

ATTACHMENTS

EXHIBIT

1

**In the United States District Court
for the
Western District of Texas**

MICHAEL CUELLAR

v.

MICHAEL D. BERNARD, ET. AL.

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SA-13-CV-91-XR

ORDER

On this day came on to be considered Cuellar's Motion for Preliminary Injunction (docket no. 4).

Background

Michael Cuellar is a former employee of the City of San Antonio. He began his employment with the City in August 2011 as a temporary contract coordinator in the Fire Department. He became a full-time employee on December 10, 2011.

On January 24, 2012, Heidi Heridia, a City of San Antonio employee "witnessed Mr. Cuellar lose his temper and threaten physical violence upon other coworkers." Ms. Heridia thereafter completed a "Violence in the Workplace Report" on February 1, 2012. The report stated that Cuellar threatened to strangle and kill employees in the purchasing office because his requests had not yet been processed. The report also stated that other co-workers had noted that Cuellar becomes agitated and "worked-up about issues." From January 24 through February 10, 2012, Cuellar's supervisor, Claude Overman, witnessed "emotional and threatening behavior" by Cuellar and reported the conduct to management officials. On February 10, 2012, Deputy Fire Chief Noel Horan and Deputy Fire Chief Cari Wedige met with Cuellar to discuss Cuellar's "actions and outbursts that were causing several other employees to be fearful of him." Cuellar

was given the option of resigning his employment, in lieu of his probationary employment being terminated. All parties agree that Cuellar tendered his resignation.

Several months later, from June 25 through August 14, 2012, Cuellar began sending to the City various requests under the Texas Public Information Act for "all" emails (apparently without regard to content or subject) sent by the individuals identified above. Cuellar was provided some documents by the City and on August 7, Cuellar contacted by social media at least one employee identified in the documents stating: "I hope it was worth betraying a friend."

On or before August 20, 2012, Cuellar send an open records request to the City seeking documents related to the use of credit cards being used by a Fire Chief, payments made towards a lease or office space used by a staff psychologist and retirement pay being issued to former Deputy Fire Chief Nimm Kidd.

Sometime during August various deputy Fire Chiefs and the Fire Chief met with the City Attorney and/or Police Chief and expressed concerns that Cuellar posed a safety threat to employees. Other than recount what transpired some six months earlier, no new information regarding Cuellar being a safety threat was provided.

On August 31, 2012, Police Chief McManus and City Attorney Bernard decided to issue a notice of Criminal Trespass¹ pursuant to Texas Penal Code § 30.05.² The notice was effective immediately and would remain in effect until such time as Cuellar was notified in writing that the prohibitions would be lifted. The notice was served upon Cuellar on September 4.

¹ The notice stated, in part, that Cuellar was "not to enter or remain on certain City-owned or City leased properties and buildings." The notice identified the following buildings as prohibited: Fire Department Headquarters located at 115 Auditorium Circle, Public Safety Headquarters at 315 S. Santa Rosa, the Fleet Logistics Center at 4531 S. Zarzamora, another Fire Department building located at 300 S. Callaghan, City Hall, and the Municipal Plaza Building.

²(a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person: (1) had notice that the entry was forbidden; or (2) received notice to depart but failed to do so.... (d) An offense under this section is: (1) a Class B misdemeanor...."

On October 10, 2012, Cuellar filed ethics complaints³ against various city employees regarding their use of suites in the Alamodome and Cuellar filed additional ethics complaints against other city employees regarding a former deputy city manager negotiating employment with an entity called Centro Partnership.⁴

Plaintiff filed his Complaint pursuant to 42 U.S.C. § 1983 in this Court on February 11, 2013, almost six months after the notice of criminal trespass was issued. In the Complaint, Cuellar alleges that the City, City Attorney, and Police Chief, by issuing the notice are violating his First Amendment rights to peacefully assemble, petition his government, and seek redress for grievances. Plaintiff alleges that the policy of banning him from City Hall constitutes a prior restraint on his First Amendment rights and also constitutes impermissible viewpoint discrimination and retaliation⁵ for his previous First Amendment activity. Further, he alleges that he possesses a liberty interest in being able to enter City Hall and the Municipal Plaza Building and the bar deprives him of procedural or substantive due process.

Standard for Preliminary Injunction

A movant must satisfy each of four traditional criteria in order to be entitled to a preliminary injunction: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest. *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279,

³ Pursuant to Section 141 of the City Charter any person who believes there has been a violation of the City's ethics laws may file a sworn complaint with the City Clerk. The City's Ethics Review Board has the jurisdiction to review such a complaint.

⁴ Notwithstanding the Notice of Criminal Trespass, Cuellar was invited to attend the Ethics Review Board hearing and make a statement. Cuellar voluntarily chose not to attend. Cuellar's testimony on the witness stand that he was unaware that he could attend is directly contradicted by his email dated November 11, 2012.

⁵ Cuellar alleges that the ban caused him the loss of a subsequent opportunity to work as a contract employee for the City. Ironically, while Cuellar presents himself as a private citizen watchdog patrolling corruption at City Hall, Cuellar was using his girlfriend, a City employee, to direct the outside vendor to offer him this contract employment. Cuellar and his girlfriend kept the outside vendor in the dark about their relationship.

288 (5th Cir. 2012). A preliminary injunction is an extraordinary remedy that “should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements.” *Planned Parenthood Ass'n of Hidalgo Cnty. Tex., Inc. v. Suehs*, 692 F.3d 343, 348 (5th Cir. 2012) (quotation and citation omitted).

A. Substantial Likelihood of Success on the Merits

I. 1983 Claims

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). Here, neither side disputes that Defendants were acting under color of state law. Thus, the Court must determine whether Defendants violated a right secured by the Constitution.

a. First Amendment Violation

i. Restriction of Access to City Hall

The Supreme Court has used a three-step approach to determine whether a First Amendment right has been violated. The first step is to determine whether the claim involves protected speech, the second step is to identify the nature of the forum, and the third step is to assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard. *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985).

Here, Plaintiff alleges that he is being deprived of “his right to freedom of expression, including through expressive conduct, to peaceably assemble, and to freely petition for redress of grievances under the First Amendment.” Plaintiff’s right to freedom of expression is protected by the First Amendment. The Court therefore proceeds to the second inquiry.

“For First Amendment purposes, ‘[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue.’” *Chiu v. Plano Independent School Dist.*, 260 F.3d 330, 344 (5th Cir. 2001) (per curiam) (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 44 (1983)). The Supreme Court has distinguished between traditional public forums, designated public forums, limited public forums, and non-public forums. *See id.* at 344-47.

The state’s efforts to exclude speakers from traditional and designated public forums “are subject to rigorous first amendment scrutiny.” *Chiu*, 260 F.3d at 344. “For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” *Perry*, 460 U.S. at 45. “The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” *Id.*

Case law supports a finding that public meetings constitute designated public fora. *See, e.g., Mesa v. White*, 197 F.3d 1041, 1044 (10th Cir. 1999); *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989) (“[T]he city commission designated their meeting a public forum when the commission intentionally opened it to the public and permitted public discourse on agenda items.”). Thus, in this case, to pass constitutional muster the ban on Plaintiff must, among other requirements, be narrowly tailored.

There is no indication that the ban has been narrowly tailored. The criminal trespass notice completely bans Plaintiff’s presence at City Hall and the Municipal Plaza Building at all times and for all purposes. At least one federal court of appeals opinion supports a finding that

banning an individual from speaking at a city council meeting constitutes a First Amendment violation. See *Surita v. Hyde*, 665 F.3d 860 (7th Cir. 2011) (holding that a mayor violated an individual's First Amendment rights when the mayor intentionally barred the individual from speaking at a city council meeting).

ii. Prior Restraint

"When public officials are given the power to deny use of a forum in advance of actual expression or association, the danger of prior restraints exists." *Collins v. Ainsworth*, 382 F.3d 529, 539 (5th Cir. 2004). "[A] system of prior restraint avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system." *Id.* (quoting *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975)). "It is thus clearly established that if public officials abuse their discretionary power to deny in advance use of a forum for First Amendment—protected expression without enacting proper safeguards, this constitutes an impermissible prior restraint." *Id.*

Here, there is no evidence that any procedural safeguards were employed when determining whether to issue the criminal trespass notice. Defendants rely on *Hill v. Colorado*, 530 U.S. 703 (2000), for support of their argument that the criminal trespass notice is not a prior restraint because the notice only regulates the place where Plaintiff's speech may occur rather than the content of what Plaintiff may say. However, in *Hill*, the Supreme Court noted that under the statute at issue in that case, "no channel of communication [was] foreclosed" and "[n]o speaker [was] silenced." *Id.* at 734. In this case, by contrast, a channel of communication—to wit, Plaintiff personally speaking at the city council meeting—is being completely foreclosed.

b. Fourteenth Amendment Violation

i. procedural due process

“To establish a violation of the Fourteenth Amendment’s guarantee of procedural due process, a plaintiff must prove that (1) he was deprived of a life, liberty, or property interest (2) without the process that was due.” *Saucedo-Falls v. Kunkle*, 299 F. App’x 315, 319 (5th Cir. 2008) (per curiam) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 & n.3, 542 (1985)). “At a minimum, due process requires that notice and an opportunity to be heard ‘be granted at a meaningful time and in a meaningful manner.’” *Gibson v. Texas Dept. of Ins.—Div. of Workers’ Compensation*, 700 F.3d 227, 239 (5th Cir. 2012) (quoting *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)); see also *Systems Contractors Corp. v. Orleans Parish School Bd.*, 148 F.3d 571, 575 (5th Cir. 1998) (“At a minimum, notice and a hearing are required before an individual may be deprived of his property or liberty interests.” (emphasis added) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976))). “[T]he specific process due in a particular situation is found by balancing three factors: (1) the private interest that will be affected by the official’s actions, (2) the risk of an erroneous deprivation of that private interest and the probable value, if any, that additional procedural protections would provide, and (3) the interest that the government seeks to achieve.” *Systems Contractors Corp.*, 148 F.3d at 575.

Courts have held that individuals have a liberty interest in being in a public place of their choice. See *City of Chicago v. Morales*, 527 U.S. 41 (1999) (plurality opinion) (“[I]t is apparent that an individual’s decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is a part of our heritage” (citations and internal quotation marks omitted)); *Kennedy v. City of Cincinnati*, 595 F.3d 327, 336 (6th Cir. 2010) (holding that the plaintiff had a liberty interest “to remain in a public place of his choice”); *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (holding that the plaintiffs

“have a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that are open to the public generally”).

Here, Plaintiff has an interest in being in City Hall during publically accessible hours and to exercise his First Amendment rights. There is no indication that Plaintiff was afforded a meaningful opportunity to be heard before the criminal trespass notice was issued that deprived him of this interest.

ii. Substantive Due Process

“To establish a violation of the Fourteenth Amendment’s guarantee of substantive due process, a plaintiff must prove that (1) he was deprived of a life, liberty, or property interest (2) in an arbitrary and capricious manner.” *Saucedo-Falls v. Kunkle*, 299 F. App’x 315, 319 (citing *Moulton v. City of Beaumont*, 991 F.2d 227, 230 (5th Cir. 1993)). “[I]n order to state a viable substantive due process claim the plaintiff must demonstrate that the state official acted with culpability beyond mere negligence.” *McClendon v. City of Columbia*, 305 F.3d 314, 325 (5th Cir. 2002). “[O]nly the most egregious official conduct can be said to be arbitrary in the constitutional sense.” *Id.* (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

Neither side discusses the issue of substantive due process in their briefs and the Court need not address the issue in order to reach its holding on Plaintiff’s motion for a preliminary injunction.

B. Irreparable Injury

Defendants argue inasmuch as Plaintiff waited for almost six months prior to filing this lawsuit, he cannot establish any irreparable injury that demands extraordinary relief at this stage of the proceedings. Although Plaintiff may have decided to forego challenging his First Amendment rights during that period, the Supreme Court has stated that the “loss of First

Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Palmer v. Waxahatchie Independent School Dist.*, 579 F.3d 502, 506 (5th Cir. 2009).

C. Balancing

Defendants argue that Cuellar poses a threat to the safety of its employees. No doubt that Cuellar has acted rudely and has been verbally abusive towards some of his fellow employees; however, the Defendants have failed to tender any persuasive evidence that Cuellar poses any physical threat. While employed at the City, Cuellar was not placed on leave or punished, and no law enforcement officer was summoned to the workplace. Cuellar was not discharged, but rather allowed to resign in lieu thereof. He did not attempt to reenter his former work site. Cuellar, however, has engaged in behavior that is either sophomoric or constitutes more than a nuisance to those law enforcement officials charged with guarding our elected officials.⁶

On the other side of the scale, Plaintiff is being deprived of rights afforded to him by the First Amendment.

D. The Injunction will not Disserve the Public Interest

As indicated above, the Defendants argue that Cuellar poses a threat to the safety of its employees. The Defendants rely upon this same concern for their argument that granting a preliminary injunction would disserve the public interest. Again, however, the Defendants have not produced any persuasive evidence demonstrating that Cuellar formerly posed a physical threat or poses a physical threat at this time.

⁶ Cuellar sought fingerprints, photographs and ingress/access data and times of various officials. He testified he sought this information as a watchdog to ensure that officials were working. The Court finds this testimony unpersuasive. Indeed, Cuellar later admitted the requests were overly broad and improper and now understands how his requests could have been misconstrued by officials.

Conclusion

In light of the foregoing, the Court finds that Plaintiff has satisfied each of the prerequisites for obtaining a preliminary injunction. Accordingly, Plaintiff's motion for a preliminary injunction is GRANTED.

Defendants are enjoined from enforcing the criminal trespass letter during the pendency of this litigation. Plaintiff may access city premises as an ordinary member of the public would do. However, Plaintiff is not afforded any greater access by this ruling.

SIGNED this 27th day of March, 2013.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

EXHIBIT

2



San Antonio
Police Department

Offense Code #	Incident Type	CPS Number
SAPD 167336	INCIDENT	SAPD-2011-0702697
Primary Offense		Page 2 of 2
Date / Time Occurred		Date / Time Reported
7/22/11 21:27 to 7/22/11 23:15		7/22/11 23:16

Offense Legend

O1 = FODDRILL, JOHN

Offense Description

While assigned to the Mental Health Detail, Officer J. Smarro, #483, and I were requested by SARIC to meet with O1 and conduct a mental health assessment of him. We went to his listed residence and talked with O1 for more than an hour and a half. O1 is very concerned that he has pointed out "approximately \$4M of fraud a year involving telephone bill payments that occurred over the last 20-25 years and no one will investigate it." O1 is bitter that he "was the employee of the month five months after he started working for COSA and then they fired him four months later after he 'blew the whistle' on his boss and the misappropriation of City funds."

O1 did not display any signs of mental illness nor was he a danger to himself or others. O1 seemed to be very credible and had documentation to substantiate his accusations. O1 stated he was very frustrated with his inability to reach anyone within the city to help him out with his complaints. O1 has been without a job for approximately 5 years and feels the city is preventing him from being able to get employment elsewhere. We all agreed that my partner and I were not the solution for him on this evening and our reason for meeting with O1 was to rule out or find any potential mental illness. O1 was given our card, as well as our city phone information. O1 cautioned us on making a report about this but was glad we were there to listen to him.

EXHIBIT

3

Report of Telephone and Internet threats

Members of the hacker group Anonymous and Occupy San Antonio have made threats over the Internet and via telephone calls in an effort to stop law abiding citizens from reporting and exposing public and police corruption. The phone call originated in Nova Scotia, Canada and the written threats were posted on the Internet. Computer accounts have been attacked as well.

The person/persons who made the threatening phone call are unknown but Anonymous is implicated. Persons who made the Internet threats are members of Anonymous and Occupy San Antonio and some are Administrators for the groups' websites.

Persons who made Internet threats:

Edd Aske
Kevin Gonzales
Raye Penber

Persons of interest:

Meghan Owen
A person going by the false name Serpentitis Kingsley
Rebecca Coffey
Rob Quijano
Kassandra Allbright
Joseph Blandford
Rosa Martinez
A person using the name Alyda Asmodeus
San Antonio City Councilman Diego M. Bernal
Others

On October 9, 2011 In an effort to help hide criminal activity inside our city/county government Occupy San Antonio "leaders" deleted all information detailing public/police corruption, banned me from the official website and stated that Councilman Bernal knows all about me and that law enforcement has records on me as a "local loon".

On October 12, 2011, my wife and I were awakened to receive a threatening phone call at 3:01 AM. The caller identified him/herself as the "voice of Anonymous". This call stated that I have been warned to leave City Councilman Diego M Bernal alone and to stop investigating - reporting the corruption. The call originated in Canada. SAPD Officer Soto - Badge # 9739 created Case# SAPD 11261976 concerning the phone threat. The AT&T Annoyance Call Bureau created a report.

On October 13, 2011 a threatening message was posted on Facebook by Kevin Gonzales – “You Jelly? Get at me Bro!” He also posted the messages “stop spreading lies about SAnonymous or else this is going to get worse.” And “come at me bro.”

Raye Penber posted the online message “Come at me, bro” and other comments.

During the predawn hours of October 18, 2011 members of Anonymous and Occupy San Antonio communicated via Facebook with City Councilman Diego M Bernal. They openly discuss the three decades of public/police corruption that Bernal/the City/SAPD conspire to hide. They paint me as a moron, paranoid, stupid and a threat to Councilman Bernal/his staff. Occupy/Anonymous members ask if Councilman Bernal if can notify the authorities. Councilman Bernal does nothing to dispel the untrue allegations that I am a threat or mentally unstable and actually joins in the charade. Rather than protect an innocent citizen’s rights he feeds the group with his comments supporting their mob mentality declaring me a paranoid threat. This is not an isolated incident but one of many acts by Bernal to cover up criminal activity inside the City by making me appear insane and a threat to him and others knowing both “facts” are untrue.

On November 2, 2011 the San Antonio City Council was addressed during the “Citizens To Be Heard” portion of the weekly Council meetings. A video was made of the presentation and posted online at <http://www.youtube.com/watch?v=-LbPQNVotVA>.

Members of Occupy and Anonymous discuss this video, they post defamatory slurs, Anonymous site administrator Edd Aske posts an online Internet threat on Facebook in regard to the video and access to the Facebook page is immediately denied.

On 11-16-2011 at approximately 4 pm Edd Aske posted the following threat on Facebook “also next time i would let you know not to put that pic up. sanonymous has already told you we will come after you if you continue. understand old man”. On November 17, 2011 Officer Walker- badge # 9721 created Case # SAPD 11287895 concerning the online Internet threats. I was directed to contact SAPD Homicide (210-207-7635) after five days.

Photos, Facebook addresses and Occupy/Anonymous site information is attached.

I am concerned for my safety and the safety of my family members. My son – John E. Foddrill Jr. - lives just blocks from my home with his wife and four year old daughter. At times other young children are present in our homes. I fear that these violent persons may attack him and his family intentionally or by mistake and may cause harm to my family members, my granddaughter and other children.

John E Foddrill Sr.

EXHIBIT

4

John E. Foddrill Sr.
9650 Limestone Pond San Antonio, TX 78254 210-824-3502

.4/8/2013 postal service and email

Mr. Edward L. Pina- Attorney
8118 Datapoint Drive
San Antonio, Texas 78229-3268

Thank you for your phone call. I'm sorry I wasn't home but got your message.

I again ask:

1. I beg you to refund my \$2800 ASAP. I can use the money to head off current efforts to foreclose on my home. . I have less than 30 days to save my home. When I saw Michael walk out of Federal Court with Stanton's arm around him and heard TCRP attorney Harrington speak to the press I realized that this should have been me back in 2010 - almost 3 years ago.
2. I beg you to help me find an attorney to handle my federal civil rights lawsuit that is almost identical to Michael Cuellar's suit being handled by TCRP. Attorney Stanton said that Malinda Gauß is a great attorney deliberately ignoring the "fraud upon the court" in 2009 and her refusal to expose the subornation of perjury and perjury committed to hide numerous crimes by City persons. TCRP told Michael to stay away from me as I lack credibility - another lie. I am not the one lying and helping the City / County hide massive fraud and theft. Doing a balancing act fighting the City while at the same time helping them hide decades of corruption inside the SAFD, SAPD, etc. is just plain crazy.

Please send me a letter with any plans to assist me with the lawsuit and to expose the criminal activity by City attorneys/witnesses/ officials/ employees. I beg you to enclose a check for \$2800.

Maybe you should retract your recommendation that Kathleen forget about informing the court of the criminal acts of City attorneys and others back in February 2009 when they defrauded our judicial system and hid the theft/fraud that I got fired for reporting. ? Maybe now we should expose the "fraud upon the court" of February 2009 that the City / County has kept secret with their illegal ban of 45 long months?

Thank you.

John

Cc: Kathleen, TCRP board members

EXHIBIT

5

VOICEMAIL
EXTENSION-110

E-MAIL ADDRESS
epina@arielhouse.com

EDWARD L. PIÑA
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

THE ARIEL HOUSE
8118 DATA POINT DRIVE
(At Fredericksburg Road)
SAN ANTONIO, TEXAS 78229-3268

TELEPHONE
(210) 614-6400

FACSIMILE
(210) 614-6401

April 8, 2012

VIA FIRST CLASS MAIL AND E-MAIL TO FODDRILL@SWBELL.NET

John E. Foddrill
9650 Limestone Pond
San Antonio, Texas 78254

**RE: JOHN F. FODDRILL
V.
CITY OF SAN ANTONIO
CONFIDENTIAL AND PRIVILEGED COMMUNICATION**

Dear Mr. Foddrill,

This will follow up on my call to your home on April 5, 2013. Thank you for your letter of March 28, 2013. Please review once again my letter to you dated December 12, 2012 wherein I summarized my legal reasoning.

In short, I agree with your issue regarding your unconstitutional ban from city hall and other municipal properties but not with your insistence on relitigating issues that were the subject of your prior lawsuit. (I do understand that you do not regard your issues as having been previously litigated. The problem is I believe res judicata or collateral estoppel apply.)

I have previously informed you that I cannot make decisions for the ACLU of San Antonio, or ACLU of Texas or ACLU National. If you want them to consider your case then go to ACLUTX.org and complete your application on-line.¹

With regard to paragraph 3 of your letter, please be sure that I do not regard the Texas Civil Rights Project's 2011 Human Rights Report as "embarrassing to [me]."

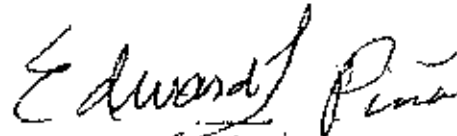
I am willing to represent you on your current case which you filed pro se in federal court but as I have stated in my prior letters this needs to be focused on your ban from City Hall and other municipal properties. I need your assurance that you will allow me to make litigation decisions.

¹ The ACLU has undergone a significant reorganization in the past few years. This includes the way cases are reviewed as well as the manner in which litigation decisions are made. I have no control over this but I will, of course, work with the ACLU or the Texas Civil Rights Project if they take your case.

I have enclosed an accounting of some of the time I have tracked on your case; much of my time has been untracked.

Please schedule an office conference so we can discuss this further. Should you have any questions please do not hesitate to schedule an appointment by contacting me at the address or telephone number indicated on this letterhead. If I am not readily available, we will certainly return your call.

Very truly yours,



EDWARD L. PIÑA
Attorney at Law

ELP/ea
Enclosure

Edward L. Piña
Attorney At Law
Edward L. Piña & Associates, P.C.
The Ariel House, 8118 Datapoint Drive, San Antonio,
Texas 78229

Invoice submitted to:
John E. Foddrill
9650 Limestone Pond
San Antonio, TX 78254

April 08, 2013

Invoice #11702

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
5/9/2011 Review email from client re: correspondence to Constable Vojdovich	0.25 200.00/hr	NO CHARGE
5/11/2011 Email to client re: recent correspondence	0.60 200.00/hr	100.00
Legal Research	0.80 200.00/hr	160.00
5/18/2011 Correspondence to Michael Bernard, City Attorney Third Request for Withdrawal of Written Criminal Trespass Warning	0.85 200.00/hr	170.00
8/29/2011 Office conference and Telephone conference with former city councilman	0.52 200.00/hr	104.00
9/28/2011 E-mail from Client	0.20 200.00/hr	NO CHARGE
10/24/2011 Review email from Kathleen Cassidy Goodman, Atty	0.50 200.00/hr	NO CHARGE
Review email from Kathleen Cassidy Goodman, Atty	0.50 200.00/hr	NO CHARGE
10/28/2011 Review email from client re: open investigation	0.25 200.00/hr	50.00
11/3/2011 Review email from client re: City council meeting (YouTube video)	0.40 200.00/hr	NO CHARGE
Review email from client re: City council meeting	0.25 200.00/hr	50.00

	<u>Hrs/Rate</u>	<u>Amount</u>
11/3/2011 Review email from client re: citizens to be heard	0.25 200.00/hr	NO CHARGE
12/1/2011 Review email from client re: SAPD reports	0.50 200.00/hr	100.00
12/8/2011 Email to client re: whistleblowers	0.50 200.00/hr	100.00
12/11/2011 Legal Research	1.00 200.00/hr	200.00
12/17/2011 Review email from client re: additional docs	0.40 200.00/hr	80.00
12/18/2011 Review email from client to Michael Barajas	0.25 200.00/hr	50.00
12/19/2011 Review email from client re: threats	0.50 200.00/hr	100.00
5/7/2012 Case review	0.80 200.00/hr	NO CHARGE
10/7/2012 Review email from client re: attorney misconduct	0.25 200.00/hr	NO CHARGE
10/15/2012 Review email from client re: color of law crime	0.25 200.00/hr	50.00
11/27/2012 Review correspondence from client re: investigations	0.75 200.00/hr	150.00
11/28/2012 Review email from client re: SACurrent article	0.25 200.00/hr	NO CHARGE
12/7/2012 Review correspondence from client to Senator Wentworth	0.50 200.00/hr	NO CHARGE
12/12/2012 Correspondence to client re: legal issues	1.80 200.00/hr	360.00
12/14/2012 Review email from client to Frank Garza re: request to attend board meetings	0.25 200.00/hr	50.00
Review email from client to Dan Ramos re: Occupy/Anonymous members	0.25 200.00/hr	NO CHARGE
Review email from Kathleen Cassidy Goodman, Atty	0.50 200.00/hr	NO CHARGE

	<u>Hrs/Rate</u>	<u>Amount</u>
12/17/2012 Review email from client re: radio interview	0.25 200.00/hr	50.00
Review email from client re: request to attend board meetings	0.25 200.00/hr	50.00
Review email from client re: request to attend ethics hearings	0.25 200.00/hr	50.00
12/18/2012 Review email from client re: radio interview	0.25 200.00/hr	50.00
Email to client re: radio interview	0.25 200.00/hr	50.00
12/19/2012 Review email from client re: recent PD indictments	0.25 200.00/hr	50.00
12/27/2012 Review email from client to FBI	0.25 200.00/hr	50.00
12/28/2012 Review email from client to FBI	0.30 200.00/hr	NO CHARGE
12/31/2012 Review email from client	0.25 200.00/hr	50.00
Review email from Allen Eliebracht re: email	0.25 200.00/hr	NO CHARGE
1/4/2013 Review email from client re: Chief McManus	0.50 200.00/hr	100.00
1/10/2013 Review email to Dan Ramos	0.25 200.00/hr	NO CHARGE
Review email to Joshua Baugh, ExpressNews	0.25 200.00/hr	NO CHARGE
Review email to David Martin Davies, Michael Barajas, and Elaine Wolff	0.25 200.00/hr	NO CHARGE
1/17/2013 Review email from client to SACurrent	0.25 200.00/hr	50.00
Review email from client to Keith Barger	0.25 200.00/hr	50.00
1/21/2013 Review email from client to Fox News	0.25 200.00/hr	50.00

EXHIBIT

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POLICE MISCONDUCT IN SAN ANTONIO

**THE NEED FOR MORE ACCOUNTABILITY,
TRANSPARENCY, AND RESPONSIVENESS**



A TEXAS CIVIL RIGHTS PROJECT 2011 HUMAN RIGHTS REPORT

ACKNOWLEDGMENTS

WE ARE INDEBTED TO JOANNE HEISEY, RYAN NOVOTNY, ELOISE SANTA MARIA, DEREK MILLER, MELISSA RODRIGUEZ, KEVIN BLODGETT, JANINE WETZEL, AND NICHOLAS JACKSON, WHO COLLABORATED ON THE RESEARCH AND WRITING OF THIS REPORT.

Special thanks to the many organizations and individuals who contributed their knowledge, insight, and stories to this report, including:

Jaime Martínez, Founder, Cesar E. Chavez Legacy and Educational Foundation

Henry Rodriguez, Civil Rights Chair, and George Alejos, Housing Council, LULAC of Texas

M. Lynn Blanco, Miriam Elizondo, Carmen Vasquez, Deana Buri, and Sherrill Case, The Rape Crisis Center in San Antonio

Patrick Filyk and Edward Piña, Attorneys, former Presidents, ACLU San Antonio chapter

Ruby Krebs, former President, San Antonio Gender Association, member of SAPD Citizen Action Advisory Board

Mario Salas, Adjunct Professor, University of Texas at San Antonio, civil rights leader, and author

Jack Ryan, Captain (Ret) Providence, RI Police Department, Co-Director of Legal & Liability Risk Management Institute, Attorney

Timothy Maher, Associate Teaching Professor of Criminology and Criminal Justice, University of Missouri-St. Louis

Elena Guajardo and Dee Villarrubia, Texas Stonewall Democratic Caucus

Oliver W. Hill, President, NAACP of San Antonio

Margo Frasier, Austin Police Monitor



Texas Civil Rights Project
The Michael Tigar Human Rights Center
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Austin, TX 78741

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(512) 474 5073 (phone) (512) 474 0726 (fax)

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Executive Summary

A string of incidents in the past few years has revealed a troubling pattern of misconduct by San Antonio police officers, ranging from illegal searches and sexual misconduct to unresponsiveness and indifference to victims. The thread connecting these incidents is the fact that better supervision, accountability, and transparency by SAPD could have prevented them. The Texas Civil Rights Project has documented many of these events, discovered through media reports, accounts from community members, SAPD records, and its own intake process.

A review of SAPD's response to many of these incidents shows that misconduct is often addressed too late — after an officer does something egregious, and too late for the department to try and remedy the officer's dangerous habits and tendencies. SAPD itself has commissioned a number of independent auditors to study some of these issues. To its credit, some changes are beginning to take place, though many reforms have not yet been considered, fallen by the wayside, or have yet to be implemented.

This report discusses a departmental culture that protects its own and is unwelcoming of supervision. Citizens report a variety of problems in dealing with the police, often when they are the victims and especially when they attempt to lodge complaints against the police. Internal Affairs' policies and practices create a hostile environment for individuals reporting possible police misconduct. The agency also suffers from a serious lack of transparency that impedes public scrutiny, and many roadblocks protect officers against the possibility of serious repercussions for most of their actions.

SAPD's current police chief, William McManus, has made efforts to move the department in the right direction by listening to citizens' concerns and pushing for changes. In order to encourage continued improvement on this front, this report provides forty-one (41) specific recommendations that address institutional problems in SAPD's culture, training, and policies. The recommended changes focus on the following areas:

- improving the investigation of citizen complaints through greater autonomy for investigators and providing better information and follow-up for complainants;
- increasing supervisor accountability for misconduct by subordinates when the supervisor fails to report or address it;
- facilitating supervisors' oversight of police officers through the creation of standardized disciplinary guidelines and better monitoring of officers' job performance;

EXHIBIT

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John E. Foddrill Sr.
9650 Limestone Pond San Antonio, TX 78254 210-824-3502 1-22-2013

Attorney Kathleen Cassidy Goodman certified mail 7012 3050 0001 5440 5362
12274 Bandera Road, Suite 228
Helotes, TX 78023

Edward L. Pina certified mail 7012 3050 0001 5440 5379
8118 Datapoint Drive
San Antonio, Texas 78229-3268

Attorney David L. Willborn certified mail 7012 3050 0001 5440 5386
9310 Broadway Bldg. II Ste. 201
San Antonio, Texas 78217

Super Lawyer Malinda Gaul certified mail 7012 3050 0001 5440 5393
924 Camaron
San Antonio, TX 78212

57th District Court Judge Arteaga certified mail 7012 3050 0001 5440 5409
100 Dolorosa
San Antonio, Texas 78205

SA13CV0051XR has been filed in Federal court as I have been banned from City Hall / public Council meetings and otherwise harmed when the City/County has tried to cover up long-term criminal activity. The Texas Civil Rights Project is filing a lawsuit for Michael Cuellar who like me was banned with no reason, time limit, due process, etc.

Each of you have been named in SA13CV0051XR because you possess proof that City attorney Deborah Klein, attorney Mark Kosanovich and others presented a "fraud upon the court" financed with tax dollars in an effort to hide three decades of criminal activity inside the City when the billing account – the "variable" –, the Avaya telephone contract and other means were used to illegally gain access to tens of millions of dollars with no competitive bidding, public review, Council vote, ordinance, etc. The record shows that attorney Gaul withheld material evidence from the Court including CIO Varn's deposition, AD 6.12, city emails, city reports, MI docs, etc. Many documents are "Bates Stamped" proving that ALL attorneys knew of their existence and that the court was being defrauded. You have proof that the funds were used to fuel criminal schemes including the theft of up to \$200,000 via "padded" invoices submitted and approved by IT manager Medina and city vendor Gonzaba – mail/wire fraud. You have proof that illegal no-bid contracts with huge mark-ups were steered to "friends"-contract fraud. You have proof of massive fraud where millions of dollars a year were falsely written off in official audits/reports/statements as monthly Centrex phone bill payments when in reality the public/grant funds were spent on non-telephone and non-grant related purchases never approved by Council-grantors-taxpayers –grant fraud/accounting fraud. You have proof that City persons submitted known false statements to state/federal representatives an effort to hide the crimes – a felony. You have proof that official statements submitted by auditors contain false information and omit material information in an effort to hide the criminal conspiracy from underwriters, investors, the SEC and taxpayers –bond fraud.

As officers of the Court you have a responsibility to report the criminal conspiracy. To date numerous requests begging that you follow the law, the Rules, etc. have been ignored.

Cc: DOJ Contreras – 7011 2970 0003 1115 4392, DOJ Leachman -7011 2970 0003 1115 4422, DOJ Giese-7011 2970 0003 1115 4415, DOJ Roomberg-7011 2970 0003 1115 4408, Gannon/Grant Thornton LLP – 7011 3500 0002 4211 2470, TPR/KSTX, Texas Ranger Chief Dendy – 7012 3050 0001 5440 5416, media

EXHIBIT

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THE ARIEL HOUSE
8118 DATAPOINT DRIVE
(At Fredericksburg Road)
SAN ANTONIO, TEXAS 78229-3268

May 18, 2011

VIA FACSIMILE TO (210) 207-4004 AND FIRST CLASS MAIL

Michael Bernard
City Attorney
City of San Antonio
100 South Flores
San Antonio, Texas 78205

**RE: JOHN E. FODDRILL
REQUEST FOR WITHDRAWAL OF
THIRD WRITTEN CRIMINAL TRESPASS WARNING**

Dear Mr. Bernard:

On September 13, 2010 I met with you and your First Assistant City Attorney regarding John F. Foddrill, who received a letter from your office dated July 1, 2009. As you will recall the letter is also signed by Chief of Police William P. McManus¹.

The letter states in pertinent part as follows:

1 "you are not to enter or remain on certain city-owned or city-leased property or building. The notice is made pursuant to section 30.05 (criminal trespass) of the Texas Penal Code.

You are prohibited from entering or remaining in San Antonio City Hall.

You are prohibited from entering or remaining in the Municipal Plaza building...

You are prohibited from entering or remaining in that portion of the Public Safety Building occupied by the Information Technology Services Department...

You are prohibited from entering or remaining in that portion of the River View Towers building that is occupied by the offices of the City of San Antonio...

These prohibitions shall remain in effect until you are notified in writing, by someone with authority to act on behalf the City of San Antonio that these prohibitions have been lifted."

During our meeting you informed me that you would withdraw your letter of July 1, 2009 and that the prohibitions would be lifted and that you would send me a letter to this effect in the near future. I still have never received your letter.

This criminal trespass warning has been in effect for twenty two (22) months. If you are renegeing on your promise to withdraw your letter prohibiting Mr. Foddrill from coming upon the City property described in your letter then I need to know this. I will need for you to provide me with copies of any documents or evidence you have relied upon for issuing this criminal trespass warning to Mr. Foddrill.

Should you have any questions or require further information please do not hesitate to contact me at the address or telephone number indicated on this letterhead. If I am not readily available, I will certainly return your call.

Very truly yours,



EDWARD L. PIÑA
Attorney at Law

/gs
Enclosure

c.c John E. Foddrill

EXHIBIT

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Citizens Against Public Corruption Waste Fraud and Abuse
9650 Limestone Pond San Antonio, TX 78254 April 22, 2013

City Clerk certified mail 7012 3050 0001 5440 5539
P.O. Box 839966
San Antonio, TX 78283

Mayor Castro , City Manager Sheryl Sculley, Councilpersons - David Medina, Saldana, Ozuna, Taylor, Bernal, Soules, Chan, Williams, Cris Medina, Lopez (individual letters - P.O. Box 839966 San Antonio, TX 78283)

Reference: Request to attend public Council Meetings and meet with elected officials in City Hall without being banned and/or arrested AND request for full, transparent, independent investigations

All;

Members of our group would like to attend public meetings and enter City Hall but fear that City Attorney Michael Bernard, Police Chief William McManus and others may make an attempt to arrest former City Telecommunications Manager John E Foddrill Sr. or members of our group in an effort to justify their illegal, unconstitutional act of banning him for almost four years to silence his reports of public/police corruption.

We ask that as our elected officials you publicly condemn the actions of City Attorney Michael Bernard, Police Chief William McManus and others who supported their efforts to violate our Constitution and other laws. We ask that you immediately terminate Bernard and McManus and call for an independent, transparent review of the criminal conspiracy to cover up years of public /police corruption. Bernard, McManus and others have violated the rights of at least two law-abiding citizens and have subjected the City and taxpayers to federal lawsuits because of their illegal acts. In the past month since US District Judge Rodriguez ruled against the City not one official/employee has come forward to address the consequences of the ruling, the underlying reports of criminal activity by City persons or the impact on investigations / cases / arrests / trials / testimony etc. by Bernard, McManus, SAPD, etc. The City's failure to investigate the reports of corruption, failure to discipline / restrain employees, failure to terminate the employees masterminding the conspiracy, etc. makes it appear as if you accept the practices and that you refuse to take any action to ensure that law-abiding citizens won't be banned in the future if they report criminal activity inside the City.

We ask that an official investigation be created to address the Texas Open Meeting Act violations that occurred since July 1, 2009. Each week elected officials, Bernard, City Manager Sheryl Sculley and others participated in illegal meetings violating the TOMA. The City had no grounds to ban law-abiding citizens and in July 2011 an official SAPD report published by Officer Bandoske reiterated the fact that former City Telecommunications Manager Foddrill was not a threat and was not mentally ill. In spite of the fact that City officials had no proof of any threat but did indeed have an official report to the contrary they continued to participate in illegal meetings while Mr. Foddrill was forced to stand outside. He stood outside on the night of November 2, 2011 when citizen Allen Ellebracht addressed the Council begging for protection from terroristic threats by supporters of Councilman Diego M Bernal directed at the Foddrill family. He stands outside today - still fearing retaliation and arrest.

We would appreciate the support of ALL our elected officials and City employees but will gladly work with just one honest, ethical City official willing to step up and follow the law, the City Charter, the Texas Open Meeting Act and our Constitution. Thank you.

Cc: media, TCRP, ACLU, Bexar County DA Reed, DPS Major Alexis, FBI agent Fernandez, US Attorney Pittman

EXHIBIT

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John E. Foddrill Sr. for CAPCWFA
9650 Limestone Pond San Antonio, TX 78254 210-824-3502

.5-29-2013 certified mail 7010 3090 0002 7075 2036 and email

Councilman Cris Medina
P.O. Box 839966
San Antonio, TX 78283

City Councilperson / Reserve LT USAF Cris Medina;

You have ignored repeated efforts to communicate with you concerning public/police corruption, grant fraud, accounting fraud, theft of public funds, oppression, Open Meeting violations, bond fraud and other illegal acts.

You ignored all efforts to meet/speak with you since taking office while you helped City Attorney Bernard and others hide public/police corruption. You ignored reports of the illegal ban imposed by Bernard to hide the crimes issued on July 1, 2009, a raid on the homes of law-abiding citizens by armed police in an effort to harass them into silence on July 4, 2011, reports of terroristic threats to frighten whistleblowers into silence by Councilman Bernal's supporters in late 2011 and other pleas for assistance/protection. On March 27, 2013 US District Judge issued a ruling that found a criminal trespass warning issued to law-abiding citizen Michael Cuellar to be illegal and unconstitutional forcing Bernard to lift the ban against Michael and myself. Since this time you still refuse to communicate with me, follow the law and provide citizens with protection so that City Attorney Bernard, Chief McManus and others cannot harass, arrest or ban us when we attend public meetings or meet with elected officials in City Hall.

You recently ignored certified mail and other letters. You ignored emails of 4/2, 4/3, 4/4, 4/8, 4/11, 4/12, 4/16, 4/18, 4/24, 4/27, 4/29, 5/2, 5/7, 5/9 and 5/10. You ignored telephone calls to your office on 4/23, 5/28, etc. as no meetings have been scheduled and calls are not returned. A certified letter of April 22, 2013 to the City Clerk (with individual copies mailed to you and other Councilpersons) was also ignored. This letter details how citizens believe that corrupt employees/officials will continue in their efforts to hide the criminal activity we have reported and will continue to take action against us in an effort to keep the crimes hidden.

We ask that you schedule a meeting with us, call a press conference, call for an open transparent investigation into the criminal activity and hold the criminals accountable. We ask that you provide assurances/ protection for law-abiding citizens reporting the corruption so that we can safely attend public meeting with no fear of arrest.

Enclosure: certified letter of 4/22/2013

cc: media , etc.