

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-2406-RPM

David MILLARD, Arturo VEGA and Eugene KNIGHT  
**PLAINTIFFS**

v.

Michael RANKIN,  
**DEFENDANT**

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**PLAINTIFFS' CLOSING ARGUMENTS BRIEF**

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The Plaintiffs, by and through their undersigned counsel, hereby submit their closing arguments brief.

It is undisputed that the three Plaintiffs are required to register on the Colorado registry pursuant to CRS 16-22-103. They must continue to register until a state court judge grants a petition to deregister. Only Mr. Vega is eligible to petition for an order to discontinue the requirement for registration pursuant to CRS 16-22-113. Mr. Millard and Mr. Knight were adults when they committed their offenses, and Mr. Vega was thirteen. None of the Plaintiffs are in sex offender treatment, on probation or parole or are incarcerated any longer. All Plaintiffs have successfully completed and been discharged their sentences for their underlying sex offenses. None of the Plaintiffs have ever committed or even

been credibly suspected of having committed a new sex offense (or even a new offense having an underlying sexual basis) after discharging their sentences for which they were convicted and required to register on the Colorado sex offender registry.

The Colorado sex offender registry is a public record, maintained by the Colorado Bureau of Investigations (“CBI”), and it is this public record that violates the Plaintiffs’ Eighth and Fourteenth Amendment rights. This registry is the only place where all sex offender convictions are publically collected and published; and the registry contains all the information (except photographs) of the juvenile sex offenders as well as the adult sex offenders. Plaintiffs’ exhibit 6 is Mr. Vega’s criminal history record that is publically released upon request and upon the payment of the fee. The fact of Mr. Vega’s juvenile adjudication for sex offenses is not in exhibit 6. Therefore, no member of the public, including prospective landlords and employers could find out about this sex offense if not for the sex offender registry. Because Mr. Vega had a juvenile adjudication for sex offenses, his sex offender registration information does not appear on the CBI website. CRS 16-22-111(1) and (1.5). However, that information will be released upon request to the public by means other than the internet. See CRS 16-22-110(6). Private companies obtain this information pursuant to CRS 16-22-110(6) and the republish on private websites. While Mr. Vega’s information is not on any of these private websites; Mr. Millard’s and Mr. Knight’s registration information is. See Plaintiff’s exhibit 1.

Without the CBI sex offender registry and release of information pursuant to CRS 16-22-110, it would be virtually impossible for a private entity to compile the same information as is currently publically available from the sex offender registry maintained by the CBI. In order to put together the same type of data bank, a private entity would have to examine all the tens of thousands of felony case files, in all 58 Colorado Counties, and then painstakingly put together a list of just the persons who have been convicted of sex offenses -- and without the information from the sex offender registry, certain information would still not be available: such as the offenders' photographs and current residential addresses. The CBI witnesses testified that there is no other data base for convicted felons, or lists or data bases of people convicted in Colorado of other felonies, other than sex offenses. If someone wants to obtain a map of the addresses of all registered sex offenders in a particular neighborhood, that is easy to obtain through the sex offender registry. However, if someone wants to obtain a map of all convicted felons, parolees or addresses used to distribute or manufacture illegal drugs, there is no place to obtain that information.

The sex offender registry also collects and publishes convictions for failure to register as a sex offender; and this information is posted on the internet by the CBI even if the underlying sex offense was a juvenile adjudication. Because Mr. Vega has s misdemeanor conviction for failure to register this is reflected in his CBI criminal history (see Plaintiffs' exhibit 6). Therefore, even though his juvenile adjudication for the underlying sex offense is not on his criminal history, it is easy for members of the public (including landlords, employers and neighbors) to

discover his status as a sex offender since his status as a registered sex offender and his adult conviction for failure to register are publically available.

Mr. Millard testified about the vigilantism and harassment he experienced in the last as a result of being on the sex offender registry. He has been harassed by various individuals who have found out that he is on the registry. He does not know their names. He has had things written on his car, in ink on his windshield. Four years ago when he lived off Nassau Ave in Denver, his car was defaced by the words in ink "sex offender." Neighbors, who found out he was on the registry, shouted "sex offender" at him when he was outside. Before he lived with his mother, he lived at 2240 S. Quebec in Denver, and someone shot a bullet through the unit below him.

Before he purchased the home where he now resides, he had to rent. When Mr. Millard was first convicted, he was evicted from his apartment he was renting after the Arapahoe County Sheriff Detective went to the apartment complex and told management that Mr. Millard was a registered sex offender. He had trouble finding a new place to rent because of his status as a registered sex offender, had to live with his mother for a while, and finally rented an apartment at 8330 East Quincy Avenue, Denver Colorado 80237. He was never asked whether he was a convicted felon or on the sex offender registry when he filled out rental applications. He was evicted after Channel 7 News did an investigative news story on the evening news (Plaintiffs' exhibit 9). Channel 7 investigated several large apartment complexes in Denver, including the complex at 8330 East Quincy Ave., and checked the names of residents against the sex

offender registry. Mr. Millard's name appears on the Channel 7 news report on the list of names of tenants on the sex offender registry. Mr. Millard was evicted, even though he always paid his rent and never caused any problems for his landlord or neighbors. Where he lives now, his once friendly neighbors no longer talk to him. Either they googled his name and his status as a registered sex offender was discovered on the internet, or one or more neighbors discovered his status because of the administrative searches conducted by the sex offender unit of his local police department. The local police are required to conduct periodic inspections to insure that registered sex offenders are residing at the addresses where they are registered. Unfortunately, the police conduct these inspections in a manner that is calculated to lead to neighborhood discovery. The police do not knock on the door of a registered sex offender during hours when one would expect the offender to be at home; instead they come during the day when the offender is at work. When the offender is not at home, rather than leaving an inconspicuous note, they leave a large and bright pink or yellow hang tag instructing the offender to contact the sex offender unit. This results in the neighbors finding out that a sex offender is residing in the neighborhood. This is especially true in apartment complexes, where the doors are close together and/or one has to walk down a hallway past neighbors' doors to get to one's own front door. When people find out Mr. Millard is on the registry, because that information is easily found on the internet and various iphone and other apps, people stop talking to him, stop making eye contact, and avoid him. There is a complete change in their tone and body language. It is very lonely and isolating.

Mr. Millard obtained a job at Albertson's after he was convicted and while he was on probation. He disclosed the fact of his felony conviction on his application but was still hired. He lived in fear of either customers, coworkers or his superiors finding out that he was a registered sex offender. That did finally happen during the pendency of this lawsuit when a disgruntled subordinate found him on the sex offender registry and notified Mr. Millard's superiors. An investigation was done, and Mr. Millard was allowed to keep his job but was transferred to another store. He was given a name tag with only his first name, to minimize the chances of a customer or someone else finding his name on the sex offender registry. However, he was informed that if customers found out his status as a registered sex offender, that he would lose his job. Mr. Millard never engaged in any action in the workplace that would justify his termination.

Mr. Knight is prohibited from stepping foot upon Denver Public Schools (DPS) property because he is a registered sex offender, and *for no other reason*. He has never been accused of committing any offense toward any DPS student or employee, whether a sex offense or otherwise, and the only reason why he was barred in the first place is because he is a sex offender and other parents found him on the registry and complained to DPS. DPS does not do criminal background checks on parents, and there is no mechanism in place to systematically search for registered sex offenders among parents of students. The Principal of his children's elementary school admitted that she was directed to bar him from DPS property even though he never committed an offense against any DPS student or employee, based on the fact that his conviction was

discovered through the sex offender registry. He was initially barred for the 2014-15 school year (Plaintiffs' exhibit 10), and received similar bar letters for the 2015-16 and 2016-17 school years.

Mr. Vega has also suffered as a result of the registry and lost a job when he was employed through Herman Miller (a furniture company) who had a contract with Raytheon, a government contractor in 2013. Mr. Vega was doing his work at the Raytheon premises when one day his supervisor approached him and told him that he had to surrender his badge and leave the premises because he was on the sex offender registry. Once his presence on the sex offender registry was discovered, Herman Miller Workplace Resources has never extended to him another employment opportunity. He has inquired about or filled out job applications for government contracting jobs but was informed that he was unqualified once the fact he is a registered sex offender was discovered. The only criminal offenses that show up on Mr. Vega's CBI criminal history are the failure to register conviction and alcohol related driving offenses. Coworkers with DUIs were not fired from their jobs.

Mr. Vega twice petitioned to be removed from the sex offender registry, since he successfully completed his sentence as a juvenile offender. However, since he cannot prove that he completed offense specific treatment while he was incarcerated at Lookout Mountain, the Jefferson County courts have denied his petitions. It is undisputed that Mr. Vega served his sentence and was successfully discharged from his parole. His inability to produce his sex offender treatment records is through no fault of his own; Lookout Mountain has destroyed

all their documentation. The Jefferson County District Attorney testified that it is the policy of his department that a sex offender prove that he is at low risk to reoffend by either a new offense specific evaluation or proving successful completion of sex offender treatment. This impermissibly shifts the burden of proof to a juvenile offender (such as Mr. Vega) to prove that he is *not* a risk and removing him from the registry will not adversely impact public safety, rather than leaving the burden of proof on the prosecution opposing the petition to prove that the juvenile offender poses an identifiable risk to public safety such that his petition to discontinue sex offender registration should be denied. See CRS 16-11-113(1)(e).

The experiences of other witnesses who testified in person or by deposition are what the Plaintiffs are afraid could happen to them. For example, Mr. Millard lives in fear that one day he will be assaulted or worse or fired from his job if his status as a registered sex offender is discovered by his coworkers, customers or neighbors.

Donald Morris is legally blind and has to use a cane. When he successfully discharged his ten year prison sentence for video voyeurism and one count of one image of child pornography, he moved to Denver in July 2012. He has completely discharged his sentence and is only required to register as a sex offender. He moved to the Shepard's Motel, 1525 Valencia Street, one of the few rental locations in Denver that will rent to registered sex offenders. No other landlord in Denver would rent to him after discovering that he is on the sex offender registry. On Sunday September 28, 2014, Mr. Morris was assaulted



and beaten by vigilantes, in the courtyard of the Shepard's Motel. His eye was reinjured and his cane was broken. The vigilantes told him that he was being assaulted because he was a sex offender. The wife of the apartment manager called the police. However, when the Denver police arrived, they ignored the vigilante bullies and instead zeroed in on Mr. Morris. Officer Gentry (badge number 97008) ignorantly determined that Mr. Morris was committing a crime because he was present in a courtyard where children were present. There is no Colorado law that provides that sex offenders cannot be present where children are present. This is the same mistake made by the people "reporting" Mr. Knight; they also made the assumption that since he is on the sex offender registry, then it must be illegal for him to be at places where children are present. There is no such Colorado law. When Mr. Morris arrived at the sex offender unit on September 29, the officer in charge did not understand why he had been directed to report, and told Mr. Morris he could go home. Mr. Morris had to struggle to get there. It was a cold day, and he only had bus fare to get to the police department, not get all the way home. He had to walk home, in the cold, a blind man with his stick. He had to walk all the way from Cherokee Street back to the Shepard's Motel, which took hours. He has two bad knees and he had to walk at a very slow pace.

Jurgita Meyer is married to a registered sex offender. Unlike many wives, she decided to stay with him rather than divorce him. She is Lithuanian, and has a degree to teach from Universities in Lithuania. After marrying Mr. Meyer, she got a job teaching in a Catholic School, where she worked as a middle school

teacher for four years. After her husband was convicted, he had to register at the police station every year. She went to the police with him where he had to fill in the registration form for the first time. She noticed then that his registration form had a section where he was required to write information about her: her full name, occupation and the place where she works. The detective who was in charge of sex offenders' registration was a parent of some students who were going to the same school she worked at. She had not taught the detective's children as they were in lower grades and Mrs. Meyer didn't recognize her. Though she did recognize Mrs. Meyer saying that she was a teacher in her kids' school and she remembered Mrs. Meyer. Very shortly after this, Mrs. Meyer was called by her principal to go to the priest's office right away where she met with the school's principal and the priest. She was asked if she knew why she was called and then they explained that they received information on her husband's offense. They asked her why she didn't tell them about her husband and she defended herself by saying that she shouldn't be punished for her husband's actions. She was then asked if she was going to leave him, and said "no". Mrs. Meyer had to explain herself to them why she was not divorcing her husband. She was threatened that if her husband would be seen around the school they would call police and he would be arrested. Mrs. Meyer explained that her husband had rules and regulations he had to live according to his probation, and that he had never been or was planning to come to school. Mrs. Meyer was interested in how they got the information on her husband and if it was provided by one of the parents who was a police officer. Neither principal nor priest

wanted to provide her with the answer. They both told her that the Archdiocese was going to review the situation and it would decide on her fate as a teacher in this catholic school. She was asked why she did not divorce her husband. In addition they mentioned that the Archdiocese wrote a letter to be sent to students' parents mentioning her husband as a sex offender with his full name and address. (The school is about 7 miles from Mrs. Meyer's home, and there is a long list of sex offenders who live close by the school, though only her husband's name and address were mentioned in the letter.) Mrs. Meyer was told that this letter was already reviewed by principal and some teachers and approved to be sent to the parents. Mrs. Meyer was shown the letter and when she asked to be allowed to keep it, this request was refused. After the meeting Mrs. Meyer was sent home for an undetermined time. She was told that she would be called with more information. Mrs. Meyer was asked several times by her students what her husband's name was and where she lived. One day when she was doing some yard work at home, in her front yard, a student that she taught along with his mother approached her saying that they were just going for a walk in the neighborhood. Mrs. Meyer knew that that this student lived several streets away from her home and she had never seen him around her home before he received the letter. She was terminated two years later when the detective's children became old enough to be her students. Mrs. Meyer's students had the highest test scores in the school, and she was only terminated when it was time for her to teach the detective's own children. She engaged in no conduct that would justify her termination. Additionally, her husband never

came to the school where she taught or engaged in any conduct toward any school student or employees that would justify publically humiliating Mrs. Meyer by telling the parents of all of her students that she was married to a registered sex offender.

Sabine Flannery is a licensed attorney in Colorado and lived in Castle Pines. She became friends with a registered sex offender who was paroled in 2012. She got to know him when he did landscaping at her house, and then she helped him set up his own landscaping company. He did work for many of her neighbors, and they were pleased with the quality of his work. All of that changed when their relationship became more intimate and he moved into Ms. Flannery's house. He had to register as a sex offender at her house, and one of her neighbors received an "alert" from a private company that tracks sex offenders that a new sex offender had moved into the area. Ms. Flannery and her sex offender friend were harassed by the neighbors. The neighbors held neighborhood meetings to discuss his personal information and agree on strategies for trying to force him out of the neighborhood. They contacted Ms. Flannery by phone, text, Facebook, email, US mail, and in person pressuring her to attend their neighborhood meetings, explain her rationale for having him move in, explain his history, and even to have him come to such a neighborhood meeting and explain himself and be willing to answer their questions. When Ms. Flannery learned that certain neighbors had begun alleging to others that her friend was "looking at" their children Ms. Flannery contacted the local police. Ms. Flannery requested they come and meet with her. When they came, Ms.

Flannery provided details about what the neighbors had been doing and asked for the assistance of the police to make sure the neighbors were clearly informed of her friend's rights, and to ask that they desist from activities aimed to still up fear and create tension and pressure on him to leave. Ms. Flannery's concern was that the neighbors would falsely accuse him of doing things in violation of his parole that would cost him his freedom. Her friend was arrested for violating his parole (for being in possession of a "smart" phone), but even after he was arrested and was no longer living at my house, my neighbors continued to ostracize Ms. Flannery and make her life very miserable. People who had previously been friendly towards her and even offering to help her on many occasions, now did things like crossing to the other side of the street rather than walk past the front of her home, they sent her anonymous nasty letters complaining about random aspects of her personal life, and even left piles of dog poop wrapped in paper on her door step. Ms. Flannery finally was left with no option but to sell her house and move. She left the Castle Pines area and relocated to Lakewood in March of 2015.

Government officials misuse the information found on the CBI website when formulating public policy. For example Englewood City Council member Rick Gillit found information about Brian Brockhausen on the sex offender registry and misinterpreted it to mean that Mr. Brockhausen was a sexually violent predator, which was not true. Mr. Gillit later corrected his mistake, but not before the City of Englewood became embroiled in City Council meetings regarding what types of residency restrictions should be placed on registered sex

offenders living in the City of Englewood. Mr. Brockhausen, a paroled sex offender has been quietly living in his parents' residence since his parole and has done nothing by his presence to put residents of the City of Englewood at risk of harm. The City of Englewood residency restriction means that only a handful of addresses in the City can be occupied by a registered sex offender. The wife of another paroled sex offender, Krystal Toner, testified that if her husband is no longer able to reside in the City of Englewood because of Englewood's residency ordinance, then they will have trouble finding replacement housing in the metro area. Englewood is where there is affordable houses and apartments for rent, and Mrs. Toner could not find another place to rent outside the City of Englewood (that would otherwise be approved by her husband's parole officer as not being in the line of sight of a school or other place where children congregate) that would be of a comparable size and price as the house they are currently renting in Englewood.

Since this case was filed in 2013, there have been opinions in other cases that support the Plaintiff's position that their constitutional rights are violated by the continuing punitive effect of the Colorado sex offender registry. In *Doe v. Snyder*, 834 F.3d 696, 705 (6<sup>th</sup> Cir 2016), the Sixth Circuit ruled that the Michigan sex offender registration and residency statute violated the US Constitution. *In re Taylor*, 343 P.3d 867 (CA 2015) California Supreme Court ruled that residency restrictions on sex offenders violates substantive and procedural due process. While the Colorado sex offender registration statute does not include restrictions on where sex offenders may live, the analysis regarding how these purported

administrative restrictions on sex offenders is in fact punishment in violation of the Fourteenth Amendment.

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Respectfully submitted,

*/s/ Alison Ruttenberg*

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CERTIFICATE OF SERVICE

I hereby certify that I have, January 9, 2017, served the foregoing upon all parties via electronic service through the PACER ECF system, with service to all counsel of record

*/s/ Alison Ruttenberg*