

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF ALABAMA

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MICHAEL A. MCGUIRE,

PLAINTIFF,

Case No. 2:11cv1027

Demand for Jury Trial

v.

CITY OF MONTGOMERY POLICE DEPARTMENT,

a municipal corporation of the City

of Montgomery, State of Alabama,

KEVIN J. MURPHY, Chief of Police,

in his official and individual

capacities, **DETECTIVE R.B. GORDON,**

in her official and individual

capacities, **DETECTIVE T.A. LACHANCE,** in

her official and individual capacities,

DETECTIVE R.L. DUCKETT, in her official

and individual capacities, **DETECTIVE A.L.**

SAVELL, in her official and individual

capacities, **MONTGOMERY COUNTY**

SHERIFF'S DEPARTMENT, a municipal

corporation of Montgomery County

of Alabama, **D.T. MARSHALL,** Sheriff of

Montgomery County, Alabama Sheriff's

Office, in his official and individual)
capacities, **LIEUTENANT LEIGH PERSKY,**)
Deputy Sheriff of the Montgomery County,)
Alabama Sheriff's Office, in his)
official and individual capacities,)
COLONEL HUGH B. MCCALL, Director of the)
Alabama Department of Public Safety, in)
his official and individual capacities,)
LINDSEY CLEMENTS, Attorney of the)
Alabama Department of Public Safety, in)
her official and individual capacities,)
LUTHER STRANGE, Attorney General for)
the State of Alabama, in his official)
and individual capacities, United States)
Attorney General, **ERIC HOLDER,** in his)
official and individual capacities,)
DEFENDANTS.)

PLAINTIFF'S COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF

Complaint for Declaratory and Injunctive Relief and Damages

INTRODUCTION

Plaintiff brings this action, pursuant to 42 U.S.C. § 1983, to obtain declaratory, injunctive and monetary relief to redress the injuries and damages he suffered, and continues to suffer, as a direct and proximate result of the conduct of Defendants that violated rights

secured to him by the United States Constitution including, but not limited to, the Fifth and Fourteenth Amendments, in violation of 42 U.S.C. § 1983, as will more fully appear herein below.

Plaintiff also seeks attorney's fees and costs pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

JURISDICTION

This action is brought pursuant to in both 42 U.S.C. §§ 1983 and 1988, as well as the Fifth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343 and the aforementioned statutory and constitutional provisions. This Court has jurisdiction to grant the declaratory relief requested pursuant to 28 U.S.C. § 2201 and F.R.Cv.Pr. 57.

VENUE

Venue lies properly in this Court pursuant to 28 U.S.C. §1391(b), because all named defendants reside in the same state, Alabama.

PARTIES

1. Plaintiff, **Michael Atchison McGuire**, is an individual, over the age of 19 and a citizen of the State of Alabama.
2. Defendant, **City of Montgomery Police Department** is the primary law enforcement body for the City of Montgomery, in the State of Alabama, with its principal place of business located at 103 North Perry Street, Montgomery, Alabama 36104.

3. Defendant, **Kevin J. Murphy**, Chief of Police of the City of Montgomery Police Department, in the State of Alabama, and is being sued in his official and individual capacities. Defendant Murphy may be served at his place of employment, City of Montgomery Police Department, 103 North Perry Street, Montgomery, Alabama 36104.
4. Defendant, **Detective R.B. Gordon**, is a detective with the City of Montgomery Police Department, in the State of Alabama, and is being sued in her official and individual capacities. At all times relevant in this matter, defendant Gordon was employed as a detective in the Criminal Investigations Division/Special Victims Unit. Defendant Gordon may be served at her place of employment, City of Montgomery Police Department, 103 North Perry Street, Montgomery, Alabama 36104.
5. Defendant, **Detective T.A. LaChance**, is a detective with the City of Montgomery Police Department, in the State of Alabama, and is being sued in her official and individual capacities. At all times relevant in this matter, defendant LaChance was employed as a detective in the Criminal Investigations Division/Special Victims Unit. Defendant LaChance may be served at her place of employment, City of Montgomery Police Department, 103 North Perry Street, Montgomery, Alabama 36104.
6. Defendant, **Detective R.L. Duckett**, is a detective with the City of Montgomery Police Department, in the State of Alabama, and is being sued in her official and individual capacities. At all times relevant in this matter, defendant Duckett was employed as a detective in the Criminal Investigations Division/Special Victims

Unit. Defendant Duckett may be served at her place of employment, City of Montgomery Police Department, 103 North Perry Street, Montgomery, Alabama 36104.

7. Defendant, **Detective A.L. Savell**, is a detective with the City of Montgomery Police Department, in the State of Alabama, and is being sued in her official and individual capacities. At all times relevant in this matter, defendant Savell was employed as a detective in the Criminal Investigations Division/Special Victims Unit. Defendant Savell may be served at her place of employment, City of Montgomery Police Department, 103 North Perry Street, Montgomery, Alabama 36104.
8. Defendant, **Montgomery County Sheriff's Office**, is the primary law enforcement body for the County of Montgomery, in the State of Alabama, with its principal place of business located at 115 South Perry Street, Montgomery, Alabama 36104.
9. Defendant, **D. T. Marshall**, Sheriff of Montgomery County, Alabama Sheriff's Office is being sued in his official and individual capacities. Defendant Marshall is the Chief Law Enforcement Officer of Montgomery County, in the State of Alabama. Defendant Marshall may be served at his place of employment, Montgomery County Sheriff's Department, 115 South Perry Street, Montgomery, Alabama 36104.
10. Defendant, **Lieutenant Leigh Persky**, is employed with the Montgomery County Sheriff's Office, and is being sued in his official and individual capacities. At all relevant times in this matter, defendant Persky was employed within the Administrative

Division of the Montgomery County, Alabama Sheriff's Office with responsibility for processing and administering registration and monitoring of persons subject to the Alabama Community Notification Act. Defendant Persky may be served at his place of employment, Montgomery County Sheriff's Department, 115 South Perry Street, Montgomery, Alabama 36104.

11. Defendant, **Colonel Hugh B. McCall**, is the Director of the Alabama Department of Public Safety, and is being sued in his official and individual capacities. Defendant McCall may be served at his place of employment, Alabama Department of Public Safety, 301 South Ripley Street, Montgomery, Alabama 36104.

12. Defendant, **Lindsey Clements**, is an Attorney for the Alabama Department of Public Safety, and is being sued in her official and individual capacities. Defendant Clements may be served at may be served at her place of employment, Alabama Department of Public Safety, 301 South Ripley Street, Montgomery, Alabama 36104.

13. Defendant, **Luther Strange**, is the Attorney General for the State of Alabama, and is being sued in his official and individual capacities. Defendant Strange may be served at his place of employment, Office of the Attorney General, 501 Washington Avenue, Montgomery, Alabama 36104.

14. Defendant, **United States Attorney General, Eric Holder**, is being sued in his official and individual capacities. Defendant Holder may be served at his place of employment, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001.

15. All Defendants named herein were acting within the course and scope of their employment, and under color of Alabama and/or Federal law, for their respective governmental agencies at all relevant times hereto.

ADMINISTRATIVE REMEDIES

16. Plaintiff was denied any administrative remedies, whatsoever and subjected to the Alabama Community Notification Act and the Sex Offender Registration and Notification Act before bringing his claims in this action. Plaintiff alleges he was not subject to the Alabama Act No. 507 (1967), the 1996 Community Notification Act, et. seq., or to the Sex Offender Registration and Notification Act at the time the original Complaint in this action was filed.

GENERAL FACTUAL ALLEGATIONS

17. Plaintiff, Michael Atchison McGuire (hereinafter "Plaintiff"), was convicted of sexual assault in the State of Colorado on or about May, 1986. On or about November 1989, Plaintiff was released from a Colorado prison, having served his prison sentence.

18. Plaintiff was not required to register as a sex offender by the State of Colorado.

19. At the time of Plaintiff's 1986 Colorado conviction, the State of Alabama's sex offender registration requirements were set forth in the Alabama Legislative Act No. 507 (1967) (See Plaintiff's Exhibit 1).

20. Alabama Act 507 (1967) was enacted to "prescribe the *punishment* for willful failure or refusal to so register" (emphasis added).

21. Plaintiff's 1986 conviction in Colorado constitutes final judgment on the crime he committed.
22. On or about April 14, 2010, Plaintiff, a disabled Veteran of the United States Armed Forces, returned to his hometown of Montgomery, Alabama due to failing health, to live and work close to his mother, who was 80 years old at the time, and to associate more closely with the rest of his family, many of whom reside in Montgomery, Alabama.
23. Plaintiff had previously heard of Alabama's "tough sex offender laws", and upon arrival to Montgomery, Alabama on or about April 14, 2010, Plaintiff *immediately* and *voluntarily* visited the Montgomery Police Department to inquire about the "sex offender" laws, and to confirm his belief that he was not subject to those laws, including the registration and restrictions under the Alabama Community Notification Act.
24. On or about April 14, 2010, upon arriving at the Montgomery, Alabama Police Department, Plaintiff was directed to the Criminal Investigations Division, Special Victims Unit, where he encountered Defendants Gordon, LaChance, Savell and Duckett ("Defendant Detectives").
25. In response to Plaintiff's inquiry with Defendant Detectives, Plaintiff was questioned by the detectives about his past crimes, the timeframe in which the crimes were committed and the State in which he committed the crimes. Plaintiff cooperated with the questioning and provided the requested information asked for by the Defendant Detectives.

26. After approximately an hour, Plaintiff asked Defendant Detectives Gordon and LaChance if he could leave and if they would call him or contact him by mail to inform him of their findings.
27. Defendant Detectives would not allow Plaintiff to leave the building, but required him to remain in a confined area of the Special Victims Unit of the Montgomery Police Department. Plaintiff avers that Defendant Detectives of the Montgomery Police Department kept Plaintiff in custody for several hours.
28. During the period in which Plaintiff was in custody, he was placed in constant fear and intimidated by Defendant Detectives Gordon, Lachance and Savell. Defendant Detective Gordon asked Plaintiff, "Who said you could live there? You can't live there!" (Referring to Plaintiff's mother's address where Plaintiff informed the detectives he would reside in Montgomery).
29. Defendant Detective Lachance told Plaintiff, "You broke federal Law by moving from Colorado to Virginia and from Virginia to D.C., and that's a felony". Defendant Detective Savell stated, "That's Federal, we need to get the D.A. on him." Plaintiff was extremely frightened by the verbal tactics of Defendant Detectives.
30. Defendant Detectives Gordon, LaChance and Savell caused Plaintiff to be fingerprinted, photographed and required Plaintiff to register with the Montgomery Police Department as a sex offender. (See Plaintiff's Exhibits 2 and 3).
31. Detective Savell gave Plaintiff a copy of the then current Alabama Sex Offender laws, which included living and work restrictions, registration requirements, reporting duties, and said

to him, "This is your Bible. Keep it with you at all times, because if you violate what's in your Bible, you will be charged with a felony." (see Plaintiff's Exhibit 4).

32. After several hours in custody, Plaintiff was finally told he was being released and was escorted to the Montgomery Police Department exit by Defendant Detective Gordon.

33. As Defendant Detective Gordon was escorting Plaintiff to the exit, Plaintiff stated to Defendant Gordon, "Ma'am, all I wanted to do was confirm that I was not supposed to be under Alabama Sex Offender law. I don't want to do anything to break the law." Detective Gordon responded, "You already broke Alabama law."

34. Defendant Gordon then told Plaintiff, "You have five (5) days to move from Darien Drive and find a compliant address. You must report back to me in five days with your new address, and it better be in a compliant area of Montgomery, or you will be arrested and charged with a felony." (See Plaintiff's Exhibit 5)

35. Defendant Detective Gordon further ordered Plaintiff to register with the Montgomery County Sherriff's Department immediately.

36. Out of fear of being arrested for a felony, Plaintiff desperately began searching for places he could live, while being compliant with the Defendant Detectives explicit directives.

37. Plaintiff had several telephone discussions with Detectives Gordon and LaChance between April 15, 2010 and April 18, 2010, in which Plaintiff inquired about the prospect of living at a minimum of 20 (twenty) prospective residences, and was informed by

Defendants Gordon and LaChance that Plaintiff could not live at either, as the prospective homes were not compliant areas per the Alabama Community Notification Act.

38. Plaintiff returned to the Montgomery Police Department on or about April 18, 2010 to express his concern that there was nowhere for him to live in the City of Montgomery.

39. Both Defendant Detectives Gordon and Lachance reviewed a map of the City of Montgomery posted in the Special Victims Unit that detailed a few parts of town in which, they told Plaintiff, convicted sex offenders subject to the Alabama Community Notification Act could reside.

40. Defendant Detective Gordon suggested that Plaintiff move to the Regency Inn, since many sex offenders had previously held residency at that location.

41. The Regency Inn is a motel located at 1771 Dickinson Drive in Montgomery, Alabama, and was deemed to be in a compliant area of the city in which sex offenders who were subject to the Alabama Community Notification Act could reside.

42. Defendant Detectives Gordon and LaChance reiterated that Plaintiff was required to move immediately or be charged with a felony. During the April 18, 2010¹⁴⁴ meeting at the Montgomery Police Department, Plaintiff requested from both Detectives Gordon and Lachance "the due process hearing I am entitled to." Detective Lachance informed Plaintiff that she "would arrange for your due process hearing immediately", pursuant to Plaintiff's request.

43. Plaintiff moved into the Regency Inn on or about April 27, 2010 and lived there until, July 19, 2010. (See Plaintiff's Exhibit 6).
44. Plaintiff is a disabled veteran who currently lives on a fixed income. After depleting all of his savings on living arrangements at the Regency Inn, Plaintiff had to move, as he could no longer afford to pay the weekly rental rates at Regency Inn. Plaintiff could not find employment due to the work restrictions placed upon him when he was subjected to the Alabama Community Notification Act. Plaintiff moved to his current residence on July 20, 2010.
45. On or about April 27, 2010, Plaintiff went to the Montgomery County Sherriff's Department to provide information of his compliant address as ordered by Defendant Detectives of the Montgomery Police Department.
46. On or about April 27, 2010, Plaintiff met with Defendant Lieutenant Persky, of the Montgomery County, Alabama Sherriff's Office. Defendant Persky interviewed Plaintiff and recorded the details of Plaintiff's 1986 conviction, provided by Plaintiff.
47. Defendant Persky told Plaintiff that he was required to comply with Alabama Sex Offender law and the Community Notification Act. Defendant Persky had Plaintiff "processed" as a sex offender, requiring Plaintiff to have his photograph, fingerprints, and DNA taken.
48. Plaintiff was issued a "sex offender identification card" and was told to keep the card on his person at all times. Defendant Persky stated to Plaintiff, "If you ever get stopped by the police,

you must show them this card, or be charged with a felony". (See Plaintiff's Exhibit 7).

49. Defendant Persky instructed Plaintiff of his periodic in-person registration requirements and informed Plaintiff that his Deputy Sheriffs would periodically visit the address that he listed as his residence. Defendant Persky told Plaintiff that if it was not confirmed by his Deputy Sheriffs that the Plaintiff was living at the place he listed as his residence, or the residence was not compliant with the Alabama Community Notification Act, he would be arrested and charged with a felony. Plaintiff was extremely frightened by the verbal tactics of Defendant Persky.

50. On or about June 25, 2010, Plaintiff complied with the restrictions of the Alabama Community Notification Act by informing the City of Montgomery's Police Department and the Montgomery County Alabama Sherriff's Office of his change of address. Plaintiff did so in fear of being arrested and charged with a felony. (See Plaintiff's Exhibits 8-13).

51. Plaintiff is unable to live with his wife of eleven years, given that she is domiciled in the only home in which she and Plaintiff could afford to pay rent from his fixed income. The home in which Plaintiff's wife lives is in an area of the City of Montgomery, Alabama deemed to be non-compliant for sex offenders under the Alabama Community Notification Act. Plaintiff was and is currently required to comply with the Alabama Community Notification Act, or be charged with a felony.

52. On or about May, 2010, Defendant Hugh B. McCall, Defendant Lindsey Clements and the other named Defendants, individually and collectively, caused Plaintiff's name, address, Colorado conviction and other personal information to be released to one or more entities, who published this information on the internet, and in other media, labeling Plaintiff as a registered "sex offender". (See Plaintiff's Exhibit 14)
53. On or about May, 2010, Defendant Hugh B. McCall, Defendant Lindsey Clements, Defendant United States Attorney General Eric Holder and the other named Defendants, individually and collectively have intentionally posted and intentionally caused to be posted, Plaintiff's name, address and other personal information about Plaintiff on the Alabama and Federal Registries for Sex Offenders, labeling Plaintiff as a "sex offender". (See Plaintiff's Exhibits 15 and 16).
54. On or about June, 2010, Defendant Hugh B. McCall and Defendant Lindsey Clements caused a "community notification flyer" to be distributed, by mail and other means, in and about the Montgomery, Alabama area, for the purposes of warning the public of Plaintiff's presence in Montgomery, Alabama, and labeling Plaintiff as a convicted "sex offender". (See Plaintiff's Exhibit 17).
55. Since April 14, 2010, Defendants individually and collectively, have subjected Plaintiff to the onerous restrictions of the Alabama Community Notification Act and to the Sex Offender Registration and Notification Act ("SORNA"), without providing any notice or opportunity for Plaintiff to be heard, or any process whatsoever,

regarding the applicability of said Act, to Plaintiff. Plaintiff has been required to register a total of four (4) times, since returning home to Montgomery.

56. Plaintiff waited eighteen (18) months to receive his due process hearing, to no avail. Plaintiff was denied any process whatsoever, notwithstanding the fact that the State of Alabama currently has and at all times relevant to this matter had administrative code that provides due process for persons convicted of a purported sex crime in a foreign jurisdiction. (See Plaintiff's Exhibit 18).

57. On or about October 15 2011, Plaintiff called the Department of Public Safety to inquire about his due process hearing before an Administrative Law Judge, as set for in Alabama administrative law and supported by Attorney General opinions (See e.g., Plaintiff's Exhibit 19).

58. Plaintiff was informed that Defendant, Lindsey Clements was the attorney employed with the Alabama Department of Public Safety responsible for matters regarding his hearing and informed his "hearing had already been denied".

59. On or about October 19, 2011, Plaintiff's attorney called Defendant Lindsey Clements regarding her office's unilateral determination to deny any process whatsoever with regard to Plaintiff's 1986 foreign jurisdiction conviction, and to discuss application of the Alabama Community Notification Act to Plaintiff.

60. Plaintiff's attorney scheduled a meeting with Defendant Clements. The meeting took place on October 20, 2011 at 2 p.m. at

Defendant's Clements' office at the Department of Public Safety in Montgomery, Alabama.

61. During the meeting with Defendant Clements, Plaintiff's counsel reviewed the facts of Plaintiff's Colorado offense, the timing of the offense, and expressed Plaintiff's belief that Alabama Community Notification Act was not applicable to Plaintiff. Defendant Clements summarily dismissed any notion that Plaintiff's position could be correct.

62. Upon Plaintiff counsel's inquiry as to why a due process hearing was not provided Plaintiff, Defendant Clements stated, "Our office makes that determination, we denied his hearing and there is nothing further we can do for him."

63. When Plaintiff's attorney asked Defendant Clements why Plaintiff was not notified of the unilateral determination by Alabama Department of Public Safety that no process was due, Defendant Clements stated, "I notified the Montgomery Police Department many months ago".

64. When Plaintiff's attorney reiterated that *Plaintiff was not notified* of this determination, and has not been afforded an opportunity to appeal the unilateral determination of no process whatsoever, Defendant Clements said, "There is nothing else that can be done. Alabama has had registration requirements since 1967. I don't know what Colorado law is, but there is nothing else that can be done. He is subject to the Alabama law."

65. Plaintiff was required to register, once again by October 31, 2011 in compliance with the Alabama Community Notification Act.

Prior to registering, Plaintiff learned of the recent changes in Alabama law with regard to sex offenders. As a result, Plaintiff called the Montgomery, Alabama County Sheriff's department on or about October 29, 2011. Plaintiff was told that new law would require Plaintiff to suffer additional restrictions under Alabama Sex Offender law and the Alabama Community Notification Act.

66. Specifically, in addition to the living, work and other restrictions Plaintiff was already subjected to, Plaintiff would have to relinquish his current Alabama driver's license for one "labeled" with a specific designation for sex offenders. Plaintiff would also be required to pay the State of Alabama a fee going forward in order to properly maintain his compliant "status" as a sex offender under the Alabama Community Notification Act, and in order to avoid violation of the law.

67. Plaintiff was arbitrarily and capriciously subjected to the Alabama Community Notification Act and SORNA by named Defendants herein, under the color and authority of Alabama State and Federal law, without any type of hearing before a fair and impartial hearing body and without any opportunity to be heard regarding the matter *before* being so subjected.

68. Plaintiff suffered stigmatizing consequences from being labeled, identified and classified as a sex offender that imposed a typical and significant hardship on him in relation to the ordinary convicted criminals whose rights as citizens have been fully restored, including, but not limited to, the following:

- (a) The loss of reputation and moral standing in the estimation of his peers based upon Defendants affirmative acts to stigmatize Plaintiff;
- (b) The excitement of derogatory opinions against him that caused his peers to hold him in contempt and caused him to be in constant fear for his safety.
- (c) The shame, mortification and humiliation of being subjected to the onerous restrictions and affirmative labeling of the Alabama Community Notification Act and SORNA.
- (d) The scorn, ridicule and contempt of his peers to which sex offenders are subjected to in his community;
- (e) The mandatory and automatic denial of citizenship attendant to a full restoral of his rights as a United States citizen, and a citizen of Alabama following the service of his prison sentence and parole in a foreign jurisdiction, and
- (f) The consideration of the sex offender label, identification and classification by the Defendant McCall and all Defendants when determining the terms, conditions and level of supervision to which he would be subjected.

69. Since the arrest and intimidation that occurred at Montgomery Police Department on April 14, 2010, and subsequent arrest and intimidation at the Montgomery County Sheriff's Office, Plaintiff sleeps for only brief moments at a time each night, constantly

awakened with fears of being arrested and taken to jail by law enforcement. Plaintiff does not engage in activity afforded the average citizen in Alabama, fearing arrest by law enforcement.

70. On or about October 30, 2011, Plaintiff filed a Temporary Restraining Order and Preliminary Injunction in the Fifteenth Judicial Circuit Court of Montgomery, Alabama, against defendants named herein, seeking redress on the Defendants' violation of procedure set forth in Alabama Administrative code.

71. The Temporary Restraining order was granted October 30, 2011 and on or about November 16, 2011, ordered null and void as it did not meet the requirements of Rule 65 of Alabama Civil Procedure. The court further ordered a hearing on the matter, set for November 30, 2011.

72. On or about November 23, 2011, Defendant, Attorney General Strange, through an employee Alabama Administrative Law Judge, sent an Order and Notice of an Administrative Law Judge Hearing to Plaintiff via his counsel, "...regarding DPS's proposed action, to apply the offender notice requirements and restrictions, of the 1996 Alabama Community Notification Act..." to Plaintiff. The order also states, "The hearing is being held based upon Mr. McGuire's right to procedural due process." (See Plaintiff's Exhibit 20).

73. Plaintiff avers that post-deprivation process is not effective. Plaintiff submits that Defendants Attorney General Strange and Defendant Hugh B. McCall's proposed post-deprivation hearing, set for December 14, 2011, *now being offered* to Plaintiff is not a gratuitous governmental accommodation.

74. Defendants, Attorney General Strange and Hugh B. McCall's current attempt to provide a post-deprivation hearing constitutes *explicit admission that process was due, and unilaterally denied* beginning on April 14, 2010 and ongoing, in violation of Plaintiff's Constitutional rights. It is indisputable that Plaintiff has *already* been subjected to the classification of "sex offender" and the attendant restrictions and requirements of the 1996 Alabama Community Notification Act, as amended, and to SORNA.
75. Plaintiff reasonably fears that, inherent in the proposed post-deprivation hearing, there is necessarily actual bias on the part of the Administrative Law Judge. The administrative body conducting the proposed post-deprivation hearing is the Alabama Attorney General's office, a defendant in the Fifteenth Judicial Circuit matter, and in this matter. The Judge presiding over the post-deprivation hearing is employed by Defendant, Attorney General Strange. Furthermore, the Alabama Attorney General's office serves as counsel for Defendant Hugh B. McCall in the proposed post-deprivation hearing.
76. On or about November 25, 2011, and in order to seek adequate remedy for all of Plaintiff's colorable claims in this Court, Plaintiff filed a motion to dismiss the action in the Fifteenth Judicial Circuit, Montgomery, Alabama, without prejudice. On November 29, 2011, Plaintiff's Motion to Dismiss, without prejudice was granted by the Fifteenth Judicial Circuit of Alabama. (See Plaintiff's Exhibit 21).

77. Defendants, and each of them, were personally involved in the wrongful labeling, identification and classification of Plaintiff as a sex offender and/or the refusal to record or remove the sex offender label, identification and classification; and each of them, by, arresting, confining, intimidating and subjecting Plaintiff to the onerous restrictions of the Alabama Community Notification Act and SORNA, acted with reckless disregard for the truth, with deliberate indifference to Plaintiff's rights and with an utterly intolerable callousness that was beyond all bounds of decency in a civilized society.
78. Plaintiff has been forced to incur reasonable attorney's fees and costs in this action, including, but not limited to those contemplated by 42 U.S.C. § 1988.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983)

**Deprivation of Plaintiff's Fifth and
Fourteenth Amendment Due Process Rights**

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

79. Plaintiff was denied and deprived of his right to due process of law, as guaranteed by the Fifth and Fourteenth Amendment of the U.S. Constitution, in violation of 42 U.S.C. § 1983, when

Defendants, under the color of law, arbitrarily and capriciously labeled, identified and classified him as a sex offender, and subjected Plaintiff to the onerous restrictions of the Alabama Community Notification Act and the Sex Offender Registration and Notification Act without notice, a hearing before a fair and impartial hearing body and any opportunity to be heard, whatsoever.

80. Defendants have subjected Plaintiff to the onerous restrictions of the Alabama Community Notification Act and SORNA, without proving that he was in fact subject to the Acts, and without providing him with an opportunity to challenge the accuracy of their unilateral actions; all without legitimate or reasonable purpose or goal.

81. Defendants knew, or should have known, that their above-described conduct prior to providing Plaintiff due process violated rights secured to Plaintiff by the Fifth and Fourteenth Amendments of the U.S. Constitution, in violation of 42 U.S.C. § 1983.

82. Plaintiff suffered, and continues to suffer, injuries and damages as a direct and proximate result of the above-described conduct of Defendants, as will more fully appear at trial.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983)

DEPRIVATION OF LIBERTY

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

83. Plaintiff was never subject to any form of the Alabama Community Notification Act, as Act No. 507, enacted in 1967 was unconstitutional and repealed, and subsequent codified Acts were and are inapplicable to Plaintiff.

84. Plaintiff was convicted in the State of Colorado in 1986. Plaintiff was not required by the State of Colorado to register as a sex offender upon his release from prison. The Colorado conviction constituted a final judgment ten years before the State of Alabama codified the 1996 Alabama Community Notification Act, et. seq.

85. Furthermore, the 1996 Alabama Community Notification Act, at the time of enactment, was void of any mention of how, or even if it would be applied to persons convicted in a foreign jurisdiction. The 1996 Alabama Community Notification Act was not amended to add language addressing convictions in a foreign jurisdiction for purported sex crimes until 2005. Therefore, the 1996 Alabama Community Notification Act, as amended, is inapplicable as applied to Plaintiff.

86. The Colorado final judgment that did not require Plaintiff to register as a sex offender upon his release from prison and/or parole was not offensive to Alabama law. There was no constitutional Alabama law requiring Plaintiff to register as a sex offender at the time of Plaintiff's conviction.
87. Plaintiff is entitled to the protections of Article IV, Section 1 of the United States Constitution, which states, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."
88. By subjecting Plaintiff to the registration and personal restrictions of the Alabama Community Notification Act, Defendants, individually and collectively, under color of law, deprived Plaintiff of his Constitutional protections under Article IV and the Fourteenth Amendment of the United States Constitution, in violation of 42 U.S.C. §1983.
89. By subjecting Plaintiff to the Alabama Community Notification Act, Defendants, individually and collectively, under color of law, deprived Plaintiff of his fundamental right to travel.
90. By subjecting Plaintiff to the Alabama Community Notification Act, Defendants, individually and collectively, under color of law, deprived Plaintiff of his fundamental right to marry.
91. By subjecting Plaintiff to the Alabama Community Notification Act, Defendants, individually and collectively, under color of law, deprived Plaintiff of his fundamental right to carry on familial relationships.

92. By subjecting Plaintiff to the Alabama Community Notification Act, Defendants, individually and collectively, under color of law, deprived Plaintiff of his fundamental right to free from affirmative stigmatization by defendants.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 1983)

VIOLATION OF PLAINTIFF'S RIGHT TO EQUAL PROTECTION

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

93. The sex offender registration, reporting and public dissemination requirements of the Alabama Community Notification Act work an unequal result upon Plaintiff in a number of ways in violation of the Fourteenth Amendment of the United States Constitution.

94. Specifically, Plaintiff is being treated unequally by the State Alabama relative to all persons who had been found guilty of statutorily defined crimes, were released from or had completed prison and probation requirements in a foreign jurisdiction to the State of Alabama, whose rights as United States citizens have been fully restored, and were not subject to to registration and permitting public disclosure as to their status, before *valid* statutes were enacted defining "sex offender" and further defining registration requirements.

95. Plaintiff is being treated unequally under the laws of Alabama.

96. The Plaintiff has constitutionally protected interests in being treated equally under the law and in not being subjected to unequal treatment without justification.

97. The Plaintiff's interest in such equal treatment arises from the Fourteenth Amendment of the United States Constitution.

98. The conduct of the Defendants arresting, detaining, requiring Plaintiff to register as a sex offender, requiring the Plaintiff to report as a sex offender, and disseminating information through the use of the Internet, as well as other methods of public notification, pursuant to the Alabama Community Notification Act, has treated and continues to treat the Plaintiff in an unequal manner as to others who are similarly situated, without legal justification or any factual basis for such unequal treatment, in violation of 42 U.S.C. §1983 and Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

FOURTH CLAIM FOR RELIEF

APPLICATION OF EX POST FACTO LAWS

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

99. Plaintiff was convicted of sexual assault in 1986. The State of Alabama's legislative Act 507 (1967), that set forth the

registration requirements for sex offenders, who were convicted in a foreign jurisdiction, was unconstitutional.

100. The express language of the 1967 Act requiring sex offenders to register was "...to prescribe *punishment* for willful failure or refusal to so register." (Emphasis added). It is well settled, that legislative intent to employ a statute for the purpose of punishment of past crimes is unconstitutional, as it is an *ex post facto* law.

101. Defendants Department of Public Safety and Attorney General Strange *now* seek to provide a post-deprivation hearing to determine if the 1996 Alabama Community Notification Act, *as amended* is applicable to Plaintiff.

102. Since Alabama had registration requirements that were unconstitutional at the time of Plaintiff's conviction in Colorado, and Alabama did not enact subsequent legislation until 1996 which imposes criminality upon individuals subject to the Act that "knowingly fail to register", the 1996 Alabama Community Notification Act, et. seq., as applied to Plaintiff is per se, *ex post facto* and deprives Plaintiff of his Constitutional rights, in violation of 42 U.S.C. § 1983.

103. The United States Constitution protects criminal defendants against the *ex post facto* application of laws. Despite this protection, Defendants, Attorney General Strange, McCall, Clements, United States Attorney General Holder and the other Defendants have intentionally subjected Plaintiff to the subsequently created Alabama Community Notification Act of 1996 and/or SORNA after acknowledging a change in the law. Such actions by Defendants

should preclude the application of qualified and sovereign, immunity, respectively, and should further relieve Plaintiff from these onerous conditions.

104. By requiring Plaintiff, under threat of criminal penalty, to endure more restrictions than required by the terms of his prison sentence and subsequent full restoral of rights as a United States citizen, Defendants, individually and collectively, under color of law, infringed upon Plaintiffs protection against the application of *ex post facto* of laws.

105. The effective date of the Sex Offender Registration and Notification Act ("SORNA") as to pre-SORNA predicate convictions is the statutory enactment date, July 27, 2006. SORNA makes it a crime to violate its registration requirements. The Act provides that a person who is (1) "required to register under" SORNA, (2) "travels in interstate or foreign commerce" or is a sex offender under federal, tribal, D.C., or U.S. territorial law, and (3) "knowingly fails to register or update registration as required by [SORNA] shall be fined" and/or imprisoned for up to ten years. 18 U.S.C. § 2250(a). Since Plaintiff's conviction date was in 1986, the application of any registration requirements and the posting of Plaintiff's name, picture, address and any other information about Plaintiff to the Federal Sex Offender Registry, or prosecution of Plaintiff for failure to register are inapplicable as to Plaintiff, as it is an *ex post facto* law. In subjecting Plaintiff to the registration requirements and restrictions of SORNA, with ramifications of criminal prosecution, Defendant, United States

Attorney General Eric Holder, applied an *ex post facto* law to Plaintiff, in violation of 42 U.S.C. §1983.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

FIFTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

FALSE IMPRISONMENT

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

106. The Defendants, City of Montgomery Police Department, Detectives R.B. Gordon, T.A. LaChance, R.L. Duckett, R.L. Savell, Montgomery County, Alabama Sheriff's Department and Defendant Leigh Persky, acting under color of law, caused the Plaintiff to be arrested, detained and imprisoned on and after April 14, 2010, even though they were devoid of any justifiable basis and lacked probable cause for said arrest, detention and imprisonment in violation of the Fourth Amendment of the United States Constitution. The Defendant Officers' and deputy sherrif's false imprisonment of the Plaintiff constituted an unlawful seizure.

107. The aforementioned actions of the Defendants proximately caused the Plaintiff to be deprived of his Fourth Amendment right to be free from arrest and imprisonment lacking probable cause and caused him to be unlawfully detained and imprisoned against his will, causing the Plaintiff damage, in violation of 42 U.S.C. §1983. The Plaintiff was aware of this unlawful detention and imprisonment.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

SIXTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

UNLAWFUL ARREST

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

108. The Defendants, City of Montgomery Police Department, Detectives R.B. Gordon, T.A. LaChance, R.L. Duckett, R.L. Savell, Montgomery County, Alabama Sheriff's Department and Defendant Persky, acting under color of law did detain, arrest, fingerprint, and photograph Plaintiff. Defendant Persky also took DNA samples from Plaintiff.

109. The aforementioned actions of the Defendants proximately caused the Plaintiff to be deprived of his Fourth Amendment right to be free from arrest and imprisonment lacking probable cause and caused him to be unlawfully detained and imprisoned against his will, causing the Plaintiff damage, in violation of 42 U.S.C. §1983. The Plaintiff was aware of this unlawful detention and imprisonment.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

SEVENTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

110. Defendants, individually and collectively, and in their official capacities, under color of state law, intentionally and deliberately inflicted emotional distress on Plaintiff by maliciously prosecuting Plaintiff, or by abusing the lawful process by unlawful purpose, or by violating Plaintiff's constitutional rights, or by falsely arresting and imprisoning the plaintiff, by conspiring against Plaintiff, or by interfering with Plaintiff's civil rights by threats, coercion, or intimidation, or knew or should have known that emotional distress was the likely result of their conduct.

111. Defendants' conduct was extreme and outrageous, beyond all possible bounds of decency and utterly intolerable in a civilized community.

112. The actions of the Defendants were the cause of Plaintiff's distress.

113. Plaintiff is a reasonable man.

114. The emotional distress sustained by Plaintiff was severe and of a nature that no reasonable man could be expected to endure.

115. As a result of the Defendants' extreme and outrageous conduct, Plaintiff was, is, and, with a high degree of likelihood, will continue to be emotionally distressed due to the intentional exclusion.

116. Defendants City of Montgomery Police Department, Defendant Murphy, Defendant McCall, Montgomery County Sheriff's Department,

and Defendant Marshall are also liable under the doctrine of *respondeat superior*.

117. As a result of the Defendants' extreme and outrageous conduct, Plaintiff has suffered and will continue to suffer mental pain and anguish, severe emotional trauma, embarrassment, and humiliation.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

EIGHTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

ABUSE OF AUTHORITY

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

118. This is a claim against all Defendants individually and collectively, pursuant to 42 U.S.C. § 1983.

119. The actions of the Defendants were taken in concert concurrently with one another, under color of law. The above-described actions subjected Plaintiff to a deprivation of rights and privileges secured to Plaintiff by the Fourth and Fourteenth Amendments of the Constitution of the United States as protected by 42 U.S.C. § 1983.

120. As a direct and proximate result of the above-mentioned unconstitutional acts of all Defendants, Plaintiff sustained severe mental anguish, emotional trauma, loss of consortium, loss of capacity for the enjoyment of life, loss of the ability to earn money in the future and other expenses. In addition, Plaintiff has incurred substantial expenses including attorneys' fees and costs.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

NINTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

REFUSING OR NEGLECTING TO PREVENT

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

121. At all times relevant to this Complaint, Defendants Gordon, LaChance, Savell and Duckett as police detectives, were acting under the direction and control of Defendants Murphy and the City of Montgomery, Alabama Police Department.

122. Defendant Persky, as deputy Sheriff, was acting under the direction and control of Defendants Marshall and the Montgomery County, Alabama Sheriff's Office.

123. Defendant Clements as Attorney for the Alabama Department of Public Safety, was acting under the direction and control of Defendant McCall.

124. Acting under color of law and pursuant to official policy or custom, Defendants McCall, Marshall, Murphy, the Montgomery, Alabama Police Department and the Montgomery County, Alabama Sheriff's Office knowingly, recklessly, or with gross negligence failed to instruct, supervise, control, and discipline on a continuing basis Defendant police officers in their duties to refrain from:

(a) unlawfully and maliciously harassing a citizen who was acting in accordance with his constitutional and statutory rights, privileges, and immunities,

(b) unlawfully and maliciously arresting, imprisoning, assaulting and prosecuting a citizen who was acting in accordance with his constitutional and statutory rights, privileges, and immunities,

(c) conspiring to violate the rights, privileges, and immunities guaranteed to Plaintiff by the Constitution and laws of the United States by subjecting him to the onerous restriction of the Alabama Community Notification Act, and

(d) otherwise depriving Plaintiff of his constitutional and statutory rights, privileges, and immunities.

125. Defendants McCall, Marshall, Murphy, the Montgomery, Alabama Police Department and the Montgomery County, Alabama Sheriff's Office had knowledge or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs conspired to be done, as heretofore alleged, were about to be committed. Defendants McCall, Marshall, and Murphy had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and knowingly, recklessly, or with gross negligence failed or refused to do so.

126. Defendants McCall, Marshall, and Murphy, the Montgomery, Alabama Police Department and the Montgomery County, Alabama Sheriff's Office directly or indirectly, under color of law, approved or

ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants police detectives, deputy sheriff and attorney heretofore described.

127. As a direct and proximate cause of the negligent and intentional acts of Defendants McCall, Marshall, and Murphy, the Montgomery, Alabama Police Department and the Montgomery County, Alabama Sheriff's Office as set forth in the paragraphs above, Plaintiff suffered loss of income and severe mental anguish in connection with the deprivation of his constitutional and statutory rights guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States and protected by 42 U.S.C. sec. 1983.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

TENTH CLAIM FOR RELIEF

(42 U.S.C. § 1983)

FAILURE TO TRAIN

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

128. The acts of the detectives of Defendants, Montgomery, Alabama Police Department as described above deprived Plaintiff of clearly established rights secured by the United States Constitution and laws of the United States, including but not limited to his Fourth and Fourteenth Amendment rights to not be arrested falsely and

without probable cause; and not to be maliciously prosecuted, and to not be subjected to onerous restrictions of liberty.

129. The acts of the deputy sheriff of Defendants, Montgomery County, Alabama Sheriff's Department as described above deprived Plaintiff of clearly established rights secured by the United States Constitution and laws of the United States, including but not limited to his Fourth and Fourteenth Amendment rights to not be arrested falsely and without probable cause; and not to be maliciously prosecuted, and to not be subjected to onerous restriction of liberty.

130. The acts of the attorney of Defendant McCall as described above deprived Plaintiff of clearly established rights secured by the United States Constitution and laws of the United States, including but not limited to his Fourth and Fourteenth Amendment rights to not be arrested falsely and without probable cause; and not to be maliciously prosecuted, and to not be subjected to onerous restriction of liberty.

131. All of the actions undertaken by Defendants', as described in the preceding paragraphs of this claim for relief, officers, agents or employees, were under color of law and pursuant to the official custom, course and policy of said Defendants.

132. As a result of the unlawful and/or unreasonable and/or malicious attempt to deprive Plaintiff of his rights guaranteed to by the laws of the United States, the Defendants named in the above paragraphs of this claim for relief are each liable under 42 U.S.C. section 1983 because of a policy of custom of their respective agencies.

133. Specifically, Defendant City of Montgomery, Alabama Police Department's policy-maker is the Police Chief, Defendant Murphy, and he delegates final policymaking authority of the police department to subordinate detectives who pursued *de facto* policies, practices and customs that were a direct and proximate cause of the unconstitutional arrest and detention of Plaintiff and the other deprivations described herein and were the moving force behind the deprivations Plaintiff suffered.

134. Defendant Montgomery County, Alabama Sheriff's Office's policy-maker is the Sheriff, Defendant D. T. Marshall, and he delegates final policymaking authority of the Sheriff's department to subordinate deputy sheriffs who pursued *de facto* policies, practices and customs that were a direct and proximate cause of the unconstitutional arrest and detention of Plaintiff and the other deprivations described herein and were the moving force behind the deprivations Plaintiff suffered.

135. Defendant McCall is the Alabama Department of Public Safety's policy-maker, and he delegated final policymaking authority of the his department to an attorney who pursued *de facto* policies, practices and customs that were a direct and proximate cause of the unconstitutional prosecution of Plaintiff and the other deprivations described herein and were the moving force behind the deprivations Plaintiff suffered.

These policies, practices and customs as applied to Defendants named in the preceding paragraphs of this claim for relief include:

a. Defendants, through the highest ranking available supervisory personnel, or designee, approved of, acquiesced to and/or condoned the violations in general, thereby ratifying and approving the wrongful acts of their agents and employees in their respective governmental agencies. Specifically, decision-makers should not have allowed its agents and employees to seek and obtain Plaintiff's arrest and subject Plaintiff to the onerous conditions of the Alabama Community Notification Act in the course thereof. The Defendants, respectively, ratified the conduct of its subordinates and those actions therefore became policy.

b. Defendants named in the preceding paragraphs of this claim for relief failed, through knowing and/or reckless and/or deliberate and/or conscious indifference, to instruct, supervise, control and discipline, on a continuing basis, the duties of personnel and officials to refrain from unlawful actions leading to the arrest, intimidation and detention applied against Plaintiff. Specifically, Defendants do not train and/or instruct and/or control its officers properly because its officers would not otherwise seek and obtain Plaintiffs arrest, detention, to intimidate and to subject Plaintiff to the onerous restrictions under the facts of this case. These deficiencies were the moving force behind Plaintiff's claim.

c. Defendants named in the preceding paragraphs of this claim for relief failed to properly train its personnel

despite actual knowledge of their deficiencies and/or through deliberate indifference to those deficiencies. Specifically, Defendants do not train and/or instruct and/or control its officers because its officers would not otherwise seek and obtain Plaintiff's arrest and subject Plaintiff to aforementioned onerous restrictions. The failure to train was the moving force behind Plaintiff's claim.

d. Defendants named in the preceding paragraphs of this claim for relief had the power to prevent or aid in preventing the commission of the aforementioned violations and could have done so by reasonable diligence.

e. Instead, Defendants knowingly, recklessly and with deliberate and/or conscious indifference failed or refused to correct the constitutional violations and/or tacitly approve such wrongs.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

DECLARATORY RELIEF

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

136. Plaintiff brings this claim for declaratory relief under Federal Rule of Civil Procedure 57 and 28 U.S.C. §§2201, 2202.

137. Plaintiff requests a declaratory judgment establishing that:

(a) Defendants were required to provide Plaintiff with notice and a hearing before a fair and impartial hearing body

at which Defendants were required to prove he was subject to the Alabama Community Notification Act and/or SORNA *before* Defendants were permitted to subject Plaintiff to the onerous restrictions of said Acts;

(b) The failure of Defendants to provide him with notice and a hearing before a fair and impartial hearing body in which Defendants presented evidence to prove that Plaintiff was subject to the onerous restrictions of any form of the Alabama Community Notification Act and/or SORNA and before labeling and classifying him as a sex offender, deprived Plaintiff of his right to due process of law, as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution, in violation of 42 U.S.C. § 1983; and,

(c) Defendant, Attorney General Strange, through his employee, Administrative Law Judge, is *now* willing to provide a post-deprivation hearing at the request of the Defendant Hugh B. McCall. This action is dispositive that Plaintiff's constitutional right to due process was due on or about April 14, 2010, and summarily and unilaterally denied by Defendants, individually and collectively, depriving Plaintiff of his Constitutional right to due process, in violation of 42 U.S.C. § 1983.

138. The Plaintiff has suffered and will imminently suffer continuous harm due to the actions of the Defendants.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

INJUNCTIVE RELIEF

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth full here.

Request for Preliminary Injunction

139. Plaintiff has and will suffer irreparable injury if Defendants are not enjoined during the pendency of this lawsuit from subjecting Plaintiff to the onerous restrictions and continuous affirmative stigmatization attendant to the Alabama Community Notification Act, as amended and of the Sex Offender Registration and Notification Act. The nature of Plaintiff's injuries include a deprivation of fundamental rights to travel, to marry, to carry on familial relationships, to be free from affirmative stigmatization, and his right to privacy. There is no adequate remedy at law for Defendants' actions. {*Sampson v. Murray*, 415 U.S. 61, 88-89, 94 S. Ct. 937, 952-53 (1974); *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 417 (4th Cir. 1999)}

140. There is a substantial likelihood that plaintiff will prevail on the merits because Plaintiff was never subject to the 1996 Alabama Community Notification Act and/or SORNA, and has already and/or continues to be deprived of his constitutional rights to due process, equal protection and from the application *ex post facto* laws. {*U.S. v. Microsoft Corp.*, 147 F.3d 935, 943 (D.C. Cir. 1998); *DSC Comm Corp. v. DGI Tech., Inc.*, 81 F.3d 597, 600 (5th Cir. 1996)}

141. The threatened harm to plaintiff outweighs the harm a preliminary injunction would inflict on defendants. Specifically,

the onerous restrictions of Plaintiff's fundamental liberties are outweighed by a enjoining the defendants' continuing affirmative deprivation of said liberties. {See *Hoechst*, 174 F.3d at 417; *Microsoft*, 147 F.3d at 943}

142. Issuance of a preliminary injunction is in the public interest because the effect that the preliminary injunction would have on the public interest will serve as deterrence for defendants and ensure that citizens are not arbitrarily and capriciously prosecuted, detained, arrested and subjected to onerous restrictions of liberty, without first, being provided Constitutional due process rights which are afforded citizens of the United States and of every State.

143. Plaintiff is willing to post a bond in the amount the court deems appropriate.

144. Plaintiff asks the court to set his application for preliminary injunction for hearing at the earliest possible time and, after hearing the request, issue a preliminary injunction against defendants.

Request for Permanent Injunction

145. Plaintiff respectfully requests this Court to set his application for injunctive relief for a full trial on the issues in this application and, after the trial, to issue a permanent injunction against defendants as follows:

146. Issue a permanent injunction requiring Defendants to expunge from all the files and records of the State and Federal Registries for Sex Offenders and any other entities to which Defendants caused Plaintiff's information to be posted, any and all documents

pertaining to or referencing in any manner the classification of Plaintiff as a sex offender and requiring those documents be provided to Plaintiff for destruction.

147. Permanently restrain Defendants from subjecting Plaintiff to any further requirements and/or restrictions, whatsoever, of the Alabama Community Notification Act of 1996, et. seq.

148. Permanently restrain Defendants from subjecting Plaintiff to any further requirements and/or restrictions, whatsoever, of the Sex Offender Registration and Notification Act ("SORNA").

149. Stay the administrative hearing proposed by Defendant Attorney General Strange, via his employee, the Administrative Law Judge, and Defendant McCall pending resolution this Court.

WHEREFORE, Plaintiff prays relief as is more fully enumerated below.

DEMAND FOR JURY TRIAL

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

150. Defendants will please take notice that Plaintiff hereby demands a trial by jury on all issues in this matter.

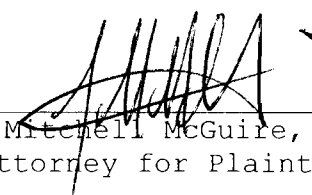
PRAYER

WHEREFORE Plaintiff prays judgment against Defendants, and each of them, as follows:

1. For general and special damages in an amount to be more precisely proven at trial;

2. For permanent injunctive relief as described herein;
3. For declaratory relief as specifically requested herein;
4. For attorney's fees and costs of suit necessarily incurred;
5. For trial by jury;
6. For leave to amend this Complaint should additional facts become known to Plaintiff; and
7. For such other and further relief as this Court may deem just and appropriate in the premises.

Respectfully submitted this 2nd day of December, 2011.



J Mitchell McGuire, ASB-8317-S69M
Attorney for Plaintiff

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EXHIBITS

Index for Exhibits

McGuire v. City of Montgomery, et al

1. Alabama Legislative Act No. 507 (1967)
2. Copy of Mr. McGuire's 4/14/10 Registration
3. Copy of Sexual Offender I.D. Card
4. Copy of page 1 of the Alabama Community Notification Act given to Plaintiff on 4/14/10
5. Copy of Document given to Plaintiff by Defendant Gordan
6. Mr. McGuire's registration record for Regency Inn
7. Sex Offender I.D. Card given to Plaintiff by Defendant Persky
8. Sex Offender Management Community Notification Act requirements given to Plaintiff by Montgomery County Sheriff's office
9. Plaintiff's sex offender registration at Montgomery County Sheriff's office on 6/25/10
10. Plaintiff's registration at Montgomery Police Dept. on 6/25/10
11. Restrictions given to Plaintiff by Montgomery County Sheriff's office
12. Sex Offender I.D. Card given to Plaintiff by Montgomery County Sheriff's office on 10/7/10
13. Sex Offender I.D. Card given to Plaintiff by Montgomery Police Dept.
14. Internet posting caused by defendants
15. Internet posting on Alabama Department of Public Safety's website
16. Internet posting on Federal Sex Offender website
17. Community Notification flyer distributed by Defendants McCall and Clements
18. Alabama Administrative Code r. 760-X-1-.21
19. Attorney General's Opinion from June 11, 2008
20. Order of Notice of Hearing
21. Order granting Plaintiff's Motion to Dismiss