

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

DARNELL M. GOINGS	)	
5012 Sargent Road, N.E.	)	
Washington, DC 20017,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case: 1:11-cv-00501
	)	Assigned To : Howell, Beryl A.
COURT SERVICES AND OFFENDER	)	Assign. Date : 3/9/2011
SUPERVISION AGENCY FOR THE	)	Description: TRO/PI
DISTRICT OF COLUMBIA	)	
633 Indiana Avenue, N.W.	)	
Washington, DC 20004,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

1. Plaintiff Darnell Goings, by and through his attorneys, brings this action arising out of the United States Constitution, and alleges as follows.

**Nature of the Action**

- 2. Mr. Goings is a District of Columbia ("D.C.") resident currently serving a five-year term of probation imposed by Franklin County (Florida) Circuit Court.
- 3. Defendant Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA"), a federal agency, has oversight of Mr. Goings' probation pursuant to D.C. Code § 24-133 and the Interstate Compact for Adult Offender Supervision.
- 4. Since October 22, 2010, Defendant has forbidden Mr. Goings to make contact of any sort with his three children, aged eleven, three, and two. Defendant has informed Mr. Goings that, if he lives with, personally visits, makes telephone contact with, or even writes a letter to any of his

children, he will be in violation of his probation, and thus subject to revocation and incarceration.<sup>1</sup>

5. The “no contact” condition has also forced Mr. Goings to live apart from his fiancée, who resides with and cares for (now by herself) the couple’s two children.

6. By imposing the “no contact” condition, Defendant has violated Mr. Goings’ rights under the substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

7. Defendant has imposed numerous other conditions on Mr. Goings’ probation. These include requirements that he undergo sex offender “evaluation” and complete sex offender “therapy”; submit to polygraph examinations regarding the entirety of his sexual history; comply with Global Positioning System monitoring; refrain from using a computer with internet access without Defendant’s written consent; avoid any place primarily used by minor children; and make no unsupervised contact with children (in addition to his own) under the age of 18.<sup>2</sup> Defendant has also required Mr. Goings to move residences repeatedly in order to comply with the challenged conditions.

8. Defendant has enforced these conditions despite the fact that the Florida judge who imposed Mr. Goings’ probation explicitly ordered that it include no sex offender conditions.

9. These conditions were not imposed at the order of a court, nor have they been reviewed by any court. Instead, Defendant has imposed them unilaterally, without providing Mr. Goings any opportunity to contest them. In so doing, Defendant has violated Mr. Goings’ rights under

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<sup>1</sup> Hereinafter, Plaintiff refers to this probation condition as the “no contact” condition.

<sup>2</sup> Hereinafter, Plaintiff refers to these probation conditions collectively, along with the “no contact condition,” as “the challenged conditions.”

the procedural component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

10. Mr. Goings seeks injunctive and declaratory relief.

### **Jurisdiction and Venue**

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

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

13. Declaratory relief is authorized under 28 U.S.C. §§ 2201-2202.

### **Parties**

#### **The Plaintiff**

14. Plaintiff Darnell Goings was born and raised in D.C. and has lived in the D.C. area for most of his life. He graduated from Theodore Roosevelt High School in 1989. Ex. 1 (Goings Dec.) ¶ 1.

15. Mr. Goings is the father of three minor children: D.G., his eleven-year-old son; J.G., his three-year-old son; and A.G., his two-year-old daughter. As of the filing of this Complaint, it has been 138 days since Defendant banned Mr. Goings from making contact of any sort with D.G., J.G., and A.G. *Id.* ¶¶ 3-4, 10.

16. Forced separation of a father and his children constitutes a fundamental liberty deprivation that is as painful as it is extraordinary. The “no contact” condition has had a profound and destructive impact on the lives of Mr. Goings and his family. *Id.* ¶¶ 5-6, 10-11, 13-14, 16; Ex. 2 (Davis Dec.) ¶¶ 1-7, 9; Ex. 3 (D.G. Dec.) ¶¶ 1-6.

17. Mr. Goings is a loving, dedicated, and compassionate father. He has changed his children’s diapers, prepared their meals, taken them to and from school, and consistently performed the variety of other tasks and created the emotional bonds that constitute fatherhood in

our culture. Ex. 1 (Goings Dec.) ¶¶ 5-6, 13-14; Ex. 2 (Davis Dec.) ¶¶ 3-5, 7; Ex. 3 (D.G. Dec.) ¶¶ 2-3.

18. Mr. Goings and D.G. have an especially close relationship. For the great majority of D.G.'s life, he has seen his father on a daily basis. Mr. Goings coached D.G.'s football team; spent time with him at museums, movies, and at home; helped him with his schoolwork; and introduced him to comic books. D.G. misses his father. He cannot understand why he is not allowed to see his father, or even talk to him. Ex. 1 (Goings Dec.) ¶¶ 5-6, 13-14; Ex. 2 (D.G. Dec.) ¶¶ 2-6; Ex. 3 (Davis Dec.) ¶¶ 3-5.

19. Mr. Goings is engaged to be married to Anika Davis, the mother of D.G. and A.G. The two began their relationship in 1996. Ex. 1 (Goings Dec.) ¶¶ 2-3; Ex. 2 (Davis Dec.) ¶¶ 1-2.

20. Because Ms. Davis resides with D.G. and A.G., Mr. Goings is unable, under threat of incarceration, to live with her, and can only rarely spend time with her. Mr. Goings and Ms. Davis used to share evenly the duties of raising their children, but now she is left to do the work of two parents. Their relationship has been severely affected. Ex. 1 (Goings Dec.) ¶¶ 5, 13-14; Ex. 2 (Davis Dec.) ¶¶ 2-6, 9.

21. Mr. Goings has also been constrained from associating with his own parents. He considered moving in with his father after being forced out of his own home, but he was not allowed to because his father's wife has a grandson who sometimes visits the house. And he can rarely visit his mother, because his niece and nephew (both of whom are under the age of ten) often stay at her house. She also cares for two babies during the week. Ex. 1 (Goings Dec.) ¶¶ 11, 15.

22. The challenged conditions are harming Mr. Goings' relationship with the rest of his family and his friends. Because he has siblings with young children, he is forced to stay away

from family gatherings. Since most of his friends have children, he has become isolated from them as well. Last year he spent both Thanksgiving and Christmas alone, and he had to stay home from the Watch Night service at his church on New Year's Eve. *Id.* ¶¶ 15-16.

23. Mr. Goings presents no danger to his children, or to any children.

### **The Defendant**

24. Defendant CSOSA is a federal agency responsible for supervision of probationers, parolees, and supervised releasees in D.C. D.C. Code § 24-133.

25. On or about October 20, 2010, CSOSA took over from Florida responsibility for supervising Mr. Goings' probation, pursuant to the Interstate Compact for Adult Offender Supervision ("Interstate Compact").

26. The Interstate Compact mandates that the receiving state (here, D.C.) "shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state." Interstate Commission for Adult Offender Supervision Rule 4.101.

### **Factual Background**

27. In the spring of 1995, while employed as a corrections officer at Franklin County (Florida) Jail, Mr. Goings had consensual sex with a sixteen-year-old female inmate. He was twenty-three years old at the time.

28. Although he was fired by the jail, Mr. Goings was not arrested or indicted. Months passed. Finally, in January 1996, Mr. Goings decided to move from Florida back to D.C. after he and his then-girlfriend broke up.

29. On March 8, 1996, Mr. Goings was charged by information in Franklin County Circuit Court with sexual battery by a person in a position of custodial authority. A warrant issued for his arrest on March 11, 1996.

30. Mr. Goings was unaware of the charge and warrant. The Florida authorities made no effort to contact or arrest him in D.C.

31. Mr. Goings lived in the D.C. area for the next thirteen years and ten months, from January 1996 to November 2009. During that period, he committed no sexual misconduct. To the contrary, he spent that time raising a family. He held jobs at National Airport and Walter Reed Hospital, among other places, and was active in the community as a football coach and PTA member.

32. On November 20, 2009, a Metropolitan Police Department officer ran a background check using Mr. Goings' driver's license and discovered the outstanding 1996 Florida arrest warrant. This was Mr. Goings' first notice that the warrant had issued.

33. Mr. Goings was arrested on the spot and returned to Florida. On June 17, 2010, he pled no contest to one count of sexual battery by a person in a position of custodial authority.

34. The complaining witness from Mr. Goings' Florida case testified on his behalf at his 2010 plea hearing. She testified that their sex had been consensual, and she requested that Mr. Goings serve no jail time. Ex. 4 (Transcript of June 17, 2010 Plea Hearing) at 15-16.

35. On August 27, 2010, Judge James C. Hankinson of Franklin County (Florida) Circuit Court placed Mr. Goings on five years' probation, including 11 months and 29 days of jail time, with credit for 277 days of time served. The judge also ordered that Mr. Goings register in Florida as a sex offender, as required by law. Ex. 5 (Aug. 27, 2010 Court Minutes Disposition); Ex. 6 (Aug. 27, 2010 Order of Probation).

36. However, the judge included in the Order of Probation a specific instruction that there be no sex offender conditions imposed on Mr. Goings during his probation. Ex. 5 (Aug. 27, 2010 Court Minutes Disposition); Ex. 6 (Aug. 27, 2010 Order of Probation).

37. During Mr. Goings' brief jail term, his Florida probation officer arranged for his return to D.C. upon the day of his release, pursuant to the Interstate Compact.

38. Even while he was in jail in Florida, Mr. Goings had significantly more contact with his children than Defendant is currently allowing him. In May 2010, he spent time with D.G. and A.G. in person when they flew to Florida, along with Ms. Davis and Mr. Goings' father, to visit him. Mr. Goings was also able to write letters to D.G. and A.G. while he was in jail, and he spoke with them regularly by phone both before and after his no contest plea and sentencing. Ex. 1 (Goings Dec.) ¶ 6; Ex. 2 (Davis Dec.) ¶ 8.

39. Mr. Goings was released from jail on October 19, 2010. He left Florida for D.C. that morning and arrived home to Ms. Davis, D.G., and A.G. that evening. Ex. 1 (Goings Dec.) ¶ 7.

40. On the morning of October 20, 2010, Mr. Goings reported to CSOSA, as he had been instructed to do by his Florida probation officer. He met with Community Supervision Officer Aprille Cole, who told him that he must move out of his home, and that he must make no contact of any sort with his children. This verbal order was the first notice that Mr. Goings received of any of the conditions that CSOSA had decided to impose on his probation. *Id.* ¶¶ 7-8.

41. Mr. Goings referred Ms. Cole to the record of his Florida court case, which showed that Judge Hankinson had ordered that no sex offender conditions be imposed on his probation. She told him, "That's not how we do it here." *Id.* ¶ 9.

42. With CSOSA's permission, Mr. Goings spent the nights of October 20 and 21, 2010, at home with his family. At CSOSA's orders, he moved out on October 22. *Id.* ¶ 10.

43. He initially moved in with his brother, but in early November 2010, CSOSA ordered him to move out of his brother's apartment because a daycare center had opened up in the building next door. Mr. Goings then moved in with his cousin. *Id.*

44. CSOSA did not provide Mr. Goings with a written list of the conditions governing his probation until on or about November 12, 2010. The document that he finally did receive, dated October 29, 2010, listed seventeen “Special Conditions” that CSOSA had imposed on his probation, including the following challenged conditions:

a. Special Condition 15: “You shall have no unsupervised contact with children under the age of 18 without knowledge and permission from CSOSA.” When he was provided with Special Condition 15, Mr. Goings was again instructed orally that it extended to his own children, and that despite its literal terms, CSOSA would enforce it to foreclose contact of any sort, whether supervised or not, including in-person, telephone, and mail contact.

b. Special Condition 2: “You shall undergo evaluation and complete sex offender therapy, to include submitting to polygraph exams, if deemed appropriate by CSOSA . . . .”

c. Special Condition 7: “You shall comply with Global Positioning System (GPS) monitoring to enforce a curfew and/or exclusion zones, if deemed appropriate by CSOSA.”

d. Special Condition 9: “You shall not possess or use a computer with access to any online computer service at any location (including employment) without the written consent of CSOSA. . . .”

e. Special Condition 16: “You shall not spend time at or loiter near places primarily used by minor children (i.e. schoolyards, swimming pools, playgrounds, public libraries, arcades, etc) unless approved by CSOSA.”

f. Special Condition 17: “You shall not be employed, volunteer, or otherwise participate in activities where you have interaction with minor children unless approved by CSOSA.” *Id.* ¶ 12; Ex. 7 (Oct. 29, 2010 CSOSA Compact Action Request).

45. CSOSA made clear to Mr. Goings that his supervising officers would be responsible for the discretionary decision of when and if these conditions would be removed—that is, when, among other things, he would be allowed to speak to, write to, or visit with his children. Ex. 1 (Goings Dec.) ¶ 12.

46. These conditions were not imposed by the order of any court, nor have they been reviewed by any court. Instead, CSOSA itself imposed the conditions, without providing Mr. Goings any opportunity to object to them prior to their imposition. CSOSA has also, itself, claimed the right to modify, relax, or remove the conditions.

47. On February 9, 2011, counsel for Mr. Goings wrote to CSOSA on his behalf and requested that it remove, or at the very least modify, the challenged conditions. Ex. 8 (Feb. 9, 2011 Taylor letter to Dorgett, Brown). CSOSA has not responded to the letter and has not altered the conditions.

### **Claims for Relief**

#### **One: Violation of Substantive Due Process**

48. Plaintiff incorporates by reference the allegations in paragraphs 1-47 above.

49. By imposing the “no contact” condition, Defendant has deprived Mr. Goings of his fundamental right to maintain a relationship with his children.

50. The “no contact” condition is not narrowly tailored to achieve a compelling government interest.

51. By imposing the “no contact” condition, Defendant has violated Mr. Goings’ rights under the substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

#### **Two: Violation of Procedural Due Process**

52. Plaintiff incorporates by reference the allegations in paragraphs 1-51 above.

53. Mr. Goings was not provided with notice of the challenged conditions prior to their imposition.

54. Mr. Goings was not given an opportunity to be heard regarding any purported facts demonstrating the justification for the challenged probation conditions. He was presented with no evidence and given no reasons for CSOSA's decision. He was not provided an opportunity to question the scope or appropriateness of the conditions prior to their imposition. Nor has Defendant adequately explained or justified the conditions since their imposition.

55. The challenged conditions were not imposed by a court, nor have they been reviewed by any court. Instead, they were unilaterally imposed by Defendant, and they remain in place subject to Defendant's discretion.

56. Despite the lack of any process and the fact that no judge imposed the challenged probation conditions, Defendant has informed Mr. Goings that he will face revocation of his probation and, therefore, incarceration should he fail to comply with them.

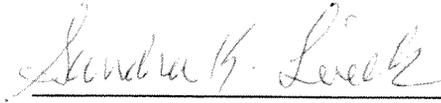
57. Defendant's continued imposition of the challenged conditions in the absence of any process violates Mr. Goings' rights under the procedural component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

#### **Request for Relief**

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

- a. preliminarily and permanently enjoining enforcement of the challenged probation conditions;
- b. declaring that the "no contact" condition violates Mr. Goings' Fifth Amendment right to substantive due process;
- c. declaring that all of the challenged conditions violate Mr. Goings' Fifth Amendment right to procedural due process; and
- d. granting such other relief as this Court deems just and proper.

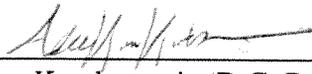
Respectfully submitted,



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Date: March 9, 2011