) (challenging conditions in the El Paso County Jail as they affected the Eighth and Fourteenth Amendment rights of prisoners with serious mental health needs); *Rodriguez v. Zavaras*, 22 F.Supp.2d 1196 (D. Colo. 1998) (discussing successful ACLU challenge to prison policy of videotaping attorney visits with prisoners); *M.M. v. Zavaras*, 939 F. Supp. 799 (D. Colo. 1995) (challenging Department of

Correction's denial of funds to indigent prisoner seeking an abortion); *Knapp v. Romer*, 909 F. Supp. 810 (D. Colo. 1995) (challenging conditions of confinement Colorado prisoners endured while incarcerated in the Texas penal system); *Marioneaux v. Colo. State Penitentiary*, 465 F. Supp. 1245 (D. Colo. 1979) (seeking temporary restraining order against correctional practice of placing prisoners in punitive and administrative segregation).

6. I am aware of additional ACLU advocacy on behalf of Colorado prisoners that has produced positive results without litigation, as well as additional litigation that has settled favorably without a published court decision. ACLU of Colorado attorneys, in conjunction with the ACLU National Prison Project, are currently litigating a class action case on behalf of prisoners in the El Paso County Jail. ACLU of Colorado attorneys are also monitoring a settlement agreement that resolved longstanding litigation on behalf of Department of Corrections prisoners who challenged censorship practices.

III. The ACLU began its investigation of prisoner allegations by requesting records from Garfield County Jail

7. In response to requests for assistance received from prisoners in the Garfield County Jail, the ACLU of Colorado Legal Department began an investigation of the prisoners' complaints several months ago. The investigation began with a letter from Mark Silverstein to the Garfield County Sheriff inquiring about the veracity of a complaint made by a pretrial detainee to the ACLU. A copy of Mr. Silverstein's letter, dated March 31, 2006, is attached as Exhibit A. The letter inquired about a complaint that Mr. Clarence Vandehey had been placed in a restraint chair on multiple occasions; that he was shot with a pepperball gun and forced to lie

in the pepper dust for 15 minutes and then strapped into the restraint chair; and that on two occasions in late January Mr. Vandehey was expected to take his outdoor recreation time in sub-zero temperatures without shoes. The letter asked the Sheriff to explain. The ACLU also asked that he send copies of whatever incident reports memorialize the incidents, and it also requested copies of the Sheriff's policies that govern the use of the restraint chair and the pepperball gun.

8. Assistant County Attorney Denise Lynch responded on behalf of the Sheriff. A copy of that letter, dated erroneously as May 13, 2006, is attached as Exhibit B. Ms. Lynch did not provide the requested explanation regarding the treatment of Mr. Vandehey. She did state that there was no written policy governing use of the restraint chair. She provided no policy governing use of the pepperball gun, although she did enclose a short policy authorizing jail deputies to use pepper spray. Ms. Lynch further stated that she would not authorize release of any of the requested incident reports until the ACLU could produce a signed release from Mr. Vandehey. Ms. Lynch also said she had advised the Sheriff not to speak with ACLU staff directly, and she requested that all future communications with the Sheriff go through her.

9. After writing to Mr. Vandehey and obtaining the signed release Ms. Lynch requested, Mr. Silverstein forwarded the release to Ms. Lynch in a letter dated April 24, 2006. The letter requested copies of all incident reports regarding Mr. Vandehey.

10. In response, on May 3, 2006, the ACLU received at no cost approximately 100 pages of documents from Ms. Lynch. The reports indicated that Mr. Vandehey

had been strapped into the restraint chair seven times since September, 2005. In more than half of the cases, the reports failed to indicate the duration of restraint, although in one such case it clearly lasted from 11:30 p.m., continued for at least 6 1/2 hours, and was still continuing when the guards changed shifts in the morning. The reports further indicated that on two occasions, deputies shot pepperballs through the food slot into Mr. Vandehey's tiny maximum-security cell. One report described the cell as "saturated" with pepperball dust. The reports confirmed that Mr. Vandehey was forced to lie down in the pepper dust in his cell, in one case for 15 minutes, and was then strapped into the restraint chair without any opportunity to decontaminate or otherwise wash off the pepper dust.

11. After discussion with Mr. Silverstein, I understood the facts reflected in these incident reports to raise very serious questions that were matters of the utmost concern to the ACLU. I am aware that prisoners have died while strapped in restraint chairs, including a prisoner who died while strapped into a restraint chair in a Colorado county jail in the late 1990s. I am aware that the United Nations Committee on Torture expressed its concern several years ago that the unregulated use of the restraint chair in the United States posed a risk of torture and other cruel, inhuman, or degrading treatment of prisoners, in violation of this country's obligations under international conventions. I am aware that in 2004 a young woman was killed in Boston when a pepperball hit her eye. I am also aware that pepper spray has been associated with a number of in-custody deaths, which were the subject of investigative reports published by the ACLU of Southern California in the 1990s. I also learned that the ACLU was involved in a case in 2000 in which a county jail

prisoner died shortly after being subjected to pepper spray, and that the coroner's report listed the pepper spraying as a contributing cause of the death.

12. Mr. Silverstein and I discussed the combined risks to prisoners at the Garfield County Jail posed by the combination of pepperball dust and/or pepper spray and fully-immobilizing restraint in the restraint chair, without any prior opportunity for decontamination. On the basis of this discussion, we decided that the ACLU Legal Department would initiate a full investigation of prisoners' complaints about the jail's practices, and we began immediately.

IV. The ACLU began interviews with prisoners on May 11, 2006

13. The ACLU Legal Department followed up with letters to current and former Garfield County Jail prisoners who had written to the ACLU. We also sent release forms to the prisoners for their signatures. On May 11, Mr. Silverstein and I traveled to Glenwood Springs to interview prisoners who had written to the ACLU and who were still held in the jail.

14. Before Mr. Silverstein and I traveled to the Garfield County Jail to interview prisoners on May 11, Mr. Silverstein told me that he had made prior arrangements by telephone with the jail officials. Mr. Silverstein said that the Assistant County Attorney had said that any arrangements for attorney visits with prisoners should be made directly with the Sheriff's Office. Mr. Silverstein told me that he called the Sheriff's Office and asked to speak to the person responsible for arranging attorney visits. He said he was directed to a deputy, who said he was responsible for arranging visits. Mr. Silverstein told me he provided the names of several prisoners we wanted to interview. Mr. Silverstein also told me that he

informed the deputy that we might want to interview additional prisoners after conducting the interviews with the named prisoners. (During interviews with prisoners, members of the ACLU legal staff often receive information about additional prisoners who would like to speak with ACLU attorneys.) Mr. Silverstein reported to me that the deputy had said that there would be no problem with the ACLU's request.

15. When we arrived at the Garfield County Jail on May 11, it appeared that none of the staff on duty knew about the prior arrangements that Mr. Silverstein had made by telephone. Nevertheless, we were allowed to visit with Mr. Vandehey in a confidential face-to-face setting in an attorney visiting room in the upstairs portion of the jail, next to the maximum-security pod. We also visited in that room with an additional prisoner, Mr. William Langley, who had also written to the ACLU seeking assistance with numerous complaints about the practices of the jail.

16. I learned later that this room is called the "direct contact" attorney visit room. I also learned later from a local public defender that when the jail was built just four years ago, there was no space reserved for "direct contact" attorney visits, and that attorney visits could only occur via telephone through a glass partition, with no pass-through for documents. I learned that the direct contact room we were in was originally intended to house a legal access computer room next to the Max/SuperMax pod. Only after attorneys protested about the jail's failure to provide for "direct contact" attorney visits did the jail strip the computer room bare to create a "direct contact" attorney visit room.

17. During those interviews on May 11, we obtained the names of additional prisoners who were interested in speaking with the ACLU legal staff. Indeed, one of the prisoners we spoke with provided releases already signed by prisoners with whom we had not previously corresponded. During that May 11 visit to the jail, we were permitted to interview one of these additional prisoners with whom we had not previously corresponded.

V. The ACLU followed up on the May 11, 2006 interviews

18. The following day, on May 12, Mr. Silverstein sent a letter to Ms. Lynch requesting copies of incident reports and other jail records regarding five additional prisoners and former prisoners whose releases we had obtained. The letter also requested copies of three jail policies and copies of certain categories of training materials.

19. Mr. Silverstein and I expected that the response to this new document request would arrive while he was out of the country on a scheduled vacation from May 20 through June 5. During his absence, I continued to pursue the investigation with additional correspondence with prisoners while directing our two summer law student interns in legal and factual research.

20. During Mr. Silverstein's absence, Ms. Lynch responded to the May 12 request for records with a letter stating that the Sheriff's Department would release 677 pages of responsive documents. The letter also stated that the ACLU must pay a total fee of $1,009.66, representing $163.41 as a search and retrieval fee and $846.25 as a charge for copying the documents at a rate of $1.25 per page. Because we had

not been charged for documents previously, had received no notice that that policy was going to be changed, and believed that $1.25 was not the "actual cost" of copying as required by statute, I protested the charges. Correspondence with Ms. Lynch about these unexpected charges was still ongoing when Mr. Silverstein returned to the office on June 5, 2006.

VI. The ACLU made plans to visit the Garfield County Jail on June 14-16, 2006 to conduct more interviews and inspect documents

21. After Mr. Silverstein's return, we planned another visit to the Garfield County Jail for the last three days of the following week, June 14, 15, and 16. In a telephone conversation on June 7, 2006, Mr. Silverstein and I reached an agreement with Ms. Lynch regarding the $1,009.66 charge for our previous document request. The ACLU agreed to pay for the search and retrieval fee of $163.41, and Ms. Lynch agreed that ACLU attorneys could simply inspect the documents on June 14, 15, and 16, and then select which documents, if any, would be copied at the rate of $1.25 per page.

22. In that telephone conversation, Mr. Silverstein explained that we planned to bring our two full-time summer law students so that we could deploy all four members of the legal team for various tasks, including reviewing documents and interviewing additional prisoners. Ms. Lynch reminded us that arrangements for interviewing prisoners should be made directly with the Sheriff's Department.

23. In a letter dated June 7, 2006, Mr. Silverstein confirmed that telephone conversation with Ms. Lynch. That letter also contained a further request to inspect and/or copy additional records, and it asked that the responsive documents be prepared for our inspection during the upcoming visit the following week. Mr.

Silverstein enclosed releases signed by four additional prisoners or former prisoners, and he requested their records. The letter also asked if a tour of the jail could be provided to the four ACLU staff members. A copy of that letter is attached as Exhibit C.

24. Ms. Lynch also sent a letter confirming the conversation, which is attached as Exhibit D. In that letter, Ms. Lynch erroneously states that Mr. Silverstein had advised that the ACLU had four additional "clients" whose records we wished to inspect. She was apparently referring to the four additional releases from prisoners and former prisoners.

25. The next day, Ms. Lynch sent another letter announcing that the Sheriff had reneged on the agreement she had made on the Sheriff's behalf. Ms. Lynch stated that the Sheriff insisted that the ACLU could not look at the documents unless it first paid the entire copying bill of $846.25.

26. With no compromise in sight, the ACLU agreed to pay for the copies that had already been made, without waiving any right to later challenge and recoup these costs. Arrangements were confirmed that the documents would be picked up on June 14, and additional documents requested in the ACLU's letter of June 7 would be available for inspection on June 14-16.

VII. The ACLU made advance arrangements for the June 14-16, 2006 visit to Garfield County Jail

27. On June 12, 2006, ACLU Legal Director Mark Silverstein called the Garfield County Sheriff's Department. Mr. Silverstein related the contents of the telephone conversation to me. He said he asked to speak with the person in charge of arranging attorney visits with prisoners. He was eventually connected to Deputy

Gary Sunderland, who confirmed that he was the person responsible for arranging attorney visits. Mr. Silverstein told me that this was not the same deputy to whom he had been directed when he arranged our attorney visits in May. Mr. Silverstein also told me that he had confirmed that we did not need to provide the names of all the prisoners we wanted to interview in advance, and that we could provide the names of additional prisoners we wanted to interview during our time at the jail, as we had done on May 11.

28. Because of our experience in May, when jail officials did not appear to be aware of arrangements for attorney visits that Mr. Silverstein had made by telephone, Mr. Silverstein sent Officer Sunderland a letter confirming the telephone conversation of June 12. That letter was faxed to Officer Sunderland on the morning of June 13, 2006, and it bears that date. A copy of that letter is attached as Exhibit E.

29. Mr. Silverstein's letter of June 13 memorializes the telephone conversation with Officer Sunderland the day before. It confirms that attorney visits can generally be conducted between 8 a.m. and 11 a.m. and from 1 p.m. to 4 p.m. It further confirms that Officer Sunderland indicated that the jail could accommodate additional attorney visits in the evening, beginning about 7 p.m.

30. The letter further confirmed the ACLU's plan to bring two attorneys and two law students and to spend most of June 14 reviewing documents and touring the jail's facilities. The letter discussed the ACLU's plan to use its staff time efficiently by splitting up so that ACLU legal staff could interview one prisoner while other ACLU staff interviewed a different prisoner.

31. The letter confirmed that Officer Sunderland had advised that there were 3 locations in the jail for confidential attorney interviews. One was the direct contact visiting room we had used in May. The two others allowed for confidential conversations, but the prisoners and the attorneys would be separated by a glass partition. These visiting rooms were designed for the conversation to be conducted by telephone, but Officer Sunderland had said he thought that two attorneys could nevertheless participate at the same time because the conversation could be heard directly through the glass partition. The letter asked Officer Sunderland to find out whether these glass-partitioned visiting rooms had a pass-through for documents and whether two attorneys would indeed be able to participate by speaking through the glass instead of relying on the telephone. The letter further requested that the jail make available some alternative space for confidential attorney-client interviews if it turned out that the glass-partitioned attorney visiting rooms were not suitable.

32. The letter provided the names of seven prisoners we wanted to interview. It advised we might need to speak with some of them on more than on occasion during our stay in Glenwood Springs. It further confirmed that we would be able to provide the names of additional prisoners we wanted to speak with after we had begun the review of documents and had begun speaking with the initial group of prisoners whose names we provided.

33. In response to the June 13, 2006 fax to Deputy Sunderland, Sheriff Lou Vallario sent a fax to the ACLU later that afternoon, the day before our departure (attached as Exhibit F). Sheriff Vallario stated that the ACLU should make any future arrangements for attorney visits through Jail Commander Scott Dawson.

Sheriff Vallario informed us that there was only one direct contact room for attorney-client visitation. He did not directly address the two glass-partitioned attorney rooms Officer Sunderland had mentioned. He stated that he would not make available the alternative confidential settings that Mr. Silverstein's fax to Officer Sunderland had requested. Sheriff Vallario also offered the use of the jail's video visitation system (used for family visits), which does not provide for face-to-face contact and requires the participants to speak in locations where they can easily be overheard by others. (Sheriff Vallario's letter stated erroneously that the ACLU had requested attorney visits on the morning of June 14; that error was corrected in subsequent correspondence between the Sheriff and the ACLU later that day.)

VIII. The ACLU staff arrived at the Garfield County Jail on June 14, 2006

34. Upon arriving at the Garfield County Jail at 9 a.m. on June 14, 2006, we met briefly with Sheriff Vallario, Commander Dawson, Ms. Lynch, and other jail staff. We were shown to a small office that the Sheriff had set aside for our inspection of documents. Our tour of the jail was set to begin. We explained that after the tour, we would begin by inspecting documents. Although we had originally planned to delay speaking with any prisoners until the following morning, we suggested that we might want to initiate a visit late that afternoon or on Wednesday evening. Commander Dawson indicated that this would be possible and that we should confirm our visiting plans with him when our plans were finalized.

35. Later in the day, we informed Commander Dawson that Mr. Silverstein and Alan Roughton, ACLU law student intern, would meet with Mr. Vandehey for

about an hour, beginning at 3 p.m. Wednesday. Commander Dawson stated that was fine. We inspected documents through the morning and early afternoon.

36. Around 3 p.m., when Mr. Silverstein was expecting to be taken to the upstairs direct-contact attorney room to interview Mr. Vandehey, a jail deputy brought Mr. Vandehey into the Sheriff's administrative area outside the small office where we were reviewing documents. It was my understanding this is an area where prisoners are never allowed. After much confusion on the part of jail staff, Mr. Silverstein, Mr. Roughton, and Mr. Vandehey were eventually sited upstairs in the "direct contact" visitation room in the jail.

37. At the end of the day on June 14, 2006, we informed jail staff that beginning that next morning of June 15, 2006, I wanted to meet with prisoners Jared Hogue, William Joseph Rine, and Mike Weaver and Mr. Roughton wanted to meet with Mr.Vandehey It was our understanding that these visits would occur simultaneously.

IX. Garfield County Sheriff blocked ACLU interviews with prisoners on June 15

38. On the morning of June 15, 2006, I arrived at the Garfield County Jail to conduct separate interviews of Mr. Hogue, Mr. Rine and Mr. Weaver in a confidential setting while Alan Roughton, conducted an interview of Mr. Vandehey. Mr. Silverstein went to the courthouse to obtain certain information from the files of pending court cases. Mr. Roughton began conducting an interview of Clarence Vandehey in the "direct contact" attorney-client room, while I reviewed documents and prepared to begin my interviews

39. When I informed April Middleton, Records Manager in the Sheriff's Office, that I was ready to begin interviews starting with Mr. Weaver, she informed me that confidential interviews could not be conducted simultaneously because of a "staff shortage" due to moving prisoners from jail to court that morning. Ms. Middleton explained that confidential interviews required staff supervision, and that it was not currently possible to provide supervision for two simultaneous confidential interviews. This report contradicted my earlier understanding that simultaneous interviews could indeed occur in the jail (i.e., one interview in the "direct contact" attorney room, and one interview in one of the two "glass partition" rooms).

40. I asked to speak to Commander Dawson, and he confirmed that I could meet with the prisoners, but I would have to wait for the "direct contact" room to open to meet with them in a confidential setting, or I could use the video phone-conferencing room. I asked when he expected to have the staff to make simultaneous confidential interviews in the attorney rooms possible. He stated that simultaneous interviews in the attorney rooms would not be possible under any circumstances, and that the staff shortage preventing this was not related to moving the prisoners to and from court.

41. Because the two "glass-partition" rooms were side-by-side, I asked Commander Dawson if it would be possible to conduct simultaneous confidential interviews in those rooms, and leave the direct contact room empty, to minimize any burden on jail staff. He stated it might be possible, but that he would have to check staff availability and it would take some time to move Mr. Roughton and Mr.

Vandehey from the direct contact room into one of the glass-partitioned attorney rooms.

42. Given the amount of time that had elapsed already, I indicated that I would use the videoconferencing for the time-being, and I asked to be notified when Mr. Roughton returned so that we could set up simultaneous interviews in the glass-partition rooms at that time. I was told by Commander Dawson that the videoconference interview would be set up and that prisoner Mike Weaver was being moved into the prisoner videoconferencing booth.

43. After some time had passed, Commander Dawson came back to talk with me. He announced that he could not allow any of the three interviews I had planned with Mr. Weaver, Mr. Hogue, or Mr. Rine. He stated that this was because when asked "Who is your attorney?" by jail staff, the prisoners did not identify the ACLU of Colorado or myself. Commander Dawson read me the names of the attorneys whom the prisoners identified, which I recognized as the names of their criminal defense attorneys. Commander Dawson indicated that it was "jail policy" to ask this question ("Who is your attorney?") prior to allowing attorney visits.

44. This was the first time I had ever heard of such a policy. I asked Commander Dawson if he had asked the prisoners if they wanted to meet with the ACLU and he said they had been asked only "Who is your attorney?" I indicated to Commander Dawson that I protested his decision and would wait until Mr. Silverstein returned to discuss the matter. Mr. Silverstein later spoke with Commander Dawson, without success, and eventually the Sheriff agreed to a meeting.

X. The ACLU met with Sheriff's Office regarding their refusal to let ACLU staff meet confidentially with prisoners on the afternoon of June 15

45. The meeting began about 1:00 p.m. that afternoon. The participants included Sheriff Vallario, Assistant County Attorney Denise Lynch, Sergeant Erpestad, Commander Dawson, the Undersheriff, and the four ACLU staff members.

46. During this meeting, the Sheriff and Ms. Lynch announced that ACLU staff members would definitely not be permitted confidential attorney visits unless the prisoner identified the ACLU or an ACLU attorney when a deputy asked the prisoner "Who is your attorney?" Sheriff Vallario insisted that this was the jail's policy. I asked if there was any written document reflecting this "policy." Sheriff Vallario replied that there was no written policy.

47. Mr. Silverstein explained that a prisoner who wanted to speak with the ACLU might not know to respond to the question "Who is your attorney?" with what Mr. Silverstein referred to as the "magic words." Mr. Silverstein asserted that each of the prisoners would undoubtedly have answered "yes" if they had instead been asked, "Do you want a visit from an ACLU attorney?" None of the participants in the meeting disagreed with this assertion.

48. Mr. Silverstein pointed out that when asked "Who is your attorney?" prisoners are likely to answer with the name of their criminal defense attorney. Ms. Lynch stated that a prisoner should "know who their attorney is." Mr. Silverstein stated that ACLU has not yet agreed to provide legal representation to the prisoners, so it would be especially difficult and possibly misleading for prisoners to state that they are represented by ACLU attorneys. Ms. Lynch simply said she was comfortable with the Sheriff's policy.

49. I stated that the Sheriff's policy was at odds with the situation of criminal defendants who do not qualify for a public defender, and need to meet and interview with criminal defense attorneys that they have not yet retained. Indeed, the next day I noted an article in the Post-Independent detailing exactly such a situation (see Exhibit G, attached).

50. We were told that we could visit with the three prisoners through the video visiting system, but the prisoners would have to initiate the visit. But there was no way the ACLU could advise these prisoners, during the time remaining to us in Glenwood Springs, that this is what they needed to do.

51. With regard to the three prisoners who I was not permitted to visit, Mr. Silverstein indicated that he wished to send the prisoners a letter explaining that the Sheriff would permit them to visit with an ACLU attorney that day or the following day (while we were in town) if they said the "magic words." Mr. Silverstein pointed out that there was not time for a letter to be delivered to the prisoners by United States Mail. Mr. Silverstein asked the Sheriff if he would be willing to have his deputies hand-deliver letters from the ACLU to the three prisoners so that they could be informed of the "magic words" while there was still time for a visit. The Sheriff refused.

52. Sheriff Vallario appeared unwilling to reach any compromise on this issue and seemed to invite litigation. In response to Mr. Silverstein's concerns and efforts at compromise, Sheriff Vallario stated only "follow our rules or go to district court across the street" and "if you don't like my policies let the judge decide."

53. Ultimately, the Garfield County officials refused to allow me to meet with Mr. Hogue, Mr. Rine or Mr. Weaver.

XI. The ACLU conducted interviews on June 15 and 16, and learned more about Sheriff's new policy

54. After the meeting with the Sheriff, I was able to conduct separate interviews with Mr. Langley, Mr. Lincoln and Mr. Vandehey, each of whom apparently identified the ACLU as their attorney. Each stated that prior to the ACLU's June 14, 2006 visit, they had never before been asked "Who is your attorney?" and required to give the "correct" answer as a prerequisite to being allowed to meet with counsel. Each of these prisoners has spent a significant amount time in the Garfield County Jail and has participated in previous attorney visits. Indeed, Mr. Silverstein and I visited both Mr. Vandehey and Mr. Langley on May 11, 2006. According to what they told me, neither was asked at that time to identify their attorney prior to being permitted to participate in the interview in the attorney room.

55. Mr. Vandehey told me that this time, before the attorney visit, when he was asked to identify his attorney, he initially named only his criminal defense attorney. Thus, despite his extensive correspondence with the ACLU and his previous visit with Mr. Silverstein and me, and despite having received a letter from me advising of our plans to visit during June 14-16, Mr. Vandehey failed to say the "magic words." He said he realized that the jail's new question was, in his words, a "trick," when Mr. Langley, who was housed in the same section of the jail, yelled to him to "say the ACLU." Mr. Lincoln told me that he learned about this "trick" when he talked to Mr. Vandehey and thus knew to say "ACLU" when he was asked the question as well.

56. If Mr. Langley had not realized the "correct" answer to the "Who is your attorney?" question, and if Mr. Langley had not been able to communicate that information to Mr. Vandehey and, indirectly, to Mr. Lincoln, then the Sheriff's policy, as described in our meeting, would have resulted in denial of the attorney visits with these prisoners. The prisoners with whom I was forbidden to visit are housed in a different section of the jail, the medium-security pod, and thus were unable to learn that they had to say "magic words" to exercise their right to meet with me in a confidential setting.

57. The policy of first asking prisoners "Who is your attorney?" before allowing a confidential attorney visit 1) does not appear in any written form; 2) was never before made known to me prior to June 15, 2006; 3) is contradicted by my personal experience at the jail on May 11, 2006; and 4) according to Mr. Langley, Mr. Lincoln and Mr. Vandehey, was never before applied on any previous occasion during the time that they have been in the Garfield County Jail.

58. Since I conducted these interviews, I have also spoken with an attorney from the public defender's office who has practiced and had clients in the Garfield County Jail for approximately five years. She stated that she has never before heard of such a policy. In addition, I have spoken with private defense attorney Chip McCorey, who has practiced privately in the area for approximately ten years. He stated that the policy has never been applied to him as far as he knows. Mr. McCorey stated that often he is retained by the friends or relatives of criminal defendants, who often do not know his name or know that he is coming to visit, and therefore would never be able to answer the question "Who is your attorney?" correctly.

Nevertheless, he has never experienced problems in obtaining confidential visits with these prisoners.

59. These facts suggest that this policy was either not enforced prior to my June 15, 2006 request to meet with prisoners in a confidential setting and was enforced discriminatorily against me, or was invented specifically to prevent ACLU legal staff from having confidential meetings with prisoners who wish to discuss the possibility of legal assistance from the ACLU.

60. Ultimately, the Sheriff prevented me from meeting with Mr. Hogue, Mr. Rine and Mr. Weaver. All three had previously communicated with the ACLU about the possibility of receiving legal assistance from the ACLU. If the Sheriff had simply asked these prisoners if they wanted to participate in an attorney visit with ACLU staff, I believe that the prisoners would have indicated that they wanted a confidential visit with me.

XII. Insufficiency of facilities for confidential attorney visits

61. Based on a review of the jail's roster of prisoners, I know that Garfield County Jail currently houses around one hundred and fifty prisoners. When we were given a tour of the jail, I learned that it can house up to two hundred and four prisoners.

62. As previously mentioned, when planning to come to Garfield County Jail for visits on June 14 - 16, we were initially informed that there were three spaces for attorney-client visits: a "direct contact" room, and two "glass partition" visiting rooms. It was my understanding and belief that confidential attorney visits could occur simultaneously in all three settings.

63. It was not until the morning of June 15, 2006 that I understood that only one interview could be conducted at a time. At this time that I was also informed that if any other attorney came to visit with a prisoner, that my interview would be terminated. Indeed, on the afternoon of June 15, 2006 my interview with prisoner Langley was cut short and terminated abruptly at 3:30 because another prisoner needed to meet with counsel.

64. Having only one direct contact room for confidential attorney visits in a 200-bed facility with 150 prisoners is not sufficient and does not provide meaningful access for prisoners to speak confidentially with attorneys. When I return to Garfield County Jail to conduct interviews in the future, there is a substantial risk that my interview will be cut off any time another attorney arrives at the jail for a visit with a prisoner, as there is only one room for confidential attorney visits.

XII. Exigency

65. I plan to return to the Garfield County Jail on Tuesday, June 27, 2006 to interview the three prisoners whom I was forbidden to interview and to interview additional prisoners. The nature of this investigation and the seriousness of the allegations necessitates my immediate access to prisoners for confidential attorney visits

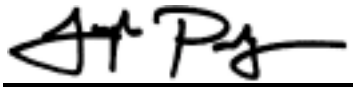
66. Without this Court's intervention, there is a substantial risk that Sheriff Vallario will once again forbid my planned interviews with one or more prisoners. For that reason, I request that this Court enter a temporary restraining order to ensure

that I will be able to conduct interviews in a confidential setting with all Garfield County Jail prisoners who are willing to speak with me.

June 21, 2006.

Signed,

s/ Taylor Pendergrass



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