

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN DOE, RICHARD ROE, AND SAMUEL
POE, individually and on behalf of all other
persons similarly situated,

Plaintiffs,

96 Civ. 1657 (DC)

-against-

STIPULATION
OF
SETTLEMENT

HON. GEORGE E. PATAKI, in his official
capacity as Governor of the State of New
York, et al.,

Defendants.

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WHEREAS, the plaintiffs brought this lawsuit on behalf of themselves and others similarly situated, by complaint filed March 7, 1996, and amended complaint filed March 13, 1998, seeking declarative and injunctive relief against Honorable George E. Pataki, as Governor of the State of New York; Paul Shechtman, in his official capacity as Commissioner of the New York State Division of Criminal Justice Services (“DCJS”); The New York State Division of Criminal Justice Services; Brion Travis, in his official capacity as Chairman of the New York State Division of Parole (“Parole”); The New York State Division of Parole; George Sanchez, in his official capacity as Commissioner of the New York State Division of Probation and Correctional Alternatives (“Probation”); The New York State Division of Probation and Correctional Alternatives; Elizabeth M. Devane, in her official capacity as Chairperson of the New York State Board of Examiners of Sex Offenders (“Board”); and The New York State

Board of Examiners of Sex Offenders, (collectively “State defendants”), alleging that New York’s Sex Offender Registration Act (“SORA”) was unconstitutional as applied to them under the ex post facto, due process and equal protection clauses of the Federal Constitution;

WHEREAS, in an order entered on June 16, 1998, the District Court (a) permanently enjoined State defendants from classifying at a risk level higher than level one for purposes of community notification, those plaintiffs who were on probation or parole when SORA went into effect on January 21, 1996 and who had their risk levels determined by either Parole or Probation, unless they have been reclassified by a court in accordance with procedures that satisfy the requirements of due process set out in Doe v. Pataki, 3 F.Supp.2d 456 (SDNY 1998) and (b) preliminarily enjoined State defendants from classifying, at a risk level higher than level one for purposes of community notification, those plaintiffs who were incarcerated on January 21, 1996 and who had their risk levels determined by the original sentencing court prior to January 1, 2000, unless they have been reclassified by a court in accordance with procedures that satisfy the requirements of due process set out in Doe v. Pataki, 3.F.Supp.2d 456 (SDNY 1998);

WHEREAS, plaintiffs and State defendants are entering into this Stipulation of Settlement (“Stipulation”) for the purpose of settling the disputes between them and avoiding further litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned attorneys for the respective parties herein, that this action is settled, subject to this Stipulation being so ordered by the Court, and that after the Notice of Settlement is mailed to all plaintiffs, the following procedures will be implemented within the time frames specified below:

1. Those plaintiffs who were (a) on parole or probation on January 21, 1996 and were required to register under Correction Law §168-g and whose risk levels were determined as level 1 by either Parole or Probation; or (b) incarcerated on January 21, 1996 and were required to register under Correction Law § 168-e upon their release from a correctional facility and whose risk levels were determined to be level 1 by the original sentencing court prior to January 1, 2000; or (c) convicted in any other jurisdiction and whose risk levels were determined to be level 1 by the Board of Examiners of Sex Offenders before January 1, 2000; shall have their risk levels entered as level 1 in the New York State Sex Offender Registry administered by DCJS thirty days (30) after this Stipulation has been approved and so ordered by the District Court.

2. Those plaintiffs who were (a) on parole or probation on January 21, 1996 and were required to register under Correction Law §168-g, and whose risk levels were determined as level 2 or level 3 by either Parole or Probation; (b) incarcerated on January 21, 1996 and were required to register under Correction Law §168-e upon their release from a correctional facility and whose risk levels were determined to be level 2 or level 3 by the original sentencing court prior to January 1, 2000; or (c) convicted in any other jurisdiction and whose risk levels were determined to be level 2 or level 3 by the Board of Examiners of Sex Offenders prior to January 1, 2000; shall have their risk levels redetermined by the original sentencing court or a court designated by the New York State Office of Court Administration (“OCA”). In the case of a plaintiff who was convicted in any other jurisdiction, the risk level shall be redetermined by the supreme or county court in the county of residence. Redetermination of risk levels shall be done in accordance with the due process rights of plaintiffs outlined in the Court’s opinion in Doe v. Pataki, 3 F.Supp.2d 456 (SDNY 1998), and as specified in this Stipulation.

3. The Notice of Settlement will be mailed by DCJS to all plaintiffs who have been protected by the injunction issued by the district court on June 16, 1998, in Doe v. Pataki, within twenty one (21) days after this Stipulation has been so ordered by the District Court. The Notice of Settlement and this Stipulation will be posted on the DCJS website thirty (30) days after this Stipulation has been so ordered by the District Court. The notice will inform all plaintiffs that the case has been settled and the injunction will be lifted within thirty (30) days for level 1 offenders and on a case-by-case basis for level 2 and level 3 offenders. Document 1 annexed hereto is the Notice of Settlement.

4. DCJS will provide lists by county of the names, addresses and all other pertinent information of the plaintiffs to OCA, the District Attorney of the respective county and The Legal Aid Society within thirty days (30) of this Stipulation being So Ordered by the District Court. DCJS may also provide the last known address through criminal history records and/or probation/parole records for any plaintiff whose address in the registry may not be current.

5. Plaintiffs have a right to counsel at all stages of the redetermination proceedings. Legal representation for those unable to afford counsel will be provided under Article 18-B of the County Law, either by attorneys individually compensated under that provision or by contract with a public defender office or legal aid society designated to give legal assistance to persons charged with a crime. For those plaintiffs who reside in a facility administered by the New York State Office of Mental Health (“OMH”) or the New York State Office of Mental Retardation and Developmental Disabilities (“OMRDD”), Mental Hygiene Legal Services will provide representation.

6. Within sixty (60) days of receiving the list from DCJS, the OCA will begin sending notices to all level 2 and 3 plaintiffs referred to above, except those plaintiffs who have been

deported, informing them of their initial appearance dates to have their risk levels redetermined. The initial appearance shall be scheduled for a date no less than sixty (60) days, but no more than ninety (90) days, after the date the notice is sent. The notices will be sent by ordinary first class mail and certified mail, return receipt requested. The notices will include an 800-telephone number operated by The Legal Aid Society for plaintiffs to contact for any additional information about the hearing process. The notices shall also include the appropriate court clerk's telephone number. Notices in a particular county will be sent to level 3 plaintiffs first and then to level 2 plaintiffs in that county.

7. Document 2 annexed hereto is the notice of a right to a hearing that will be sent by OCA to level 3 plaintiffs and Document 3 annexed hereto is the notice of a right to a hearing that will be sent by OCA to level 2 plaintiffs. The notice will be in English and Spanish. The notice will include the person's original risk level and specify the registration obligations and community notification provisions applicable to each risk level. It shall explain the hearing process for a redetermination of the risk level and the right to appointment of counsel if the person cannot afford a lawyer. The notice shall contain a form, the Risk Level Redetermination Hearing Request Form ("form"), to be returned to the court on which the plaintiff will indicate his or her desire to: (a) appear on the initial appearance date and contest the original risk level; or (b) not appear on the initial appearance date nor contest the original risk level; or (c) contest the original risk level but not appear in person on the initial appearance date. A copy of this form is annexed hereto as Document 4 and will be included in the mailing of Documents 2 and 3. Plaintiffs will also indicate on the form if they wish to retain their own counsel or, if they cannot afford counsel, have counsel appointed. Plaintiffs will have thirty (30) days to respond to the notices. A stamped return envelope will be provided by OCA.

8. If, after the expiration of thirty (30) days, such ordinary mailing has not been returned as undeliverable, the plaintiff to whom such notice was addressed shall be presumed to have received such notice. If a plaintiff fails to return the form and fails to appear at the initial appearance date, the court will record the plaintiff's waiver of his or her right to a hearing. The court will send a copy of its determination of the plaintiff's waiver to DCJS, and the plaintiff's original risk level will be entered into the registry administered by DCJS no less than sixty (60) days after the initial appearance date and the notification provisions appropriate to that risk level under Correction Law §§ 168-j, l, p and q will be put into effect. The court's determination shall indicate that it is a redetermination proceeding pursuant to this Stipulation. If a plaintiff returns the form and indicates his or her desire to appear at the initial appearance date and contest the original risk level and then fails to appear at the initial appearance date, the court will assign counsel if so requested on the hearing request form and set a hearing date. On the hearing date, if a plaintiff, without sufficient excuse, fails to appear, the redetermination will go forward in his or her absence. The court will send a copy of its determination to DCJS and the risk level will be entered into the registry administered by DCJS and the notification provisions appropriate to that risk level under Correction Law §§ 168-j, l, p and q will be put into effect. The court's determination shall indicate that it is a redetermination proceeding pursuant to this Stipulation. If a plaintiff returns the form and indicates his or her desire not to challenge his or her risk level, OCA shall notify DCJS and the plaintiff's original risk level will be entered into the Registry administered by DCJS and notification provisions appropriate to that risk level under Correction Law §§ 168-j, l, p and q will be put into effect. The court's determination shall indicate that it is a redetermination proceeding pursuant to this Stipulation.

9. At the initial appearance date, counsel will be assigned for those unable to afford counsel. Unless the parties agree otherwise, the court will then set a date for the hearing to take place no sooner than 60 days later.

10. Applying the guidelines established under Correction Law §168-l(5), the District Attorney will prepare a new risk assessment instrument for each plaintiff and provide copies to the court, plaintiff and plaintiff's counsel at least thirty days (30) before the hearing. No plaintiff who has completed parole or probation shall be assessed points in the "release environment" category for not being subject to supervision. The District Attorney will also provide to plaintiff's counsel all documents and materials upon which its risk assessment recommendation is based.

11. Where there is a dispute between the parties concerning the determination, the court shall adjourn the hearing as necessary to permit the plaintiff or the District Attorney to obtain materials relevant to the determination from the state Board of Examiners of Sex Offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party.

12. The judicial hearings will be conducted in the county of conviction, unless otherwise provided in this Stipulation. For those plaintiffs residing in OMH or OMRDD facilities, the judicial hearings will be conducted in the county in which the facility is located. The court will make the redetermination after the plaintiff has had an opportunity to be heard on any contested issue. Evidence of a plaintiff's behavior since his or her initial registration shall be considered pertinent and be given appropriate weight for the redetermination. The District Attorney shall bear the burden of proving the facts supporting the State's recommendation by clear and convincing evidence. In making the redetermination, the court shall review any victim's

statement and any relevant materials and evidence, which may include live testimony or documentary evidence, submitted by the plaintiff and the district attorney and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the redetermination. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The Court may adjourn the proceeding to permit either party to obtain witnesses or evidence relevant to the redetermination.

13. After the hearing, the court shall render an order setting forth its determination, and the findings of fact and conclusions of law on which the determination is based. The findings of fact and conclusions of law should address the extent, if any, to which the plaintiff's behavior since his or her initial registration makes the risk of reoffense more or less likely. The court's decision that a plaintiff represents either a high, moderate, or low risk of reoffense must be supported by clear and convincing evidence. The court shall neither consider nor render a determination on the question of whether the plaintiff shall be designated a sexual predator, sexually violent offender or predicate sex offender. The court order shall indicate that it is a redetermination proceeding pursuant to the Stipulation.

14. The court shall submit a copy of its order in the redetermination proceeding to DCJS and the parties, and also send a copy to The Legal Aid Society. The plaintiff's risk level as stated in the order shall be entered into the registry administered by DCJS, and the notification provisions appropriate to that risk level under Correction Law §§ 168-j, l, p and q will be put into effect. Prior to DCJS's entry into the registry of the risk level stated in the order, said notification provisions shall not be put into effect. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under

any state or federal statute. Either party may appeal as of right from the redetermination order pursuant to the provisions of articles fifty-five and fifty-seven of the Civil Practice Law and Rules, and may seek to appeal to the Court of Appeals subject to the provisions of article fifty-six of the Civil Practice Law and Rules. Where counsel has been assigned to represent the plaintiff upon the ground that the plaintiff is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to Article 18-B of the County Law.

15. If a plaintiff's risk level is determined to be a level 2, that plaintiff will be considered to be a level 2 offender as of March 11, 2002; therefore, the duration of the registration requirement will be 10 years from the date of his or her original registration. If a plaintiff's risk level is determined to be a level 3, that plaintiff will be considered a level 3 offender as of March 11, 2002, requiring lifetime registration with the possibility of relief from registration 13 years after the date of his or her original registration. If a plaintiff's risk level is reduced to a level 1, that plaintiff will be considered a level 1 offender as of March 11, 2002; therefore, the duration of the registration requirement will be ten years from the date of his or her original registration.

16. In any case where there is no current address in the Registry or the criminal history records or the parole/probation records or where the notice is returned as undeliverable, OCA will notify the District Attorney in the appropriate county, who will attempt to locate the plaintiff. In order to locate the plaintiff, the District Attorney may share information with any law enforcement agency. If the plaintiff is located, a notice of the right to a hearing will be sent as set forth above. If the plaintiff has not been located within six months, the District Attorney will notify the DCJS and The Legal Aid Society in writing. The plaintiff's original risk level will be entered into the Registry administered by DCJS and the notification provisions

appropriate to that risk level under Correction Law §§ 168-j, l, p and q will be put into effect. If a plaintiff who was not located after six months subsequently requests a hearing, a hearing shall be provided as set forth above.

17. If a deported plaintiff requests a hearing, such hearing shall be provided pursuant to this Stipulation. The original risk levels of those plaintiffs who have been deported and have not requested a hearing will be entered into the Registry administered by DCJS no less than six months after the Stipulation of Settlement has been approved and So Ordered by the District Court and posted on the DCJS website.

18. The 800-telephone number operated and staffed by The Legal Aid Society will be in operation within 21 days of the Stipulation being So Ordered by the District Court and will remain in operation for one year. The operation and staffing costs of the 800-telephone number for one year in the amount of \$199,000 shall be paid to The Legal Aid Society by DCJS. Thereafter, based upon the volume of calls made in the first year, an assessment of the need to continue the operation and staffing of the 800-telephone number will be made by DCJS and The Legal Aid Society. In the event that DCJS concludes that it is necessary to continue the operation of the 800-telephone number, then DCJS and The Legal Aid Society will negotiate in good faith a budget for the same. The Legal Aid Society will provide to DCJS documentation of the volume of calls for each month of the first year that the 800-telephone number is operational.

19. Within 120 days of the Stipulation being So Ordered by the court, State defendants shall pay to The Legal Aid Society, the sum of \$250,000 as payment for reasonable attorneys' fees, costs and disbursements in full settlement of any claims for such fees, costs and disbursements in this action. Said payment is subject to the approval of all appropriate New York State officials in accordance with the provisions for indemnification under New York Public Officers Law Section 17.

20. Upon the Stipulation of Settlement being So Ordered by the Court, all plaintiffs shall be bound by the terms of this Stipulation and may not initiate a cause of action in another

court to limit or expand the rights, obligations and conditions specified in the Stipulation regarding the redetermination of their risk levels or the effectuation of the provisions of SORA with respect to them, or limit the liability provisions contained in Correction Law § 168-r.

21. The parties agree that this action should be dismissed with prejudice and the injunctions previously issued in this action vacated consistent with the terms of the Stipulation.

22. The terms of this Stipulation shall not become effective, and shall not be enforceable and binding upon the parties hereto unless and until the Stipulation is So Ordered by the Court.

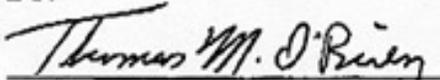
DATED: NEW YORK, NEW YORK

June 2, 2004

FOR PLAINTIFFS:

THE LEGAL AID SOCIETY
CRIMINAL DEFENSE DIVISION
SPECIAL LITIGATION UNIT

BY:

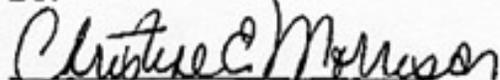


THOMAS M. O'BRIEN
SUSAN L. HENDRICKS
LAURA R. JOHNSON

FOR STATE DEFENDANTS:

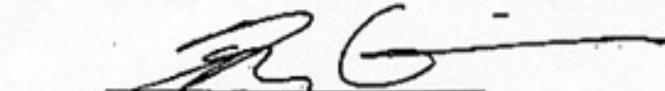
ELIOT SPITZER
ATTORNEY GENERAL OF THE
STATE OF NEW YORK

BY:



CHRISTINE E. MORRISON

So Ordered, this 4th day of June, 2004


HONORABLE DENNY CHIN

