

1998 WL 476173

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United States District Court, S.D. New York.

John DOE, Richard Roe, and Samuel Poe, individually and on behalf of all other persons similarly situated,
Plaintiffs,

v.

George PATAKI, et al., Defendants.

No. 96 CIV. 1657(DC). | March 18, 1998.

Opinion

CHIN, D.J.

*1 Plaintiffs having requested the issuance of a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure; the parties having previously submitted joint stipulations of fact and memoranda of law on some issues, supplemented by new submissions by plaintiffs, consisting of a Declaration by Susan L. Hendricks with appended exhibits, and a Memorandum of law in Support of a Temporary Restraining Order; the Court having considered those pleadings; the parties having been heard on this application; and for the reasons stated on the record on March 16, 1998, it is hereby ordered as follows:

(1) Sufficient reason having been shown, with respect to individuals who were convicted of designated sex offenses prior to and who were under the supervision of either the New York State Division of Parole or a local department of probation on January 21, 1996, and who were administratively given a risk level classification pursuant to Correction Law § 168–g, defendants shall classify all such individuals, for purposes of community notification, at no higher than risk level one, pending further order of this Court or until such time the registrant receives proper prior notice of a proposed higher risk level classification and an opportunity to be heard before a court, including (a) notice prior to the hearing specifying the risk level recommendation of the New York State Board of Examiners of Sex Offenders (the “Board”), the reasons therefor, and the extent of community notification procedures that would be followed for an individual at that level, and (b) presentation by the state (or local prosecuting body) of clear and convincing evidence that the registrant should be classified level two or three.

(2) As to those plaintiffs who were on probation or parole on January 21, 1996, the parties have agreed to supplement their joint stipulation concerning classification of offenders (dated August 1, 1996) by April 7, 1998, and have also agreed to otherwise rely on their prior submissions concerning issuance of preliminary and permanent injunctions. The parties have consented to continuance of this temporary restraining order pending the Court’s determination of those issues.

(3) Sufficient reason having been shown, with respect to individuals who were convicted of designated sex offenses prior to and who were incarcerated as of January 21, 1996, and who thereafter received or will receive judicial risk classifications pursuant to Correction Law § 168–n, defendants shall classify all such individuals, for purposes of community notification, at no higher than risk level one, pending further order of this Court, unless such registrant previously received, or until such time that the registrant hereafter receives, proper prior notice and an opportunity to be heard before a court, including (a) notice prior to the hearing specifying the Board’s risk level recommendation, the reasons therefor, and the extent of community notification procedures that would be followed for an individual at that level, and (b) the presentation by the state (or local prosecuting body) of clear and convincing evidence that the registrant should be classified level two or three.

*2 (4) Paragraph 3 of this temporary restraining order, unless continued by subsequent order of this Court, shall expire at 5:00 p.m. on the 17th day of April, 1998.

(5) Nothing in this order shall be construed as otherwise restraining defendants, or their agents and employees, and all persons acting in concert with them from otherwise implementing the Act. In addition, nothing in this order shall be construed as prohibiting defendants from responding to inquiries, in implementing the 900 telephone number, that the risk level classification of any individuals covered by paragraphs one and three above is “pending.”

Doe v. Pataki, Not Reported in F.Supp. (1998)

(6) With respect to those plaintiffs who were incarcerated January 21, 1996, and subsequently received judicial classifications, the parties are hereby directed to submit their papers according to the following schedule, which has been agreed to by the parties: Plaintiffs shall submit their motion to amend the complaint and for a preliminary injunction on March 30, 1998; defendants shall submit their papers in opposition by April 7, 1998; and plaintiffs' reply papers shall be submitted no later than April 10, 1998.

SO ORDERED.