

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JOHN DOE,

Plaintiff,

v.

Civil Action No.: 09-004455

COURT SERVICES & OFFENDER

SUPERVISION AGENCY

633 Indiana Avenue, NW

Washington, DC, 20004

DISTRICT OF COLUMBIA

1350 Pennsylvania Ave, NW

Washington, DC, 20004

ERIC H. HOLDER, Jr., Attorney General

U.S. Department of Justice

950 Pennsylvania Ave., NW

Washington, DC, 20004

JOHN ROE MPD OFFICER

Metropolitan Police Department

300 Indiana Ave., NW

Washington, DC, 20001

Defendants.

NOTICE OF FILING OF NOTICE OF REMOVAL OF A CIVIL ACTION

To: John Doe (through his below counsel)

Arthur B. Spitzer, Esq.

Frederick Mulhauser, Esq.

Carl Takei, Esq.

American Civil Liberties Union

1400 20th Street, NW, Suite 119

Washington, DC 20036

District of Columbia

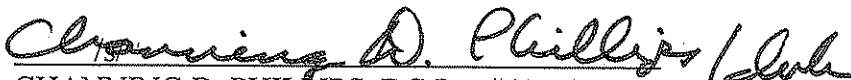
1350 Pennsylvania Ave, NW

Washington, DC, 20004

John Roe MPD Officer
Metropolitan Police Department
300 Indiana Ave., NW
Washington, DC, 20001

PLEASE TAKE NOTE that on June 29, 2009, the Federal Defendants, that is, the Court Services & Offender Supervision Agency and Eric H. Holder, Jr., through counsel, filed with the Clerk of the United States District Court for the District of Columbia a Notice of Removal of the above-captioned case, pursuant to 28 U.S.C. §§ 1441, 1442(a)(1), and 1446. The Superior Court of the District of Columbia "shall proceed no further unless and until the case is remanded." See 28 U.S.C. § 1446(d). A copy of the Notice of Removal of a Civil Action (and attachments) are attached hereto.

Respectfully submitted,



CHANNING D. PHILLIPS, DC Bar #415793

Acting United States Attorney

/s/ 

RUDOLPH CONTRERAS, D.C. Bar #434122

Assistant United States Attorney

/s/ 

CHRISTOPHER B. HARWOOD

Assistant United States Attorney

United States Attorney's Office

Civil Division

555 4th Street, N.W.

Washington, D.C. 20530

(202) 307-0372 (phone)

(202) 514-8780 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing *Notice of Filing of Notice of Removal of a Civil Action* has been made by electronically filing with CaseFileXpress and by mailing a copy via U.S. mail to Plaintiff (through counsel) addressed to:

Arthur B. Spitzer, Esq.
Frederick Mulhauser, Esq.
Carl Takei, Esq.
American Civil Liberties Union
1400 20th Street, NW, Suite 119
Washington, DC 20036

and to co-Defendants:

District of Columbia
1350 Pennsylvania Ave, NW
Washington, DC, 20004

John Roe MPD Officer
Metropolitan Police Department
300 Indiana Ave., NW
Washington, DC, 20001

on this 29th day of June, 2009.

/s/ 

CHRISTOPHER B. HARWOOD

CA Form 1

Superior Court of the District of Columbia
CIVIL DIVISION

500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

JOHN DOE

Plaintiff

Civil Action No. 2009 CA 4455 B

vs.

COURT SERVICES + OFFENDER SUPERVISION
AGENCY, ET AL. Defendant

SUMMONS

To the above named Defendant: U.S. ATTORNEY'S OFFICE ON BEHALF OF C.S.O.S.A.

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m.; Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

CARL TACEI

Name of Plaintiff's Attorney

ACLU OF THE NATIONAL CAPITAL AREA

Address

1400 - 20TH ST NW, STE. 119

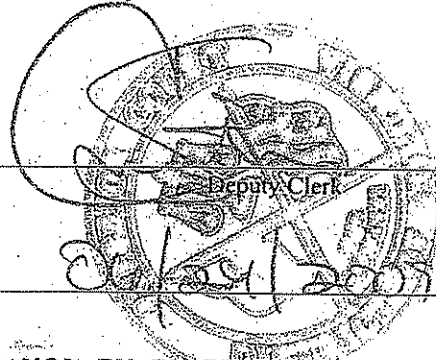
WASHINGTON, DC 20036

Telephone

202-457-0800

By

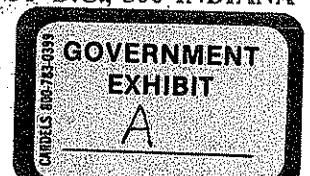
Date



PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JOHN DOE,

Plaintiff,

v.

COURT SERVICES & OFFENDER SUPERVISION AGENCY

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JOHN ROE MPD OFFICER

Metropolitan Police Department

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Defendants.

No. 0004455-09

COPY

RECEIVED Civil Clerk's Office JUN 19 2009 Superior Court of the District of Columbia Washington, D.C.

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COMPLAINT

Plaintiff John Doe alleges, on knowledge as to himself and his own acts and on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. The Court Services and Offender Supervision Agency (CSOSA) improperly listed Plaintiff John Doe as a sex offender, as a result of which his name, home address, work address, photograph, and other identifying information were posted on the DC Sex Offender Registry website. This lawsuit seeks to undo the damage done by that action and to ensure that it will not

recur. Because the sex offender provisions of the federal Adam Walsh Act were a cause of that improper action, this lawsuit also seeks to ensure that Plaintiff will not be subject to those provisions, which exceed the Commerce Clause powers of Congress, violate the Ex Post Facto Clause, and violate the Double Jeopardy Clause of the United States Constitution.

JURISDICTION

2. This Court has subject matter jurisdiction over Plaintiff's claims under D.C. Code § 11-921(a).

PARTIES

3. Plaintiff John Doe is an adult resident of the District of Columbia. His true name has been disclosed to the Court in a sealed filing.

4. Defendant Court Services & Offender Supervision Agency is an independent federal agency created by the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105-33, § 11233 (1997). At all relevant times, the actions or omissions of CSOSA officials described herein were made under color of law and within the scope of their employment.

5. Defendant District of Columbia operates and governs the Metropolitan Police Department (MPD) pursuant to the laws of the District of Columbia. At all relevant times, the actions or omissions of MPD officials described herein were made under color of law and within the scope of their employment.

6. Defendant Eric H. Holder, Jr. is the Attorney General of the United States. He is sued in his official capacity.

7. Defendant John Roe MPD Officer is an unknown official employed by MPD, the identity of whom is presently unknown to Plaintiff. This official is sued in his or her individual

capacity. At all relevant times, the actions or omissions of John Roe described herein were made under color of law and within the scope of his or her employment.

FACTS

John Doe

8. On December 18, 2006, Plaintiff pled guilty, in the U.S. District Court for the Eastern District of Virginia, to a single count of possessing a visual depiction of a minor engaging in sexually explicit conduct (*i.e.*, simple possession of child pornography), in violation of 18 U.S.C. § 2252(a)(4)(B). His plea agreement contained no provisions regarding sex offender registration.

9. The facts of Plaintiff's offense, as set forth in the statement of facts proffered in connection with his plea agreement, are as follows: On October 15, 2004, Plaintiff was interviewed by agents of the Federal Bureau of Investigation (FBI). During the interview, he admitted that he searched the Internet for pornographic images of underaged girls. With Plaintiff's consent, the FBI conducted a search of his computer and discovered that he had used the Internet to download pornographic and erotic images of girls who appeared to be teenagers. Some of the photographs depicted individuals who were under the age of 18 at the time they were photographed, and one photograph was confirmed to have traveled in foreign commerce. There is no suggestion that Plaintiff either intended to disseminate or actually disseminated the material on his computer to others.

10. On March 23, 2007, the court sentenced Plaintiff to a 27-month term of federal custody, followed by a period of supervised release. During the final weeks of his custody, Plaintiff was transferred to a halfway house in the District of Columbia. He was released from custody on April 15, 2009. Since then, Plaintiff has been on supervised release, living with his wife in a shared residence in the District of Columbia. He is presently volunteering at a non-

profit organization in the District of Columbia, and plans to seek paid employment in the District of Columbia. He is 63 years old.

Plaintiff's Obligations Under DC Law

11. Under the District of Columbia Sex Offender Registration Act (DC SORA), D.C. Code § 22-4001 *et seq.*, Plaintiff is not required to register as a sex offender upon release, because simple possession of child pornography is not a registration offense under DC SORA.

Plaintiff's Obligations Under the Federal Adam Walsh Act

12. The federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16901 *et seq.*, was enacted on July 27, 2006, as part of the Adam Walsh Child Protection and Safety Act, Pub. L. 109-248.

13. SORNA defines three tiers of sex offenders, with Tier III Sex Offenders being guilty of the most severe crimes and Tier I Sex Offenders being guilty of the least severe crimes. Simple possession of child pornography is a Tier I offense. SORNA requires Plaintiff to register with the appropriate state agency as a Tier I Sex Offender in any state where he resides, works, or attends school.

14. If Plaintiff knowingly fails to register or knowingly fails to update his registration as required by SORNA, he exposes himself to prosecution under 18 U.S.C. § 2250(a), a federal crime which carries a sentence of up to ten years in prison.

15. SORNA's registration and community notification provisions are so punitive in purpose or effect that they constitute punishment.

CSOSA's Inappropriate Registration of Plaintiff as a Class B Sex Offender

16. In anticipation of his release, CSOSA directed Plaintiff to register as a sex offender in the District of Columbia even though his crime is not a registry offense in the District of

Columbia. The sole purpose of that directive was to ensure that Plaintiff complied with his obligations under the federal SORNA.

17. On March 19, 2009, Plaintiff registered as a sex offender with CSOSA. The only reason he did so was to comply with his federal SORNA obligations.

18. CSOSA accepted Plaintiff's registration by characterizing Plaintiff's offense as constituting a violation of, or being "substantially similar" to, a violation of D.C. Code § 22-2201 (obscenity involving a child under 17 years of age).

19. D.C. Code § 22-2201 prohibits the possession of obscene materials with intent to disseminate those materials. It does not, however, prohibit the simple possession of such materials. CSOSA's characterization of Plaintiff's offense as constituting a violation of, or being "substantially similar" to, a violation of D.C. Code § 22-2201, was incorrect as a matter of fact and as a matter of law.

20. CSOSA's decision to register Plaintiff as a sex offender when he is not obligated to register under DC law is not a decision committed to CSOSA's discretion. This decision was arbitrary and capricious, contrary to Plaintiff's constitutional rights and privileges, exceeded the statutory authority of CSOSA, and did not observe the procedure required by law.

21. There is no administrative or executive authority to which Plaintiff may appeal CSOSA's decision to register him as a sex offender.

22. On information and belief, CSOSA has an official policy or custom of registering ex-offenders who are obligated to register under SORNA but not under DC SORA by mischaracterizing their offenses.

CSOSA and MPD's Improper Posting of Plaintiff's Information on the World Wide Web

23. Under D.C. Code § 22-4010, CSOSA provides sex offender registration information to the National Sex Offender Registry and to the Metropolitan Police Department. The MPD operates the DC Sex Offender Registry website.

24. If a registrant provides CSOSA with notice of intent to seek judicial review of CSOSA's determination that he is required to register as a sex offender in the District of Columbia, then CSOSA must inform MPD of this fact. Under D.C. Code § 22-4010(4), the registration information of such a person shall not be made publicly available unless and until CSOSA informs MPD that the person has either failed to file a judicial challenge within 30 days of registering or that such a challenge has been withdrawn or dismissed.

25. When registering, Plaintiff provided notice of his intent to seek judicial review of CSOSA's determination that he was required to register as a sex offender in the District of Columbia, by signing the appropriate section of the form.

26. At some point on or after March 19, 2009, but prior to April 4, 2009, CSOSA provided Plaintiff's registration information to MPD.

27. At some point on or after March 19, 2009, but prior to April 4, 2009, John Roe MPD Officer received Plaintiff's registration information. Roe then posted Plaintiff's registration information on the DC Sex Offender Registry website despite Plaintiff's intent to seek judicial review and the absence of any withdrawn or dismissed challenge. This posting took place at some point prior to April 4, 2009 (*i.e.*, 15 or fewer days after Plaintiff's registration).

28. As a consequence of the improper posting of Plaintiff's identifying information on the DC Sex Offender Registry website, his identifying information was also posted on the federal sex offender registry website.

29. This posting violated D.C. Code § 22-4010. On information and belief, this violation could only have occurred as the result of a negligent or reckless failure by CSOSA to maintain its records, a negligent or reckless failure by MPD to maintain its records, a bad-faith decision by John Roe MPD Officer to release Plaintiff's registration information, or some combination thereof.

30. Both the DC Sex Offender Registry website and the federal sex offender registry website are accessible almost to any person in the world with access to the Internet.

31. There are organizations and individuals that periodically download, archive, and redistribute the entire contents of the federal sex offender registry website and each state sex offender registry website, including the DC Sex Offender Registry website. The information posted regarding Plaintiff on these registry websites therefore may remain archived and subject to redistribution by these third parties.

32. On or about April 7, 2009, Plaintiff contacted CSOSA to request that the improper listing be taken down. In response, Plaintiff's listing was removed from the DC Sex Offender Registry website on or about April 7, 2009, and removed from the federal sex offender registry website on or about April 8, 2009.

CLAIM I.
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 701 *et seq.*
(CSOSA)

33. The actions and conduct of CSOSA in registering Plaintiff as a sex offender and releasing his identifying information to the Sex Offender Registry website were arbitrary and capricious, contrary to constitutional powers, in excess of CSOSA's statutory jurisdiction, and did not observe the procedure required by law. This Court is authorized to remedy those violations by the Administrative Procedure Act, 5 U.S.C. § 706.

CLAIM II.
PRIVACY ACT, 5 U.S.C. § 552a(g)
(CSOSA)

34. The actions and conduct of CSOSA in registering Plaintiff as a sex offender constituted a failure to maintain the records concerning Plaintiff with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in a determination relating to the qualifications, character, rights, or opportunities of, or benefits to Plaintiff that may be made on the basis of such record, and resulted in a determination being made that was adverse to Plaintiff. These actions violated Plaintiff's rights under the Privacy Act, 5 U.S.C. § 552a(g).

CLAIM III.
COMMERCE CLAUSE
(CSOSA)

35. The actions and conduct of CSOSA in registering Plaintiff as a sex offender were performed pursuant to SORNA's registration requirement, 42 U.S.C. § 16913, a statute which exceeds Congress's powers under the United States Constitution, thus violating Plaintiff's right not to be subjected to unconstitutional action by the government.

CLAIM IV.
COMMERCE CLAUSE
(U.S. Attorney General)

36. If Plaintiff succeeds in challenging his registration as a sex offender in the District of Columbia, he will knowingly be unregistered and will thereby be subject to prosecution under 18 U.S.C. § 2250(a), a statute which exceeds Congress's powers under the United States Constitution. Such prosecution would violate Plaintiff's right not to be subjected to unconstitutional action by the government.

CLAIM V.
***EX POST FACTO* CLAUSE**
(U.S. Attorney General)

37. The application to Plaintiff of SORNA's registration and community notification provisions, 42 U.S.C. § 16901 *et seq.*, constitutes *ex post facto* punishment in violation of Art. I, § 10, cl. 1 of the United States Constitution.

CLAIM VI.
DOUBLE JEOPARDY
(U.S. Attorney General)

38. The application to Plaintiff of SORNA's registration and community notification provisions, 42 U.S.C. § 16901 *et seq.*, constitutes double jeopardy in violation of the Fifth Amendment of the United States Constitution.

CLAIM VII.
D.C. Code § 22-4013(b)
(District of Columbia)

39. Pursuant to D.C. Code § 22-4013(b), the District of Columbia is liable for the negligent actions or omissions that caused Plaintiff's information to be improperly posted on the Sex Offender Registry website. [Only CSOSA can violate 4010. MPD can't.]

CLAIM VIII.
NEGLIGENCE
(John Roe MPD Officer)

40. John Roe MPD Officer is liable for his negligent actions or omissions which caused Plaintiff's information to be improperly posted on the DC and federal Sex Offender Registry websites.

CLAIM IX.
FALSE LIGHT
(John Roe MPD Officer)

41. John Roe MPD Officer is liable for his actions or omissions which caused false statements or representations concerning Plaintiff, and which placed the Plaintiff in a false light that would be offensive to a reasonable person, to be published on the DC and federal Sex Offender Registry websites.

CLAIM X.
RESPONDEAT SUPERIOR
(District of Columbia)

42. Defendant District of Columbia is liable for the common law torts of its employees committed in the scope of their employment. Where any DC officer is found liable to plaintiffs, the District of Columbia is also liable under the doctrine of *respondeat superior*.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

(a) ENTER JUDGMENT declaring that Plaintiff is not required to register as a sex offender under DC SORA, D.C. Code § 22-4001 *et seq.*;

(b) ENTER JUDGMENT declaring that 42 U.S.C. § 16913 and the applicable provisions of 18 U.S.C. § 2250(a) exceed Congress's power under the Constitution;

(c) ENTER JUDGMENT holding the appropriate defendants jointly and severally liable for compensatory damages in an amount appropriate to the proof adduced at trial;

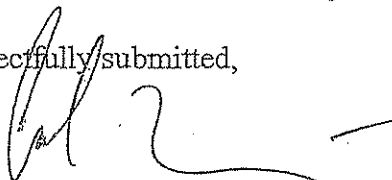
(d) ENTER JUDGMENT holding the appropriate defendants jointly and severally liable for punitive damages in an amount appropriate to the proof adduced at trial;

(e) ENTER AN INJUNCTION prohibiting CSOSA from registering Plaintiff as a sex offender in the D.C. Sex Offender Registry, directing the District of Columbia to remove

Plaintiff from the D.C. Sex Offender Registry, prohibiting the District of Columbia from posting Plaintiff's identifying information on the D.C. Sex Offender Registry website, and prohibiting the Attorney General of the United States from prosecuting Plaintiff for violating 18 U.S.C. § 2250(a) in connection with his non-registration;

- (f) AWARD to Plaintiff his reasonable costs and reasonable attorneys' fees; and
- (g) GRANT such other and further relief as the Court deems just and proper.

Respectfully submitted,



Arthur B. Spitzer, DC Bar No. 235960
Frederick Mulhauser, DC Bar No. 455377
Carl Takei, DC Bar No. 987672
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Attorneys for Plaintiff John Doe

June 18, 2009