

Federal Judge Orders Trump Administration to Stop Denying Pandemic Relief Funds to Incarcerated Persons, most states and facilities have allowed filing

by Equal Justice Society

On Sept.24, Judge Phyllis J. Hamilton of the U.S. District Court for the Northern District of California issued an Order certifying a nationwide class of people incarcerated in state and federal prisons, and granting the plaintiffs' motion for preliminary injunction requiring the U.S. Department of Treasury, the U.S. Internal Revenue Service, and the United States of America ("Defendants") to stop withholding CARES Act stimulus funds from plaintiffs or any class member on the sole basis of their incarcerated status.

The Judge's preliminary injunction further ordered the defendants to reconsider their prior denial of advance refund payments to any person based on incarcerated status within 30 days, whether the denial was based on a 2018 or 2019 tax return, or on claims filed through the IRS's online "Non-Filer" portal.

A Treasury Department Inspector General report confirms that, as of early May, the IRS had determined that at least 80,000 incarcerated people were eligible for payments of over \$100 million. The Judge's order will thus result in desperately needed economic assistance of over \$100 million to be delivered to members of the Class.

Other class members who did not file a 2018 or 2019 tax return were urged to file a claim with the IRS by the last month. in order to receive a payment. The Defendants are required to file a declaration within 45 days confirming that these steps have been implemented, and to provide the Court with "data regarding the number and amount of benefits that have been disbursed."

"The country is suffering during this pandemic and economic crisis, and incarcerated people and the families they rely on for support are no exception," said Yaman Salahi, a Partner at Lieff, Cabraser, Heimann & Bernstein, representing the Plaintiffs and Class. "Judge Hamilton's order ensures that incarcerated people will receive the sorely needed economic assistance that Congress allocated."

"The Treasury Department's theft of the CARES Act supplements that Congress intended get to people in need right away is not only illegal, but cruel to the people and families most harmed by COVID-19 and over-incarceration— Black, Latinx and Native people and people with lower incomes," said Mona Tawatao of the Equal Justice Society, an attorney for the plaintiffs. "The court's order will bring them critical relief and some measure of justice."

In the Order, Judge Hamilton recognized the strength of Plaintiffs' claims, finding "[P]laintiffs are likely to succeed on the merits of their APA contrary to law claim. The statute mandates distribution of the advance refund to eligible individuals. Incarcerated persons who otherwise qualify for an advance refund are not excluded as an 'eligible individual.' The IRS's decision to exclude incarcerated persons from advance refund payments is likely contrary to law.... Plaintiffs have established they are likely to be irreparably injured without an injunction."

Judge Hamilton also required the government to reconsider prior denials of stimulus check applications that were due to the incarceration status of a person within 30 days. To ensure accountability, Hamilton ordered that "within 45 days, defendants [IRS and Treasury] shall file a declaration confirming these steps have been implemented, including data regarding the number and amount of benefits that have been disbursed."

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Louisiana Supreme Court Strikes Down Driver's License ID law

BY KEVIN MCGILL

Louisiana's requirement that people convicted of certain sex crimes carry a state-issued ID card with the words "SEX OFFENDER" printed on it in orange capital letters is unconstitutional, the state's Supreme Court ruled. The 6-1 ruling on Oct. 20 upholds a decision by a state judge in Lafayette who last year threw out a charge filed against a man who altered his card to remove the label.

State attorneys had argued that the state had a legitimate interest in having the information on the ID card: to let law enforcement officers know the cardholder's criminal history.

But Justice James Genovese, writing for the majority, said there are less restrictive ways to inform law enforcement than requiring someone to show the branded card every time they are required to produce a government ID.

"A symbol, code, or a letter designation would inform law enforcement that they are dealing with a sex offender and thereby reduce the unnecessary disclosure to others during everyday tasks," Genovese wrote.

He added that the state has a sex offender registry and other methods of notifying the public without compelling the offender to repeatedly self-identify as one every time an ID must be produced. "As Louisiana has not used the least restrictive means of advancing its otherwise compelling interest, the branded identification requirement is unconstitutional," Genovese wrote.

Justice William Crain dissented, arguing that the speech involved is the government's not the defendant's. "The speaker is the government: the words are stamped by a governmental agency on a government-issued identification card in accordance with a government enacted statute," Crain wrote. "This is the embodiment of government speech."

First Ever Live Streamed Anti-Registry Protest a Success for WAR BY WOMEN AGAINST REGISTRY

On Aug. 20, the 10th Circuit Court in Denver overturned *Millard v Rankin*, the US District Court ruling that found Colorado's sex offense registry scheme violated the 8th Amendment ban on cruel and unusual punishment. (The 10th Circuit ruling is *Millard v Camper*, No. 17-1333 (10th Cir 2020).)

In response, Women Against Registry (WAR) and other Anti-Registry Movement (ARM) activists held a public demonstration against this 10th Circuit ruling on Sept. 24th. The primary message we had for the event was a direct challenge to the 10th Circuit logic. We created a brochure specifically for the protest, which explained the "duck test," the logical deduction that simply states if something looks, talks, and walks like a duck, then it is likely a duck. Registered citizens and their loved ones negatively impacted by the public registry know the registry looks, feels, and acts like punishment, and the more we educate the general public the more they recognize the registry is punishment. The 10th Circuit, however, denied that the registry was punishment, much less cruel and unusual punishment. In essence, the 10th Circuit had deduced a duck was a cow.

About 25 people felt our message was important enough to attend the protest. Some traveled from Missouri, Nebraska, Washington state, Illinois, Kentucky, Utah, and Michigan to attend. Others were members of the local chapters of registry reformist groups. One family attended with their children, who carried child-sized protest signs. Those of us who traveled from out-of-state arrived early to plan ahead for the protest.

We pushed ahead with our plans to protest as planned, arriving just before 8 AM. As fellow activists continued to arrive, we spread out over the four corners surrounding the courthouse, with our main table in front of the main entrance of the courthouse. We stood outside the courthouse and spoke to passersby and handed out fliers.

WAR Registry Protest, *Cont. from page 3*

Still, despite the concerns over BLM protests and the COVID pandemic and the absence of media coverage, this event managed to draw at least two dozen anti-registry activists, and we were still able to spread our message of hope and change to others. Others knew someone impacted by the registry and never knew there were organizations they could turn to for help and support. In that sense, this protest remains a successful event.

We are not finished demonstrating to educate that the registry and all of its associated violations of human rights are in fact punishment, even cruel and unusual punishment. There is a potential case before SCOTUS that will also allow SCOTUS the opportunity to recognize that the registry is punishment.

Maryland v. Rogers addresses whether sex offender registration is "punishment" within the meaning of the 6th and 14th Amendments. Jimmie Rogers pleaded guilty to a Maryland criminal law that provides that a person may not knowingly "take or cause another to be taken to any place for prostitution." Because the victim's age was not an element of the offense, the prosecution did not present evidence of her age. However, the Maryland Department of Public Safety and Correctional Services determined that the victim was a minor. After Rogers' release from prison, the department classified him as a Tier II sex offender, which requires registration for 25 years for human-trafficking offenses against minors. In contrast, a Tier I person with a sex offense must register for only 15 years and may petition for removal after 10 years. The Maryland Court of Appeals, the state's highest court, determined that sex offense registration constitutes punishment for which the state must prove all elements beyond a reasonable doubt. The Maryland attorney general's petition asks the justices to review that decision, arguing that it conflicts with two Supreme Court decisions and other lower-court and state-court decisions.

If the Supreme Court of the United States (SCOTUS) takes the case, our next public demonstration should be at their steps and the court needs to be packed with our families.

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CURE-SORT NEWS

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Corrected Information on APA Article on Civil Commitment

In the previous issue there was incorrect information portrayed in the story about the American Psychiatric Association's Board of Trustees task force that decried the practice of civil commitment. The release that was published from **Psychology Today** in its Aug. 21, 1998, issue told of the task force report from the San Diego conference of APA of 1998.

Everything in the article was correct, but the confusion came when the report referred to the U.S. Supreme Court decision on the case of Kansas v. Hendricks. This story referred to that decision as "last year" and it was actually referring to 1997 when that decision occurred.

Our apologies for the confusion in not listing the proper date on when the task force report was given. It is appreciated that the APA decries the use of civil commitment.

A Brief Note About Letters to CURE-SORT

The CURE-SORT board knows well that every one of our members has concerns, all of which we care about and need to be informed of. Our membership has been the best source of information for decades now, and there is no replacing your boots-on-the-ground perspective.

Recently, some individuals have been frustrated with delays in response. We don't currently have a volunteer staff large enough to reply promptly to all the letters we receive, along with emails and phone calls. Please be patient; we will try to respond to you in as timely a manner as possible!

To that end, please, keep your messages short and to the point, and do not send us legal papers. The best way to get in touch with us is by mail. **Please send all mail to P.O. Box 1022, Norman, OK 73070-1022.**

Recognizing the Passing of Several CURE-SORT Members over past few months

It has come to our attention that the following members of our CURE-Sort membership have passed away.

William C. Beals had been at the Minnesota Sex Offender Program, Moose Lake, MN.

David L. Mayes in Syracuse, NY, and

Tom Tschetter in St. Louis, MO.

As always, our thoughts and prayers go to the family and friends of all those members who have passed. Though their journeys have come to an end, we continue to remember them in our fight for justice and fairness.

Resources

We are pleased to offer the following resources. Donations are accepted and encouraged to cover cost of postage and printing. Mail donations to the CURE-SORT, address on Page 3.

One Breath At A Time by Ila Davis (\$17.50)

Understanding Offending Behavior by Stephen Price. (A collection of 9 of Stephens articles from previous newsletters) (\$4.00 for the set of 9 articles)

When Someone on the Registry Moves into My Neighborhood (Member Price \$5; Non-Member \$10)

SUPPORT GROUP: Families & friends for those in civil confinement, contact Andrew Extein, MSW. Interested persons please e-mail: CCN@curenational.org. Contact SORT if no email and we'll contact him.

No More Victims – One Man's Journey Into Sexual Offending and Recovery, By S. Sands (Ed G), \$13.95 (does not include shipping). Send all Requests to: gunder788@verizon.net or amazon.com.

PLEASE NOTE: Check the date on your mailing label to determine if your membership is due to expire. Also, please let us know if your address changes—especially inmates—because your mail will not be forwarded. Be sure to include your prison I.D. number to guarantee proper mailing.