

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

COREY BARNES;

Plaintiff,

v.

CITY of COLORADO SPRINGS, COLORADO, a municipal corporation;
CARLOTTA RIVERA, a Colorado Springs police officer, in her individual capacity;
KATELYN BURKE, a Colorado Springs police officer, in her individual capacity;
WILLIAM WATSON, a Colorado Springs police officer, in his individual capacity,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Corey Barnes, by and through his counsel, Mark Silverstein, Sara R. Neel, and Arielle Herzberg of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, respectfully alleges for his Complaint and Jury Demand as follows:

INTRODUCTION

1. As a result of the Colorado Springs Police Department's customs and practices of tolerating racially-biased policing and unconstitutional searches and seizures, Plaintiff Corey Barnes was illegally detained, handcuffed, and searched by Colorado Springs police officers on May 15, 2018.

2. On that date, officers of the Colorado Springs Police Department ("CSPD") repeatedly made clear through radio communications that they were searching a multi-building apartment complex for a Black male who was around 15-years-old, had a long light brown afro haircut, was wearing a zippered hoodie and blue jeans, and had run into a specific apartment in a

specific building of the complex. Colorado Springs police officers Rivera, Burke, and Watson (the “Defendant Officers”) unjustifiably stopped and handcuffed Mr. Barnes in a parking lot even though Mr. Barnes had very short hair, not a long afro; he was almost double the age of the suspect (he was 29 years old, not 15); and he was wearing a t-shirt and shorts, rather than a zippered hoodie and jeans. The Defendant Officers lacked probable cause, reasonable suspicion, or any other legal basis to believe that Mr. Barnes had engaged in any criminal activity or was armed or dangerous. They stopped and handcuffed Mr. Barnes only because he was walking while Black.

3. Although another officer on the scene immediately told the Defendant Officers that Mr. Barnes was *not* the suspect, Officers Rivera, Burke, and Watson continued to detain Mr. Barnes without justification and then illegally inserted their hands into his pockets without his consent, searched his wallet, and called in his name and date of birth for a warrants check. Then, when an officer radioed that Mr. Barnes came out of a different building than the suspect was in and when the Defendant Officers were told for a second time, by dispatch, that Mr. Barnes was not the suspect, they still did not immediately release him.

4. Plaintiff Corey Barnes brings this action to vindicate his constitutional rights to the equal protection of the law and to be free from unreasonable searches and seizures.

JURISDICTION AND VENUE

5. This action arises under the Constitution of the United States, pursuant to 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. § 1331.

6. Venue is proper pursuant to 28 U.S.C. § 1391. All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

PARTIES

7. Plaintiff Corey Barnes is a resident of Colorado Springs, Colorado. When the incident occurred, he was one week short of his 29th birthday.

8. At all times relevant to this Complaint, Defendants Carlotta Rivera, Katelyn Burke, and William Watson (“Defendant Officers”) were officers working for the Colorado Springs Police Department (“CSPD”). Each is sued in his or her individual capacity.

9. Defendant City of Colorado Springs is a Colorado municipal corporation. At all times relevant to this Complaint, the individual defendants acted as employees and agents of the City of Colorado Springs.

10. At all times relevant to this Complaint, defendants were acting or failing to act under color of state law.

FACTUAL ALLEGATIONS

11. Corey Barnes is an African-American man who has lived in Colorado Springs for the past 10 years. He has a wife and three children, ages 9, 8, and 2.

The Suspicionless Stop

12. On May 15, 2018, at around noon, Corey Barnes arrived at the Montecito Apartment Complex. He was considering applying for a job there. He planned to go into the apartment complex’s office, but when he arrived, he saw a maintenance person working so he stopped to ask the maintenance person about the job.

13. While talking to the maintenance person, Mr. Barnes saw two teenage Black males take off running, followed by police officers.

14. Police officers were chasing the two males because they had run out of a stolen car.

15. The officers caught up to the driver and detained him quickly.

16. The officers continued to look for the passenger.

17. Between approximately 12:23 and 12:27 PM, officers described the missing suspect over the radio as a light-skinned Black male with long afro-type hair, wearing a grey hoodie and jeans. The officers stated multiple times that the suspect's name was Malachai and that he ran into building 310.

18. Call details, which likely were displayed on officers' screens in their police cars, described the suspect as: "LT SKIN BM GRY SWEATSHIRT POSS MALACHAI" and "SUS POSS 15 YOM, LT SKIN BM, LONG LT BRO AFRO."¹

19. At about 12:30, Officer Rivera asked for a description of the person that they were looking for one more time and an officer repeated: "light skin Black male, believe he's 15, wearing a grey-zipped hoodie, blue jeans and has long light brown afro-style haircut."

20. Officers stated over the radio that the suspect was "in or about apartment 102," which they had previously explained was in building 310.

21. Mr. Barnes and the maintenance person had been talking on the sidewalk between two buildings in the apartment complex. In order to avoid the commotion, Mr. Barnes ended the conversation and began to walk away from the maintenance man.

22. An officer on the scene, standing right outside building 330, asked Mr. Barnes his name. When Mr. Barnes did not respond, the officer did not follow up or stop Mr. Barnes.

23. Mr. Barnes stepped into building 330 to avoid the commotion. A few minutes later, he left the building and began walking back to his car.

¹ These abbreviations likely mean "light-skinned Black male, grey sweatshirt, possibly Malachai," and "suspect possibly a 15-year-old male, a light-skinned Black male [with a] long light brown afro."

24. After he left building 330, a different officer asked Mr. Barnes if he knew someone named Malachai. When Mr. Barnes did not respond, the officer did not follow up or stop Mr. Barnes. Mr. Barnes walked toward his car through a parking lot.

25. At about 12:35 PM, as Mr. Barnes was walking to his car, Officers, Burke, Rivera and Watson stopped him in the parking lot.

26. Officer Rivera had asked for a description over the radio of the male suspect just a few minutes prior to stopping Mr. Barnes.

27. Mr. Barnes did not match this description.

28. Mr. Barnes had very short hair, not the reported “long light brown afro-style haircut” of the suspect.

29. Mr. Barnes was almost twice the age of the suspect – he was 29 years old at the time, not 15.

30. Furthermore, Mr. Barnes was wearing a t-shirt, not a hoodie.

31. Mr. Barnes was also wearing shorts, not blue jeans.

32. Thus, Mr. Barnes did not match the suspect’s description. Race was a motivating factor in the Defendant Officers’ decision to stop Mr. Barnes.

The Illegal Detention, Handcuffing, and Search

33. The Defendant Officers asked Mr. Barnes to identify himself.

34. Mr. Barnes exercised his constitutional right to remain silent.

35. Mr. Barnes activated the video record feature of his cell phone and began recording the incident.

36. Defendant Officers asked him again to identify himself.

37. After he did not answer, Officer Rivera ordered Mr. Barnes to put his hands behind his back. Mr. Barnes complied. Officer Rivera, with assistance from Officer Watson, then handcuffed Mr. Barnes without legal justification.

38. The Defendant Officers never showed any fear or suspicion that Mr. Barnes was posing any danger.

39. As the Defendant Officers were cuffing him, Officer Rivera told Mr. Barnes they were “trying to figure out who you are.” Officer Rivera asked, “Anything on you at all with your name on it, sir?”

40. When Mr. Barnes did not answer, Officer Rivera called into her radio, “can the unit on the west side take a look at this guy and see if this is Malachai?”

41. Immediately, another officer on the scene some distance away responded that Mr. Barnes was not the suspect. Officer Rivera called out to that officer, “**No, this isn’t who you’re looking for?**”

42. The officer responded, “**That’s not him.**”

43. Officer Rivera acknowledged the officer’s response that Mr. Barnes was not the suspect, and she said, “OK. Thank you.”

44. But Officers Rivera, Burke and Watson did not release Mr. Barnes.

45. Mr. Barnes told the Defendant Officers that he felt like he was being kidnapped and detained for no reason.

46. The Defendant Officers continued to ask for his name, and he did not respond.

47. Officer Rivera then began an illegal search Mr. Barnes’s pockets.

48. Officer Burke and Watson stood close by and spoke to Mr. Barnes about how they needed to know his name while Officer Rivera searched Mr. Barnes’s pockets.

49. Mr. Barnes remained compliant but said that he was being searched without his permission. Officer Rivera responded, as she continued to search his pockets, “Well, I’m looking for your ID. So, you don’t know what your name is; I gotta figure out who you are.”

50. Mr. Barnes reiterated, “You’re searching me without my permission,” and Officer Rivera responded, “Yes, sir, I am.”

51. In searching Mr. Barnes, Officer Rivera touched his thighs and pelvis near his genital area as well as his backside, making him uncomfortable.

52. After reaching into all four pockets of Mr. Barnes’s shorts, Officer Rivera pulled out Mr. Barnes’s wallet.

53. Officer Rivera handed Mr. Barnes’s wallet to Officer Burke.

54. Officer Burke then searched Mr. Barnes’s wallet for an ID and extracted his ID.

55. Officer Burke handed the ID to Officer Watson, who examined the ID and said it belonged to Corey Barnes.

56. Officer Watson then handed the ID to Officer Rivera.

57. Officer Rivera proceeded to call into her radio Mr. Barnes’s name and date of birth. She asked for his information to be added to the call screen and she asked over the radio for someone to “advise if he is clear so that we can cut him loose.”

58. Officer Rivera then handed the ID back to Officer Burke, who placed the ID back inside the wallet, and held onto the wallet.

59. Over the radio, after Officer Rivera asked for the dispatcher to “advise if [Corey] is clear,” an officer advised that Mr. Barnes had walked out of building 330 – which was not the building that the suspect had reportedly run into.

60. Despite receiving this clearly exculpatory information, the Defendant Officers continued to detain Mr. Barnes and kept him handcuffed.

61. The dispatcher then confirmed that Mr. Barnes was not their suspect.

62. Defendant Officers did not release Mr. Barnes immediately.

63. Instead, Officer Rivera twice asked Mr. Barnes if he knew Malachai. Mr. Barnes did not respond.

64. Finally, Officer Rivera instructed the other officers to take a picture of Mr. Barnes's ID so she could "add him to the call screen."

65. Officer Burke opened Mr. Barnes wallet, which she had been holding, and pulled out Mr. Barnes's ID again.

66. Officer Rivera took a picture of the ID while Officer Burke held the ID out for the picture.

67. The Defendant Officers finally uncuffed Mr. Barnes.

68. Throughout Mr. Barnes's entire interaction with Officers Rivera, Burke, and Watson and despite being subjected to an illegal stop, handcuffing, and search, Mr. Barnes was completely compliant.

69. Defendant Officers lacked probable cause, reasonable suspicion, or any other legal basis to believe that Plaintiff had engaged in any criminal activity or was armed or dangerous.

70. Nothing about the interaction would have provided a reasonable officer any reasonable suspicion that either Mr. Barnes was armed or dangerous. The Defendant Officers found no weapons or contraband during the search.

71. The detention, handcuffing, and search of Plaintiff was illegally motivated by racial bias.

72. The Defendant Officers called in Mr. Barnes's name to the dispatcher to check for warrants and continued to interrogate him based on stereotypical beliefs.

73. After he was released, Mr. Barnes asked for an explanation. Officer Watson said, "You were being detained . . . because for some reason [you] don't want to answer a simple question about [what] your name is when we're looking for someone from a stolen car."

74. The sequence of events, confirmed by Mr. Barnes' cell phone recording, undeniably shows that the Defendant Officers illegally searched and illegally continued the detention of Mr. Barnes *after* they learned that he was not the suspect they were looking for. In a later police report and description of the encounter on the call screen, however, Defendant Officers tried to cover up their actions by misleadingly and falsely stating that they released Mr. Barnes when they found out he was not a suspect involved in the car theft. Defendant Officers' written statements are demonstrably false and clearly contradict the video evidence.

Internal Affairs Complaint

75. On May 16, 2018, the day after he was detained, Mr. Barnes filed a complaint with CSPD about the illegal detention, search, and handcuffing.

76. Over one year later, on August 29, 2019, CSPD's Internal Affairs Section issued a complaint disposition letter to Mr. Barnes. The Internal Affairs Section explicitly approved, as consistent with CSPD policy, the "initial actions" of the officers, which the letter characterized as a detention and "pat-down search of your person." The letter silently endorsed putting Mr. Barnes in handcuffs during the detention and did not find it problematic that the officers refused to release Mr. Barnes after they learned—from numerous sources—that Mr. Barnes was not the

suspect. The only criticism of the officer's actions was the conclusion that Officer Rivera "violate[d] department policy and procedure . . . when she retrieved the wallet from [Mr. Barnes's] pocket." The letter said that the finding had resulted in unspecified "appropriate administrative action."

77. The letter did not explain any basis for concluding that the Defendant Officers were justified in carrying out the detention, the handcuffing, or any patdown search of Mr. Barnes.

78. In response to a records request submitted by the ACLU of Colorado after the internal investigation was completed, CSPD refused to provide transcripts or recordings of the internal affairs interviews of Officers Rivera, Burke, and Watson.

79. The protection of these records and the ratification and endorsement of the majority of the Defendant Officers' actions were part and parcel of, and consistent with, the City's customs, practices and policies that caused the violation of Mr. Barnes' constitutional rights.

Colorado Springs's Liability

80. Colorado Springs maintains customs, policies, and/or practices that caused the constitutional violations here. These include but are not limited to: (1) a custom and/or practice of tolerating racially-biased policing and unconstitutional searches and seizures; (2) a custom and/or practice of protecting police officers during investigations into misconduct and failing discipline officers for misconduct; and (3) a custom, policy, and/or practice of not adequately supervising Terry stops. Colorado Springs is well-aware of these customs, policies, and/or practices and maintains them with deliberate indifference to Plaintiff's rights.

(1) *Custom and/or Practice of Colorado Springs Tolerating Racially-Biased Policing and Unconstitutional Searches and Seizures that Caused the Constitutional Violations*

81. Colorado Springs's written regulations and publicly-proclaimed policies require police officers to comply with the Fourth Amendment. They also prohibit biased policing. Nevertheless, it the longstanding and widespread custom and practice of the Colorado Springs police department to engage in, tolerate, ratify, and/or acquiesce in racial profiling, racially-biased policing, and unreasonable searches and seizures.

82. A review of legal complaints, publicized incidents, and settlements in the last few years shows the Colorado Springs Police Department's historical custom and practice of mistreating African Americans and conducting racially-biased policing and unconstitutional stops, searches, and seizures:

- a. In August 2013, John Sturgis, an African American man, filed a lawsuit alleging that CSPD officers stopped and arrested him without legal justification and subjected him to excessive force.² In January 2012, CSPD officers were looking for a man in his early 20s with short hair, and they stopped Mr. Sturgis and arrested him even though he was almost twice the age of the suspect (he was 39 years-old) and had a shaved head.³ Colorado Springs paid \$300,000 to settle Mr. Sturgis's claims.⁴

² Tom McGhee, *Lawsuit: Colorado Springs Police Further Injured Handcuffed Man*, DENVER POST (Apr. 30, 2013), <https://www.denverpost.com/2013/04/30/lawsuit-colorado-springs-police-further-injured-handcuffed-man/>.

³ *Id.*

⁴ Pam Zubeck, *Case by Case: Brutality Lawsuits Against CSPD*, COLORADO SPRINGS INDY (July 15, 2015), <https://www.csindy.com/coloradosprings/brutality-lawsuits-against-cspd/Content?oid=3208628>.

- b. In 2015, Grant Bloomquist sued several CSPD officers, alleging that the officers illegally arrested him and used excessive force.⁵ In the lawsuit, he alleged that he saw CSPD officers brutally beating an African American man outside of a nightclub.⁶ He alleged that when he yelled at the officers to stop, CSPD officers struck him repeatedly and then arrested him without probable cause.⁷
- c. A few years later, in October 2016, brothers Ryan and Joey Brown sued Colorado Springs and several CSPD officers alleging that they were targeted in a traffic stop in March 2015 due to their race. The brothers were young Black men who were driving to their home, which was in a predominantly white neighborhood. In the complaint, Ryan and Joey Brown alleged that CSPD officers had no grounds on which to pull them over, and officers would not tell the Brown brothers why they had been pulled over. The officers ordered Ryan out of the car at gunpoint, conducted an illegal search, threw Ryan to the ground and threw his phone away to stop him from recording the interaction. The complaint asserted that in a later interview, an officer admitted that he wanted to “find a reason to stop” the brothers’ car. CSPD responded to the brothers’ complaint about their mistreatment by determining that the officers’ conduct was justified. The resulting court case caused CSPD to undergo intense media scrutiny and critique

⁵ KRDO News, *Only on 13: Surveillance video shows incident at heart of CSPD excessive force lawsuit*, KRDO (Sept. 22, 2015), <https://krdo.com/news/2015/09/22/only-on-13-surveillance-video-shows-incident-at-heart-of-cspd-excessive-force-lawsuit/>.

⁶ *Id.*

⁷ *Id.*

of CSPD's customs and/or practices related to racial profiling.⁸ In April 2017, Colorado Springs agreed to settle the case by paying \$212,000.⁹

- d. Just a few weeks prior to the incident with Mr. Barnes, on April 26, 2018, Jeffrey Melvin, a 27-year-old unarmed African American man, died after an encounter with Colorado Springs police officers.¹⁰ A lawsuit is pending. The complaint filed by Mr. Melvin's estate alleges that even though officers lacked probable cause to believe Mr. Melvin committed a crime, they forcibly detained, held down, choked, pepper sprayed and deployed a Taser on him. The complaint alleges that the Taser and use of force killed Mr. Melvin. Mr. Melvin's family filed a complaint with CSPD, but none of the officers involved were ever disciplined.

⁸ Kassondra Cloos, *ACLU: Video, police report raise questions about validity of Colorado Springs traffic stop*, COLORADO SPRING GAZETTE (May 3, 2015), <http://gazette.com/aclu-video-police-report-raise-questions-about-validity-of-colorado-springs-traffic-stop/article/1550912>; Stephen Hobbs, *Fellow cop says Colorado Springs police officer may have escalated traffic stop*, COLORADO SPRING GAZETTE (October 8, 2015), <http://gazette.com/fellow-cop-says-colorado-springs-police-officer-may-have-escalated-traffic-stop/article/1560909>; Stephen Hobbs and Kassondra Cloos, *Case dismissed against Colorado Springs man who filmed traffic stop*, COLORADO SPRING GAZETTE (September 24, 2015), <http://gazette.com/case-dismissed-against-colorado-springs-man-who-filmed-traffic-stop/article/1559983>; AP, *Police look into video that ACLU calls racial profiling*, CBSNEWS (May 4, 2015 2:26 PM), <http://www.cbsnews.com/news/colorado-springs-police-look-into-video-that-aclu-calls-racial-profiling/>; Reuters, *Colorado's ACLU Says Two Black Men Were Victims of Police Bias, Racial Profiling*, THE HUFFINGTON POST (May 6, 2015 1:51 pm ET), http://www.huffingtonpost.com/2015/05/06/aclu-racial-profiling-bla_n_7224530.html; Donna Bryson, *Police look into video that ACLU calls racial profiling*, YAHOO! NEWS (May 4, 2015), <https://www.yahoo.com/news/police-look-video-aclu-calls-racial-profiling-174327794.html?ref=gs>; Pam Zubeck, *ACLU Sues City over "Racially-Biased Policing"*, COLORADO SPRINGS INDY (Oct. 12, 2016), <https://www.csindy.com/IndyBlog/archives/2016/10/12/aclu-sues-city-over-racially-based-policing>.

⁹ Pam Zubeck, *UPDATE: Colorado Springs reaches settlement in racial profiling case*, COLORADO SPRINGS INDY (Apr. 20, 2017), <https://www.csindy.com/TheWire/archives/2017/04/20/colorado-springs-reaches-settlement-in-racial-profiling-case>.

¹⁰ *Family Still Looking for Answers after Man's Death Following Police Encounter* (Sep. 19, 2018), <https://www.kktv.com/content/news/Family-still-looking-for-answers-after-mans-death-following-police-encounter-493701341.html>.

e. CSPD's unlawful treatment of African American men has also continued after the incident with Mr. Barnes. On August 3, 2019, CSPD officers shot and killed a young African American man, De'Von Bailey, as he ran away from the officers.¹¹ This incident caused CSPD to again undergo intense national media scrutiny, and it prompted protests and criticism for racially-biased policing.¹²

83. In addition to these prior incidents, statistical data shows that the Colorado Springs Police Department has a history of racially-disparate traffic stops and arrests, and a history of consistently treating African American individuals worse than white individuals:

- a. In October 2016, data from the Colorado Springs Police Department showed that African-American males were stopped while driving by the Colorado Springs Police Department 97% more often than would be expected based on their proportion in the population in Colorado Springs as of the 2010 Decennial United

¹¹ Tim Elfrink, *Police Fatally Shot a Black Teen Three Times in the Back. His Family Wants an Independent Probe.*, WASH. POST (Aug. 16, 2019), <https://www.washingtonpost.com/nation/2019/08/16/devon-bailey-colorado-springs-police-shooting-body-cam-footage/>.

¹² Vandana Ravikumar, *De'Von Bailey Was Shot In the Back and Killed by Police, His Family Says. They're Rallying For 'Justice'*, USA TODAY (Aug. 13, 2019), <https://www.usatoday.com/story/news/nation/2019/08/13/devon-bailey-shooting-colorado-family-investigation-police-shooting/2003519001/>; Lindsey Grewe, *Colorado Springs PD Releases Body-Cam Footage of Shooting that Killed De'Von Bailey*, WISNEWS (Aug. 15, 2019), <https://www.wistv.com/2019/08/16/colorado-springs-pd-releases-body-cam-footage-shooting-that-killed-devon-bailey/>; Tim Elfrink, *Police Fatally Shot a Black Teen Three Times in the Back. His Family Wants an Independent Probe.*, WASH. POST (Aug. 16, 2019), <https://www.washingtonpost.com/nation/2019/08/16/devon-bailey-colorado-springs-police-shooting-body-cam-footage/>; Brakkton Booker and Richard Gonzales, *Family Wants Independent Probe in Fatal Police Shooting of Teen in Colorado*, NPR (Aug. 16, 2019), <https://www.npr.org/2019/08/16/751746274/family-wants-independent-probe-in-fatal-police-shooting-of-teen-in-colorado>; Elise Schmelzer, *Polis Calls for Independent Investigation into Shooting of De'Von Bailey by Colorado Springs Police*, DENVER POST (Aug. 22, 2019), <https://www.denverpost.com/2019/08/22/jared-polis-devon-bailey-colorado-springs-police/>; Sam Tabachnik and Elise Schmelzer, *Colorado Springs Police Officers Justified in Shooting of De'Von Bailey, Grand Jury Determines*, DENVER POST (Nov. 13, 2019), <https://www.denverpost.com/2019/11/13/colorado-springs-devon-bailey-officer-involved-shooting-grand-jury/>.

States Census. When looking at driving age population in Colorado Springs, African-American males were, at that point, stopped by the Colorado Springs Police Department 120% more often than would be expected. When analyzing traffic stop data for daylight hours, the time when there is greater likelihood that racial identity played a role in a traffic stop, with daylight defined as 10 a.m. to 4 p.m., African-American males were, at that point, stopped by the Colorado Springs Police Department 161% more often than would be expected based on their proportion in the population in Colorado Springs. Caucasian males, on the other hand, were consistently stopped by the Colorado Springs Police Department at rates consistent with the relative size of their population in the City, suggesting no racial bias on the part of officers when dealing with this population.

- b. Additional data shows that CSPD officers disproportionately arrest African Americans. African Americans comprise only 6.2% of the city's population.¹³ Nevertheless, in 2017, they made up 17.6% of the persons the CSPD arrested for what the agency's annual report refers to as "arrests at the highest charge."¹⁴ In 2018, 18.1% of individuals that the Colorado Springs Police Department arrested for the same charges were African American.¹⁵

¹³ United States Census Bureau, *QuickFacts: Colorado Springs City, Colorado, Population estimates, July 1, 2018*, <https://www.census.gov/quickfacts/fact/table/coloradospringscitycolorado/PST045218>.

¹⁴ CSPD Strategic Information Center, *2017: Colorado Springs Police Department Annual Statistical Report*, https://coloradosprings.gov/sites/default/files/2017_cspd_annual_statistical_report_final_draft_updated_012519-2.pdf (showing that the CSPD arrested 3,106 Black individuals at the highest charge out of their total of 17,618 arrests at the highest charge).

¹⁵ CSPD Strategic Information Center, *2018: Colorado Springs Police Department Annual Statistical Report*, https://coloradosprings.gov/sites/default/files/2018_cspd_annual_statistical_report_final-2.pdf (showing that CSPD arrested 3,365 Black individuals at the highest charge out of their total of 18,580 arrests at the highest charge).

c. CSPD officers are also more likely to use force on African Americans than white individuals. In 2014 and 2015, approximately 20% of the people against whom CSPD used force were African American.¹⁶ In 2016, this figure jumped to 26% and in 2017, it was 25%.¹⁷ In 2017, CSPD officers used force against 21% of the total number of African American males who were arrested. In the same year, CSPD officers used force against only 12% of the total number of white males who were arrested.¹⁸

84. Despite being on notice from prior lawsuits, press, settlements, and statistical data that continued tolerance of racially-biased policing and violations of constitutional rights was substantially certain to result in a constitutional injury like that suffered here, Colorado Springs has consciously chosen not to remedy its deficient customs and to instead ignore the risk of harm caused by the customs.

85. With deliberate indifference to the rights of African American persons in Colorado Springs, Defendant Colorado Springs has tolerated a police force that engages in racial profiling, racially-biased policing, and violations of constitutional rights.

86. The custom and/or practice of Colorado Springs of encouraging, condoning, tolerating, and ratifying the use of racially-motivated policing and unconstitutional searches and seizures were the moving forces behind, and proximate cause of, the violations of Plaintiff's constitutional rights.

¹⁶ Memorandum from Sgt. Joel Kern to Chief of Police Peter Carey on 2014 Use of Force Report (Apr. 8, 2015).

¹⁷ 2016 Annual Internal Affairs Report, Colorado Springs Police Department; Memorandum from Amanda Terrell-Orr, Planning and Compliance Administrator, to Deputy Chief Mark Smith on Revised 2017 Use of Force Analysis (July 16, 2018).

¹⁸ Memorandum from Amanda Terrell-Orr to Deputy Chief Mark Smith on Revised 2017 Use of Force Analysis (July 16, 2018).

87. The actions of the defendant officers described herein were carried out pursuant to and consistent with Colorado Springs's customs and practices of racially-biased policing and unconstitutional seizures and searches. The presence and participation of three officers provides further evidence that all of their actions were consistent with Colorado Springs's established customs and/or practices.

(2) Custom and/or Practice of Colorado Springs Protecting Police Officers During Investigations into Misconduct and Failing to Discipline Officers for Misconduct Caused the Constitutional Violations

88. It is the custom and/or practice of the Colorado Springs Police Department to conduct internal affairs investigations and investigations of police officers' actions in a manner that protects the officers from findings of misconduct whenever possible, even when there is strong evidence that the officers engaged in misconduct. It also the custom and/or practice within the Colorado Springs Police Department to fail to discipline officers for misconduct.

89. Legal complaints and publicized incidents show the Colorado Springs Police Department's historical custom and practice of protecting its officers during investigations by failing to: (1) adequately investigate police officers' actions, (2) discipline officers for misconduct, and/or (3) openly provide investigation records to the public. For example:

- a. In 2006, after CSPD officer David Nelson was accused of slamming someone named Rocky Manning onto the pavement and kneeing him in the back during a traffic stop, causing Mr. Manning \$11,000 in medical bills and severe pain, the then-CSPD police chief concluded that "misconduct did not occur."¹⁹

¹⁹ Pam Zubeck, *Obstructed View: Failure to Disclose Disciplinary Actions Keeps the Public In the Dark About Police Misbehavior*, COLORADO SPRINGS INDY (Nov. 18, 2015), <https://www.csindy.com/coloradosprings/colorado-springs-police-investigations-shrouded-in-secrecy/Content?oid=3469469>.

- b. In 2013, after CSPD Officer Tyler Walker was accused of slamming 18-year-old Alexis Acker's head to the ground in a hospital waiting room, CSPD took some sort of undisclosed disciplinary measures but refused to release the officer's internal affairs file or Response to Aggression forms to the public, even after the related lawsuit settled.²⁰
- c. In 2015, after brothers Ryan and Joey Brown submitted a complaint to the Colorado Springs Internal Affairs Bureau complaining of mistreatment when they were pulled over due to their race and illegally searched, the Internal Affairs Bureau found the actions of the officers to be "justified, legal and proper."²¹ None of the officers, including Officer Nelson (who was involved in the Rocky Manning incident described above), were disciplined by CSPD for their actions.²² Although the investigative file exonerating the police was released because the CSPD said the file was of "high" public interest, when news entities requested the Internal Affairs history of Officer Nelson, who was involved in both the Rocky Manning and Brown incident, and Response to Aggression forms filed by other officers involved in the Brown incident, CSPD refused to release the records.²³

²⁰ *Id.*; Pam Zubeck, *CSPD Withholds Investigation of Cop who Cost Taxpayers \$100,000 in Lawsuit Settlement*, COLORADO SPRINGS INDY (Jul. 20, 2016), <https://www.csindy.com/coloradosprings/cspd-withholds-investigation-of-cop-who-cost-taxpayers-100000-in-lawsuit-settlementstaying-mum/Content?oid=3912572>.

²¹ Pam Zubeck, *UPDATE: Colorado Springs reaches settlement in racial profiling case*, COLORADO SPRINGS INDY (Apr. 20, 2017), <https://www.csindy.com/TheWire/archives/2017/04/20/colorado-springs-reaches-settlement-in-racial-profiling-case>.

²² Pam Zubeck, *Obstructed View: Failure to Disclose Disciplinary Actions Keeps the Public In the Dark About Police Misbehavior*, COLORADO SPRINGS INDY (Nov. 18, 2015), <https://www.csindy.com/coloradosprings/colorado-springs-police-investigations-shrouded-in-secrecy/Content?oid=3469469>.

²³ *Id.*

d. Three years later, in 2018, the family of Jeffrey Melvin filed a complaint with CSPD after Mr. Melvin was tasered and killed by CSPD officers.²⁴ According to the lawsuit filed in that case, Colorado Springs did not discipline the officers for their actions.

90. The custom and/or practice of Colorado Springs protecting its officers during investigations into misconduct has resulted in a culture in which officers, such as the Defendant Officers in this case, know that they can engage in misconduct with only a minimal chance of adverse consequences or repercussions.

91. Colorado Springs had notice from prior lawsuits that continued protection of its officers during investigations creates a risk that officers would continue to engage in misconduct that violates residents' constitutional rights. Yet, Colorado Springs has chosen not to remedy its deficient customs, and even in this case, conducted an internal investigation that approved of the illegal detention and patdown, and silently endorsed the unjustified handcuffing and the continued detention even once officers found out that Mr. Barnes was not the suspect. After the investigation was completed, Colorado Springs chose to protect the Defendant Officers' Internal Affairs interviews from disclosure.

92. Colorado Springs displays deliberate indifference to the rights of persons in Colorado Springs, including Plaintiff, by tolerating an atmosphere and culture in the Colorado Springs Police Department where officers feel free to engage in biased policing practices and unconstitutional searches and seizures without fear of consequences.

²⁴ *Family Still Looking for Answers after Man's Death Following Police Encounter* (Sep. 19, 2018), <https://www.kktv.com/content/news/Family-still-looking-for-answers-after-mans-death-following-police-encounter-493701341.html>.

93. The custom and/or practice of Colorado Springs ratifying police misconduct after investigating and failing to discipline officers for misconduct were the moving forces behind, and proximate cause of, the violations to Plaintiff's constitutional rights.

(3) Custom, Policy, and/or Practice of Colorado Springs Not Adequately Supervising Terry Stops That Caused the Constitutional Violations

94. When the Defendant Officers approached Mr. Barnes and asked him about his identity, they were conducting a "Terry stop." Terry stops are investigative detentions of limited scope and duration, requiring reasonable suspicion of criminal activity.

95. Defendant Colorado Springs maintains a custom, policy, and/or practice of failing to supervise Terry stops.

96. Colorado Springs police officers are not required to make Field Interview Reports of Terry stops unless there are certain circumstances not applicable here.

97. Even when required to make Field Interview Reports, Colorado Springs police officers are not required to make any report or make any contemporaneous notes that explain the facts that purportedly amount to reasonable suspicion to justify the Terry stop. They are furthermore not required to memorialize the facts that justify any steps taken during the Terry stop, such as the facts that justify any handcuffing or search that they conduct during a Terry stop.

98. By failing to require documentation, Colorado Springs provides a clear opportunity for wholesale violations of constitutional rights. When supervisors do not have written reports to review, there is no mechanism to hold officers accountable to constitutional standards. Without supervisory review, officers are free to, and do, carry out Terry stops on the basis of insufficient evidence or impermissible reasons, and impermissibly infringe on constitutional rights during Terry stops.

99. Defendant Colorado Springs was deliberately indifferent to the constitutional rights of Plaintiff, knowing that failing to properly supervise its employees would lead to racial profiling and unconstitutional stops, searches, and seizures.

100. Moreover, the need for supervision of Terry stops is obvious because without supervision, there is an obvious risk that officers will engage in Terry stops without facts amounting to reasonable suspicion. The need for supervision of Terry stops is so obvious, and the inadequacy of Colorado Springs so likely to result in a violation of constitutional rights, such as those described herein, that Colorado Springs's failure to supervise amounts to deliberate indifference to the constitutional rights of persons, including Plaintiff, with whom the Colorado Springs police officers come into contact.

101. The custom and/or practice of Colorado Springs of failing to supervise Terry stops was the moving force behind, and proximate cause of, the violations to Plaintiff's constitutional rights.

FIRST CLAIM FOR RELIEF
*42 U.S.C. § 1983 - Fourth Amendment
Unlawful Seizure
(Against All Defendants)*

102. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

103. The Fourth Amendment forbids unreasonable seizures. Pursuant to the Fourth Amendment, a temporary detention can be justified only by reasonable suspicion of criminal activity. In this case, the Defendant Officers required (but did not have) reasonable suspicion that Mr. Barnes was the suspect police were pursuing. Here, the Defendant Officers had no reasonable suspicion that Mr. Barnes was the suspect to begin with, and they were alerted multiple times during the detention that Mr. Barnes was not the suspect.

104. A handcuffing required not only a reasonable basis to believe Mr. Barnes was the suspect, but additional facts indicating that Mr. Barnes was armed and that handcuffing was necessary to protect officers during the encounter. The Defendant Officers did not have grounds for the handcuffing at any point.

105. A reasonable officer would have known that the initial detention, handcuffing, continued detention and continued handcuffing of Mr. Barnes violated clearly established Fourth Amendment law.

106. The Defendant Officers are jointly responsible for the unconstitutional initial stop, handcuffing, continued detention, and continued handcuffing, and the Defendant Officers are also liable for their failure to intervene to prevent the constitutional violations of which they were aware and did nothing to prevent.

107. Colorado Springs, through its procedures, policies, practices, and customs, caused the violation of Mr. Barnes's rights.

108. Wherefore, Mr. Barnes is entitled to compensatory damages from Colorado Springs; compensatory and punitive damages from the individual Defendant Officers; an award of reasonable costs and attorney's fees; and such other relief as the Court deems just.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 - Fourth Amendment
Unlawful Search
(Against All Defendants)

109. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

110. The Fourth Amendment forbids unreasonable searches. Even during a valid Terry stop, the Fourth Amendment prohibits a patdown of outer clothing unless officers have facts amounting to reasonable suspicion that the person is armed. In addition, the Fourth Amendment

prohibits police from reaching into a person's pockets without reasonable suspicion that those pockets contained weapons. Here, the Defendant Officers were not conducting a valid Terry stop, as they had no reasonable suspicion that Mr. Barnes was the suspect. They did not have reasonable suspicion that Mr. Barnes was armed and thus had no grounds for a patdown search, nor did they have grounds for the intrusion into Mr. Barnes' pockets or into his wallet.

111. A reasonable officer would have known that the search violated clearly established Fourth Amendment law.

112. Colorado Springs' Internal Affairs Bureau admitted that Officer Rivera's search of Mr. Barnes's pockets was improper.

113. All three of the Defendant Officers are jointly responsible for the unconstitutional search.

114. All three officers are also liable for their failure to intervene to prevent the constitutional violations of which they were aware and did nothing to prevent.

115. Colorado Springs, through its procedures, policies, practices, and customs, caused the violation of Mr. Barnes's rights.

116. Wherefore, Mr. Barnes is entitled to compensatory damages from Colorado Springs; compensatory and punitive damages from the individual Defendant Officers; an award of reasonable costs and attorney's fees; and such other relief as the Court deems just.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 - Fourteenth Amendment
Denial of Equal Protection
(Against All Defendants)

117. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

118. The Fourteenth Amendment forbids Defendants from depriving Plaintiff of the equal protection of the law and provides Plaintiff with a clearly established constitutional right to be free from racial discrimination in law enforcement by police officers.

119. Plaintiff's race was a motivating factor in the decision of Defendant Officers to detain, handcuff, and search Plaintiff in violation of his constitutional rights. The Defendant Officers' actions had a discriminatory effect on Mr. Barnes.

120. Reasonable officers would have known that they were violating clearly established law.

121. The Defendant Officers are jointly responsible for the violation of equal protection. The Defendant Officers are also liable for their failure to intervene to prevent the constitutional violations of which they were aware and did nothing to prevent.

122. Colorado Springs, through its procedures, policies, practices, and customs, caused the violation of Plaintiff's rights.

123. Wherefore, Mr. Barnes is entitled to compensatory damages from Colorado Springs; compensatory and punitive damages from the individual Defendant Officers; an award of reasonable costs and attorney's fees; and such other relief as the Court deems just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- (a) Compensatory and punitive damages from Defendant Officers sued in their individual capacity;
- (b) Compensatory damages from the City of Colorado Springs;
- (c) An award of reasonable attorney's fees and costs associated with this action on all claims allowed by law;

- (d) Pre and post-judgment interest at the lawful rate;
- (e) Any further relief that this Court deems just and proper in equity and at law.

JURY DEMAND

Plaintiff requests a trial by jury in this matter.

Respectfully submitted this 15th day of May, 2020.

s/ Mark Silverstein
Mark Silverstein
Sara R. Neel
Arielle Herzberg
American Civil Liberties Foundation of Colorado
303 E. 17th Avenue Suite 350
Denver, Colorado 80203
Phone: (720) 402-3104
msilverstein@aclu-co.org
sneel@aclu-co.org
aherzberg@aclu-co.org

ATTORNEYS FOR PLAINTIFF