

FILED IN DENVER
DISTRICT COURT
DENVER, COLORADO
COPY

**DISTRICT COURT,
CITY AND COUNTY OF DENVER, COLORADO**

Denver City & County Building
1437 Bannock Street
Denver, Colorado 80202

Plaintiffs:

AMERICAN FRIENDS SERVICE COMMITTEE,
a Pennsylvania not-for-profit corporation;
ANTONIA ANTHONY;
END THE POLITICS OF CRUELTY, an unincorporated
association;
CHIAPAS COALITION, an unincorporated association;
STEPHEN NASH; and
VICKI NASH

v.

Defendant:

CITY AND COUNTY OF DENVER

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Case No.

Courtroom

020V2993

ATTORNEYS FOR PLAINTIFFS	
CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	

Plaintiffs, American Friends Service Committee (“AFSC”); Antonia Anthony; End the Politics of Cruelty; Chiapas Coalition; Stephen Nash; and Vicki Nash complain against defendant, City and County of Denver (the “City”), as follows:

INTRODUCTION

1. This action challenges a custom and practice of the Denver Police Department (the “Department”) of monitoring the peaceful protest activities of Denver-area residents; maintaining files (the “Spy Files”) on the expressive activities of law-abiding individuals and advocacy organizations, many of which the Department has falsely branded with the label of “criminal extremist”; and providing copies of certain Spy Files to third parties.

2. In violation of federal law and the City’s written policy, the Department has systematically compiled and maintained information about the political opinions, political associations, and peaceful expressive activities of as many as 3,200 individuals and 208 organizations.

3. Examples from the few pages of the Spy Files that have been publicly released demonstrate that the Department has recorded the following kinds of information about specific individuals:

- (a) membership in the AFSC;
- (b) organizing and speaking at events sponsored by Amnesty International;
- (c) attendance in 2000 at demonstrations sponsored by the Justice for Mena Committee, which sought to hold Denver police accountable for the killing of Ismael Mena in a botched no-knock raid in 1999;
- (d) membership in End the Politics of Cruelty, a Denver human rights group that focuses on issues of police accountability;
- (e) participation in protests against the International Monetary Fund and the World Bank in Washington, D.C.;

- (f) membership in or association with the Chiapas Coalition, a Denver group that supports the rights of indigenous persons in Mexico's poorest state;
- (g) the purported opinion of a member of the Chiapas Coalition that "global financial policies are responsible for the uprisings in Chiapas, Mexico";
- (h) being "seen" at a demonstration in 2000 protesting the celebration of Columbus Day;
- (i) license numbers and descriptions of vehicles used by individuals identified as participants in peaceful protest activities;
- (j) home addresses and personal descriptions of individuals engaged in lawful expressive activity; and
- (k) the address of a private residence that an individual reportedly "frequents."

4. The Plaintiffs, targets of this program of police surveillance, file this case as a class action to seek relief from the past, present, continuing, and future adverse effects of the Department's illegal spying, monitoring, and information-sharing.

PARTIES

A. Plaintiffs

5. AFSC is a not-for-profit corporation incorporated under the laws of the State of Pennsylvania. AFSC maintains an office in Denver at 901 West 14th Avenue. AFSC is a Quaker organization supported by individuals of different faiths who care about social justice, humanitarian service, and peace. Its work is based on a Quaker belief in the dignity and worth of every person and a faith in the power of love and nonviolence to bring about change.

6. Sister Antonia Anthony has been a professed member of the Sisters of Saint Francis of Penance and Christian Charity since 1956. She has spent twenty-five years working in ministry with indigenous persons in the United States and Mexico, including three years living and working in Chiapas, Mexico's poorest state. She is currently engaged in a peace and justice ministry with the Marycrest community in Denver, Colorado. She is active with the Chiapas Coalition in Denver.

7. Chiapas Coalition is a Denver-based organization that conducts education and advocacy activities in support of the human rights struggle of indigenous persons in the Mexican state of Chiapas. It is an unincorporated association that sues to enforce substantive rights.

8. End the Politics of Cruelty is a Denver-based human rights organization that conducts rallies, educational programs, demonstrations, and other activities to promote its views. In recent years it has focused on issues of police accountability in Denver. It is an

unincorporated association that sues to enforce substantive rights.

9. Stephen Nash and Vicki Nash are Denver residents who have been married for 26 years. They frequently participate in peaceful educational and advocacy activities to express their views on political and social issues.

B. Defendant

10. Defendant City and County of Denver (the "City") is a municipal corporation incorporated in the State of Colorado. It carries out law enforcement functions through the Department. All actions and omissions of Denver police officers and the Department alleged herein are carried out under color of State law and pursuant to a custom, practice, or policy of the City.

FACTUAL BACKGROUND

Disclosure of the Spy Files

11. On March 11, 2002, the American Civil Liberties Union of Colorado ("ACLU") publicly disclosed recently-discovered documents demonstrating that the Department has been monitoring and recording the peaceful protest activities of Denver-area residents and keeping files on the expressive activities of law-abiding advocacy organizations. Copies of the documents disclosed by the ACLU are attached hereto as Exhibit A.

12. In a letter dated March 11, 2002 to Denver Mayor Wellington Webb, the ACLU asked the Mayor to take immediate steps to stop the Department's practice of keeping files on peaceful protest activities. A copy of the March 11 letter is attached hereto as Exhibit B.

13. In the March 11 letter, the ACLU also asked the Mayor to take four additional actions: prohibit the police from sharing their Spy File information with other law enforcement agencies; order a full public accounting about the Spy Files that would answer a number of questions; notify individuals named in the Spy Files and permit them to review the information about them in the Spy Files; and preserve the Spy Files, because they might be evidence in any forthcoming lawsuits.

14. On March 13, 2002, Mayor Webb called a news conference to address issues raised by the existence of the Department's Spy Files. Mayor Webb stated that the City's written policy on intelligence gathering was a good one, and he made copies of that policy available to the press. A copy of that written policy (the "City's Written Policy") is attached hereto as Exhibit C.

15. At a news conference, the Mayor Webb further stated as follows:

After a preliminary review of the policy and reviewing a sampling of the files that have been kept on individuals and organizations, it

is our conclusion that there was an overly-broad interpretation of the policy that resulted in cases where it may not have been justifiable to include certain individuals or organizations in our intelligence gathering activities.

A copy of the Mayor's press statement is attached hereto as Exhibit D.

16. Contrary to the Mayor's characterization, the Spy Files did not result from a mere misinterpretation of the City's Written Policy. On the contrary, the Department created and maintained the Spy Files in direct violation of the clear directives of the City's Written Policy.

17. The Department's surveillance of, and collection, maintenance, and dissemination of information on, parties engaged in peaceful advocacy activities was not grounded in any legitimate basis for law enforcement-related background or surveillance activities. There is no constitutional, statutory, city ordinance, or other legal authorization for such activities.

18. Mayor Webb stated the City intends to appoint independent auditors to review the Spy Files. Mayor Webb subsequently appointed three such auditors. According to the announced plan, the independent auditors will determine which of the Spy Files are legitimately-maintained criminal intelligence files and which are not. The latter will be purged, according to the City's plan.

19. As of the date of this complaint, the City has not agreed to permit the targets of the Department's surveillance to review the portions of the Spy Files that pertain to them.

Information About the Named Plaintiffs in the Spy Files

20. The few pages of Spy File documents currently available to Plaintiffs reveal the following:

- (a) AFSC is falsely labeled in the Spy Files as "Criminal Extremist." To the contrary, the AFSC is neither criminal nor extremist. It is an 85-year-old pacifist Quaker organization that was awarded the Nobel Peace Prize in 1947 for its advocacy of nonviolent social change.
- (b) Sister Antonia Anthony is listed in the Spy Files as "[a]ctive protestor with Chiapas Coalition." The Spy Files further state that Sister Antonia "demonstrated in Washington D.C. during protests against the International Monetary Fund and World Bank meetings" and that she purportedly "blames the global financial policies are responsible [sic] for the uprisings in Chiapas, Mexico."
- (c) The Spy Files falsely label the Chiapas Coalition as "Criminal Extremist." It is neither criminal nor extremist. The Spy Files state, erroneously, that the group is "dedicated to overthrow of Mexican government." The Spy Files also state that

the group had conducted demonstrations in Denver "at the Mexican Embassy." There is no Mexican Embassy in Denver.

- (d) The Spy Files contain separate files on Stephen and Vickie Nash. Stephen Nash's Spy File reports that he was "observed at Justice for Mena Committee demonstration on 3/29/2000." It states that he was "seen" at a demonstration protesting a parade to honor Christopher Columbus. It reports that he is a "member and spokesperson" for the AFSC and a member of End the Politics of Cruelty, both of which are falsely labeled as "criminal extremist" in Stephen Nash's Spy File. It further states that he served as a spokesperson for the Justice for Mena Committee at a demonstration. Another entry states that Stephen Nash was a speaker and event organizer for an Amnesty International event. The file contains the description and license number of cars the police linked to Stephen Nash, his driver's license number, and his height, weight, eye color, and hair color. In a box titled, "associated subjects," it lists his wife of 26 years, Vickie Nash.
- (e) The file on Vickie Nash lists her as a member of AFSC and End the Politics of Cruelty, both of which the file falsely labels as "criminal extremist." It documents her marriage to Stephen Nash, her address, and a description and license number of her car.

21. All of the foregoing Spy Files are marked as "permanent" files.

22. The pages in which the foregoing entries appear contain nothing but identifying information and facts that show that the targets of the surveillance are engaged in peaceful and legitimate educational activities, political expression, petitioning the government, and political association. The pages contain no facts that suggest that any of the named plaintiffs are involved in criminal activity.

23. The Department has recorded false and derogatory information about the Plaintiffs. It has mischaracterized the goals and purposes of the Plaintiffs' expressive activity and smeared their personal, political, and professional reputations.

24. The Department has recorded this false and derogatory information without providing Plaintiffs with notice or an opportunity to be heard. Plaintiffs have had no opportunity to rebut, deny, explain, correct, or expunge the false and derogatory information that the Department has placed in the Spy Files.

25. The Department has disseminated the information in the Spy Files to third parties.

26. There is no legitimate law enforcement rationale and no legitimate government interest in maintaining or disseminating permanent records containing false derogatory information about Plaintiffs.

27. Even when the information recorded is accurate, and often it is not, there is no legitimate law enforcement rationale for maintaining dossiers on the expressive activities of the Plaintiffs and the members of the plaintiff class.

The Department's Custom and Practice of Illegal Surveillance

28. On information and belief, the City and County of Denver received grant money from the federal government pursuant to the Omnibus Crime Control and Safe Streets Act of 1968. The grant money includes funds for intelligence activities, including the creation or maintenance of a criminal intelligence database. On information and belief, the Department used some of the federal grant money to set up the computerized database in which at least some portions of the Spy Files data are maintained.

29. The Department's criminal intelligence database, including the paper and computer records that make up the Spy Files, is governed by 28 C.F.R. Part 23. The purpose of this federal regulation is to ensure that all criminal intelligence systems operating with federal money are utilized in conformance with the privacy and constitutional rights of individuals. 28 C.F.R. § 23.1.

30. The regulation recognizes that the collection and exchange of law enforcement intelligence data "may represent potential threats to the privacy of individuals to whom such data relates." 28 C.F.R. § 23.2.

31. Accordingly, the regulation requires that files can contain information about an individual "only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity." 28 C.F.R. § 23.20(a).

32. The regulation expressly forbids the collection of information about political views and associations unless the information "directly relates" to criminal conduct and there is reasonable suspicion that the individual is involved in that criminal conduct:

A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

28 C.F.R. § 23.20. The City's Written Policy incorporates the standard of the foregoing paragraph. (See Exhibit C.)

33. Despite the clear directive of the federal regulation and the City's Written Policy, it is the informal custom and practice of the Department to collect and to maintain information on political views and expressive activity even in the absence of any connection to criminal activity.

34. The collection and maintenance of such information, including the information referring to the named plaintiffs, serves no legitimate law enforcement purpose. It violates the clear directive of 28 C.F.R. Part 23, as well as the City's Written Policy.

35. Pursuant to 28 C.F.R. Part 23, information may be maintained in a criminal intelligence database for a maximum period of five years. The records from the Department's Spy Files, however, state that they are "permanent."

False and Defamatory Information

36. It is the custom and practice of the Department to record false and derogatory information in the Spy Files, to falsely label law-abiding activist groups as "criminal extremist," and to distort, misstate, and mischaracterize their goals and purposes.

37. Pursuant to this custom and practice, the Department has relied on false information or mere incidental association to label individuals as "members" of groups when, in fact, they are not members.

38. The Department smears the political, personal, and professional reputations of individuals by listing them as members of groups that are falsely labeled as "criminal extremist."

39. Pursuant to the custom and practice of the Department, individuals who are the subjects of the Spy Files have no notice and no opportunity to be heard to rebut, deny, explain, correct, or expunge the false, derogatory, or misleading information that the Department records in the Spy Files.

Sharing and Dissemination of Information

40. It is the custom and practice of the Department to share copies of the Spy Files or information contained therein with other law enforcement and governmental agencies. The Department maintains the Spy Files, in part, for the purpose of disseminating that information to additional third parties in the future

41. On information and belief, the Department has kept a record of each time that it has shared information from the Spy Files, or the fact that a file exists, with other law enforcement agencies.

42. The Department has also shared with individuals outside law enforcement the existence of a Spy File on a particular individual or group.

43. On information and belief, the Department has also shared information from the Spy Files with individuals outside law enforcement.

44. On information and belief, the Department shares information from the Spy Files with other law enforcement agencies without ensuring that they have safeguards in place that will shield the information from further disclosure.

45. The Plaintiffs have no opportunity to find out when the Department has shared or intends to share information from the Spy Files with third parties. Nor is there any opportunity for Plaintiffs to learn the identity of third parties with whom the Department has shared information. As a result, Plaintiffs are denied notice of the dissemination and denied any opportunity to contact the third party to rebut, deny, explain, correct, or expunge the often false and derogatory information provided from the Spy Files.

Effect on Plaintiffs

46. The Department singled out and selected the Plaintiffs and the plaintiff class for surveillance and monitoring based upon their advocacy of controversial or unpopular political positions and opinions.

47. It is the custom and practice of the Department to gather information for the Spy Files using methods that have the objective effect of chilling or deterring reasonable persons from the exercise of their rights of expression and association.

48. For example, it is the custom and practice of the Department to use undercover or plainclothes operatives to videotape or to photograph individuals who appear at or participate in lawful demonstrations.

49. Individuals are less likely to join a rally or to participate in other expressive activities when they reasonably fear that they will be photographed by police or that their names will appear in police "criminal intelligence" files. This is especially true when they reasonably fear being listed as associates or members of an organization labeled by police, although falsely, as "criminal extremist."

50. The custom and practice of the City has injured and threatens to continue injuring Plaintiffs in their ability to attract others to join them in rallies, protests, petitions, and other expressive activities.

51. The customs and practices of the City have chilled and threaten to continue chilling the exercise of constitutionally-protected rights of expression and association.

52. The customs and practices described herein, including the creation, maintenance, and dissemination of the Spy Files, have caused and threaten to continue causing injury to the personal, political, and professional reputations of the Plaintiffs.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rules 23(a) and (b)(2) of the Colorado Rules of Civil Procedure.

54. Plaintiffs represent a class of persons defined as (a) all organizations and all past, current, and future Denver residents and visitors who engage in or have engaged in peaceful political, religious, educational, social or expressive activities, and who, as a result of these activities, have been, are now, or will become, targets of surveillance by the Department or the subjects of the Department's Spy Files.

55. The proposed class is so numerous that joinder of all members is impracticable. The proposed class consists of as many as 3,200 individuals and 208 organizations.

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

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

58. 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 American Civil Liberties Union Foundation of Colorado, which has extensive experience in litigating class actions raising issues of constitutional rights and civil liberties.

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

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983; First and Fourteenth Amendments)

60. The allegations of paragraphs 1-59 are incorporated by reference as though fully set forth herein.

61. The Department's surveillance program and the creation, maintenance, and dissemination of the Spy Files pose an imminent threat of infringing, interfering with, and diminishing Plaintiffs' ability to enjoy and exercise fully and freely their rights to freedom of speech, freedom of the press, freedom of assembly, freedom of association, and freedom to petition their government for redress of grievances, as well as their freedom to travel, their rights to privacy, due process, and the equal protection of the laws, all of which are protected by the First and Fourteenth amendments to the United States Constitution.

62. WHEREFORE, the Plaintiffs are entitled to declaratory and injunctive relief, including expungement of the Spy Files following the conclusion of this litigation and such other

relief as the Court deems just.

SECOND CLAIM FOR RELIEF

(Colorado Constitution)

63. The allegations of paragraphs 1-62 are incorporated by reference as though fully set forth herein.

64. The Department's surveillance program and the creation, maintenance, and dissemination of the Spy Files pose an imminent threat of infringing, interfering with and diminishing Plaintiffs' ability to enjoy and to exercise fully and freely their rights to freedom of speech, freedom of the press, freedom of assembly, freedom of association, and freedom to petition their government for a redress of grievances, as well as their freedom to travel, and their rights to privacy, due process and equal protection of the laws, all of which are protected by Colorado Constitution, including Article II, Sections 3, 7, 10, 24, and 25.

65. WHEREFORE, the Plaintiffs are entitled to injunctive and declaratory relief and such other relief as the Court deems just.

THIRD CLAIM FOR RELIEF

(42 U.S.C. §1983; 28 C.F.R. Part 23)

66. The allegations of paragraphs 1-65 are incorporated by reference as though fully set forth herein.

67. The Department's surveillance program and the creation, maintenance, and dissemination of the Spy Files violate and threaten to continue violating the requirements specified in 28 C.F.R. Part 23.

68. The violations and threatened violations of the City's Written Policy pose an imminent threat of infringing, interfering with, and diminishing Plaintiffs' ability to enjoy and to exercise fully and freely their constitutional rights and their privacy.

69. WHEREFORE, the Plaintiffs are entitled to injunctive and declaratory relief and such other relief as the Court deems just.

FOURTH CLAIM FOR RELIEF

(Enforcement of the City's Written Policy)

70. The allegations of paragraphs 1-69 are incorporated by reference as though fully set forth herein.

71. The Department's surveillance program and the creation, maintenance, and

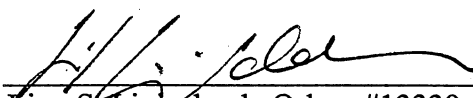
dissemination of the Spy Files violate and threaten to continue violating the requirements of the City's Written Policy.

72. The violations and threatened violations of 28 C.F.R. Part 23 pose an imminent threat of infringing, interfering with, and diminishing Plaintiffs' ability to enjoy and to exercise fully and freely their constitutional rights and their privacy.

73. WHEREFORE, the Plaintiffs are entitled to injunctive and declaratory relief and such other relief as the Court deems just.

Dated: March 28, 2002

Respectfully submitted,



Lino S. Liptasky de Orlov, #13339

Gregory W. Johnson, #29478

Sandra B. Wick, #31972

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