

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

NOELLE HANRAHAN
1060 Wakeling Street
Philadelphia, Pennsylvania 19124,

CHRISTOPHER HEDGES
262 Moore Street
Princeton, New Jersey 08540,

DERRICK A. JONES
1900 Goss St., Apt. 211
Boulder, Colorado 80302,

JAMES RIDGEWAY
P. O. Box 11374
Washington, D.C. 20008,

and

SIDDIQUE ABDULLAH HASAN
#R130-559
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505-4635,

GREGORY CURRY, #213-159
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505-4635,

KEITH LAMAR, #317-117
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505-4635,

JASON ROBB, #308-919
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505-4635,

CASE NO. 2:13-cv-1212

JUDGE EDMUND SARGUS

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

GEORGE W. SKATZES, #173-501)
Chillicothe Correctional Institution)
P. O. Box 5500)
Chillicothe, Ohio 45601,)
)
Plaintiffs,)
)
vs.)
)
GARY C. MOHR)
Director, Ohio Department of Rehabilitation)
and Correction)
770 West Broad Street)
Columbus, Ohio 43222,)
)
JoELLEN SMITH)
Communications Chief, Ohio Department)
of Rehabilitation and Correction)
770 West Broad Street)
Columbus, Ohio 43222,)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In April 1993, one of the major prison uprisings in United States history took place at the Southern Ohio Correctional Facility (SOCF) in Lucasville, Ohio. Nine prisoners and one correctional officer were killed. Five prisoners were sentenced to death, including four of the Prisoner Plaintiffs, and numerous other prisoners were sentenced to lengthy sentences, including the fifth Prisoner Plaintiff in this litigation.

Plaintiffs assert that Defendants have violated Plaintiffs' constitutionally protected rights to media access, in violation of the First and Fourteenth Amendments, by:

a. denying all media requests to interview Prisoner Plaintiffs because of the anticipated content of the interviews;

b. denying all media requests to interview prisoners convicted of crimes during the 1993 Lucasville uprising based upon policies and decisions that have no rational basis; and,

c. unreasonable restrictions on media and public access to information.

2. Plaintiffs seek a Preliminary and Permanent Injunction prohibiting Defendants from denying in-person media access to inmates involved with the Lucasville prison uprising, and requiring that if Defendants wish to deny a particular request for such access, they must provide a specific, factual basis for denying the particular request and notice of an opportunity to appeal the denial, with a right to an evidentiary hearing before the Court.

JURISDICTION

3. Plaintiffs bring this action to protect rights conferred by the First and Fourteenth Amendments to the United States Constitution.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a) in that Plaintiffs seek redress for civil rights violations under 42 U.S.C. § 1983.

5. This Court has jurisdiction for claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

6. Plaintiffs have no obligation to exhaust administrative remedies inasmuch as:

a. The media policies provide no appeal procedure from denial of a request for media access; and,

b. The inmate grievance procedure set forth in Ohio Administrative Code § 5120-9-31 is not applicable where the subject matter is not related to institutional life, or concerning a matter in which a final decision has been rendered by central office staff. Nevertheless, Plaintiffs Hasan and Curry did attempt to utilize the grievance procedure based on the Warden's denial of media

access to them and, in each case, did obtain a final Decision from the Chief Inspector on a Grievance (Hasan (Sanders), No. CI-04-13-000021, and Curry, No. CI-04-13-000002).

VENUE

7. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. § 1391(b) and (c) in that a substantial part of the events or omissions giving rise to Plaintiffs' claims have occurred in this District, and the actions and contacts of Defendants MOHR and SMITH subject them to jurisdiction in this District.

PARTIES

Media Plaintiffs

8. Plaintiff NOELLE HANRAHAN is the Director and Producer of Prison Radio who sought and was denied interviews with Prisoner Plaintiffs Robb, LaMar, Hasan (Sanders), Curry, and Skatzes in February 2013 for a "broadcast, print, and multimedia story on incidents at the Southern Ohio Correctional Facility in Lucasville that resulted in their current sentences."

9. Plaintiff CHRIS HEDGES is a former Pulitzer-prize winning reporter for *The New York Times* where he spent fifteen years, and he is the author of three *New York Times* best sellers. Plaintiff Hedges was denied the opportunity to interview Plaintiffs Hasan (Sanders), LaMar, Robb, Curry, and Skatzes and to question them about their participation in a 1993 prison uprising as well as their personal histories in and out of prison for a book he is writing on the nature of rebellion.

10. Plaintiff DERRICK A. JONES was at the time relevant to this action an Instructor of Theatre and Film and Assistant Director, Arts Village, at Bowling Green State University in Bowling Green, Ohio. He was subsequently hired to serve on the faculty of the Naropa Institute in Boulder, Colorado. Plaintiff Jones sought and was denied the opportunity to interview

Plaintiffs Skatzes, Curry, LaMar, Hasan (Sanders) and Robb about their involvement in the disturbance at the Southern Ohio Correctional Facility at Lucasville in 1993.

11. Plaintiff JAMES RIDGEWAY has been a reporter for close to fifty years, and is the author of sixteen books. His work with Jean Casella has been published in the *New York Times*, *The Nation*, *The Guardian*, and many other print and online publications. Plaintiff RIDGEWAY and Jean Casella are recipients of a 2012-13 Soros Justice Media Fellowship for reporting on U.S. prisons and jails, and they are co-editors of a web publication called Solitary Watch. They sought and were denied media interviews with Plaintiffs Hasan (Sanders), LaMar, Robb, Curry, and Skatzes.

12. Plaintiff SIDDIQUE ABDULLAH HASAN, formerly known as Carlos Sanders, is under a sentence of death. He is on security Level 5 and is entitled to Longterm privileges at the Ohio State Penitentiary. Plaintiff Hasan filed two informal complaints concerning denial of access to meet on-camera with the media, and he filed an "Original Grievance" that was denied by the Chief Inspector (No. CI-04-13-000021).

13. Plaintiff GREGORY CURRY is serving a maximum sentence of life in prison. He is on security Level 5 at the Ohio State Penitentiary. After requests for interviews with him by Plaintiff Hanrahan and Mary Ratcliff were denied, he filed an informal complaint, denied by the Warden, and an "Original Grievance" that was denied by the Chief Inspector (No. CI-04-13-000002).

14. Plaintiff KEITH LAMAR is under a sentence of death. He is on security Level 5 and is entitled to Longterm privileges at the Ohio State Penitentiary.

15. Plaintiff JASON ROBB is under a sentence of death. He is on security Level 5 and is entitled to Longterm privileges at the Ohio State Penitentiary.

16. Plaintiff GEORGE W. SKATZES is under a sentence of death. He is in general population on death row at the Chillicothe Correctional Institution.

Defendants

17. Defendant GARY C. MOHR is Director of the Ohio Department of Rehabilitation and Correction (ODRC). He is the executive head of the Department. All duties conferred on the various divisions of the department are performed under rules and regulations that he prescribes and are under his control. (Ohio Revised Code section 5120.01) He and his designee have discretion to grant or deny any interview request. He is sued only in his official capacity.

18. Defendant JoELLEN SMITH is Communications Chief of the Ohio Department of Rehabilitation and Correction. As the Director's designee, she has discretion to grant or deny any interview request. At all times relevant to this Complaint, it was she who, with or without consultation with other administrators, denied requests for interviews by the media. She is sued only in her official capacity.

STATEMENT OF FACTS

I. ODRC Has Denied All Media Requests for Interviews with Lucasville Defendants

19. Defendants and their predecessors have for twenty years denied all face-to-face media access to prisoners convicted of crimes committed during the April 1993 uprising at the Southern Ohio Correctional Facility in Lucasville, Ohio. Examples of such denials are:

a. **February 19, 2003.** Reporter Kevin Mayhood of the *Columbus Dispatch* reported to Plaintiff Siddique Hasan: "This week prisons chief Reginald Wilkinson decided no inmates convicted of [Lucasville] riot crimes will be permitted to speak to us."

b. **June 20, 2005.** W. Keith Fletcher, Public Information Officer, Ohio State Penitentiary, wrote to Daniel Sturm, 26 Upland Avenue, Youngstown: "at this time we must respectfully

decline your request to interview Warden Marc Houk and inmate Carlos Sanders [Siddique Abdullah Hasan] (R130-559). Interviews with general population inmates are discretionary by policy and we do not grant interviews with Level 5 (security level of Carlos Sanders) inmates. *We also limit any interview to discussion about their offense or a topic not related to prison policy or procedure.*" (Emphasis added.)

c. **November 6, 2006.** Warden Marc Houk, Ohio State Penitentiary, wrote to Gary Anderson, 1376 West St., Redding, CA 96001: "Upon reviewing your visiting application and the circumstances surrounding your visit request with Carlos Sanders (R130-559) and Jason Robb (A308-919), I am denying your visitation on November 15, 2006. *Our research of your background leads us to believe that your visit with the inmates mentioned above, is for research purposes relating to your play 'Lucasville: The Untold Story of a Prison Uprising'.* We will not facilitate any media, visit, or research opportunity, with the aforementioned inmates, due to their security level." (Emphasis added.)

20. As the twentieth anniversary of the Lucasville Uprising approached in April 2013, numerous requests for media interviews were submitted and denied. These include the following:

a. **February 8, 2013.** In an exchange of emails, Defendant JoEllen Smith, Communications Chief, ODRC, denied the request of Plaintiff Noelle Hanrahan, Prison Radio, to interview Plaintiffs Curry, Hasan, LaMar, Robb and Skatzes. Plaintiff Hanrahan requested the reason for denial. Defendant Smith replied, "We base our decisions on inmate interviews on a number of different screening criteria, including the overall safe operation of the facility and potential impact on crime victims, etc."

b. **February 26, 2013.** Derrick A. Jones, Instructor of Theatre and Film and Assistant Director, Arts Village, at Bowling Green State University, sent a letter to JoEllen Smith dated

February 21, 2013 in which he requested permission to interview George Skatzes, Gregory Curry, Keith LaMar, Siddique Hasan (Carlos Sanders) and Jason Robb. Defendant Smith replied by email on February 26, 2013, stating "we cannot approve your request to interview these offenders." Plaintiff Jones promptly responded, "Can you indicate why the access is denied?" Defendant Smith replied, "Inmates who are classified as Level 5 inmates are not eligible for interviews. In addition, [w]e base our decisions on inmate interviews on a number of different screening criteria, including the overall safe operation of the facility and potential impact on crime victims, etc."

c. **February 27, 2013.** In response to a letter dated February 24, 2013 from Mary Ratcliff, editor of the *San Francisco Bay View*, a National Black Newspaper, to Warden Norm Robinson at the Chillicothe Correctional Institution, Warden's Assistant Amy Hamilton replied by email, stating, in full:

I am in receipt of the request to interview inmate Skates [sic] A173-501 regarding the approaching twentieth anniversary of the SOCF uprising. Decisions regarding inmate interview requests are based on a number of different screening criteria, including the overall safe operation of the facility and potential impact on crime victims. I regret to inform you the request has been denied.

d. **March 4, 2013.** In response to a letter dated February 24, 2013 from Mary Ratcliff, editor of the *San Francisco Bay View*, to Warden David Bobby at the Ohio State Penitentiary, Warden's Assistant Laura Gardner replied by email, stating, in full: "Mary, I would like to thank you for your request to interview 4 inmates at the Ohio State Penitentiary, however your request has been denied."

e. **March 5, 2013.** JoEllen Smith emailed material concerning requests for interviews with Plaintiffs Hasan, LaMar, and Robb in connection with the forthcoming Lucasville Re-Examining Conference to ODRC Director Gary Mohr, stating: "FYI. I thought you should be

aware of this. *We've decline[d] any and all requests for interviews with these offenders.*"

(Emphasis added.) Director Mohr replied on March 5, 2013: "*Decline interview.*" (Emphasis added.)

f. **March 14, 2013.** Stephen J. Huffman, Assistant Director, Ohio Department of Rehabilitation and Correction, replied by letter to a request by Plaintiff Hanrahan that he review the decision by Defendant Smith denying permission to conduct interviews with Plaintiffs Robb, LaMar, Sanders [Hasan], Curry and Skatzes, in which he stated: "The decisions to permit inmates to participate in media interviews are based on a number of wide ranging factors. These criteria include, but are not limited to, the safety and security considerations, the nature of the offense for which the offender is incarcerated, disciplinary history and potential impact on victims of crime. In considering these factors in relation to the offenders you've requested to interview, I concur with Mrs. Smith in denying your interview request."

g. **March 28, 2013.** JoEllen Smith, Communications Chief, ODRC, denied Plaintiff Chris Hedges' request dated March 16, 2013 to interview Plaintiffs Curry, Hasan, LaMar, Robb and Skatzes. She stated: "Inmates in level 5 security are not permitted to participate in interviews. In addition, in making interview decisions we take a number of factors into account including safety and security of the prison as well as impact on victims or staff."

h. **April 1, 2013.** Julie Carr Smyth, Statehouse Correspondent for the Associated Press in Columbus, e-mailed JoEllen Smith stating that the Associated Press requested interviews with Carlos Sanders (Siddique Abdullah Hasan), Keith LaMar, George Skatzes, James Were, and Anthony Lavelle. Defendant Smith replied twenty-one minutes later. She denied the request, stating: "We do not permit Level 5 inmates to be interviewed. In addition, we take a number of factors into account when approving or denying media interview requests, including safety and

security of the prison as well as impact on victims or staff.” However, Prisoner Plaintiff George Skatzes is not on Level 5.

i. **April 17, 2013.** Defendant JoEllen Smith, Communications Chief, ODRC, denied a request by Plaintiffs James Ridgeway and Jean Casella of Solitary Watch to interview Plaintiffs Curry, Hasan, LaMar, Robb and Skatzes. Defendant Smith stated: “A number of different factors are taken into consideration when deciding if an inmate is appropriate and eligible to participate in media interviews. These factors include, but are not limited to, the nature of the case, behavior while in prison, impact on the safe operations of the facility, as well as the potential impact on our staff and victims. Our death row media policy can be found online at . . . (01-COM-13)”

j. **April 22, 2013.** Julie Carr Smyth renewed her request to interview the Lucasville Five, particularly Prisoner Plaintiff Hasan, in which she stated, “several of those sentenced to death after the riot launched a hunger strike on the April 11 anniversary seeking a chance to sit down with the media for an on-camera, in-person interview to discuss their cases.” JoEllen Smith promptly denied this interview request: “In addition to the considerations I provided you for your last request, inmates must be in general population to be eligible to participate in media interviews. Inmate Hasan is in a restricted population.”

II. Many Media Requests Have Been Granted for Interviews with Prisoners Who Are Not Lucasville Defendants

21. The Ohio Department of Rehabilitation and Correction (ODRC) has frequently granted face-to-face interviews with prisoners on death row “prior to a scheduled execution date” (as distinguished from prisoners who are scheduled to be executed on a specific date). The following appear to be examples:

a. **Gregory Esparza and Jamie Madrigal.** A request from WTVG 13, ABC Toledo, April 2, 2003, sought permission to interview death row inmates at Toledo to find out if they feel

justice has been served and to give them a chance to say what they haven't been able to for all the years they've been on death row. "OK" appears to be written by hand on this request.

b. **Terrell Yarborough and Michael Bies.** An article that appeared in *The New York Times Magazine* on June 29, 2003, written by Margaret Talbot and entitled "The Executioner's I.Q. Test" contains extensive quotations from interviews with Terrell Yarborough and Michael Bies who were then on death row.

c. **Jeronique Cunningham.** Fox 25 News, WOHL, in Lima, Ohio, interviewed Jeronique Cunningham with photographer, camera, tripod, light, DV tapes, batteries, and "mic stand," on the morning of February 23, 2005.

d. **John Fautenberry.** The French national TV channel, France 2, requested a two-hour filmed interview with a crew of four for a documentary on serial killers and criminal psychology. A handwritten note on the request indicates approval of the interview to take place on September 9, 2005, nearly four years before John Fautenberry's execution in July 2009.

e. **Kenneth Richey.** Kenneth Richey, who was convicted of aggravated murder for starting a fire that killed a two-year-old girl, was interviewed by the following media representatives on at least the following occasions, in some instances describing conditions on death row:

i. By the *Edinburgh Evening News* in July 2000 with camera and hand held tape recorder, again in July 2002, and possibly again in 2005.

ii. By BBC News, interviews apparently conducted by BBC correspondent and a camera operator with standard TV news kit, camera, microphones, and lights, published on some or all of the following dates: November 1, 2000, October 13, 2002, May 7, 2003, January 27, 2004, February 27, 2004, and January 30, 2005.

iii. By Channel 35, WLIO, in Lima, Ohio, April 22, 2003, by reporter and photographer who in addition to conducting a television interview toured DR 6 at Mansfield Correctional Institution. (An article by James Drew, "Death penalty and conviction of the Briton tossed . . .," in the *Toledo Blade* on January 26, 2005, refers to "an interview in May, 2003, with WLIO-TV in Lima.")

iv. By Towers Productions, Chicago, July 22, 2003, in an on-camera interview with producer, associate producer, and cameraman, for TV documentary series, "American Justice," to be aired on A&E Network, focusing on his individual case from investigation through trial.

v. By *News of the World*, Glasgow, October 29, 2003, by staff journalist and photographer to interview Kenneth Richey.

vi. By Kate Allen of Amnesty International, Alistair Carmichael-MP, Trevor McDonald of Trevor McDonald Show, and a journalist from a national UK paper, in February 2004.

vii. By *Sunday Post*, Glasgow, May 2004, the requester stating, "I know that Mr. Richey is only allowed one such face-to-face interview every 90 days"; handwritten notes on the request state, "Inmate said, yes!" and "OK."

viii. By *The Times of London*, requested for Friday, January 28, 2005, but a handwritten note says "2/2," interviewer to bring audio tape recorder, photographer, still camera, flash unit and lenses, to talk about Richey's experience in America and "how he feels after being granted a new trial."

ix. By Cicada Films, an independent RV company in the UK that was making a documentary about how some British women have developed relationships with long-

term US prisoners, on date suggested by a handwritten note stating: "6/17/05 JoEllen [Smith] said move ahead."

f. **Frank Spisak.** Frank Spisak was a neo-Nazi convicted of three homicides. He was interviewed by WJW-TV in 2008, three years before his execution. A video extract of the 2008 interview was shown and identified by Fox 8 (Cleveland), Video Dailymotion, December 3, 2011.

III. Defendants' Dispositions of Media Requests for Interviews with Lucasville Defendants Have Been Inconsistent and Pretextual

A. Defendants Have Ignored the Superior Authority of the Ohio Administrative Code

22. The Ohio Administrative Code is an authority superior to any departmental policy. Section 5120-9-16 of the Code is captioned "News media visits." Administrative Rule [hereafter AR] 5120-9-16, effective April 1, 2009, provides in full:

(A) It is the policy of the department of rehabilitation and correction to permit visits by representatives of the news media to correctional institutions, when approved by the managing officer of the particular institution or his designee.

(B) The managing officer or his designee may place reasonable restrictions on the number of reporters allowed in the institution at any one time and on the duration of their visits.

(C) Arrangements for the use of photographic, recording or broadcast equipment or for interviews must be made in advance.

(1) Pictures or recorded interviews of specific inmates may be taken only after securing clearance from the managing officer or his designee and only after the inmate to be photographed has expressed his approval by signing the inmate consent form.

(2) The managing officer or his designee may place reasonable restrictions on the frequency, length, and starting time of personal interviews. The institution will visually monitor such interviews to assure the reporters' safety.

(D) If an institution is placed under a state of emergency, representatives of the news media will be allowed access only to those areas that are designated by the managing officer or his designee. During the existence of a state of emergency, the director or his designee shall inform the news media of the situation within the institution as releasable information becomes available.

23. In derogation of AR 5120-9-16(A) which states that it is the policy of the ODRC to "permit" visits of the news media, ODRC Policies 01-COM-09 VI(A)(5) and 01-COM-13 VI(D)(1) provide that "[t]he Director/designee will have discretion to grant or deny any interview request."

24. Neither AR 5120-9-16 nor any ODRC policy provides an appeal or other procedure for review of denial of any interview request.

25. Although AR 5120-9-16(A) states that media visits will be permitted "when approved by the managing officer of the particular institution or his designee," denials of media requests to interview Lucasville defendants have in most cases been made by Defendants Smith and Mohr at the Central Office of the ODRC in Columbus.

26. AR 5120-9-16 does not attempt to restrict or regulate news media visits based on the anticipated content of the interview. However, ODRC Policies 01-COM-09(VI)(E)(11)(e) and 01-COM-13(VI)(D)(12)(e), state with reference to "Nature of the interview", "*Interviews will only be permitted when the inmate is speaking about their offense or a topic not related to prison policy or procedure.*" (Emphasis added.)

27. In denying requests to interview Prisoner Plaintiffs housed at the Ohio State Penitentiary, Warden Bobby stated: *"interviews will only be permitted when the inmate is speaking about his offense or a topic not related to prison policy or procedure."* (Emphasis added.) Other denials by Defendants repeat this same distinction based on the anticipated content of the interview.

B. Defendants Fail to Specify Particular Reasons for Each Denial of Media Access

28. In denying requests by Media Plaintiffs to interview Prisoner Plaintiffs, Defendants list certain *factors* that are considered, but in their denial of requests for media interviews *do not state what factors were dispositive* in denying each particular request. Defendant Smith has offered "etc." as one such factor.

29. Plaintiffs Curry, Hasan, LaMar and Robb submitted informal complaints to Warden Bobby protesting the refusal to let outside media interview them regarding the events of 1993.

30. Plaintiff Hasan stated as the grounds for his complaint: "It has been two decades since the Lucasville rebellion and I have been repeatedly denied access to meet with the media In order for me to appeal your denial, I need you to answer the following questions: 1. Why am I being denied access to meet on-camera with the media when other prisoners have been allowed to while housed at this prison? 2. What do I have to do if anything, to have this unrealistic restriction removed?"

31. Plaintiff Hasan wrote in his "Original Grievance" (No. CI-04-13-000021): "While other death-row prisoners in Ohio, as well as others at OSP, have been granted on-camera access to the media to speak about their cases, I have been repeatedly denied this opportunity. The same security arrangements that have been used for others to meet with the media would be the same arrangements that would be used for me." By way of relief, Plaintiff Hasan requested "equal

protection (and treatment) . . . by being allowed to meet with the media on-camera to speak about my criminal case.” The Decision of the Chief Inspector on a Grievance, issued to Plaintiff Hasan (Sanders) on April 26, 2013, failed to address these issues.

32. Plaintiff Curry stated in his “Original Grievance” No. CI-04-13-000002, in part, that “the State’s empty denial with no reasoning seems to indicate a predetermined position . . .”

C. ODRC Policies Prohibit Media Visits on the Basis of the Anticipated Content of the Interviews

33. ODRC Policies, but not Administrative Rule 5120-9-16 on News Media Visits, explicitly limit the permissible content of interviews with prisoners.

34. The Department of Rehabilitation and Correction has promulgated two Media Policies. Policy 01-COM-09, Media, applies to prisoners who are not under sentence of death. The procedures set forth in Media Policy 01-COM-09 are applicable to Prisoner Plaintiff Curry.

35. Policy 01-COM-13 is titled “Media Policy – Death Row and Executions.” There are separate procedures in the death row media policy for “Death Row Inmate Interviews or Media Interaction – Prior to a Scheduled Execution Date” as distinguished from “Death Row Inmate Interviews – Once the Execution Has Been Scheduled.” The procedures set forth in Policy 01-COM-13, “Death Row Inmate Interviews or Media Interaction – Prior to a Scheduled Execution Date,” are applicable to Prisoner Plaintiffs Hasan, LaMar, Robb and Skatzes, all of whom are sentenced to death but none of whom has a scheduled execution date.

36. Regarding “Access to DRC Facilities by Non-News Media,” Policy 01-COM-09 VI(F) provides: “Access to institutions by independent filmmakers, writers for non-news magazines and others may be permitted by special advance arrangement and approval of the Communications Chief and Managing Officer.”

37. Plaintiff Jones in his letter of February 21, 2013 to JoEllen Smith stated with reference to the Prisoner Plaintiffs, these inmates "are willing to be interviewed on camera about their involvement in the disturbance at the Southern Ohio Correctional Facility at Lucasville in 1993" and, "As a documentarian, I request these interviews as part of a story on the 20th anniversary of these events. The voices of those convicted of strong involvement in this disturbance are crucial to presenting a well-rounded story." Permission to interview Plaintiff Prisoners was denied.

D. Defendants State that Prisoners on Level 5 May Not Have Media Interviews although Nothing in the Ohio Administrative Code Supports That Position, and Defendants Have Granted Media Access to Level 5 Prisoners Who Are Not Lucasville Defendants

38. Level 5 is the highest level of security in the Ohio prison system. Defendants, in denying media visits with Prisoner Plaintiffs, frequently make reference to placement on Level 5 as a reason for such denial. No such provision appears in the Ohio Administrative Code and, to the extent such a restriction appears in departmental policies, such provisions are inconsistent with Administrative Rule 5120-9-16 that permits media visits subject to time, place and manner restrictions.

a. The following provision in Policy 01-COM-09 VI(E)(10), and in Policy 01-COM-13 VI(D)(11), was in effect during the first half of 2013 when the Media Plaintiffs' requests for media interviews were denied: "Inmates must be in general population in order to be eligible for a media interview. Inmates in protective control, local control, disciplinary control, security control, initial reception, or a mental health residential setting (OCF or RTU) are not eligible unless there is a pressing need and the request is approved by the Director/designee." Policy 55-SPC-02, Special Management Procedures, effective August 8, 2013, defines "Special Management Status" as security control, disciplinary control, local control or protective control.

But, at all times relevant to this Complaint, none of the Prisoner Plaintiffs have been in Special Management Status.

b. The Media Policy for Death Row, but not the general Media Policy, was revised effective July 8, 2013. Policy 01-COM-13 VI(D)(11) now begins with the sentence, "Inmates must not be in a restricted population as defined by Department Policy 53-CLS-01, Inmate Security Classification Levels 1 through 4, in order to be eligible for a media interview." However, Policy 53-CLS-01 III states: "This policy applies to all Ohio Department of Rehabilitation and Correction staff and inmates involved in the classification process, except . . . Level 5 inmates."

39. Prisoner Plaintiff Skatzes is not on Level 5. He is in general population on death row at the Chillicothe Correctional Institution. Yet in decision after decision, Defendants denied media access to Skatzes as well as to the four plaintiffs on Level 5.

40. Filmmaker James Lipscomb was granted permission to visit the Ohio State Penitentiary and to film conversations with prisoners all of whom were held at the highest level of security (now Level 5). His documentary film, entitled "Lock Up/Lock Down," was released by the Discovery Channel in the Year 2000.

E. Defendants Deny Media Interviews with So-Called "Level 5 Longtermers" although These Prisoners Enjoy Privileges Similar to Those of Prisoners in Death Row General Population

41. Prisoner Plaintiffs Hasan, LaMar and Robb are considered to be "Level 5A Longtermers," but that term is not defined in the Ohio Administrative Code or in any ODRC policy.

42. Policy 53-CLS-01 IV defines "Restricted Population" as "privilege levels of 4A, 4B, 4AT, 5A and 5B, which do not permit congregate activity to the same degree as lower levels of security."

43. Level 5A Longtermers enjoy privileges not available to other prisoners on Levels 5 or 4. On information and belief, 5A Longtermer privileges are comparable to privileges enjoyed by prisoners in General Population at the Chillicothe Correctional Institution such as Plaintiff Skatzes. Level 5A Longtermers enjoy privileges that are greater than those available to prisoners on Level 4A particularly with regard to recreation/out-of-cell time, visits, and commissary.

a. Congregate recreation/out-of-cell time. Level 5A Longtermers are entitled to one hour of outdoor recreation, or one and three quarters hours out-of-cell time, with one other Level 5A Longtermer every day, and *two congregated recreation periods on Tuesdays and Fridays*. Level 4As are entitled to recreation seven days per week but they do not regularly get two recreation periods on the same day.

b. Visits. Level 5A Longtermers are allowed *greater visiting privileges* than Level 4As. Level 5A Longtermers are permitted contact visits with family and friends, including young children, as often as two days per week for as long as six hours. During such contact visits, the prisoner is tethered to the floor with a chain for security. Unlike Level 4As, on days when they are not entitled to contact visits, Level 5A Longtermers can have semi-contact visits in booths that have an opening such that the visitor can hold the prisoner's hand or share food from the nearby vending machines. According to the Ohio State Penitentiary Inmate Handbook, "Level 5A Long term inmates are permitted three (3) visits per month by each approved visitor *five (5) hours semi contact or Full Contact*. They may also schedule *full day visits* with each approved visitor providing the spot is open." "Level 4A inmates are permitted a total of *three (3) four (4) hour full contact, or non-contact* visits per month per visitor."

c. Commissary. Level 5A Longtermers can shop *every week*. Other prisoners shop every 2 weeks or twice a month. The spending limit for Level 5A Longtermers is *\$70 per week*. The

spending limit for Level 4As is *\$100 every two weeks*. Since early 2011, the 5A Longtermer commissary list has been expanded to make it similar to the death row commissary list and the privilege of ordering sundry and food packages is similar to death row.

44. Section 5120-9-16 of the Ohio Administrative Code provides that media interviews will be visually monitored to assure the reporters' safety. If media interviews were to take place in the large visiting area at the Ohio State Penitentiary, safety precautions could be implemented similar to those that are implemented during contact visits with family and friends of Level 5 Longtermers, or were implemented when death row prisoners were interviewed by the media at OSP.

45. Defendants' experience with other death-sentenced prisoners who enjoy privileges similar to those afforded Level 5A Longtermers demonstrates that interviews by media with Level 5A Longtermers would not pose a risk to the safety and security of the prison or to the media.

F. Conclusion

46. Defendants have consistently denied media access to any and all prisoners convicted of crimes during the Lucasville uprising, no matter where such prisoners are confined or at what level of security, and regardless of the severity of the crimes for which they were convicted. Media representatives have been permitted to interview many other death-sentenced prisoners during the same period. The reasons offered by Defendants for this discriminatory and inconsistent pattern of decision-making are not authorized by the Ohio Administrative Code and are based on the anticipated content of interviews.

FIRST CAUSE OF ACTION – CONTENT BASED DISCRIMINATION

Defendants Have Denied All Media Requests to Interview Prisoner Plaintiffs because of the Anticipated Content of the Interviews in Violation of the First and Fourteenth Amendments to the United States Constitution

47. Plaintiffs reallege Paragraphs 1-46 as if fully stated herein.

Count I

48. A *de facto* ban on all individual interviews with prisoners who took part in the Lucasville events is for the sole purpose of limiting public discussion of the Lucasville prison uprising in 1993 in violation of the First and Fourteenth Amendments to the United States Constitution.

49. Requests to interview individual prisoners involved in the Lucasville events, no matter where such prisoners are confined or at what level of security, were denied because of what it was anticipated they would say to reporters. Said restriction violates the Plaintiffs' rights under the First and Fourteenth Amendments.

Count II

50. Policies 01-COM-09 VI(E)(11)(e) and 01-COM-13 VI(D)(12)(e) explicitly state, "Interviews will only be permitted when the inmate is speaking about their offense or a topic not related to prison policy or procedure."

51. Permitting inmate interviews only when the inmate is speaking about his or her offense, and not about prison policy or procedure is a prior restraint based solely upon the anticipated content of the interviews. Said restrictions are therefore unconstitutional *on their face* as a violation of the First and Fourteenth Amendments.

Count III

52. Policies 01-COM-09(VI)(A)(5) and 01-COM-13(VI)(D)(1) vest in the Director, or his designee, unfettered discretion to approve or deny all requests for media interviews. This unfettered discretion allows for content-based discrimination at the whim of the Director, or his designee.

53. Policies 01-COM-09 and 01-COM-13 do not provide for any appeal process when a request for a media interview is denied. Said policies are therefore unconstitutional on their face because they provide for no adequate administrative remedy.

54. Because the above policies vest the Defendant Director with unfettered discretion to grant or deny media interviews for any reason including the anticipated content of the speech, without providing for any appeal process, the above policies are unconstitutional on their face under the First and Fourteenth Amendments of the United States Constitution.

Count IV

55. Defendants' policies and practices permit media interviews to some prisoners convicted of serious or violent offenses while denying media access to all prisoners convicted of offenses during the Lucasville uprising. Defendants treat prisoners involved in the Lucasville offenses differently from other prisoners convicted of serious or violent offenses. Such discrimination based upon the content of the Plaintiffs' speech violates the First and Fourteenth Amendments to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment.

56. As set forth in Paragraph 21, above, between the years 2000 and 2010 Defendants have approved and facilitated a total of at least twenty-three media interviews, prior to a scheduled execution date, with at least eight prisoners. Sixteen or more such interviews were approved for a single high profile prisoner, Kenneth Richey.

57. Criteria such as safety and security considerations, nature of the offense for which the offender is incarcerated, disciplinary history, potential impact on victims or staff, did not prevent the following media interviews from being granted:

a. As set forth in Paragraph 21(d), above, France TV was granted approval to interview John Fautenberry for a documentary on serial killers and criminal psychology;

b. As set forth in Paragraph 21(f) above, Frank Spisak, a neo-Nazi convicted of three homicides was interviewed by WJW-TV.

58. The only plausible reason for the Defendants' granting media access to prisoners the likes of Frank Spisak and denying similar access to these Plaintiffs is the desire to stifle public discussion of the 1993 Lucasville prison uprising.

SECOND CAUSE OF ACTION – NO RATIONAL BASIS FOR RESTRICTIONS

Defendants' Policies and Decisions Denying All Media Requests to Interview Prisoners Convicted of Crimes During the 1993 Lucasville Uprising Have No Rational Basis, and Therefore, Violate Both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution

59. Plaintiffs reallege Paragraphs 1-58 as if fully stated herein.

Count V

60. As recited in Paragraph 20 above, numerous requests for media interviews were submitted and denied as the twentieth anniversary of the 1993 Lucasville uprising approached.

61. Defendants frequently stated that prisoners on security level 5 are not permitted interviews. This criterion is plainly pretextual:

a. Administrative Rule 5120-9-16 states that it is the policy of the Department of Rehabilitation and Correction to permit visits by representatives of the news media, subject to

reasonable restrictions (such as the number of reporters, frequency, length and time of personal interviews, and monitoring to assure the reporters' safety).

b. All the prisoners interviewed by documentary filmmaker James Lipscomb for his documentary film "Lockup/Lockdown" were confined in Ohio's super-maximum security prison at the highest level of security (now Level 5).

c. Plaintiff George Skatzes is not on Level 5. Yet media requests to interview Plaintiff Skatzes were summarily denied along with the requests to interview other prisoners.

d. Policy 01-COM-09 VI(E)(10) states, and Policy 01-COM-13 VI(D)(11) prior to July 8, 2013 stated, that in order to be eligible for a media interview, inmates must be in general population, not in protective control, local control, disciplinary control, security control, initial reception, or a mental health residential setting. However none of those exclusionary categories apply to any of the Prisoner Plaintiffs.

e. Policy 01-COM-13 VI(D)(11), death row media policy, revised July 8, 2013, states that in order to be eligible for a media interview, inmates must not be in a restricted population as defined by Policy 53-CLS-01. Policy 53-CLS-01 III explicitly states that it does not apply to Level 5 inmates.

f. Policy 53-CLS-01 IV defines "Restricted Population" as referring to privilege levels 4A, 4B, 4AT, 5A and 5B, which do not permit congregate activity to the same degree as lower levels of security. However, Level 5 Longtermers are permitted congregate activity with other 5A Longtermers, and they are permitted more hours of congregate activity per week than prisoners on Level 4A.

g. As Level 5A Longtermers, Plaintiffs Hasan, LaMar, and Robb, are allowed visiting and commissary privileges not available to other Level 5 prisoners and, in some instances, more than provided to prisoners on Level 4A.

62. The concern expressed by Defendants about the “safe operation of the facility” is also plainly pretextual:

a. Administrative Rule 5120-9-16 (D)(2) provides for visual monitoring of personal interviews to assure the reporters’ safety.

b. Policies 01-COM-09 and 01-COM-13 provide for termination of the interview if a disruption or disturbance should occur or should the media representative fail to adhere to the guidelines established for the interview.

c. As Level 5A Longtermers, Plaintiffs Hasan, LaMar and Robb are permitted privileges inconsistent with a conclusory concern about safety inasmuch as, among other privileges, they are allowed full contact visits twice a week and their visitors sometimes include young children.

d. Plaintiff Skatzes is allowed contact visits with family and friends on Death Row at the Chillicothe Correctional Institution.

63. Because the existing regulations, policies, and practices including requirements for officer presence, prisoners tethered by a chain to the floor, and interview termination, adequately address Defendants’ putative concerns, Defendants’ denials of media access to these Plaintiffs are devoid of any rational basis or legitimate state interest. The denials thus violate the due process clause of the Fourteenth Amendment to the United States Constitution.

Count VI

64. Permitting media access to some inmates while denying media access to these Plaintiffs, discriminates against these inmate Plaintiffs. Said discrimination against these

Plaintiffs is devoid of any rational basis and is without any legitimate state interest, thus violating Plaintiffs rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION – UNREASONABLE RESTRICTIONS ON MEDIA AND PUBLIC ACCESS TO INFORMATION

Restrictions on Interviews with Individual Prisoners Impact the Right of the Public to Have Access to Information and Such Restrictions on Speech Violate the First and Fourteenth Amendments to the United States Constitution

65. Plaintiffs reallege Paragraphs 1-64 as if fully stated herein.

Count VII

66. The opportunity for journalists to engage individual prisoners in face-to-face, on-camera interviews implicates the free speech rights of journalists, prisoners, and the public. In pursuing and carrying out such interviews, representatives of the media act as agents of the public.

67. In-depth, face-to-face, on-camera interviews are essential to adequate and fair reporting. There is no alternative practice that would fully accommodate Plaintiffs' constitutional rights because this form of interview has unique communicative properties.

68. Defendants have exercised their discretion to suppress speech in a certain form and from a particular point of view in violation of the First and Fourteenth Amendments.

69. Defendants' total ban on media access to in-person interviews of prisoners implicated in the 1993 Lucasville uprising is an unconstitutional policy and practice designed to prevent public access and discussion of the content of the Lucasville events.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray this Honorable Court for the following:

1. A Declaratory Judgment that Defendants have violated Plaintiffs' constitutionally protected rights to media access, in violation of the First and Fourteenth Amendments, by:
 - a. denying all media requests to interview Prisoner Plaintiffs because of the anticipated content of the interviews;
 - b. denying all media requests to interview prisoners convicted of crimes during the 1993 Lucasville uprising based upon policies and decisions that have no rational basis; and,
 - c. unreasonable restrictions on media and public access to information.
2. Plaintiffs seek a Preliminary and Permanent Injunction prohibiting Defendants from denying in-person media access to inmates involved with the Lucasville prison uprising, and requiring that if Defendants wish to deny a particular request for such access, they must provide a specific, factual basis for denying the particular request and notice of an opportunity to appeal the denial, with a right to an evidentiary hearing before the Court.
3. An award of attorney fees, pursuant to 42 U.S.C. section 1988, and costs.
4. Such other relief as this Court deems necessary to protect Plaintiffs' constitutional rights under the First and Fourteenth Amendments.

Respectfully submitted,

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