

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

NEW TIMES, INC., ASSOCIATION OF ALTERNATIVE NEWSWEEKLIES, DARK NIGHT PRESS, CLAY DOUGLAS, LARRY RICE, DORET KOLLERER, CHRISTINE DONNER, MAOIST INTERNATIONAL MOVEMENT, BARRIO DEFENSE COMMITTEE, ANTHONY LUCERO, MAXWELL THOMAS, DANIEL HERNANDEZ, ARTHUR MCCRAY, GEORGE MOORE, TRAVIS COLVIN, and MARTIN WILLIAMS,

Plaintiffs,

v.

JOHN SUTHERS, in his official capacity as EXECUTIVE DIRECTOR OF COLORADO DEPARTMENT OF CORRECTIONS,

Defendant.

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**COMPLAINT**

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**INTRODUCTION**

1. This lawsuit challenges Administrative Regulation 300-26 (“AR 300-26”) of the Department of Corrections (“DOC”) and the DOC’s policy, custom, pattern, and practice of arbitrarily and unjustifiably censoring reading material, including incoming mail, magazines, newsletters, and books, in a manner that deprives both publishers and inmates of their 1<sup>st</sup> Amendment rights without due process of law. By adopting and implementing AR 300-26, the DOC has authorized and ratified censorship of reading material on the basis of criteria that are overbroad, subjective, and unconstitutionally vague. The DOC has not issued any regulations that interpret or narrow the reach of these overly broad and vague criteria, nor has the DOC

created any written training materials to guide the discretion of officers who wield the power to censor.

2. According to the challenged regulation, for example, inmates may be forbidden to receive political commentary if prison officials determine, in their own subjective judgment, that an article encourages or endorses “hatred or contempt of other persons.” Inmates are also forbidden to receive publications if prison officials determine that they are produced or distributed by “Security Threat Groups” or if they contain material “advocating or depicting association or membership in” such groups. The manner in which these criteria have been applied sweeps within its scope such publications as the Denver weekly *Westword* and the entertainment magazine *Rolling Stone*.

3. The DOC’s procedures for permitting inmates to appeal censorship decisions deprive the inmates of their constitutional due process right to be heard at a meaningful time and in a meaningful manner, because the DOC does not require the censors to identify the articles or information which they believe threaten institutional security. Inmates are not allowed to review the material subject to censorship. Moreover, when reviewing inmate grievances regarding censorship decisions, DOC officials generally do not review the censored material itself, which is typically destroyed or mailed out of the facility before the grievance process is complete.

4. The DOC’s procedure for reviewing publications deprives publishers of their constitutional right to be heard at a meaningful time and in a meaningful manner. Publishers receive no notice and no opportunity to rebut the DOC’s frequently baseless accusations that their publications encourage “hatred or contempt” or that the publishers

constitute a “Security Threat Group,” or that their publications contain material “advocating or depicting association or membership” in such groups.

5. This Complaint describes only a small number of instances in which specific publications were censored from inmates or unreasonably delayed in their delivery to other inmates under AR 300-26. One example of the systematic prohibition of whole categories of innocuous and unjustifiably censored publications is music and entertainment news magazines. *Rolling Stone* and its counterpart in African-American and Latino entertainment, *VIBE*, as well as other music-oriented magazines such as *The Source*, *Blaze*, and *Yo*, which feature predominately Hip-Hop, Rap, and other minority performers, have been censored routinely at various facilities since at least late 1997. The grounds consistently stated for censoring these publications are the DOC’s subjective determination that certain, often unidentified advertisements or article photos contain purported depictions of gang-related signs or symbols, or that the publication is produced by a “Security Threat Group” or “advocates or depicts association or membership in a STG.” The basis for these “gang-related” determinations that led to censure of an entire issue has been as harmless and non-threatening as a photo in a jeans advertisement of an African-American teenager wearing baggy pants and a cap making what could be a 1960’s style “peace sign” with the first two fingers of his right hand.

6. In short, the overly broad and vague scope of AR 300-26 has resulted in a system-wide pattern and policy of inconsistent and arbitrary censorship since at least 1997 through the present that has, and will continue to delay, impede, and prohibit inmates from receiving information and ideas that pose no threat to institutional security and without adequate

procedural mechanisms in place to satisfy due process, in violation of the 1<sup>st</sup> and 14<sup>th</sup> Amendment rights of inmates and publishers.

### **JURISDICTION AND VENUE**

7. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

8. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

9. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All inmate Plaintiffs and Defendant reside within the District of Colorado.

### **PARTIES**

#### **PUBLISHER PLAINTIFFS**

10. Dark Night Press, located in Chicago, Illinois, publishes *Dark Night Field Notes*, a quarterly periodical distributed throughout the United States and Canada, which provides commentary, book review and poetry primarily on Native American issues, including inmate conditions.

11. Clay Douglas is the publisher of *Free American* news magazine, a monthly conservatively-oriented magazine of political news and commentary that has been published since 1994. The magazine has a circulation of approximately 9,000 and is sold in grocery stores, newsstands, and bookstores throughout the country.

12. Larry Rice is a citizen of the State of Missouri and the editor and publisher of *Cry Justice Now* newspaper. The paper's mission statement identifies its main purposes as fighting for justice, to expose, rectify, resolve, and eliminate the causes and effects of injustice, and proclaiming the gospel of Jesus Christ.

13. Doret Kollerer is a citizen of the State of California. Since 1992, she has served as the editor and publisher of *North Coast Xpress*, a bimonthly magazine of news and political commentary. The mission of *North Coast Xpress* is to promote democratic ideals of the Constitution and the Bill of Rights.

14. Christine Donner is a citizen of the State of Colorado. She is the coordinator of the Prisoner's Rights Project of the Rocky Mountain Peace and Justice Center, which is based in Boulder, Colorado. The Prisoner's Rights Project is opposed to the growing trend of building control units and supermax prisons where an increasing number of inmates spend 23 hours each day confined to their cells. Ms. Donner and her associates at the Prisoner's Rights Project write, edit, and produce *Shut Them Down*, a newsletter which deals with these issues.

15. Barrio Defense Committee is a publisher located in San Jose, California. It publishes *Voz Del Barrio Aztlan* approximately monthly, which is a publication containing Chicano cultural and nationalistic commentary on historic and present conditions of Mexican-Americans in the United States.

16. New Times, Inc. is an Arizona corporation which does business in Denver, Colorado. New Times, Inc. publishes *Westword*, a weekly publication of news, entertainment, and political and social commentary on local, regional, and national events.

17. The Association of Alternative Newsweeklies (“AAN”) is a trade association of weekly newspapers. The current president of AAN is Patricia Calhoun, editor of *Westword*, one of AAN’s member papers. AAN strives to promote vigorous quality journalism, to combat censorship, and to promote generally the interests of alternative weekly newspapers. In this lawsuit, AAN sues for declaratory and injunctive relief in a representative capacity on behalf of its members. AAN members, including *Westword*, have been adversely affected by the challenged censorship in the past and are at risk of being similarly affected in the future. The rights that AAN asserts in this lawsuit are germane to the purposes of the organization. Neither the claims AAN asserts nor the prospective relief it requests require that individual members of AAN participate in this lawsuit.

18. Maoist Internationalist Movement (“MIM”) is an unincorporated association which publishes and distributes *MIM Notes*, a bimonthly newsletter. MIM identifies its role as upholding the revolutionary communist ideology of Marxism, Leninism, and Maoism. It advocates an end to the oppression of all groups over other groups, including, for example, an end to racism, poverty, and the oppression of women.

19. The regular mailing lists of each of the foregoing publications include inmates of the DOC, with the exception of *Westword*. *Westword* has been sent to various inmates upon their request for specific issues and articles. In the past, officials of the DOC have censored one or more issues of each of the foregoing publications and/or have declared them to be contraband and have forbidden inmates from receiving, possessing, or reading them. In the censorship process pursuant to AR 300-26, the DOC does not provide any notice to publishers and does not provide them with an opportunity to be heard regarding the DOC’s censorship

decision. Each of the publisher Plaintiffs intends to continue distributing their publications to inmates of the DOC in the future.

20. Because of the continued operation of AR 300-26 and the pattern and practice challenged here, each of the publisher Plaintiffs faces a real and substantial threat that their publications will be subjected to censorship again in the future.

#### INMATE PLAINTIFFS

21. Anthony Lucero is an inmate of the DOC currently housed at Limon Correctional Facility. Pursuant to AR 300-26 and the resulting censorship decisions of the DOC, Lucero has been denied access to multiple issues of *MIM Notes* and to the book, *Hidden Faces of Eve*, described below.

22. Maxwell C. Thomas is an inmate of the DOC currently housed at Limon Correctional Facility. Pursuant to AR 300-26 and the resulting censorship decision of the DOC, Thomas has been denied access to the Vol 4 #1 of *Scenario*, described below.

23. George Moore is an inmate of DOC currently housed at Fremont Correctional Facility. Pursuant to AR 300-26 and the resulting censorship decision of the DOC, Moore has been denied access virtually every month since August 1999 to issues of *VIBE*, described below.

24. Travis Colvin is an inmate of the DOC currently housed at Limon Correctional Facility. Pursuant to AR 300-26 and the resulting censorship decision of the DOC, Colvin has been denied access to *Signed English: A Basic Guide*, a self-instruction book on sign

language authored by Harry Bornstein and Karen L. Saulner and published by Three Rivers Press, described below.

25. Dan Hernandez is an inmate of the DOC currently housed at Colorado State Penitentiary. Pursuant to AR 300-26 and the resulting censorship decision of the DOC, Hernandez has been denied access to the *Resource Guide*, described below.

26. Arthur McCray is an inmate of the DOC currently housed at Colorado State Penitentiary. Pursuant to AR 300-26 and the resulting censorship decision of the DOC, McCray has been denied access to issue #100 of *The Source*, described below.

27. Martin Williams is an inmate of the DOC currently housed at Limon Correctional Facility. Pursuant to AR 300-26 and the resulting censorship decision of the DOC, Williams has been denied access to issue numbers 16 and 22 of *Cry Justice Now*.

28. Pursuant to the regulations and practices challenged in this case, all of the inmate Plaintiffs have been subjected to these and other acts of unconstitutional censorship. Each of them faces a substantial risk that he will be subjected to unconstitutional censorship in the future.

#### DEFENDANT

29. John Suthers is the Executive Director of the Colorado Department of Corrections. Suthers has responsibility for the enforcement of AR 300-26 and the policies, customs, and practices challenged herein. All employees and officials of the DOC referenced in this Complaint are employees and agents of Defendant Suthers. All policies, practices, actions,



and threatened actions of the Defendant and his agents alleged in this Complaint are actions taken under color of state law.

### **AR 300-26 AND CENSORSHIP PROCEDURES**

30. The censorship decisions challenged in this lawsuit are carried out pursuant to AR 300-26. AR 300-26 provides that inmate reading material is not permitted if the material “poses a threat to the security or good order of the facility or office, or is determined to be contrary to public safety and rehabilitative goals set for the offender by the DOC.”

31. In order to make the censorship decisions, AR 300-26 provides that the DOC shall “determine whether an objective person could reasonably believe that the material or publication is detrimental to security, good order, public safety or rehabilitative goals.” Pursuant to AR 300-26, materials or publications may be prohibited if they encourage violence or disorder; disregard for moral or legal consequences of violent or wrongful acts; hatred or contempt of other persons; vengeance against other persons; or prurient interest in sex.

32. AR 300-26 expressly provides that the following materials can be prohibited under the general criteria set forth above:

1. Any publication describing the design or manufacture of firearms, explosives, or other weapons or destructive devices.
2. Any publication describing the manufacture of controlled substances or intoxicants.
3. Any publication advocating hatred or contempt of other persons.
4. Any publication or material produced or distributed by Security Threat Groups (STGs) or any publication or material advocating or depicting association or membership in a STG which is contrary to the security interests of the facility.

5. Offenders may be permitted to subscribe to and have in their personal possession sexually-oriented magazines and periodicals providing that Mental Health or Sex Offender Treatment Program staff have not directed the offender not to subscribe to or possess such magazines or periodicals because they are contrary to rehabilitative goals. However, materials, magazines or periodicals primarily devoted to depicting or describing bestiality, pedophilia, sadism, masochism, or necrophilia may not be approved for subscription or possession.

A copy of AR 300-26 is attached to this Complaint as Exhibit 1 .

33. AR 300-26 provides that each prison shall set up an “Offender Reading Material Committee” (“Reading Committee”) to evaluate whether reading material should be prohibited. If the mailroom staff believe that an incoming publication is subject to exclusion, the publication is referred to the Reading Committee.

34. AR 300-26 provides that inmates receive written notice that an item of incoming mail has arrived and has been referred to the Reading Committee. Despite this requirement, the mailroom staff routinely fails to follow the procedures and publications have been censored without any notice to inmates. Additionally, the publishers and senders of reading material receive no notice that their publications have not been delivered to the inmates.

35. When the Reading Committee determines that reading material will be prohibited, AR 300-26 requires the Committee to complete an “Offender Reading Material Evaluation Form,” a sample copy of which is attached to this Complaint as Exhibit 2. The form contains a checklist that tracks the criteria for censorship outlined in AR 300-26, and contains additional boxes that can be checked to indicate other reasons for the censorship. *Id.* It requires the signature of the chair of the Reading Committee. The decision to prohibit material is not final until the Warden also signs the form.

36. When the Reading Committee determines that a publication contains material that is subject to censorship, the entire publication is withheld from the inmate. Thus, an entire book or magazine will be prohibited because the Reading Committee determines that one article, one page, or one advertisement contains material subject to censorship under AR 300-26.

37. When the Warden approves the Reading Committee's decision to prohibit reading material, AR 300-26 provides that the prisoner will receive a copy of the Offender Reading Material Evaluation Form. A decision to prohibit material must indicate which of the criteria are violated by the material, and how the material violates the criteria. AR 300-26 § IV.G. Despite this requirement, the DOC regularly fails to describe "how the material violates the criteria" of AR 300-26. It is a common pattern and practice of the DOC to simply check a box on the Offender Reading Material Evaluation Form without providing any additional details regarding the censorship decision. Additionally, the publishers or the senders of the prohibited material receive no notice that the Defendant has determined that the reading material is prohibited.

38. When the Warden has ratified the Reading Committee's decision to prohibit reading material, the reading material is deemed to be contraband, and the inmate is given the opportunity to send the material out of the facility at the inmate's expense. If the inmate does not do so within ten days, the reading material is generally destroyed.

39. After receiving an Offender Reading Material Evaluation Form indicating that reading material has been prohibited, the prisoner may file a grievance protesting the censorship decision. The DOC has established a three-step grievance process, which is

delineated in Administrative Regulation 850-4. A Step I grievance must be filed within 30 days, and the facility has 25 days to answer. The prisoner then has five days to file a Step II grievance. Once again, the facility has 25 days to answer. The prisoner can then file a Step III grievance, which is reviewed by the Step III Grievance Officer. The Step III Grievance Officer is required to respond within 25 calendar days. The DOC provides that if an inmate timely appeals at each stage, the grievance process will be exhausted within 90 days.

40. The Defendant does not require that decision makers review the censored reading material when considering a grievance protesting censorship. Indeed, in most cases it is not even possible for the decision makers to review the censored publications when resolving grievances. Pursuant to the requirement that material deemed contraband be disposed of within 10 days of receipt of the Offender Reading Material Evaluation Form, the censored publication is generally not available for review in conjunction with the grievance process.

41. The DOC's written procedures are inadequate to protect the 1<sup>st</sup> Amendment rights of the prisoners and the publishers of censored publications. The inmate has no opportunity to review the content of the censored publication and thus has no opportunity to argue meaningfully that the material has been inappropriately censored. Because the publisher receives no notice of the censorship, the prisoner is deprived of any chance that an individual knowledgeable about the content of the censored material will be able to argue meaningfully that it should not be censored. In addition, any grievance that the prisoner files will be decided by a decision maker who generally does not review the censored publication.

42. AR 300-26 is overbroad, vague, and ambiguous in violation of the 1<sup>st</sup> Amendment of the United States Constitution and its procedural provision violates the Plaintiffs'

14<sup>th</sup> Amendment procedural due process rights to notice and opportunity to be heard. Pursuant to AR 300-26, the DOC has engaged in a policy, custom, pattern, and practice of arbitrarily and capriciously censoring reading material, including magazines, newsletters, and books.

### **EXAMPLES OF CENSORSHIP AFFECTING PLAINTIFFS**

#### Dark Night Press: *Dark Night Field Notes*

43. In September of 1998, volumes # 11, 12, and 13 of *Dark Night Field Notes* intended for a Colorado State Penitentiary inmate Michael Poor Bear were censored and rejected pursuant to AR 300-26. DOC officials prohibited the publication on the grounds that it was “advocating hatred or contempt of other persons,” and because it constituted a “potential threat to stability or control of offender population (advocates facility disruption, noncompliance with rules or regulations, or anarchy).” The DOC provided no notice to the publisher, Dark Night Press. Had the DOC not prohibited Poor Bear from receiving these issues, Poor Bear would have renewed his subscription to *Dark Night Field Notes*. The censorship of these publications was improper and capricious, and violated the 1<sup>st</sup> and 14<sup>th</sup> Amendment rights of Dark Night Press. Dark Night Press received no notice that issues of its publication were subject to censure. It had no opportunity to be heard why its publication should not be censored.

#### Clayton Douglas: *Free American*

44. Gregory Oliver, an inmate at Limon Correctional Facility, was prohibited from receiving an issue of *Free American* news magazine in November 1997. DOC officials prohibited the publication on the grounds that it advocated “hatred or contempt of other persons” or had “militia content.” DOC officials erroneously evaluated the content of the censored issue.

On at least three other occasions, the Reading Committee withheld issues of *Free American* for a substantial amount of time before they were finally delivered to the inmates to whom they were addressed. Douglas received no notice that issues of his publication were subject to censure. He had no opportunity to be heard why his publication should not be censored.

Larry Rice: *Cry Justice Now*

45. On January 30, 1998, the DOC refused to permit Plaintiff Martin Williams to receive issue number 16 of *Cry Justice Now* newspaper. In June 1999 the DOC refused to permit Williams to receive issue number 22 of *Cry Justice Now*. According to the Offender Reading Material Evaluation Form for issue number 16, for example, the publication was prohibited because it was “advocating hatred or contempt of other persons,” and because it constituted a “potential threat to stability or control of offender population (advocates facility disruption, noncompliance with rules or regulations, or anarchy).” This publication does describe prison-related issues and conditions, and is generally critical of prison and government officials and the general public. However, it does not advocate physical retaliation or violence but rather advocates non-violence and self-examination through religious observance. In fact, this publication often has articles praising efforts by former inmates to kick lives of crime and drugs through religious observance. A likely reason for censorship of these issues of *Cry Justice Now* is the publication’s criticism of prison conditions. Such commentary provides no legitimate basis to censor the publication. The DOC’s decision regarding the censorship of this publication was improper. Rice received no notice that issues of his publication were subject to censure and had no opportunity to be heard why his publication should not be censored.

Doret Kollerer: *North Coast Xpress*

46. In November 1997, the DOC censored a copy of *North Coast Xpress* from Mussa Mohamed-Ali, an inmate at Arkansas Valley Correctional Facility, upon his transfer to that facility. DOC officials prohibited the publication as being material produced by a “Security Threat Group.” There have been several additional instances of a facility’s initial withholding of different issues of *North Coast Xpress* only to permit the inmates to whom they were addressed permission to have those issues after substantial delays while the Reading Committee reviewed their contents. For example, in September 1999, the DOC refused to deliver Vol. 7, No. 4 of *North Coast Xpress*, this time to Randy Gasper, an inmate at Colorado State Penitentiary. After a significant delay, Gasper eventually was permitted to receive the withheld publication. Plaintiff Doret Kollerer, senior editor of *North Coast Xpress*, was never notified by the DOC of its censorship of at least one issue or of the delayed detention of the publication from other inmates. Kollerer also was never notified or given an opportunity to be heard to contest her being branded as a “Security Threat Group” by DOC officials.

Christine Donner: *Shut Them Down*

47. In November of 1998, the DOC censored and refused to permit Malcom Perkins, an inmate housed at Colorado State Penitentiary, to receive a copy of the summer 1996 issue of *Shut Them Down*, a newsletter published by Christine Donner, Prisoner’s Rights Project of the Rocky Mountain Peace and Justice Center Department. The title reflects the Project’s recommendation with regard to control units, the supermax administrative segregation units in which prisoners spend 23 hours each day locked in their cells. According to the Offender Reading Material Evaluation Form that Perkins received, signed by the Warden on November 3, 1998, the newsletter was prohibited because it allegedly constituted a “potential threat to

stability or control of offender population (advocates facility disruption, noncompliance with rules or regulations, or anarchy).” DOC officials erroneously evaluated the content of the censored publication. It does not advocate facility disruption, nor does it advocate noncompliance with rules or regulations or anarchy. Neither Plaintiff Christine Donner, nor anyone else at the Prisoner’s Rights Project received notice that the mailings to Perkins and other inmates had been censored and that inmates had been prohibited from receiving *Shut Them Down*. Donner had no opportunity to be heard why the publication should not be censored.

Barrio Defense Committee: *Voz Del Barrio Atzlan*

48. In February 1998, and again in October 1999, the DOC censored and refused to permit several inmates of Colorado State Penitentiary to receive copies of *Voz Del Barrio Atzlan*, a publication containing Chicano history and nationalism news and commentary. The August 1999 issue, for example, withheld in October 1999, was prohibited on the grounds it “advocated hatred or contempt of other persons” and was published by a “Security Threat Group.” The DOC erroneously evaluated the content of this publication and the status as a Security Threat Group. The DOC did not notify its publisher, the Barrio Defense Committee, of its censorship of *Voz Del Barrio Atzlan*. Consequently, the Defense Committee had no opportunity to be heard why the publication should not be censored and why it should not be considered a Security Threat Group.

New Times, Inc.: *Westword*

49. In April 1999, the DOC withheld and censored an issue of *Westword* that was addressed to Gilbert Archuleta, then an inmate at Colorado State Penitentiary. The grounds given by the DOC for its censure of *Westword* were twofold – it was purportedly a “publication



advocating hatred or contempt of other persons” and purportedly was produced by a “Security Threat Group” “which is contrary to the security interests of the facility.” *Westword* intends to continue sending inmates those issues or articles specifically requested or ordered by an inmate, such as the issue denied to Archuleta. No one at New Times, Inc., including *Westword’s* editor, Patricia Calhoun, was notified of the censorship and, therefore had no opportunity to be heard as to why *Westword* should not be censored or why New Times, Inc. should not be branded a Security Threat Group. The DOC wrongfully evaluated the content of the censored issue and erroneously censored the publication.

MIM: *MIM Notes*

50. Since as early as 1997 through the present, the DOC has regularly censored issues of *MIM Notes*. At least 20 separate issues have been censored on various grounds, including “advocating hatred or contempt of other persons,” as a “threat to stability of control of offender population,” as being produced by a “Security Threat Group” or simply “other,” unidentified grounds. As noted above, *MIM Notes* is a bimonthly newspaper published by the Maoist Internationalist Movement. It contains news and political commentary from an anti-capitalist and anti-imperialist point of view. The DOC erroneously evaluated the content of *MIM Notes* and wrongfully censored each issue, and has informed one inmate that *MIM Notes* is now banned entirely by Limon Correctional Facility, contrary to the required review of any material on an issue-by-issue basis. The DOC has never notified the publisher of its censure decisions, who therefore has never had an opportunity to be heard as to why *MIM Notes* should not be censored.

Inmate Maxwell Thomas

51. On July 6, 1998, the DOC determined that Plaintiff Maxwell Thomas would not be permitted to receive Volume 4 #1 of *Scenario* magazine, a quarterly publication relating to screen writing art. The Offender Reading Material Evaluation Form identifies the basis for censorship as “other,” and a handwritten notation states: “Screen play depicts security systems and violent escape.” Thomas exhausted available administrative remedies with regard to the censorship of Volume 4 #1 of *Scenario* magazine. In a letter dated November 3, 1998, the DOC’s Step III Grievance Officer rejected Thomas’s grievance and certified that he had exhausted the grievance process. The DOC censorship of this publication is simply incorrect and capricious. It does not depict security systems or violent escape, nor does it pose any threat to institutional security.

Inmate Dan Hernandez

52. In early 1998, Anthony Lucero mailed a 12-page typewritten *Resource Guide* to several inmates at the Colorado State Penitentiary. The *Resource Guide* contains addresses for courts, public defenders, newspapers, periodicals, and groups that advocate for human rights, including the rights of prisoners. Some prisoners received the *Resource Guide* immediately, without any review by the Reading Committee. The *Resource Guide* addressed to Plaintiff Dan Hernandez was confiscated by the DOC on the grounds it contains information which constitutes “a substantial danger to a human being or a substantial threat to security and order of the facility.” Hernandez exhausted the DOC’s grievance process with respect to the censorship of the *Resource Guide*. In a letter dated July 29, 1998, the DOC’s Step III Grievance Officer denied Hernandez’s Step III grievance and certified that Hernandez had exhausted the

grievance process. The DOC's censorship of the *Resource Guide* is incorrect and capricious, as it does not contain material that is a substantial danger, either to individuals or to institutional security.

#### Inmate Arthur McCray

53. Beginning in about June 1997, Arthur McCray had a subscription to *The Source*, a monthly magazine covering Rap music, Afro-American culture, and politics. After permitting McCray to receive several issues, the DOC censored McCray's January 1998 issue of *The Source*, on the grounds the magazine contained gang-related material. Subsequent issues have been sent to the Reading Committee and censored in part, only to be returned to McCray with pages torn out. McCray has not renewed his subscription solely because of the threat of repeated censorship and the obvious loss of the cost of the subscription. McCray exhausted available administrative remedies with regard to the censorship of issue #100 of *The Source*. In a letter dated June 23, 1998, the Step III Grievance Officer denied the grievance and certified that McCray had exhausted administrative remedies. *The Source* articles do not promote gang membership. Rather, it has had articles about gang members who have left gangs and turned their lives around. The DOC's evaluation of *The Source* is capricious and in violation of McCray's 1<sup>st</sup> Amendment rights, and its conduct already has unconstitutionally chilled McCray's right to continue receiving this publication.

#### Inmate Anthony Lucero

54. In April, 1998, DOC officials refused to permit Plaintiff Anthony Lucero to obtain *Hidden Faces of Eve*, a book by Nawal El Saadawi. Saadawi is a medical doctor who served as Director of Health Education in the Egyptian Ministry of Public Health. The book

examines the oppression of women in Arab countries. The DOC informed Lucero that the book is “contrary to the rehabilitative goals of the facility.” Lucero exhausted available administrative remedies with regard to the censorship of this publication. In a letter dated July 29, 1998, the DOC’s Step III Grievance Officer certified that Lucero had exhausted the grievance process. The book is a well-regarded text, and the prohibition of the book violates Lucero’s 1<sup>st</sup> Amendment rights.

55. Plaintiff Anthony Lucero is on the mailing list for *MIM Notes*. Numerous issues of *MIM Notes* have erroneously been censored by DOC officials. As noted above, DOC officials have determined that various issues of the publication “advocate hatred or contempt of other persons” or that it is a publication produced by a “Security Threat Group.” DOC officials have also rejected *MIM Notes* on the ground that it poses a “potential threat to stability or control of offender population.” Lucero was denied access to several issues of *MIM Notes*, including one issue from February or March 1997, and the issues dated July 1, and July 15, 1997, and June 1, June 15, July 1, and July 15, 1999. Lucero exhausted all available administrative remedies with regard to the censorship of all 1997 issues of *MIM Notes*. After completing the first two steps, Lucero filed a Step III grievance with regard to the censorship of the 1999 issues of *MIM Notes*. More than 25 days have passed, and the Step III Grievance Officer has not responded. Lucero has therefore exhausted available administrative remedies as to the 1999 issues that have been censored. Lucero recently was informed that *MIM Notes* is now “banned by LCF [the facility where he is housed] (not allowed),” in direct violation of Lucero’s and MIM’s constitutional rights. These issues of *MIM Notes* addressed to Lucero have unconstitutionally been censored. Without intervention from this Court, he faces a real and

substantial risk that future issues will be censored as well. The DOC's evaluation of these issues of *MIM Notes* was erroneous. They contain constitutionally-protected political speech that does not pose a threat to institutional security.

Inmate George Moore

56. Since August 1998, George Moore has subscribed to *VIBE* magazine, a monthly publication covering African-American and Latino music, movie and other entertainment news. It is very similar in format and news and advertising content to *Rolling Stone* magazine. Beginning in August 1999, with the September 1999 issue of *VIBE*, the DOC has denied Moore access to *VIBE*, although never before that date. The grounds stated for censoring various issues is that they were produced by "Security Threat Groups" or are considered a "potential threat to stability or control of offender population." Both stated grounds were based on photos and advertisements that the DOC considered to contain "gang signs" throughout the issues. Moore exhausted available administrative remedies with regard to the censorship of the September 1999 issue of *VIBE*, as certified by the Step III Grievance Officer in his December 17, 1999 letter to Moore. The DOC's censorship of *VIBE* is incorrect and capricious. It poses no threat to the stability or control of the inmate population and is not produced by a "Security Threat Group," but by Miller Publishing Group, whose founder and chairman is the renowned musician and recording producer Quincy Jones. Without intervention by the Court, Moore fears a real and substantial risk that future issues also will be wrongly censored.

Inmate Travis Colvin

57. A young relative of Plaintiff Travis Colvin is hearing-impaired. To better communicate with that relative during visits, Colvin asked another family member to buy and send him a self-instruction book on basic sign language. His relative sent him *Signed English: A Basic Guide* by Harry Bornstein and Karen L. Saulner, which was intercepted from the mail by the DOC and routed to the Reading Committee. Colvin has exhausted available administrative remedies. By letter dated October 22, 1999, the Step III Grievance Officer denied Colvin's access to the book, stating that its "key problem" was that "it might assist [Colvin] to communicate with other inmates in a form of code, creating a security problem for the facility." The DOC's decision is erroneous and capricious and is the equivalent of prohibiting an inmate from teaching himself Spanish or Hungarian or Swahili or any other language he might choose. The DOC's prohibition of this book violates Colvin's 1<sup>st</sup> Amendment rights.

Inmate Martin Williams

58. As noted above in ¶ 45, in January 1998, and June 1999, Plaintiff Martin Williams was denied access to two separate issues of *Cry Justice Now*. Williams exhausted available administrative remedies with regard to the censorship of issue number 16 of *Cry Justice Now*. In a letter dated June 23, 1998, the DOC's Step III Grievance Officer rejected Williams' grievance and certified that he had exhausted the grievance process. After completing the first two steps with respect to issue number 22, Williams filed a Step III Grievance which has been pending for several months, without response from the Step III Grievance Officer. Williams has therefore exhausted available administrative remedies with respect to the denial to

him of access to issue number 22. The DOC's decision to censor this publication was improper and capricious for the reasons set forth in ¶ 45 above.

59. Because of the failure to train mailroom staff and because of the overly broad and vague language of AR 300-26, numerous publications that are not constitutionally subject to censorship and which ultimately are deemed permitted by the DOC have been diverted to Reading Committees, thus delaying the delivery of the publications to the prisoners. The DOC fails to require the Reading Committees to make a prompt decision. Delays of several months and more are routine. Thus, even when a Reading Committee ultimately determines that a publication is not subject to censorship, the delivery of the publication to the prisoner often is unreasonably delayed. The 1<sup>st</sup> Amendment interests of the affected publishers and inmates, including Plaintiffs Doret Kollerer, Larry Rice, and Anthony Lucero, have been infringed by these regular and unreasonable delays.

#### **OTHER EXAMPLES OF CENSORSHIP**

60. Several books which inmates have the right to read have been censored erroneously by DOC officials, including the following:

a. *Like Water For Chocolate*, by Laura Esquivel, the popular novel, later made into a motion picture. The book was censored in October 1998 at Centennial Correctional Facility, upon information and belief on the ground that it described the "design or manufacture of firearms, explosives, or other weapons or destructive devices," according to the DOC's own quarterly report of publications it has censored.

b. *The Gathering Storm: America's Militia Threat*, by Morris Dees, the founder and head of the Southern Poverty Law Center in Montgomery, Alabama. Upon information and belief, according to the DOC Quarterly Report, this publication was censored at Centennial Correctional Facility on the basis that it is a publication describing "the design or manufacture of firearms, explosives, or other weapons or destructive devices." This book is anti-militia, aimed at exposing militia and other hate groups.

c. *A Nahuatl-English Dictionary and Concordance to the Cantares Mexicanos*, by John Bierhorst, published by Stanford University Press in 1985. Nahuatl is the language of the Aztecs. In addition to being a dictionary, the book contains religious songs of the Aztecs. This book was denied to Roy Saldivar, an inmate of the Colorado State Penitentiary, in August 1997, on the grounds that it was a "gang affiliation" publication. Saldivar filed grievances through Step III, and at each stage was denied the right to access to the book. In the DOC's final denial, the Step III Grievance Officer identified the grounds for denial as being "in the interest of security and fire safety, prison officials may limit the volume of books, periodicals and other paperwork that inmates accumulate in their cells," citing an Operational Memorandum that applies to Colorado State Penitentiary. Those grounds, however, do not even apply to Saldivar. During 1997, Saldivar did not even have two books in his cell. He did not have any books in his cell. His acquisition of the requested book would not have caused him to exceed the two-book limit. There is no basis for the continued censorship of this book.

d. *Criminal Injustice: Confronting the Prison Crisis*, by Elihu Rosenblatt, published by Southend Press in 1996, which is a book of essays, speeches, and articles published by such organizations as the American Friends Service Committee, *The Nation*



magazine, the Vancouver Commission on the Status of Women, the Death Penalty Information Center, the Center on Juvenile and Criminal Justice, the ACLU Capital Punishment Project, Yale Law Journal, the Yale Journal of Law and Liberation, among other publications and organizations. Its preface states that the book was designed “as a primer for people who are working to raise consciousness in their communities, their schools, their workplaces, and inside prisons and the prison system.” This book was denied to David Washington, then an inmate at Buena Vista Correctional Facility, in July 1997 on the grounds it “advocates facility disruption” and constitutes a “potential threat to stability or control of inmate population.”

61. In addition to *Scenario* magazine, described above, other screenwriting or drama publications have also been censored by the DOC, including the Fall 1997 issue of *Drama Script Review*, which was censored, upon information and belief, at Colorado State Penitentiary in January 1998, on the grounds it posed a “potential threat to stability of control of offender population.”

62. Magazines merely displaying art in various forms likewise have been wrongfully censored by DOC officials, including:

a. *Lowrider Arte*, which contains nothing more than drawings and other artwork, principally of classic cars, published periodically by the publisher of *Lowrider* magazine, which contains articles about classic car shows, car restorations, and the like, targeting the Chicano reader. *Lowrider* magazine itself has been censored or withheld for lengthy review before permitting its recipient to receive it. Two separate issues of *Lowrider Arte* were censored at Colorado State Penitentiary in September 1998 on the grounds it is a publication produced or distributed by Security Threat Groups or which advocates or depicts

association or membership in a Security Threat Group. The December 1997 and February 1998 issues likewise were denied to Louis Jaques, an inmate at the Colorado State Penitentiary. None of these issues contains any threatening gang-related art, gang slogans, violence, weapons, or controlled substances, as purported.

b. Several issues of *Aerosol Art* magazine were censored in October 1997 at Buena Vista Correctional Facility on the grounds they were “Security Threat Group related. ‘Taggers’ are considered a STG. This art is created by ‘Taggers,’” which, upon information and belief, refers to graffiti artists who spray paint public areas. There is no basis to censor this or any other art-oriented magazine.

63. Several publications that espouse an anti-imperialist point of view on behalf of Mexican-Americans have been erroneously censored, in addition to *Voz del Barrio Aztlan*, discussed above. As one additional example, *Voz Fronteriza*, a quarterly publication continuously published since 1975 by a registered student organization at the University of California at San Diego, has been denied to inmates at the Colorado State Penitentiary. The student publisher is a member of the Raza Rights Coalition and the San Diego regional chapter of the National Chicano Moratorium Committee, groups, like this publisher, which are committed to Raza self-determination, and, as the publication states, to “wage our struggle in the form of the printed word to raise issues that are important to the Mexicano community” “to create unity and better serve the Raza community both on and off campus.”

### **EXAMPLES OF ARBITRARY AND CAPRICIOUS CENSORSHIP**

64. On several occasions, the same issue of a publication has been censored or detained for review at one facility, but permitted to one or more inmates at another facility immediately upon arriving in the mail. For example, the Fall 1999 issue of *North Coast Xpress* was submitted to the Reading Committee at Colorado State Penitentiary, but allowed to be received without any reviews by Plaintiff Anthony Lucero at Limon Correctional Facility, among other inmates at other facilities. As another example, *Voz Del Barrio Atzlan* was censored at Colorado State Penitentiary, but allowed to be received by Plaintiff Anthony Lucero at Limon. Similarly, the August 1 and 15, 1999 issues of *MIM Notes* were censored at Colorado State Penitentiary, but Plaintiff Anthony Lucero was permitted to receive those issues without review at Limon. As another example, *VIBE* magazine is regularly permitted at the Denver Women's Correctional Facility, while it is consistently censored at the Colorado Women's Correctional Facility in Canon City.

65. Even within the same facility, publications that inmates were permitted to receive routinely were suddenly and then consistently thereafter censored, despite the absence of any perceptible change in the content of the publication. As one example, Plaintiff George Moore received *VIBE* every month from August 1998 through July 1999. After that date, his copy of the same publication was routinely censored or detained. Also, while Moore received his issues of *VIBE* from August 1998 through July 1999, other inmates' copies of the same issues were censored.

**FIRST CLAIM FOR RELIEF**

(42 U.S.C. § 1983-14<sup>th</sup> Amendment, Due Process-Publisher Plaintiffs)

66. Plaintiffs incorporate the allegations of paragraphs 1-65 as if fully set forth herein.

67. The Colorado DOC, under the color of its regulation AR 300-26, has subjected the publisher Plaintiffs to deprivation of their due process rights under the 14<sup>th</sup> Amendment of the United States Constitution.

68. The Defendant's procedures for determining when and whether the publisher Plaintiffs' publications shall be subject to censorship fail to provide adequate procedural protection of due process rights under the 14<sup>th</sup> Amendment.

69. Defendant does not provide any notice to publishers that their publication is subject to censorship.

70. Defendant does not provide any opportunity for publishers to be heard as to why their publications, or particular issues of their publications, should not be censored.

71. Defendant has violated and threatens to continue violating the publisher Plaintiffs' rights under the 1<sup>st</sup> Amendment and the Due Process Clause of the 14<sup>th</sup> Amendment.

72. Wherefore, Plaintiff publishers are entitled to a declaratory judgment, an injunction, and attorneys fees.

**SECOND CLAIM FOR RELIEF**

(42 U.S.C. § 1983-14<sup>th</sup> Amendment Due Process – Inmate Plaintiffs)

73. Plaintiffs incorporate the allegations of paragraphs 1-65 as if fully set forth herein.

74. The Colorado DOC, under the color of its regulation AR 300-26, has subjected the inmate Plaintiffs to deprivation of their due process rights under the 14<sup>th</sup> Amendment of the United States Constitution.

75. The Defendant's procedures for determining when and whether a publication shall be subject to censorship fail to provide adequate procedural protection for the due process rights under the 14<sup>th</sup> Amendment.

76. When prisoners receive notice that incoming reading material has been prohibited, the restrictive procedures for appealing or grieving the censorship deprive the inmates of their constitutional due process right to be heard at a meaningful time and in a meaningful manner.

77. Prisoners are not permitted access to the censored material even for the purpose of composing a grievance.

78. Thus, a prisoner cannot argue effectively why the material is not properly subject to censorship.

79. Meaningful review of grievances is further impeded because the DOC does not require the censors to identify specific portions of a book or magazine that they believe threatens institutional security or the manner in which they believe it threatens institutional security.

80. Moreover, when reviewing grievances that protest censorship, DOC officials typically do not review the censored material itself, which usually has already been destroyed or sent out of the prison.

81. Defendant has violated and threatens to continue violating the inmate Plaintiffs' rights under the 1<sup>st</sup> Amendment and the Due Process Clause of the 14<sup>th</sup> Amendment.

82. Wherefore, inmate Plaintiffs are entitled to a declaratory judgment, an injunction, and attorneys fees.

**THIRD CLAIM FOR RELIEF**

(42 U.S.C. § 1983-1<sup>st</sup> Amendment-Overbroad, Vague- All Plaintiffs)

83. Plaintiffs incorporate the allegations of paragraphs 1-65 as if fully set forth herein.

84. The Colorado DOC, under the color of its regulation AR 300-26, has subjected Plaintiffs to deprivation of their rights under the 1<sup>st</sup> Amendment of the United States Constitution.

85. AR 300-26 authorizes censorship on the basis of criteria that are overly broad, subjective, and unconstitutionally vague.

86. For example, AR 300-26 authorizes prison officials to censor "any publication advocating hatred or contempt of other persons." It also authorizes prison officials to censor "any publication or material produced or distributed by Security Threat Groups (STGs) or any publication or material advocating or depicting association or membership in a STG."

87. The Defendant has not produced written guidelines that clarify the vagueness of the regulation or that narrow the criteria in a manner that provides sufficient guidance to DOC officials who make censorship decisions.

88. The custom, pattern, and practice of enforcing these criteria demonstrates that Defendant has authorized a system of arbitrary and inconsistent censorship that

unconstitutionally permits prison censors to proscribe material entirely or to delay unreasonably an inmate's receipt of a publication while it is being reviewed by the Reading Committee on the basis of their own viewpoints and their disagreement with the ideas expressed, rather than on the basis of reasonable forecasts of threats to prison security.

89. Wherefore Plaintiffs are entitled to a declaratory judgment, an injunction, attorney's fees, and such other relief as the Court may deem appropriate.

**FOURTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983-1<sup>st</sup> Amendment-Improper Censorship-Publisher Plaintiffs)

90. Plaintiffs incorporate the allegations of paragraphs 1-65 as if fully set forth herein.

91. The Colorado DOC, under the color its regulation AR 300-26, has subjected the publisher Plaintiffs to deprivation of their rights under the 1<sup>st</sup> Amendment of the United States Constitution.

92. The publisher Plaintiffs have a right under the 1<sup>st</sup> Amendment to publish, distribute, and sell the news, analysis, political commentary, and other expressive material contained in their publications.

93. The publisher Plaintiffs' 1<sup>st</sup> Amendment right includes the right to reach their intended audience.

94. Specifically, the Defendant's application of AR 300-26 and censorship of the publisher Plaintiffs' publications infringes on the 1<sup>st</sup> Amendment right of the publisher Plaintiffs to reach their intended audience.

95. Defendant has violated and threatens to continue violating the publisher Plaintiffs' rights under the 1<sup>st</sup> Amendment.

96. Wherefore, the publisher Plaintiffs are entitled to a declaratory judgment; an order requiring the Defendant to deliver the censored issues discussed in paragraphs 43 through 65 to the prisoners to whom they were addressed; attorneys' fees; and such additional relief, including injunctive relief, that the Court may order to prevent future violations of the rights of the publisher Plaintiffs.

**FIFTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983-1<sup>st</sup> Amendment-Improper Censorship-Inmate Plaintiffs)

97. Plaintiffs incorporate the allegations of paragraphs 1-65 as if fully set forth herein.

98. The Colorado DOC, under the color of its regulation AR 300-26, has subjected the inmate Plaintiffs to deprivation of their rights under the 1<sup>st</sup> Amendment of the United States Constitution.

99. The Defendant's censorship of the publications described in this Complaint, in particular the censorship described in paragraphs 51 through 59 above, violated and continues to violate the 1<sup>st</sup> Amendment rights of the inmate Plaintiffs

100. Wherefore the inmate Plaintiffs are entitled to a declaratory judgment, an order requiring the Defendant to deliver the censored publications discussed in paragraphs 51 through 59 to the particular inmates to whom they were addressed, or to permit the inmates to receive the censored books or publications; attorneys' fees; and such additional relief, including



injunctive relief, that the Court may order to prevent future violations of the rights of the inmate Plaintiffs.

**PRAYER FOR RELIEF**

101. A declaration the AR 300-26 is unconstitutionally vague and violates the 1<sup>st</sup> Amendment and that the DOC policy, custom, and practice in implementing AR 300-26 violates the 1<sup>st</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution;

102. An injunction against the challenged practices;

103. For their costs, reasonable attorneys' fees, and such other and further relief as the Court deems appropriate.