

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. _____

Michael Jason Martinez;
Elizabeth Fritz;
Thomas Trujillo;
Amber Hugenot;
Gary Harrison;
Robert Rumpf; and
Damian Gradeless on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Terry Maketa, in his official capacity as El Paso County Sheriff,

Defendant.

**CLASS ACTION COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF**

INTRODUCTION

1. In this action, plaintiffs challenge a new policy of the El Paso County Jail—which went into effect on August 2, 2010—that forbids prisoners to write letters to their parents, children, spouses, domestic partners, fiancées, sweethearts, friends, or to anyone else in the free world who does not fall within the jail’s narrow “legal mail” exception to the newly-imposed ban on outgoing letters. Under the challenged policy, prisoners’ outgoing correspondence is restricted to small 4 x 6 inch postcards supplied by the jail. This new policy severely restricts prisoners’ ability to communicate with persons outside the jail, in

violation of their rights under the First and Fourteenth Amendments to the United States Constitution and Article II, Sections 10 and 25 of the Colorado Constitution.

2. On behalf of a class of similarly-situated prisoners of the El Paso County Jail, the plaintiffs ask this Court to enjoin the postcard-only policy and declare that it violates their constitutional rights as well as the rights of their free-world correspondents.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States, including the First and Fourteenth Amendments and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the claims based on Colorado law pursuant to 28 U.S.C. § 1367.

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

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

PARTIES

6. Plaintiff Michael Jason Martinez is an inmate in the El Paso County Jail.
7. Plaintiff Elizabeth Fritz is an inmate in the El Paso County Jail.
8. Plaintiff Thomas Trujillo is an inmate in the El Paso County Jail.
9. Plaintiff Amber Hugenot is an inmate in the El Paso County Jail.
10. Plaintiff Gary Harrison is an inmate in the El Paso County Jail.
11. Plaintiff Robert Rumpf is an inmate in the El Paso County Jail.
12. Plaintiff Damian Gradeless is an inmate in the El Paso County Jail.

13. Defendant Terry Maketa is the Sheriff of El Paso County and head of the El Paso County Sheriff Office. He is the final policy maker for the El Paso County jail and exercises overall responsibility for the policies and practices of the El Paso County Jail, including the policy challenged in this case. He is sued in his official capacity.

14. Deputies and their supervisors working in the El Paso County Jail are agents and employees of Defendant Maketa.

15. All actions of Defendant Maketa and his employees at issue here are carried out under color of state law.

FACTS

16. The El Paso County Jail is located in Colorado Springs, Colorado. It houses both convicted prisoners and pretrial detainees. Its average daily population is approximately 1300 prisoners.

17. In late July, 2010, the jail staff informed prisoners that beginning August 2, 2010, a new policy would govern prisoners' outgoing correspondence. The new policy was communicated in a one-page memorandum from Commander William Mistretta that listed as its subject: "Directive 10.04 / Inmate Mail / Post Cards." Although the memorandum is dated April 20, 2010, it was not circulated to prisoners until some time in the week of July 19, 2010. A copy of the memorandum is attached to this Complaint as Exhibit A.

18. Pursuant to the new policy, "all outgoing personal letter writing materials will consist of 4 x 6 inch post cards. Envelopes and writing paper will no longer be issued to inmates. Inmates will no longer be able to purchase envelopes and writing paper from commissary for personal letter writing." Exhibit A.

19. The jail's postcard-only policy makes an exception for outgoing mail that is classified as "legal" mail. The jail's Inmate Handbook states that "'Legal mail' is not mail sent to family members or friends, even if it contains copies of your legal papers." The Inmate Handbook also specifies that "Legal mail does not include mail to or from doctors, psychiatrists, Child Protective Services, Outside Journey." The jail's Standard Operating Procedure regarding inmate mail further states that "Legal mail does not include mail to or from doctors, psychiatrists, or clergy."

20. Prisoners who have funds on the jail's books can buy postcards for 50 cents each. All the postcards are identical. The front features a color photograph of the jail itself. The return address, printed in the upper left corner, identifies the postcard as coming from the Criminal Justice Center of the El Paso County Sheriff's Office . The last line of the pre-printed return address is a blank line labeled "Inmate." Prisoners must fill in their name in that space. The back side, where prisoners can write their brief messages, contains a large watermark depiction of the emblem of the El Paso County Sheriff's Office—a large badge marked "Sheriff El Paso County Colorado" and the words "Honesty," "Loyalty," and "Unity."

21. If prisoners do not have funds to buy postcards, the jail provides a meager ration of two postcards every two weeks, but only if the prisoners qualify for what the jail's policy refers to as "indigent mail." Prisoners qualify for "indigent mail" only if they have continuously had less than \$3.00 in their inmate fund account for the preceding 14 days. Thus, prisoners who receive a few dollars from friends or family lose their eligibility for "indigent mail" for at least 14 days and possibly as long as 27 days. "Indigent supplies" are distributed only once every two weeks. Thus, a prisoner whose inmate account balance has remained below \$3.00 for only 13 days will not receive any postcards. That prisoner will not

be able to obtain free postcards until the next delivery of “indigent supplies” two weeks later. Many prisoners who currently have more than \$3.00 in their inmate account are at risk of running out of funds. When that happens, the jail’s policy will restrict them to two postcards every other week.

22. Prisoners who qualify for “indigent mail” also receive a felt tip marker with which to write on the postcards. The markers issued to indigent prisoners have very fat tips that require prisoners to write in large letters if their writing is to be legible. Thus, these “indigent” markers further restrict the amount of text that indigent prisoners can fit onto the already-tiny postcards. In addition, the ink in the “indigent” markers is water soluble and smears easily on the glossy surface of the postcards. If a postal worker has moist hands or delivers the mail during inclement weather, there is a risk that the prisoner’s writing will become smeared, blurred, and perhaps totally illegible.

23. The new postcard-only policy effects a significant change from the previous policy. The Inmate Handbook, which has not been updated to reflect the new policy, states that indigent prisoners “will be permitted three personal letters per week free of charge.” Prisoners with funds could send as many letters as they wished as long as they purchased the materials and the stamps from the jail’s commissary.

24. The challenged policy significantly limits the ability of prisoners to express themselves. The tiny 4 x 6 postcards allow prisoners only a fraction of the writing space that is available in a two or three-page, double-sided letter. In addition, the postcards expose the content of the prisoners’ communications to anyone who handles or processes the postcards, both within the jail and after the postcards leave the facility. The policy either chills prisoners from writing about sensitive personal matters entirely, or it requires them to expose their

communications to a host of strangers or unintended recipients—such as postal employees, an office secretary, a housemate, or a child who retrieves from the mailbox a postcard that discusses sensitive details intended only for the parent’s eyes. The new policy also categorically prohibits prisoners from enclosing expressive or artistic drawings they have made, newspaper or magazine clippings, religious literature, or other writings they wish to share. Prisoners cannot use an envelope to write a letter-to-the-editor, to correspond with a doctor or a psychiatrist, to seek spiritual guidance from clergy, to provide information to investigative reporters, or even to submit their own writings to such periodicals as the *Colorado Springs Independent* or *Prison Legal News*.

25. The postcard-only policy also burdens the First Amendment rights of non-prisoners. As the United States Supreme Court has recognized:

Communication by letter is not accomplished by the act of writing words on paper. Rather, it is effected only when the letter is read by the addressee. Both parties to the correspondence have an interest in securing that result, and censorship of the communication between them necessarily impinges on the interest of each. ... The wife of a prison inmate who is not permitted to read all that her husband wanted to say to her has suffered an abridgment of her interest in communicating with him as plain as that which results from censorship of her letter to him. In either event, censorship of prisoner mail works a consequential restriction on the First and Fourteenth Amendments rights of those who are not prisoners.

Procunier v. Martinez, 416 U.S. 396, 408-409 (1974).

Plaintiff Michael Jason Martinez

26. Mr. Martinez was a prisoner in the El Paso County Jail when the postcard-only policy went into effect. That policy interferes with the ability of Mr. Martinez to communicate with his correspondents.

27. Before the postcard-only policy went into effect, Mr. Martinez was communicating by letter to a member of the editorial staff at the *Colorado Springs Gazette*, the daily newspaper that is published in Colorado Springs. Mr. Martinez’s letters concerned

issues in the jail that Mr. Martinez believed were of public concern and of interest to a newspaper reporter or editor. Mr. Martinez sent several such letters, each of which was several pages long. Mr. Martinez wants to send additional letters to the *Gazette* employee, but he cannot do so because of the defendant's postcard-only policy. Mr. Martinez also wants to write, and submit for publication, a letter-to-the-editor of the *Colorado Springs Gazette*. The small size of the jail's postcards prevents him from saying what he wants to say in the letter-to-the-editor.

28. Mr. Martinez has received an invitation from *Prison Legal News*, a monthly journal of legal developments in corrections and criminal justice, to write an article for publication about the El Paso County Jail and the impact of the jail's postcard-only policy on the prisoners. Mr. Martinez wants to accept that invitation. The article Mr. Martinez wants to write will not fit on a postcard. Because of the defendant's postcard-only policy, Mr. Martinez cannot accept the invitation to submit an article for publication to *Prison Legal News*.

29. Mr. Martinez has four children. They live with Mr. Martinez's wife. Mr. Martinez wants to write to his wife about issues and subjects that are not appropriate for his children to know about. If he had to write on a postcard, it would be easy for Mr. Martinez's 13-year-old and his 15-year-old to read any of his written communications to his wife. As a result, the postcard-only policy has constricted the scope of the subjects and content that Mr. Martinez can include in his written communication to his wife.

30. Before the postcard-only policy went into effect, Mr. Martinez used to draw pictures and cartoons for his younger children. That is one of the ways that Mr. Martinez has communicated with his children while he has been incarcerated. The postcard-only policy

forbids Mr. Martinez from sending drawings to his children unless the drawings are small enough to fit onto a 4 x 6 postcard.

Plaintiff Elizabeth Fritz

31. Elizabeth Fritz has been a prisoner in the El Paso County Jail since May, 2010. Before the postcard-only policy went into effect, Ms. Fritz communicated with her husband by means of letters. Through the letters, they were able to maintain a very open communication link. Ms. Fritz was regularly writing letters of three to six pages to her husband. The postcard-only policy has adversely affected her ability to communicate with her husband. The space available on the postcards does not provide enough room for Ms. Fritz to express her thoughts, her feelings, and her concerns, and to maintain a close emotional relationship with her husband.

32. In addition, Ms. Fritz's husband lives with his parents, the in-laws of Ms. Fritz. Because her in-laws might see the postcards that arrive at the house, Ms. Fritz has been inhibited and chilled from communicating private and personal messages that she intends solely for her husband, messages that she does not want her husband's parents to read. When she could write letters, her correspondence included discussion of sensitive relationship issues. She can not discuss such issues on a postcard.

33. Ms. Fritz is concerned about the impact of the postcard-only policy on her husband and on the loved ones of other prisoners who can no longer receive prisoners' letters. She knows that the families of prisoners often depend on the communications contained in the letters that prisoners are no longer permitted to send. Ms. Fritz believes that her letters were helping her husband to keep going during her absence. She feels heartbroken that she cannot give her husband the words of encouragement that she could readily write in a private letter.

34. Until her arrest and incarceration in May, 2010, Ms. Fritz was working as a manager in a fast-food restaurant. For the first months she was in jail, she did not know how long she would be gone. In August, 2010, her pending charges were resolved, and she now knows the date that she will be released after completing her sentence for a misdemeanor charge to which she pleaded guilty. Now that she knows when she will return to the community, Ms. Fritz wants to write a letter to her former supervisor. She wants to explain what happened to cause her absence from work, and she wants to ask if she can resume working at the restaurant when she is released. Because of the postcard-only policy, however, Ms. Fritz cannot carry out that communication. There is not enough space on a postcard to convey what she wants to say. In addition, Ms. Fritz does not wish to expose the details of her arrest and confinement to other former and possibly future co-workers, who would surely see and read the glossy jail postcard before it would reach her former supervisor, the intended recipient.

Plaintiff Amber Hugenot

35. Amber Hugenot has been a prisoner in the El Paso County Jail since early June, 2010. The postcard-only policy has interfered with her ability to communicate. She feels extremely limited in what she can and cannot express on a postcard because she fears she may be treated differently by guards who may judge her based on what she might write. Ms. Hugenot has seen guards reading the content of prisoners' postcards. Ms. Hugenot is so uncomfortable with the postcard-only policy that she has been writing to friends and family less frequently than she had before the policy went into effect.

36. Ms. Hugenot has two small children. They are too young to read. Before the postcard-only policy went into effect, Ms. Hugenot drew pictures for her children and sent

them to their father. She used that artwork to her communicate with her children and express her feelings to them. Because of the postcard-only policy, she cannot send out those drawings any more. Her children are too young to understand the postcard-only policy. It breaks Ms. Hugenot's heart to know that her children are asking their father why their mother is not sending them drawings any more.

37. Ms. Hugenot is currently pregnant. She has struggled with what this pregnancy means in her life and who will care for her baby once it is born. She wants to communicate with the father of her child regarding this highly personal and extremely important matter. While she has attempted to communicate about this issue by corresponding on the Jail's postcards, many of her private thoughts, feelings, questions and concerns related to the future of her baby have gone unsaid, because she does not want to expose them to all of the individuals who may handle the postcard.

Plaintiff Thomas Trujillo

38. Mr. Trujillo has been an inmate in the El Paso County Jail since 2009. The postcard-only policy severely limits his ability to correspond with his family and loved ones.

39. Mr. Trujillo's wife is suffering from liver failure due to Hepatitis C. She is very close to dying. A few months ago, the doctors said she has only four months left to live. Mr. Trujillo's wife is spending her last months of life in her brother's home in Albuquerque. She cannot come to visit Mr. Trujillo, and neither he nor his wife can afford the cost of phone calls.

40. On the small postcards to which he is limited, Mr. Trujillo cannot say all that he wants to say to his wife before she dies. He estimates that he would have to buy 20 postcards, at a cost of ten dollars, to express all that he can say in a normal letter. In addition, Mr.

Trujillo cannot express certain concerns or pose questions about his wife's health in a postcard without exposing her disease and her condition to whomever winds up handling or processing the postcard.

41. Mr. Trujillo has two daughters living in Albuquerque to whom he wrote letters regularly prior to El Paso's institution of the postcard-only policy. He feels his daughters are particularly in need of his support now, because their mother is dying. On a postcard Mr. Trujillo cannot say all that he wants to say in order to provide comfort and support to his daughters in this incredibly difficult time.

42. Mr. Trujillo also wants to correspond with an older woman from his church who has always been like a mother to him. He wrote to her regularly before the postcard-only policy went into effect. He wants to write to her about a potentially life-threatening medical condition of his, but he doesn't want to write about it on postcards that lack the privacy of a letter. He has been to the woman's house and has seen how her mail is often left out on a table where visitors can see it.

43. Mr. Trujillo leads an informal Bible study group in the jail. He used to write to church members about the progress and needs of fellow study group participants. He did this because these church members have provided support to study group participants in various ways. For example, the church members have sometimes made it a point to visit participants in the group. They have also sometimes helped inmates take care of personal affairs outside the jail. However, Mr. Trujillo does not feel he can share his fellow inmates' names or personal information on postcards. As a result, Mr. Trujillo is no longer able to write to the church members to ask them to provide their much-appreciated assistance to particular prisoners who participate in the study group.

44. When the postcard-only policy was imposed, Mr. Trujillo had some funds in his inmate account, and he was able to purchase postcards at the jail's commissary. By the end of August, 2010, he had exhausted those funds and could no longer purchase postcards. The jail's policy on "indigent mail" then consigned Mr. Trujillo to receiving only two postcards every other week. The jail's "indigent mail" policy put Mr. Trujillo in the position of having to choose between writing to his daughters or writing to his dying wife. Just before this Complaint was filed, a relative put some funds in Mr. Trujillo's inmate account, thus enabling him to buy postcards again. Nevertheless, Mr. Trujillo is at risk of exhausting those funds in the near future and of once again being restricted to a ration of only two postcards every two weeks.

Plaintiff Gary Harrison

45. Plaintiff Gary Harrison has been an inmate in the El Paso County Jail since February 2010. Since the postcard-only policy was put into effect, Mr. Harrison's ability to keep in touch with his family has been severely limited.

46. Mr. Harrison has been diagnosed with a serious illness requiring long term treatment. He regards his condition as sensitive private information, and his mother, sisters, and his girlfriend are the only people who know of his diagnosis. Before the postcard-only policy was imposed, he regularly wrote letters to his mother and his sister that included discussion of his health, his treatment options, and the progression of his disease.

47. Mr. Harrison feels he cannot discuss his condition on postcards because of the risk that this very personal information could be learned by anyone who sees the postcard. For instance, Mr. Harrison wishes to keep his sensitive medical information private from his step-father, who lives with Mr. Harrison's mother and has access to the mailbox. Similarly, Mr.

Harrison wishes to keep his sensitive medical information private from his sister's boyfriend, who lives with his sister and has access to the mailbox. Because of the postcard-only policy, Mr. Harrison has lost the opportunity to share and receive familial support regarding his serious medical condition.

48. Mr. Harrison cannot afford to purchase the number of postcards needed to equal the total writing surface he once had for his letters. He has lost the opportunity once provided by letter writing to fully express himself. Mr. Harrison's mother and sister live on the East Coast, and cannot afford to visit him. . He also cannot afford phone calls that would allow him to stay in touch with his family.

Plaintiff Robert Rumpf

49. Plaintiff Robert Rumpf has been an inmate in the El Paso County Jail since April 2010. The challenged policy has severely limited Mr. Rumpf's ability to maintain his relationships with his sister, niece, and aunt, as well as his ability to receive support for his life threatening, terminal, extremely private illness.

50. Before the postcard-only policy was imposed, Mr. Rumpf regularly wrote letters to his sister, his niece and his aunt, all of whom live out of state. Mr. Rumpf has taught himself to draw and, before the institution of the challenged policy, regularly sent drawings of cartoon characters to his two-year-old niece. Although he has never met his niece, he was able to establish a relationship with her through these drawings. He heard from his sister that the drawings brought his niece great joy. Because of the postcard-only policy, Mr. Rumpf can no longer send drawings to his niece. He cannot fit these cartoons onto the jail postcards, and he cannot produce the drawings on the postcard due to their glossy nature. Mr. Rumpf feels that he has lost his only way to communicate in a manner that is meaningful to a toddler.

51. Prior to the El Paso Jail's institution of the postcard-only policy, Mr. Rumpf also used to write regularly to his sister. These letters became particularly important after the death of Mr. Rumpf's mother in April, 2010, while he was in jail. Mr. Rumpf is close to his sister and he knows that their mother was truly his sister's world. Mr. Rumpf is the closest sibling to his sister and he feels that his support is essential to her emotional recovery from their mother's death. The postcards do not provide Mr. Rumpf enough space or privacy to express all of the things he wants to express to his sister, and to provide her the kind of personal support that he wishes to provide and that she needs. His sentiments require pages to express. Additionally, he does not want to write about his sister's private feelings and her private relationship with their mother on a postcard that is exposed to whoever processes, handles, or sees the postcard.

52. Additionally, Mr. Rumpf has a serious, terminal, extremely private medical condition that he used to discuss with his sister in his letters. He feels he cannot write about his ongoing health issues by postcard because he does not want his private medical issues to be discovered by any member of the jail staff or by any visitor to his sister's home. Mr. Rumpf has no alternative way to communicate with his sister about these private medical issues. His sister lives in another state and cannot visit him in jail. In addition, Mr. Rumpf cannot afford to call his sister on the jail's telephones that are available to prisoners. Even if he could afford the calls, he would not be able to discuss his private health issues on the telephone. The wall-mounted phones provided to inmates are close together and have no privacy dividers. Other inmates, as well as guards, can easily overhear conversations.

53. Prior to the postcard-only policy, Mr. Rumpf sent handmade cards to his elderly aunt who lives out of state. Mr. Rumpf believes these cards brought joy to his aunt. Due to

the challenged policy, Mr. Rumpf can no longer send these cards. The postcards do not have the same warm, personal, homemade feel as handmade cards. Additionally, because the postcards include the color photograph of the jail and the watermark depiction of the Sheriff's badge, Mr. Rumpf does not believe that his elderly aunt would enjoy receiving them. Therefore, since the imposition of the challenged policy, Mr. Rumpf has refrained from sending mail to his aunt.

54. Further, Mr. Rumpf does not have the money to purchase the multiple postcards each week that would be necessary to continue the previous flow of communication that letters provided. Mr. Rumpf is on "indigent" status at the jail. Pursuant to the jail's "indigent mail" policy, Mr. Rumpf receives only two postcards every two weeks.

Plaintiff Damian Gradeless

55. Plaintiff Damien Gradeless has been an inmate at El Paso Jail since May 2010. The postcard-only policy has removed an important emotional outlet for Mr. Gradeless, severely restricting his ability to share his thoughts and feelings with, and maintain close relationships with, his family and his fiancée.

56. Prior to the imposition of the challenged policy, Mr. Gradeless was a prolific letter writer. Writing letters helped Mr. Gradeless, a young man who had just turned eighteen, cope with his incarceration. He wrote lengthy letters on a regular basis to his fiancée, mother, father, and siblings.

57. After the postcard-only policy was imposed, Mr. Gradeless attempted to maintain as much written communication with his loved ones as he could by purchasing twenty postcards per week, the maximum he has been permitted to buy at the jail's commissary. Twenty postcards do not even begin to equal the writing space that Mr. Gradeless filled on a

weekly basis in his communications with his family before the postcard-only policy went into effect.

58. Before the postcard-only policy went into effect, Mr. Gradeless drew cartoons for his youngest siblings and made numerous, hand-drawn, personalized cards for family members on their birthdays and holidays. He felt that the care and effort he put into these cards and drawings offered something more to his family than words, and was one of the few gifts he was capable of giving his family members while incarcerated. He can no longer offer such gifts on the jail postcards.

59. Mr. Gradeless used to write to his mother about ongoing family tensions, particularly related to his younger sister, who is now a teenager. As the eldest brother, Mr. Gradeless often discussed his sibling's behavior with his mother in his letters. However, his sister lives with his mother and often retrieves the family's mail. Mr. Gradless believes it would be hurtful to his family if his sister were to read his communications with his mother about his sister's behavior. Therefore, due to the postcard-only policy, Mr. Gradless has been forced to discontinue to these discussions with his mother.

60. Although his fiancée visits him regularly, Mr. Gradeless finds that he has more thoughts than he can communicate during their 30 minute visits. Writing gives him the ability to reflect and record his feelings after she leaves, when he is alone again. The postcard-only policy, however, prevents him from sending what he wants to write to his fiancée.

61. Regular letters were the primary way Mr. Gradeless kept in touch with his father. He has no other alternative avenues of communication with his father, who lives in Michigan and cannot afford to make the trip to visit. Similarly, telephone calls are too expensive for

Mr. Gradless to afford. He has only spoken to his father twice on the telephone since the beginning of his incarceration on May 3, 2010.

The challenged policy's effect on the Plaintiff class

62. In numerous ways, the challenged policy has inhibited, infringed, limited, chilled, and suppressed the constitutionally-protected communications between prisoners and their correspondents or intended correspondents.

63. The challenged policy has forced prisoners to either abandon important correspondence or risk divulging highly confidential, sensitive information. Gay prisoners have been chilled from expressing themselves when writing to their intimate partners. Prisoners with HIV, Hepatitis C, or other sensitive medical issues have been chilled from corresponding with medical personnel or with family members or intimate associates about their medical conditions. The policy has also chilled prisoners from discussing mental health issues in their correspondence. Prisoners who express themselves through drawings or cartoons are forbidden to enclose their art. Those who wish to enclose a religious tract, or a clipping from a newspaper or magazine, are forbidden from doing so. When children may have access to the mailbox, parents are chilled from communicating with their spouses about marital problems, child-raising issues, and other matters they do not wish to disclose to their children. Prisoners have been chilled from corresponding candidly with clergy or other religious or spiritual guides.

64. The challenged policy also dramatically limits the volume of written communication permitted to prisoners, and significantly increases the cost of that communication. Even a prisoner who purchases the maximum twenty postcards permitted

under the policy, at a cost of ten dollars, has less writing space than is contained in a single three-page letter that can be mailed with a forty-four-cent stamp.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

65. Each of the plaintiffs has filed a grievance objecting to the postcard-only policy. Each has filed a grievance appeal after being unsatisfied with the jail's response to the original grievance. Each has received a response denying the grievance appeal. Each of the plaintiffs has exhausted all available administrative remedies.

DECLARATORY RELIEF

66. An actual and immediate controversy exists between the parties.

67. Defendant takes the position that the challenged policy is valid and constitutional. Plaintiffs assert that the challenged policy violates their rights under the Colorado and United States constitutions.

68. In requesting declaratory relief, plaintiffs request an interpretation of the rights, legal status and relationships of the parties under the law and facts.

INJUNCTIVE RELIEF

69. The defendant has acted and is threatening to continue acting under color of state law to deprive plaintiffs of their constitutional rights. Plaintiffs face a real and immediate threat of irreparable injury as a result of the actions and threatened actions of the defendant and the existence, operation, and threat of enforcement of the challenged policy.

CLASS ACTION ALLEGATIONS

70. The plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

71. Each of the plaintiffs seeks to represent a class defined as “all current and future prisoners in the El Paso County Jail who are subject to or affected by the Defendant’s postcard-only policy.”

72. The proposed class is so numerous and so fluid that joinder of all members is impracticable.

73. There are questions of law and fact common to the members of the plaintiff class.

74. The claims of the named plaintiffs are typical of the claims of the members of the class.

75. The named plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. Plaintiffs are represented by attorneys employed by and working in cooperation with the ACLU Foundation of Colorado and the National Prison Project of the ACLU Foundation, which have extensive experience in class action cases involving federal civil rights claims.

76. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

FIRST CLAIM FOR RELIEF

(First Amendment, Fourteenth Amendment, 42 U.S.C. § 1983)

77. The challenged policy has violated, and threatens to continue violating, the plaintiffs’ rights under the First Amendment and the Due Process Clause of the Fourteenth Amendment.

78. Wherefore, the plaintiffs are entitled to a declaratory judgment, injunctive relief, and such additional relief as the Court deems just.

SECOND CLAIM FOR RELIEF

(Colorado Constitution, Article II, Sections 10 and 25)

79. The challenged policy has violated, and threatens to continue violating, the plaintiffs' rights under the Colorado Constitution, Article II, Sections 10 and 25, which protect the right of free expression and the right to due process of law.

80. Wherefore, the plaintiffs are entitled to a declaratory judgment, injunctive relief, and such additional relief as the Court deems just.

PRAYER FOR RELIEF

81. Wherefore, plaintiffs ask that this Court:

- a. Certify, pursuant to Fed. R. Civ. P. 23(a) and (b)(2), a class comprising
"all current and future prisoners in the El Paso County Jail who are
subject to or affected by the Defendant's postcard-only policy;"
- b. Declare that the challenged postcard-only policy violates the rights of the
plaintiffs and their correspondents;
- c. Permanently enjoin the defendant from continuing to enforce the
challenged postcard-only policy, or any other policy that limits outgoing mail to
postcards, thus restoring the status quo that existed before this controversy began;
- d. Award plaintiffs their reasonable costs and attorney fees;
- e. Provide whatever additional relief the Court deems just.

Dated September 14, 2010

s/Mark Silverstein
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