

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOE L. WILLS)	
102 Galveston St., S.W. #201)	
Washington, D.C. 20032)	
)	
Plaintiff,)	
)	
v.)	Case: 1:11-cv-01464
)	Assigned To : Howell, Beryl A.
UNITED STATES PAROLE)	Assign. Date : 8/12/2011
COMMISSION and)	Description: TRO/PI
COURT SERVICES AND OFFENDER)	
SUPERVISION AGENCY FOR THE)	
DISTRICT OF COLUMBIA,)	
)	
Defendants.)	
)	

COMPLAINT

1. Plaintiff Joe Wills, by and through his attorneys, brings this action against Defendants United States Parole Commission (“Parole Commission”) and Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA”).
2. Mr. Wills alleges as follows, based on personal knowledge as to matters with which he had personal involvement and information and belief as to all other matters.

Nature of the Action

3. Mr. Wills is a District of Columbia resident currently serving a 52-month term of supervised release, under the authority of the Parole Commission and the supervision of CSOSA. Mr. Wills’ supervised release follows a brief period of incarceration for two misdemeanor drug offenses.

4. The Parole Commission has imposed a number of special conditions on Mr. Wills' supervised release, including the "Special Sex Offender Aftercare Condition." That condition states:

You shall participate in an in-patient or out-patient mental health program as directed by your [CSOSA] Supervision Officer, with special emphasis on long-term sex offender testing and treatment. You are expected to acknowledge your need for treatment and to participate in good faith in achieving the program goals that will be established for you.

Ex. 1 (June 24, 2011 Parole Commission Notice of Action).

5. The Special Sex Offender Aftercare Condition, as imposed by the Parole Commission and enforced by CSOSA, requires Mr. Wills to submit to an intrusive, involuntary, and unnecessary mental health treatment program. It compels him to undergo psychosexual therapy—during which he must divulge in explicit detail his sexual history, thoughts, and practices—and subjects him to polygraph examinations regarding those disclosures. It also forces him to acknowledge a need for that unnecessary treatment.

6. The Parole Commission provided Mr. Wills inadequate process prior to imposing the condition. It offered him no meaningful opportunity to contest the condition or statement of reasons justifying it.

7. Moreover, the Parole Commission and CSOSA are forcing Mr. Wills to undergo this "sex offender testing and treatment" despite the fact that he has never been convicted of an offense involving sexual conduct.

8. Only once has Mr. Wills even been accused of sexual misconduct: over 27 years ago, in 1984, when he was charged in D.C. Superior Court with assault with intent to rape. The government dismissed that charge in January 1986.

9. Mr. Wills is indigent and unemployed. He has serious medical conditions that require regular medication and treatment. He subsists on food stamps and the assistance of relatives. Mr. Wills is also illiterate. Three times a week, he commutes to reading classes at the Washington Literacy Council.

10. The requirements of the Special Sex Offender Aftercare Condition are hampering Mr. Wills' efforts to provide for and educate himself. Defendants' forced sex offender treatment, therefore, is not only unnecessary to Mr. Wills' rehabilitation, but is actively impeding it.

11. The Parole Commission's unjustified imposition of the Special Sex Offender Aftercare Condition violates the "reasonably related" standard of D.C. Code § 24-403.01(b)(6) and 18 U.S.C. § 3583(d).

12. By imposing the Special Sex Offender Aftercare Condition without providing Mr. Wills adequate process, the Parole Commission has violated his Fifth Amendment right to procedural due process.

13. The Special Sex Offender Aftercare Condition, as imposed by the Parole Commission and enforced by CSOSA, infringes on Mr. Wills' fundamental rights without adequate justification, and thus violates Mr. Wills' Fifth Amendment right to substantive due process.

14. Finally, by compelling Mr. Wills to "acknowledge [his] need for treatment," Defendants have violated his First Amendment right to refrain from speaking.

15. Mr. Wills seeks injunctive and declaratory relief.

Jurisdiction and Venue

16. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1367, and the United States Constitution.

17. Venue is proper in this district under 28 U.S.C. § 1391.

18. Declaratory relief is authorized under 28 U.S.C. §§ 2201-02.

Parties

A. Plaintiff

19. Plaintiff Joe Wills is a 54-year-old District of Columbia resident currently serving a 52-month term of supervised release under the authority of the Parole Commission and the supervision of CSOSA. His term of supervised release is set to expire on or about April 1, 2015.

20. Mr. Wills is indigent. He subsists on food stamps and the financial assistance of his mother and brother. He has no residence of his own.

21. Mr. Wills is illiterate. Three days a week, he commutes to Northwest D.C. to attend literacy classes at the Washington Literacy Council. Mr. Wills enjoys his reading classes and believes that he is making progress in his studies.

22. Mr. Wills also suffers from a number of serious health conditions that require him to visit doctors regularly and take medicine daily.

23. Mr. Wills' obligations under the Special Sex Offender Aftercare Condition, which requires him to commute regularly to Northwest D.C. for unnecessary and intrusive treatment, are burdening him financially, interfering with his health and educational needs, and causing him undue psychological stress.

B. Defendants

24. Defendant Parole Commission is a federal agency located in the District of Columbia. District of Columbia supervised releasees, like Mr. Wills, are "subject to the authority of the United States Parole Commission until completion of the term of supervised release." D.C. Code § 24-403.01(b)(6). The Parole Commission has "the same authority" over D.C. supervised releasees "as is vested in the United States District Courts by 18 U.S.C. § 3583(d)-(i)" *Id.*

25. Pursuant to that authority, the Parole Commission may impose special conditions of supervised release as long as they meet four requirements: (1) the conditions must be

“reasonably related” to the nature and circumstances of the supervisee’s instant offense; (2) they must be “reasonably related” to the supervisee’s history and characteristics; (3) they must be “reasonably related” to the sentencing goals of deterrence, protection of the public, and rehabilitation; and (4) they must “involve[] no greater deprivation of liberty than is reasonably necessary” to achieve those same sentencing goals. 18 U.S.C. § 3583(d).

26. Defendant CSOSA, a federal agency located in the District of Columbia, is responsible for “supervis[ing] any offender who is released from imprisonment for any term of supervised release imposed by the Superior Court of the District of Columbia.” D.C. Code § 24-133(c)(2).

Factual Background

A. The 27-Year-Old Dismissed Charge That Is the Basis for Sex Offender Treatment.

27. According to Superior Court records, on February 3, 1984, when Mr. Wills was 26 years old, he entered the unoccupied apartment of his upstairs neighbor and took certain items. While he was inside, the neighbor returned. She later alleged that Mr. Wills told her to take off her pants and that she then fled.

28. On January 30, 1986, Mr. Wills entered a guilty plea to two misdemeanor offenses: attempted second degree burglary and theft of property of a value of less than \$250. In return, the United States not only dismissed the greater counts of second degree burglary and felony theft, it also dismissed in its entirety the count of assault with intent to rape.

29. Judge Emmet Sullivan, then of the Superior Court, sentenced Mr. Wills in a manner that exacted no additional jail time for the misdemeanors, and no term of supervision. The one-year penalties that he imposed for each misdemeanor were run concurrent both to each other and to a three-to-ten-year sentence that Mr. Wills was then serving for assault with a dangerous weapon.

30. Mr. Wills heard no more about the dismissed count for nearly 25 years. Although he has had contacts with the criminal justice system in the interim, he has never again been accused of

any charge that even hinted at sexual misconduct or sexual deviance. For many of the intervening years, Mr. Wills has worked as a laborer for a roofer and a bricklayer. He has fathered two children, who are now grown, and has two grandchildren.

31. But in January 2009, the Parole Commission, reaching back to his then-25-year-old dismissed count, ordered Mr. Wills to be subject to the Special Sex Offender Aftercare Condition while on supervised release for two 2007 drug offenses. After Mr. Wills spent further time in prison in 2010 for two misdemeanor drug offenses, the Parole Commission imposed the condition for a second time in June 2011.

B. Defendants' 2009 Imposition and Enforcement of the Special Sex Offender Aftercare Condition.

32. On November 29, 2007, Mr. Wills pled guilty in D.C. Superior Court to one count each of possession with intent to distribute cocaine and possession with intent to distribute marijuana. He was sentenced to 14 months of incarceration followed by five years of supervised release.

33. CSOSA, in its January 21, 2008, pre-sentence report to the court, did not recommend that the Parole Commission impose sex offender treatment as a condition of Mr. Wills' supervised release.

34. On January 9, 2009, three weeks prior to Mr. Wills' scheduled release, CSOSA provided Mr. Wills a set of supervised release reporting instructions. Ex. 2 (CSOSA "Reporting Instruction Sheet"). According to the instructions, Mr. Wills would be subject to one special condition while under CSOSA's supervision: "Drug Testing." *Id.*

35. On January 29, 2009, one day prior to his release, CSOSA issued a "Pre-Release Investigative Report" regarding Mr. Wills. The report noted that Mr. Wills had no convictions for sex offenses and no history of "sexual incidents." Yet again, CSOSA did not recommend that the Parole Commission impose sex offender treatment as a condition of Mr. Wills' release.

36. Mr. Wills was released from a halfway house into the community on January 30, 2009. CSOSA placed him within its General Supervision Unit, not its Sex Offender Unit. Ex. 3 (Jan. 30, 2009 CSOSA Running Record entry).

37. By that time, however—unbeknownst to Mr. Wills or, apparently, CSOSA—the Parole Commission had already imposed the Special Sex Offender Aftercare Condition on Mr. Wills’ supervised release. It did so on January 6, 2009, through a Notice of Action that read in part:

In the case of the above-named, the following action was ordered: . . . [Y]ou shall be subject to the Special Sex Offender Aftercare Condition. You shall participate in an in-patient or out-patient mental health program as directed by your [CSOSA] Supervision Officer, with special emphasis on long-term sex offender testing and treatment. You are expected to acknowledge your need for treatment and to participate in good faith in achieving the program goals that will be established for you.

Ex. 4 (Jan. 6, 2009 Parole Commission Notice of Action).

38. The Parole Commission provided Mr. Wills no process either prior to or after imposing the Special Sex Offender Aftercare Condition. It gave him no advance notice that the condition would be imposed, no opportunity to contest it, and no statement of reasons justifying it. Due to his illiteracy, Mr. Wills was not even able to read the condition when it was presented to him just prior to his release from the halfway house.

39. For at least a month after the Parole Commission imposed the Special Sex Offender Aftercare Condition, neither the Commission nor CSOSA could articulate a justification for it. A February 9, 2009, Running Record entry by Mr. Wills’ CSOSA supervising officer captured the confusion:

[Parole Commission] [c]ase analyst Corey Mitchell returns this officer’s telephone call concerning the [Parole Commission Notice of Action] dated 1/6/09. He confirms that they too have the same conditions ordered but have no reasons listed just as this officer has no reasoning on the form.

Ex. 5.

40. Despite the uncertainty surrounding the condition, CSOSA transferred Mr. Wills to its Sex Offender Unit on February 18, 2009. Ex. 6 (Feb. 18, 2009 CSOSA Running Record entry).

41. Having never received notice of the Special Sex Offender Aftercare Condition, Mr. Wills was surprised by this transfer, as reflected in CSOSA's February 23, 2009, Running Record entry: "Mr. Wills is confronted with his NOA dated 1/6/09 and the special conditions added. He was unaware of any other than drug aftercare." Ex. 7.

42. Mr. Wills' supervising officer still could only speculate as to the basis for the condition:

Offender is informed that [the condition] may have been added due to past "assault with intent to rape" charge that was dismissed. Mr. Wills is told that further contact will be made to USPC to confirm these special conditions but that Mr. Mitchell from USPC confirmed that they were in fact there.

Id.

43. On March 9, 2009, Mr. Wills' supervising officer required him to inform his girlfriend, with whom he was residing, of the "nature of [his] sex offense"—despite the fact that he had never been convicted of a sex offense. Ex. 8 (March 9, 2009 CSOSA Running Record entry).

44. On May 14, 2009, Mr. Wills' supervising officer met in person with his girlfriend to confirm that she was "aware[] of offender's supervision conditions and sex offense." Ex. 9 (May 14, 2009 CSOSA Running Record entry). This compelled disclosure of inaccurate information caused a significant strain in Mr. Wills' relationship with his girlfriend. Their relationship has since ended.

45. CSOSA soon began to enforce the Special Sex Offender Aftercare Condition. As made clear by both the evidence of CSOSA's enforcement of the condition to date and its Policy Manual on Sex Offender Supervision (which undersigned counsel obtained through a Freedom of Information Act request), the condition involves compelled, highly intrusive mental health treatment.

46. CSOSA started by scheduling Mr. Wills for an “assessment package” consisting of six sessions with a CSOSA-paid treatment provider at the Center for Clinical and Forensic Services (“CCFS”) and two polygraph examinations. This assessment was to be followed by at least twelve 50-minute long sex offender treatment sessions with CCFS. Ex. 10 (July 28, 2009 CSOSA Sex Offender Referral and Funding Authorization Form).

47. Having required Mr. Wills to waive his right to therapist-patient confidentiality, Ex. 11 (March 18, 2009 CSOSA release form), CSOSA ordered Mr. Wills to meet for the first time with his CCFS treatment provider on September 14, 2009. Ex. 12 (Sept. 9, 2009 CSOSA Running Record entry). His initial, weekly sessions with CCFS were intended to form the basis of a “clinical diagnosis” and a “comprehensive treatment plan.” Ex. 13 (CSOSA Policy Manual on Sex Offender Supervision) at 10-11.

48. During a compelled “psychosexual assessment,” Mr. Wills was required to divulge in explicit detail his sexual history, thoughts, and practices—some of the most intimate aspects of human experience. CSOSA forced Mr. Wills to disclose, among other things:

- a. whether he describes himself as homosexual, heterosexual, or bisexual;
- b. what sexual experiences he had prior to the age of 10;
- c. at what age he first masturbated, and the number of times per day and per week he masturbated at the height of his masturbation;
- d. at what age he first had sexual intercourse, and how many partners he has had;
- e. the level of sexual confidence he felt as an adolescent;
- f. the varieties of sex he has engaged in, including vaginal, anal, oral and sadomasochistic;
- g. numerous aspects of his sexual interactions with consenting adult partners, done in private;

- h. at what age he first viewed pornography, and how frequently he looks at pornography;
- i. whether he has ever suffered from impotence, or from a sexually transmitted disease;
- j. how stimulated he would be by fantasizing about, among other things, seeing an attractive boy under the age of 12; engaging in anal sex; having sex with a prostitute; looking through a window at a masturbating woman; and watching two men having sex;
- k. the number of times that he has stolen underwear;
- l. the number of times that he has cross-dressed; and
- m. the number of times that he has had sexual contact with a dead animal or person.

49. On October 27, 2009, CSOSA ordered Mr. Wills to take a polygraph examination. After signing a waiver of confidentiality, Mr. Wills was asked three questions on the polygraph examination, each “regarding sexual contact via force or non-consent.” (Oct. 27, 2009 Polygraph Report). According to the polygrapher, Mr. Wills’ answers to two of the questions indicated “deception.” *Id.*

50. The polygrapher wrote that Mr. Wills “could not explain his physiological responses,” but added that Mr. Wills was “worried about an upcoming court date” related to his misdemeanor drug charges. *Id.* Mr. Wills’ CCFS treatment provider observed, further, that Mr. Wills attributes his difficulty with polygraph examinations to “hypervigilance (as a result of illiteracy and serious medical concerns),” and that “Mr. Wills’ report on hypervigilance seems reasonable.” Ex. 14 (Nov. 2009 CCFS Progress Report). Mr. Wills denies that he has ever forced anyone to have sexual contact with him, as the polygrapher noted in his report. (Oct. 27, 2009 Polygraph Report).

51. Mr. Wills attended numerous sex offender treatment sessions with CCFS in late 2009. Because the Special Sex Offender Aftercare Condition requires Mr. Wills to “acknowledge [his]

need” for this treatment—despite the fact that he does not “need” it—the treatment providers repeatedly pressured him to do so, saying that it would make him feel better. There is no therapeutic benefit in forcing a patient to “acknowledge” his need for a treatment that he does not in fact need.

52. On December 7, 2009, Mr. Wills was arrested for violating the terms of his supervised release, based on an October 4, 2009, arrest for drug possession. On March 29, 2010, he was convicted in Superior Court of misdemeanor possession of cocaine and drug paraphernalia, and the Parole Commission formally revoked his supervised release on June 18, 2010. Mr. Wills was incarcerated until December 1, 2010, when he returned to the community and began a new 52-month term of supervised release.

C. Defendants’ 2011 Imposition and Enforcement of the Special Sex Offender Aftercare Condition.

53. Upon Mr. Wills’ release, the Parole Commission did not immediately re-impose the Special Sex Offender Aftercare Condition. Ex. 15 (June 18, 2010 Parole Commission Notice of Action). Despite this fact, CSOSA placed Mr. Wills back in its Sex Offender Unit.

54. On May 23, 2011, when the Parole Commission still had not imposed the Special Sex Offender Aftercare Condition, Mr. Wills’ supervising officer informed him that CSOSA intended to petition the Parole Commission to do so. Mr. Wills indicated his objection to the proposed modification on a form that his supervising officer provided to him. Ex. 16 (June 6, 2011 CSOSA submission to Parole Commission).

55. On June 2, 2011, with the assistance of one of his reading instructors, Mr. Wills addressed a letter to the Parole Commission providing the basis for his objection: “I do not believe that I should be subject to this condition because I have never been convicted of a sex crime and am therefore not in need of treatment for sex offenders.” *Id.*

56. On June 6, 2011, Mr. Wills' supervising officer formally petitioned the Parole Commission to add the Special Sex Offender Aftercare Condition. The officer wrote, in part:

Mr. Wills was released to supervision on December 1, 2010 and was assigned to the Special Sex Offender Supervision Unit due to his being charged with Assault with Intent to Rape in Docket # 1984-FEL-1071. This charge was dismissed on January 30, 1986. However, according to CSOSA policy, he will be supervised in the Sex Offender Unit until a complete risk and needs assessment can be conducted.

Id. The officer also cited the "deception indicated" finding on Mr. Wills' October 2009 polygraph examination as a reason for his continued supervision in the Sex Offender Unit. *Id.* The officer attached Mr. Wills' letter of objection to his submission to the Parole Commission. *Id.*

57. On June 24, 2011, the Parole Commission granted CSOSA's request to add the condition. Ex. 1 (June 24, 2011 Parole Commission Notice of Action). Yet again, the Parole Commission provided Mr. Wills inadequate process prior to imposing the condition. Although he was allowed to file a paper objection, he was offered no hearing, no opportunity to call or cross-examine witnesses, no chance to review or challenge the evidence allegedly supporting the condition, and no meaningful statement of reasons.

58. On July 25, 2011, Mr. Wills' CSOSA supervising officer notified him that his sex offender treatment would soon begin again. That same day, the supervising officer informed undersigned counsel that the sex offender treatment would again include, among other things, a psychosexual assessment (spanning three sessions), followed by one or more polygraph examinations and a further thirteen individual treatment sessions.

59. Mr. Wills' supervising officer again required him to sign a form waiving his right to therapist-patient confidentiality, or face a violation report to the Parole Commission and likely revocation of his supervised release.

60. According to CSOSA's Policy Manual, Mr. Wills' ongoing "comprehensive treatment" may include "[c]ognitive behavioral group therapy"; "[u]se of techniques for reducing deviant sexual arousal, such as covert sensitization, aversive conditioning and/or hormonal therapy"; and forced "physiological monitoring," including "plethysmographs¹ and polygraphs, etc." Ex. 13 (CSOSA Policy Manual) at 14-15. CSOSA may require Mr. Wills to take a "sexual history" polygraph, during which he will be asked to confirm all of the detailed sexual information that he disclosed during his initial "psychosexual assessment." *Id.* at 33. CSOSA may subject him to sanctions for "failing" the polygraph, including requiring him to pay for his "treatment services," requesting that the Parole Commission fine him, confining him to his home, and/or recommending to the Parole Commission that his supervised release be revoked. *Id.* at 18.

61. Once Mr. Wills "has successfully completed sex offender treatment, [he] shall be placed into aftercare for an indefinite period of time." *Id.* at 13. "The aftercare period shall . . . consist minimally of maintenance polygraph exams every 12 months." *Id.* at 14.

62. The Parole Commission has informed Mr. Wills that its decision to re-impose the Special Sex Offender Aftercare Condition is not appealable to the Commission's National Appeals Board. Ex. 1 (June 24, 2011 Parole Commission Notice of Action). Mr. Wills has therefore exhausted his administrative remedies.

D. Mr. Wills' Inappropriate Release Conditions Are the Direct Result of the Constitutionally Inadequate Process that the Parole Commission Routinely Provides Supervised Releasees Prior to Imposing Sex Offender Conditions.

63. Numerous other supervised releasees have, like Mr. Wills, been subjected to substantively unreasonable sex offender conditions imposed by the Parole Commission and enforced by CSOSA.

¹ A plethysmograph is a device placed around the penis to measure changes in blood flow, and is used to assess a man's level of sexual arousal in response to various visual and auditory stimuli.

64. This pattern, whereby such conditions are imposed on the most insubstantial of bases, such as ancient charges of sexual misconduct—in Mr. Wills’ case, a charge dismissed over 25 years ago—is attributable to the Parole Commission’s practice of providing constitutionally inadequate process prior to imposing sex offender conditions of supervised release.

65. As a matter of routine practice, the Parole Commission imposes sex offender conditions without offering supervisees any process, as the Commission did when it imposed the Special Sex Offender Aftercare Condition on Mr. Wills in January 2009.

66. This absence of process is compounded by the fact that the Parole Commission’s regulations offer D.C. supervised releasees like Mr. Wills no mechanism to appeal the imposition of their sex offender conditions. *See generally* 28 C.F.R. §§ 2.200-2.220.

67. Further, when CSOSA petitions the Parole Commission to modify a supervisee’s release conditions by adding sex offender conditions, the Parole Commission, as a matter of routine practice, grants CSOSA’s request after providing supervisees only a cursory paper objection process, as it did when it imposed the Special Sex Offender Aftercare Condition on Mr. Wills in June 2011.

68. Absent meaningful process, there is no way to ensure that the sex offender conditions of supervised release that the Parole Commission routinely imposes, and that CSOSA routinely enforces, are substantively reasonable, as is required by statute. D.C. Code § 24-403.01(b)(6); 18 U.S.C. § 3583(d).

Claims for Relief

**One: Violation of D.C. Code § 24-403.01(b)(6) and 18 U.S.C. § 3583(d)
(Against the Parole Commission)**

69. Plaintiff incorporates by reference the allegations in paragraphs 1-68 above.

70. The Special Sex Offender Aftercare Condition is not reasonably related to the nature and circumstances of Mr. Wills' instant misdemeanor drug offenses.

71. The condition is not reasonably related to Mr. Wills' history and characteristics.

72. The condition is not reasonably related to the sentencing goals of deterrence, protection of the public, and rehabilitation.

73. The condition implicates at least four significant liberty interests: Mr. Wills' right to refuse mental health treatment, his right to avoid the stigma of inaccurate classification as a sex offender, his right to maintain privacy in sexual matters, and his right to refrain from speaking.

74. Given the liberty interests at stake, the condition involves a greater deprivation of liberty than is reasonably necessary to achieve the sentencing goals of deterrence, protection of the public, and rehabilitation.

75. By imposing the Special Sex Offender Aftercare Condition without adequate justification, the Parole Commission violated its statutory obligations under D.C. Code § 24-403.01(b)(6) and 18 U.S.C. § 3583(d).

Two: Violation of Procedural Due Process
(Against the Parole Commission)

76. Plaintiff incorporates by reference the allegations in paragraphs 1-75 above.

77. The Special Sex Offender Aftercare Condition implicates at least four significant liberty interests: Mr. Wills' right to refuse mental health treatment, his right to avoid the stigma of inaccurate classification as a sex offender, his right to maintain privacy in sexual matters, and his right to refrain from speaking.

78. Mr. Wills has never been convicted of a sex offense. Only once has Mr. Wills even been accused of sexual misconduct: over 27 years ago, in 1984. The government dismissed that charge on January 30, 1986.

79. Prior to imposing the Special Sex Offender Aftercare Condition in January 2009, the Parole Commission provided Mr. Wills no notice of the condition; did not disclose any evidence that it had allegedly justifying the condition; did not provide Mr. Wills an adversarial hearing at which he could contest the condition, call witnesses and present documentary evidence in support of his position, or confront and cross-examine any witnesses against him. Nor did the Parole Commission provide Mr. Wills a written statement setting forth the evidence and reasons that it relied on in imposing the condition.

80. Prior to imposing the Special Sex Offender Aftercare Condition in June 2011, the Parole Commission did not disclose any evidence that it had allegedly justifying the condition; did not provide Mr. Wills an adversarial hearing at which he could contest the condition, call witnesses and present documentary evidence in support of his position, or confront and cross-examine any witnesses against him. Nor did the Parole Commission provide Mr. Wills a meaningful written statement setting forth the evidence and reasons that it relied on in imposing the condition.

81. By imposing a supervised release condition that implicates significant liberty interests without providing Mr. Wills adequate process, the Parole Commission violated his rights under the procedural component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

Three: Violation of Substantive Due Process
(Against the Parole Commission and CSOSA)

82. Plaintiff incorporates by reference the allegations in paragraphs 1-81 above.

83. The Special Sex Offender Aftercare Condition, as imposed and enforced by Defendants, infringes on Mr. Wills' fundamental rights to refuse unwanted mental health treatment, to privacy in sexual matters, and to refrain from speaking.

84. The Special Sex Offender Aftercare Condition is not narrowly tailored to achieve a compelling government interest.

85. The Special Sex Offender Aftercare Condition is not substantially related to an important government interest.

86. The Special Sex Offender Aftercare Condition is not rationally related to a legitimate government interest.

87. By imposing and enforcing the Special Sex Offender Aftercare Condition without adequate justification, Defendants have violated Mr. Wills' rights under the substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

Four: Violation of the First Amendment
(Against the Parole Commission and CSOSA)

88. Plaintiff incorporates by reference the allegations in paragraphs 1-87 above.

89. The Special Sex Offender Aftercare Condition compels Mr. Wills to "acknowledge [his] need for treatment."

90. That requirement constitutes governmental regulation of speech based on content.

91. The compelled-speech component of the Special Sex Offender Aftercare Condition is not narrowly tailored to achieve a compelling government interest, nor is it the least restrictive method of achieving Defendants' purported interests.

92. By imposing and enforcing the compelled-speech component of the Special Sex Offender Aftercare Condition, Defendants have violated Mr. Wills' rights under the First Amendment to the United States Constitution.

Request for Relief

WHEREFORE, Plaintiff requests that this Court issue a judgment against Defendants:

- a. preliminarily and permanently enjoining enforcement of the Special Sex Offender Aftercare Condition;
- b. declaring that the Parole Commission imposed the Special Sex Offender Aftercare Condition in violation of its statutory obligations under D.C. Code § 24-403.01(b)(6) and 18 U.S.C. § 3583(d);
- c. declaring that the Parole Commission imposed the Special Sex Offender Aftercare Condition in violation of Mr. Wills' Fifth Amendment right to procedural due process;
- d. declaring that the Special Sex Offender Aftercare Condition, as imposed and enforced by Defendants, violates Mr. Wills' Fifth Amendment right to substantive due process;
- e. declaring that by compelling Mr. Wills to "acknowledge [his] need for treatment," Defendants have violated Mr. Wills' First Amendment right to refrain from speaking; and
- f. granting such other relief as this Court deems just and proper.

Respectfully submitted,



Sandra K. Levick (D.C. Bar No. 358630)



David A. Taylor (D.C. Bar No. 975974)



Tara Mikkilineni (D.C. Bar No. 997284)

Public Defender Service for the District of Columbia
Special Litigation Division
633 Indiana Ave., N.W.
Washington, D.C. 20004
(202) 628-1200

Attorneys for Plaintiff

Date: August 12, 2011