IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOE L. WILLS Plaintiff, v. UNITED STATES PAROLE COMMISSION and COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA, Defendants.	)	Civil Action No. 11-1464 (BAH) **Oral Hearing Requested**

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

Joe Wills has never been convicted of an offense involving sexual conduct. Only once has Mr. Wills even been accused of sexual misconduct: over 27 years ago, in 1984, when he was charged in D.C. Superior Court with assault with intent to rape. The government dismissed that charge in January 1986.

Nonetheless, the United States Parole Commission ("Parole Commission") has twice imposed the Special Sex Offender Aftercare Condition as a condition of Mr. Wills' supervised release, first in January 2009, and again in June 2011. The condition calls for an involuntary "mental health program . . . with special emphasis on long-term sex offender testing and treatment." Ex. 1 (June 24, 2011 Parole Commission Notice of Action). As enforced by the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA"), the Special Sex Offender Aftercare Condition has required Mr. Wills to undergo extraordinarily intrusive psychosexual therapy, and even to acknowledge a "need" for that unnecessary

treatment. It has also required him divulge in explicit detail his sexual history, thoughts, and practices and subject himself to a polygraph examination.

The Special Sex Offender Aftercare Condition has constituted a dramatic imposition on Mr. Wills' right to refuse unwanted mental health treatment and to privacy in sexual matters, and it has stigmatized him with the inaccurate label of "sex offender." Moreover, the Parole Commission imposed the condition without providing Mr. Wills a meaningful explanation for its alleged necessity or a meaningful opportunity to contest it.

Mr. Wills respectfully moves the Court for summary judgment on his claim, advanced in his August 12, 2011 Complaint (DE #1), that the Parole Commission has violated his Fifth Amendment right to procedural due process.[1] The Court should hold, in accordance with the holdings of each of the four federal courts of appeals to have considered the issue, that the Commission violated the Fifth Amendment when it failed to provide Mr. Wills—a supervised releasee who has never been convicted of a sex offense—advance written notice that it intended to impose the condition; disclosure of any evidence against him; a hearing at which he could call and cross-examine witnesses and present documentary evidence; and a written statement of the Commission's findings.

[1] Mr. Wills makes three additional claims in his Complaint: (1) the Parole Commission imposed the Special Sex Offender Aftercare Condition in violation of the "reasonably related" standard of D.C. Code § 24-403.01(b)(6) and 18 U.S.C. § 3583(d); (2) Defendants imposed and enforced the Special Sex Offender Aftercare Condition in violation of his Fifth Amendment right to substantive due process; and (3) Defendants imposed and enforced the condition in violation of his First Amendment right to refrain from speaking.

STATEMENT OF UNDISPUTED FACTS[2]

A. Background

1. Mr. Wills is a District of Columbia resident currently serving a 52-month term of supervised release, under the authority of the Parole Commission and the supervision of CSOSA.

2. Mr. Wills' term of supervised release, which follows a brief period of incarceration for two misdemeanor drug offenses, is set to expire on or about April 1, 2015.

3. The Parole Commission and CSOSA are both federal agencies located in the District of Columbia.

4. District of Columbia supervised releasees, like Mr. Wills, are "subject to the authority of the United States Parole Commission until completion of the term of supervised release." D.C. Code § 24-403.01(b)(6).[3]

5. CSOSA is responsible for "supervis[ing] any offender who is released from imprisonment for any term of supervised release imposed by the Superior Court of the District of Columbia." D.C. Code § 24-133(c)(2).

B. The 27-Year-Old Dismissed Charge That Was the Basis for Sex Offender Treatment.

6. According to D.C. Superior Court records, on February 3, 1984, when Mr. Wills was 26 years old, he entered the unoccupied apartment of his upstairs neighbor and took certain items. While he was inside, the neighbor returned. She later alleged that Mr. Wills told her to take off her pants and that she then fled.

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[2] Mr. Wills sets forth below only those facts on which this motion depends. His Complaint includes a more extensive recitation of the facts generally pertinent to the case.

[3] *See also Denson v. United States*, 918 A.2d 1193, 1195 (D.C. 2006) ("Under District of Columbia law, discretionary conditions of supervised release . . . are imposed not by the trial court, but by an independent administrative agency, the U.S. Parole Commission . . . .").

7. On January 30, 1986, Mr. Wills entered a guilty plea to two misdemeanor offenses: attempted second degree burglary and theft of property of a value of less than $250. In return, the United States not only dismissed the greater counts of second degree burglary and felony theft, but it also dismissed in its entirety the count of assault with intent to rape.

8. Mr. Wills had never previously, and has never since, been charged with sexual misconduct of any sort. Nor was he ever subjected to sex offender treatment as a release condition until January 2009.

C. Defendants' 2009 Imposition and Enforcement of the Special Sex Offender Aftercare Condition.

9. On November 29, 2007, Mr. Wills pled guilty in D.C. Superior Court to one count each of possession with intent to distribute cocaine and possession with intent to distribute marijuana. He was sentenced to 14 months of incarceration followed by five years of supervised release.

10. On January 9, 2009, three weeks prior to Mr. Wills' scheduled release, CSOSA provided him a set of supervised release reporting instructions. Ex. 2 (CSOSA "Reporting Instruction Sheet"). According to the instructions, Mr. Wills would be subject to one special condition while under CSOSA's supervision: "Drug Testing." *Id.*

11. On January 29, 2009, one day prior to his release, CSOSA issued a "Pre-Release Investigative Report" regarding Mr. Wills. The report noted that Mr. Wills had no convictions for sex offenses and no history of "sexual incidents." CSOSA did not recommend that the Parole Commission impose sex offender treatment as a condition of Mr. Wills' release.

12. Accordingly, on January 30, 2009, when Mr. Wills was released from a halfway house into the community, CSOSA placed him within its General Supervision Unit, not its Sex Offender Unit. Ex. 3 (Jan. 30, 2009 CSOSA Running Record entry).

13. By that time, however—unbeknownst to Mr. Wills—the Parole Commission had already imposed the Special Sex Offender Aftercare Condition as a condition of Mr. Wills' supervised release. It did so on January 6, 2009, through a Notice of Action that read in part:

> In the case of the above-named, the following action was ordered: . . . [Y]ou shall be subject to the Special Sex Offender Aftercare Condition. You shall participate in an in-patient or out-patient mental health program as directed by your [CSOSA] Supervision Officer, with special emphasis on long-term sex offender testing and treatment. You are expected to acknowledge your need for treatment and to participate in good faith in achieving the program goals that will be established for you.

Ex. 4 (Jan. 6, 2009 Parole Commission Notice of Action).

14. The Parole Commission provided Mr. Wills no process prior to imposing the Special Sex Offender Aftercare Condition. It gave him no advance notice that the condition would be imposed, no disclosure of any evidence supporting the condition, no hearing at which he could contest the condition by calling or cross-examining witnesses, and no statement of reasons justifying it.

15. On February 9, 2009, Mr. Wills' CSOSA supervising officer made the following Running Record entry regarding the Special Sex Offender Aftercare Condition:

> [Parole Commission] [c]ase analyst Corey Mitchell returns this officer's telephone call concerning the [Parole Commission Notice of Action] dated 1/6/09. He confirms that they too have the same conditions ordered but have no reasons listed just as this officer has no reasoning on the form.

Ex. 5.

16. CSOSA transferred Mr. Wills to its Sex Offender Unit on February 18, 2009. Ex. 6 (Feb. 18, 2009 CSOSA Running Record entry).

17. Having never received notice of the Special Sex Offender Aftercare Condition, Mr. Wills was surprised by this transfer, as reflected in CSOSA's February 23, 2009, Running Record

entry: "Mr. Wills is confronted with his NOA dated 1/6/09 and the special conditions added. He was unaware of any other than drug aftercare." Ex. 7.

18. Mr. Wills' supervising officer added:

> Offender is informed that [the condition] may have been added due to past "assault with intent to rape" charge that was dismissed. Mr. Wills is told that further contact will be made to USPC to confirm these special conditions but that Mr. Mitchell from USPC confirmed that they were in fact there.

Id.

19. On March 9, 2009, Mr. Wills' supervising officer required him to inform his then-girlfriend, with whom he was residing, of the "nature of [his] sex offense"—despite the fact that he had never been convicted of a sex offense. Ex. 8 (March 9, 2009 CSOSA Running Record entry).

20. On May 14, 2009, Mr. Wills' supervising officer met in person with his girlfriend to confirm that she was "aware[] of offender's supervision conditions and sex offense." Ex. 9 (May 14, 2009 CSOSA Running Record entry). This compelled disclosure of inaccurate information caused a significant strain in Mr. Wills' relationship with his girlfriend. Ex. 10 (Wills Dec.) ¶ 7. Their relationship has since ended. *Id.*

21. The disclosure comported with the policy of CSOSA's Sex Offender Unit, which is to "notify all persons with whom the offender resides about the offender's supervision status," and to "have communication with all [of the supervisee's] identified collateral contacts within 30 calendar days of the initial supervision visit." Ex. 11 (CSOSA Policy Manual on Sex Offender Supervision) at 4.

22. CSOSA soon began to enforce the Special Sex Offender Aftercare Condition. It started by scheduling Mr. Wills for an "assessment package" consisting of six sessions with a CSOSA-paid treatment provider at the Center for Clinical and Forensic Services ("CCFS") and two

polygraph examinations. Ex. 12 (July 28, 2009 CSOSA Sex Offender Referral and Funding Authorization Form). This assessment was to be followed by at least twelve 50-minute long sex offender treatment sessions with CCFS. *Id.*

23. CSOSA ordered Mr. Wills to meet for the first time with his CCFS treatment provider on September 14, 2009. Ex. 13 (Sept. 9, 2009 CSOSA Running Record entry). It required him to waive his right to therapist-patient confidentiality prior to the meeting. Ex. 14 (March 18, 2009 CSOSA release form).

24. Mr. Wills' initial, weekly sessions with CCFS were intended to provide a "psychosexual assessment" that would form the basis of a "clinical diagnosis" and a "comprehensive treatment plan." Ex. 11 (CSOSA Policy Manual) at 10-11.

25. During his compelled "psychosexual assessment," Mr. Wills was required to divulge in explicit detail his sexual history, thoughts, and practices. CSOSA, through the CCFS treatment provider, forced Mr. Wills to answer questions regarding his earliest sexual experiences, his masturbation habits, and the varieties of consensual sexual behavior in which he has engaged. Ex. 10 (Wills Dec.) ¶ 3. He had to reveal how frequently he looks at pornography and whether he has ever suffered from impotence. *Id.* ¶ 4. He had to characterize how stimulated he would be by the thought of a young boy, or of two men having sex. *Id.* ¶ 5. The treatment provider asked him whether he has ever had sex with a dead animal or a dead person. *Id.* ¶ 6.

26. On October 27, 2009, CSOSA ordered Mr. Wills to take a polygraph examination about his sexual past.

27. Mr. Wills attended at least ten weekly sex offender treatment sessions with CCFS in the fall of 2009. Ex. 15 (CCFS Treatment Reports).

28. On December 7, 2009, Mr. Wills was arrested for violating the terms of his supervised release, based on an October 4, 2009, arrest for drug possession. On March 29, 2010, he was convicted in Superior Court of misdemeanor possession of cocaine and drug paraphernalia, and the Parole Commission formally revoked his supervised release on June 18, 2010. Mr. Wills was incarcerated until December 1, 2010, when he returned to the community and began a new 52-month term of supervised release.

D. Defendants' 2011 Imposition and Enforcement of the Special Sex Offender Aftercare Condition.

29. Upon Mr. Wills' release, the Parole Commission did not immediately re-impose the Special Sex Offender Aftercare Condition. Ex. 16 (June 18, 2010 Parole Commission Notice of Action). Nonetheless, CSOSA placed Mr. Wills back in its Sex Offender Unit.

30. On May 23, 2011, when the Parole Commission still had not re-imposed the Special Sex Offender Aftercare Condition, Mr. Wills' supervising officer informed him that CSOSA intended to petition the Parole Commission to do so. Mr. Wills indicated his objection to the proposed modification on a form that his supervising officer provided to him. Ex. 17 (June 6, 2011 CSOSA submission to Parole Commission).

31. On June 2, 2011, Mr. Wills addressed a letter to the Parole Commission providing the basis for his objection: "I do not believe that I should be subject to this condition because I have never been convicted of a sex crime and am therefore not in need of treatment for sex offenders." *Id.*

32. On June 6, 2011, Mr. Wills' supervising officer formally petitioned the Parole Commission to add the Special Sex Offender Aftercare Condition. The officer wrote, in part:

> Mr. Wills was released to supervision on December 1, 2010 and was assigned to the Special Sex Offender Supervision Unit due to his being charged with Assault with Intent to Rape in Docket # 1984-FEL-1071. This charge was dismissed on

> January 30, 1986. However, according to CSOSA policy, he will be supervised in the Sex Offender Unit until a complete risk and needs assessment can be conducted.

Id. The officer also cited a "deception indicated" finding on Mr. Wills' October 2009 polygraph examination as a reason for his continued supervision in the Sex Offender Unit. *Id.* The officer attached Mr. Wills' letter of objection to his submission to the Parole Commission. *Id.*

33. On June 24, 2011, the Parole Commission granted CSOSA's request to re-impose the Special Sex Offender Aftercare Condition. Ex. 1 (June 24, 2011 Parole Commission Notice of Action).

34. Although Mr. Wills had the opportunity to file a brief written objection prior to the Parole Commission's re-imposition of the condition, the Commission offered him no hearing, no opportunity to call or cross-examine witnesses, no chance to review or challenge the evidence allegedly supporting the condition, and no meaningful statement of reasons. It also made clear, in its June 24, 2011, Notice of Action, that its decision was not appealable to the Commission's National Appeals Board. *Id.*

35. On July 25, 2011, Mr. Wills' CSOSA supervising officer notified him that his sex offender treatment would soon begin again. The officer told him that if he did not sign a form waiving his right to therapist-patient confidentiality, he would be in violation of the terms of his supervised release. Ex. 10 (Wills Dec.) ¶ 8.

36. On August 12, 2011, Mr. Wills filed a Complaint and Motion for Preliminary Injunction, in which he asked this Court to preliminarily enjoin enforcement of the Special Sex Offender Aftercare Condition.

37. In early September 2011, Mr. Wills' CSOSA supervising officer contacted Mr. Wills' outside mental health treatment provider, Careco Mental Health Services, and disclosed to his

case manager there that CSOSA intended to put Mr. Wills through sex offender treatment. *Id.* ¶ 9.

38. On September 7, 2011, two days before Defendants' response to Mr. Wills' Motion for Preliminary Injunction was due, the Parole Commission issued a Notice of Action that removed the Special Sex Offender Aftercare Condition from the terms of Mr. Wills' supervised release.

39. On September 8, 2011, Mr. Wills withdrew his Motion for Preliminary Injunction, while noting that the withdrawal was without prejudice to the claims for declaratory and permanent injunctive relief set forth in his Complaint.

ARGUMENT

Mr. Wills moves for summary judgment on his claim that the Parole Commission imposed the Special Sex Offender Aftercare Condition in violation of his Fifth Amendment right to procedural due process.

I. Summary Judgment Standard

"Pursuant to Federal Rule of Civil Procedure 56, the Court will grant a motion for summary judgment 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law' based upon the pleadings, depositions, and affidavits and other factual materials in the record." *AFGE, AFL-CIO, Local 2798 v. Pope*, 2011 U.S. Dist. LEXIS 98103, at *15 (D.D.C. Sept. 1, 2011) (citing Fed. R. Civ. P. 56(a), (c)).

"Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (internal quotation marks omitted).

II. There Is No Genuine Dispute as to Any Material Fact.

"[T]he dispute about a material fact is 'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). There is no such dispute regarding any fact underlying Mr. Wills' procedural due process claim. Each can be found in one of three places: Defendants' own records, the public record, or Mr. Wills' declaration. And, as discussed at length below, given those facts and the overwhelming law in his favor, no reasonable factfinder could return a verdict for Defendants on Mr. Wills' procedural due process claim, which is as simple as it is certain: the Parole Commission has twice imposed sex offender treatment on Mr. Wills—who has never been convicted of a sex offense—without ever providing him basic procedural protections.

III. Mr. Wills Is Entitled to Judgment as a Matter of Law on His Procedural Due Process Claim.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (internal quotation marks omitted). Courts "examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State, [and] the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989) (citation omitted).

A. Every Circuit Court To Consider the Issue Has Held that a Person in Mr. Wills' Position Is Constitutionally Due Far More Process than the Parole Commission Provided Him.

Four federal courts of appeals—the Third, Fifth, Ninth, and Tenth Circuits—have considered the question presented here: how much process the government must provide a

prisoner or conditional releasee who, like Mr. Wills, has never been convicted of a sex offense, before it may subject him to sex offender classification and treatment. Every one of those courts has concluded that, given the liberty interests at stake, the government must provide at least the following procedural safeguards: advance written notice of the condition; disclosure of the evidence against the supervisee; a hearing at which he can call witnesses and present documentary evidence; and a written statement of findings.

Despite twice subjecting him to the Special Sex Offender Aftercare Condition, the Parole Commission has never come close to providing that minimum process to Mr. Wills.

1. Courts Have Identified a Liberty Interest in Avoiding the Compelled Mental Health Treatment and Stigma Associated with Sex Offender Treatment.

Every Circuit to consider the issue has held that when the state classifies individuals as "sex offenders" and requires them to undergo sex offender treatment, it implicates their interest in avoiding compelled mental health treatment and in avoiding the "stigma" associated with classification and treatment as a sex offender. These courts have grounded their holdings on the Supreme Court's seminal decision in *Vitek v. Jones*, 445 U.S. 480 (1980). There, the Court held that the government must provide a prisoner procedural safeguards prior to transferring him to a mental hospital and mandating that he undergo mental health treatment, for

> the stigmatizing consequences of a transfer to a mental hospital for involuntary psychiatric treatment, coupled with the subjection of the prisoner to mandatory behavior modification as a treatment for mental illness, constitute the kind of deprivations of liberty that requires procedural protections.

Id. at 494. The Court reasoned that "[c]ompelled treatment in the form of mandatory behavior modification programs"—of which the Special Sex Offender Aftercare Condition at issue here is a prime example—implicate "the right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security," which is "among the historic liberties protected by

the Due Process Clause." *Id.* at 492 (internal quotation marks omitted). The personal intrusion wrought by forced treatment is compounded by the reputational damage associated with it, since "[i]t is indisputable that commitment to a mental hospital can engender adverse social consequences to the individual and . . . whether we label this phenomena 'stigma' or choose to call it something else . . . we recognize that it can occur and that it can have a very significant impact on the individual." *Id.* (internal quotation marks omitted).

The first Circuit to apply *Vitek*'s analysis to sex offender treatment was the Ninth, in *Neal v. Shimoda*, 131 F.3d 818, 828 (9th Cir. 1997). The *Neal* court reasoned that a mandated "twenty-five session psychoeducational treatment program" for imprisoned sex offenders, *id.* at 822, constituted, like the mandatory behavior modification at issue in *Vitek*, "an extensive treatment program," and the court could "hardly conceive of a state's action bearing more 'stigmatizing consequences' than the labeling of a prison inmate as a sex offender," *id.* at 829. That combination was sufficient for the court to hold that the state's classification of a prisoner as a sex offender and requirement, as a pre-condition to parole, that he undergo sex offender treatment, implicated his liberty interests. *Id.* at 830.[4]

In *Chambers v. Colorado Dep't of Corrections*, 205 F.3d 1237, 1238 (10th Cir. 2000), the Tenth Circuit relied on *Neal* to grant the plaintiff, an inmate, summary judgment on his claim that "the Colorado Department of Corrections' Sex Offender Component classifying [him] a sex offender and requiring his participation in the Sexual Offender Treatment Program . . . implicates

[4] The Eleventh Circuit came to a similar conclusion two years later. *Kirby v. Siegelman*, 195 F.3d 1285, 1292 (11th Cir. 1999) (relying on *Vitek* to hold that state's classification of a prisoner, who had never been convicted of a sex offense, as a sex offender and requirement that he complete sex offender treatment as a precondition to parole eligibility implicated a liberty interest). That Circuit, however, unlike the others discussed in this section, appears never to have taken the next step in the due process analysis of delineating precisely how much process the government must provide in the setting presented.

a liberty interest under the Due Process Clause of the Fourteenth Amendment." A few years later, in *Gwinn v. Awmiller*, 354 F.3d 1211, 1217-19 (10th Cir. 2004), that court not only re-affirmed its holding in *Chambers*, but it also went a step further by detailing the process due a person in Mr. Chambers' position. *See infra* at 16.

The Fifth Circuit took up the issue in *Coleman v. Dretke*, 395 F.3d 216, 219 (5th Cir. 2004), where it analyzed the liberty interests implicated when the state "impos[es] sex offender registration and therapy as conditions to the release on mandatory supervision of a prisoner who has never been convicted of a sex crime." It held:

> The facts of the present case are materially indistinguishable from *Vitek*. As in *Vitek*, the state imposed stigmatizing classification and treatment on Coleman without providing him any process. The state's sex offender therapy, involving intrusive and behavior-modifying techniques, is also analogous to the treatment provided for in *Vitek*. . . . [T]he Due Process Clause, as interpreted in *Vitek*, provides Coleman with a liberty interest in freedom from the stigma and compelled treatment on which his parole was conditioned, and the state was required to provide procedural protections before imposing such conditions.

Id. at 223. The Fifth Circuit recently re-affirmed that holding in *Meza v. Livingston*, 607 F.3d 392, 402 (5th Cir. 2010), where it said: "The consequences of attending sex offender therapy, combined with the highly invasive nature of the therapy, leave us no doubt that Meza . . . had a significant interest in being free from sex offender therapy." The *Meza* court then took the further step of detailing the process due a person in Mr. Coleman's position. *See infra* at 15-16.

Most recently, the Third Circuit, in *Renchenski v. Williams*, 622 F.3d 315, 320 (3d Cir. 2010), considered the liberty interest in avoiding mandatory sex offender treatment held by a prisoner serving a term of life without parole who had never been convicted of a sex offense. "[G]uided by the Supreme Court's decision in *Vitek*," *id.* at 325, the court held "that the stigmatizing effects of being labeled a sex offender, when coupled with mandatory behavioral

modification therapy, triggers an independent liberty interest emanating from the Due Process Clause of the Fourteenth Amendment," *id.* at 328.

The Circuits that have considered the issue, then, are unanimous in holding that a person never convicted of a sex offense has a liberty interest in avoiding sex offender treatment. *Cf. Chandler v. James*, 2011 U.S. Dist. LEXIS 47746, at *27 (D.D.C. May 4, 2011) ("Several courts, although none yet in this circuit, have found that a prisoner or parolee has a liberty interest in not being classified as a sex offender and required to undergo psychological treatment designed for sex offenders; consequently, before he can be so classified and ordered to submit to treatment, the prisoner/parolee must be afforded due process.").

2. In Light of the Liberty Interests at Stake, Courts Have Consistently Held That a Person in Mr. Wills' Position Is Due Far More Process than the Parole Commission Provided Him.

Federal courts of appeals have been similarly uniform in holding that, prior to imposing sex offender classification and treatment on a person never convicted of a sex offense, the government must provide the person dramatically more process than the Parole Commission has provided to Mr. Wills. In the Fifth Circuit, for instance, prior to "requiring a parolee who has not been convicted of a sex offense to register as a sex offender or participate in sex offender therapy," the state parole board must provide him:

> (1) written notice that sex offender conditions may be imposed as a condition of his mandatory supervision; (2) disclosure of the evidence being presented against [him] to enable him to marshal the facts asserted against him and prepare a defense; (3) a hearing at which [he] is permitted to be heard in person, present documentary evidence, and call witnesses; (4) the right to confront and cross-examine witnesses, unless good cause is shown why this right should not be granted; (5) an impartial decision maker . . . ; and (6) a written statement by the factfinder as to the evidence relied on and the reasons it attached sex offender conditions to his mandatory supervision.

Meza, 607 F.3d at 411. The Third Circuit's standard is nearly identical. There, prior to imposing sex offender treatment and classification on a prisoner, the government must provide him:

> (1) written notice . . . that Defendants are considering classifying him as a sex offender and mandating his participation in [the sex offender treatment program]; (2) a hearing, held sufficiently after the notice to permit [him] to prepare, which includes: disclosure of the evidence Defendants would rely upon for the classification, and an opportunity for [him] to be heard in person and to present documentary evidence; (3) an opportunity to present witness testimony and to confront and cross-examine witnesses called by Defendants, "except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation, or cross-examination"; (4) administration of the hearing by an independent decisionmaker; (5) rendering of a written statement by the decisionmaker as to the evidence relied on and the reasons for [his] classification; and (6) "[e]ffective and timely notice of all the foregoing rights."

Renchenski, 622 F.3d at 331 (quoting *Vitek*, 445 U.S. at 494-95).

The other two Circuits to consider the issue have required process that is only marginally less robust. In the Tenth Circuit, prior to classifying and treating a prisoner as a sex offender, the government must provide:

> notice of the charges, an opportunity to present witnesses and evidence in defense of those charges, and a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. . . . Additionally, in order to comport with due process, there must be some evidence to support the hearing panel's decision, and the decisionmaker must be impartial.

Gwinn, 354 F.3d at 1219 (internal citations omitted). The Ninth Circuit, similarly, has held that prisoners without sex convictions must receive advance written notice that treatment may be imposed, disclosure of the evidence against them, a hearing at which they can present documentary evidence and call witnesses, and a written statement of findings. *Neal*, 131 F.3d at 830-31.[5]

[5] It stands to reason that *Gwinn* and *Neal*, where the plaintiffs were prisoners, prescribe slightly less process than *Meza*, where the plaintiff was a parolee, because "parolees are owed more process than inmates." *Meza*, 607 F.3d at 408. As a supervised releasee, Mr. Wills is entitled to

The Parole Commission has plainly failed to meet even the minimum procedural requirements set forth in *Neal*. Mr. Wills has never been provided a hearing at which he could call witnesses and present evidence to challenge the appropriateness of his classification and treatment as a sex offender, and he has never received a meaningful statement of reasons from the Parole Commission justifying the Special Sex Offender Aftercare Condition. Although he was permitted to file a written objection to CSOSA's June 2011 request that the Parole Commission re-impose the condition (he was provided no notice of any sort prior to the Commission's initial imposition of the condition, in January 2009), such cursory process is not nearly enough to justify a condition that intrudes so deeply on his significant liberty interests. *See Neal*, 131 F.3d at 830-31 (noting that "the fact that [plaintiff] wrote letters to the [sex offender treatment program] administrator protesting the [sex offender] label does not begin to satisfy the requirements" of due process).

The constitutional violation, then, is manifest. Based on facts that are beyond dispute, Mr. Wills is due a judgment as a matter of law that the Parole Commission has violated his Fifth Amendment right to procedural due process.[6]

B. A Formal *Mathews* Analysis Underscores the Strength of Mr. Wills' Claim.

Mr. Wills has established why, on the strength of every federal court of appeals decision considering the issue, he is due judgment as a matter of law on his procedural due process claim.

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the process set forth in *Meza*, and it is that process that he requests in the Proposed Order appended to this motion.

[6] It is also worth noting that the Parole Commission has failed to provide Mr. Wills process equivalent to that which federal district judges must provide supervised releasees prior to imposing or modifying any special conditions of supervised release: notice of the conditions and an adversarial hearing, with the assistance of counsel, at which the releasee may put on and contest evidence regarding the suitability of the conditions. *See* Fed. R. Crim. Pro. 32(i); 32.1(c)(1). This is significant because, by statute, the Parole Commission has "the same authority" over District of Columbia supervised releasees as district judges have over federal supervised releasees. D.C. Code § 24-403.01(b)(6).

It will nonetheless be useful to briefly progress through a formal *Mathews* analysis—which calls for balancing "(1) the private interest affected by the government action; (2) the risk of erroneous deprivation and the value of additional safeguards; and (3) the government's interest, including the fiscal and financial burdens that additional or substitute procedural requirements would entail," *Propert v. District of Columbia*, 948 F.2d 1327, 1332 (D.C. Cir. 1991) (citing *Mathews*, 424 U.S. at 335)—in order to underscore the strength of the private interests at stake and the high risk of error absent additional safeguards, which combine to far outweigh any governmental interests.[7]

1. The Private Interests at Stake Are Compelling.

The Special Sex Offender Aftercare Condition implicates at least three distinct private interests, each of which has been recognized as a significant liberty interest: Mr. Wills' right to refuse mental health treatment, his right to avoid the stigma of classification as a sex offender, and his right to maintain privacy in sexual matters.[8]

a. The Condition Infringes on Mr. Wills' Right to Refuse Unwanted Mental Health Treatment.

Three Supreme Court cases provide the contours of the liberty interest in avoiding unwanted mental health treatment. In *Vitek*, discussed *supra* at 12-13, the Court held that "mandatory behavior modification programs" implicate the "right to be free from . . . unjustified intrusions on personal security," which is "among the historic liberties protected by the Due

[7] Of the above-cited circuit court cases analyzing the process due a person in Mr. Wills' situation, only *Meza*, discussed further below, engaged in a formal *Mathews* analysis.

[8] The condition also infringes on Mr. Wills' First Amendment right to refrain from speaking, by compelling Mr. Wills to "acknowledge [his] need" for sex offender treatment. *See Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006) ("Some of this Court's leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say."). Mr. Wills asserts a substantive First Amendment claim in his Complaint, but he does not make it a basis for this motion.

Process Clause." 445 U.S. at 492 (internal quotation marks omitted). In *Parham v. J.R.*, 442 U.S. 584, 600 (1979), where the Court considered what process a state must constitutionally provide to a minor prior to subjecting him to unwanted mental health treatment, the Court recognized a "substantial liberty interest in not being confined unnecessarily" for such treatment. Finally, in *Washington v. Harper*, 494 U.S. 210, 221-22 (1990), the Court held that prisoners possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment."

In *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 278-79 (1990), the Court cited those three cases as examples of its historical recognition of "[t]he principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." The *Cruzan* Court noted the longstanding nature of this right:

> Before the turn of the century, this Court observed that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891). This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment.

Id. at 269.[9] *Vitek* and its brethren make clear that the "right of every individual to the possession and control of his own person, free from all restraint or interference of others," *Botsford*, 141

[9] *See also id.* at 305 (Brennan, J., dissenting) ("The right to be free from medical attention without consent . . . is deeply rooted in this Nation's traditions, as the majority acknowledges."); *Washington v. Glucksberg*, 521 U.S. 702, 725 (1997) (citing "the long legal tradition protecting the decision to refuse unwanted medical treatment" as grounded in "this Nation's history and constitutional traditions"); *Vacco v. Quill*, 521 U.S. 793, 807 (1997) (acknowledging the "well-established, traditional rights to bodily integrity and freedom from unwanted touching"). Indeed, courts in this Circuit and elsewhere have referred to the right to refuse treatment as "fundamental." *See Smith v. Shalala*, 954 F. Supp. 1, 3 (D.D.C. 1996) ("[C]ompetent adults have a fundamental right to refuse medical treatment . . . ." (citing *Cruzan*)); *Sundby v. Fiedler*, 827 F. Supp. 580, 583 (W.D. Wis. 1993) (holding, regarding compelled sex offender treatment, that "[t]he due process clause protects certain fundamental rights, one of which is the right to be

U.S. at 251, extends not just to government intrusions that impact the body, but to those that work on the mind as well.

The Special Sex Offender Aftercare Condition is just such a governmental intrusion. It involves "an in-patient or out-patient mental health program . . . with special emphasis on long-term sex offender testing and treatment." Ex. 1 (June 24, 2011 Parole Commission Notice of Action). CSOSA implements this "mental health program" through a "psychosexual assessment," on which it bases a "clinical diagnosis" and a "comprehensive treatment plan." Ex. 11 (CSOSA Policy Manual) at 10-11. Mr. Wills underwent a psychosexual assessment, numerous sex offender treatment sessions, and a polygraph examination in the fall of 2009, and, until he filed this lawsuit, Defendants had him scheduled to begin treatment again. In the event that the Parole Commission re-imposes the condition, Mr. Wills' treatment may include further cognitive behavioral therapy; "[u]se of techniques for reducing deviant sexual arousal, such as covert sensitization, aversive conditioning and/or hormonal therapy"; and forced "physiological monitoring," including "plethysmographs and polygraphs, etc." *Id.* at 14-15.[10] Should he "successfully complete[] sex offender treatment, [he] shall be placed into aftercare for an indefinite period of time." *Id.* at 13.

The Special Sex Offender Aftercare Condition is, in short, a government-compelled mental health treatment program, one that unquestionably implicates Mr. Wills' right to refuse

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free from unjustified bodily and mental intrusions" (citing *Vitek* and *Harper*)); *In re A.C.*, 533 A.2d 611, 615 (D.C. 1987) ("The fundamental right to bodily integrity encompasses an adult's right to refuse medical treatment . . . ."); *cf.* B. Jesse Hill, *The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines*, 86 Tex. L. Rev. 277, 304 (2007) ("The right to bodily integrity is one of the oldest fundamental rights recognized by the law.").

[10] A plethysmograph is a device placed around the penis to measure changes in blood flow, and is used to assess a man's level of sexual arousal in response to various visual and auditory stimuli.

unwanted mental health treatment. *See Renchenski*, 622 F.3d at 327 (prison sex offender treatment program that "consists of weekly psychotherapy sessions for approximately two years . . . is sufficiently similar to the forced transfer to a mental institution that the Supreme Court determined triggered a liberty interest in *Vitek*").

b. The Condition Stigmatizes Mr. Wills with the Label of "Sex Offender."

Mr. Wills has already established his liberty interest in avoiding the stigma of the label "sex offender." *See supra* at 12-15; *Vitek*, 445 U.S. at 492 ("It is indisputable that commitment to a mental hospital can engender adverse social consequences to the individual and . . . whether we label this phenomena "stigma" or choose to call it something else . . . we recognize that it can occur and that it can have a very significant impact on the individual." (internal quotation marks omitted)); *Coleman*, 395 F.3d at 223 ("As in *Vitek*, the state imposed stigmatizing [sex offender] classification and treatment on Coleman without providing him any process."); *Kirby*, 195 F.3d at 1292 ("[T]he stigmatizing effect of being classified as a sex offender constitutes a deprivation of liberty under the Due Process Clause."); *Neal*, 131 F.3d at 829 (court could "hardly conceive of a state's action bearing more 'stigmatizing consequences' than the labeling of a prison inmate as a sex offender").[11]

These courts have made clear that mere labeling or classification of a person as a sex offender—as Defendants have done to Mr. Wills by placing him in CSOSA's "Sex Offender Unit" and ordering him to undergo "sex offender treatment"—is sufficient to implicate his liberty interest in avoiding stigma. But Defendants have done more than just label Mr. Wills a "sex offender"; they have worked to publicize that false description. In March 2009, CSOSA

[11] *But see Grennier v. Frank*, 453 F.3d 442, 445 (7th Cir. 2006) (rejecting argument that "the stigma of being called a 'sex offender' is enough by itself to deprive a person of liberty"); *Gunderson v. Hvass*, 339 F.3d 639, 644 (8th Cir. 2003) ("Damage to reputation alone . . . is not sufficient to invoke the procedural protections of the due process clause.").

required Mr. Wills to inform his then-girlfriend of the "nature of [his] sex offense," Ex. 8 (March 9, 2009 CSOSA Running Record entry)—despite the fact that he has never committed one. Two months later, Mr. Wills' supervising officer met in person with his girlfriend to confirm that she was "aware[] of offender's supervision conditions and sex offense." Ex. 9 (May 14, 2009 CSOSA Running Record entry). Those disclosures caused a significant strain in Mr. Wills' relationship with his girlfriend and contributed to its demise. Ex. 10 (Wills Dec.) ¶ 7.[12] Finally, in early September 2011, Mr. Wills' CSOSA supervising officer contacted his outside mental health treatment provider, Careco Mental Health Services, and disclosed to his case manager there that CSOSA intended to put Mr. Wills through sex offender treatment. *Id.* ¶ 9.

Defendants have branded Mr. Wills with a scarlet letter that he does not deserve, creating a severe and lasting stigma that continues to deprive him of his liberty.

c. The Condition Infringes on Mr. Wills' Right to Privacy in Sexual Matters.

Finally, any accounting of the private interests at stake must include Mr. Wills' right to privacy in sexual matters. The Supreme Court has recognized "two different kinds" of constitutional privacy interests, which are "founded in the Fourteenth Amendment's concept of personal liberty." *Whalen v. Roe*, 429 U.S. 589, 599 & n.23 (1977).[13] The first is "the individual interest in avoiding disclosure of personal matters." *Id.* at 599. The second is "the interest in independence in making certain kinds of important decisions," *id.* at 599-600, such as those that "deal[] with 'matters relating to marriage, procreation, contraception, family relationships, and

[12] The disclosures were consistent with the policy of CSOSA's Sex Offender Unit, which is to "notify all persons with whom the offender resides about the offender's supervision status," and to "have communication with all [of the supervisee's] identified collateral contacts within 30 calendar days of the initial supervision visit." Ex. 11 (CSOSA Policy Manual) at 4.

[13] *Cf. Eastwood v. Department of Corrections*, 846 F.2d 627, 630 (10th Cir. 1988) ("While the Constitution does not explicitly establish a right of privacy, the Supreme Court has recognized for nearly 100 years that a right of personal privacy does exist.").

child rearing and education. In these areas, it has been held that there are limitations on the States' power to substantively regulate conduct.'" *Id.* at 600 n.26 (quoting *Paul v. Davis*, 424 U.S. 693, 713 (1976)).

The Special Sex Offender Aftercare Condition implicates both types of privacy described in *Whalen.* First, it invades Mr. Wills' privacy by forcing him to disclose "personal matters," *Whalen*, 429 U.S. at 599, in the form of a complete and detailed account of his sexual history, thoughts, and practices. *See Eastwood v. Department of Corrections*, 846 F.2d 627, 631 (10th Cir. 1988) ("This constitutionally protected right [to privacy] is implicated when an individual is forced to disclose information regarding personal sexual matters."). CSOSA, through the CCFS treatment provider, forced Mr. Wills to answer questions regarding his earliest sexual experiences, his masturbation habits, and the varieties of consensual sexual behavior in which he has engaged. Ex. 10 (Wills Dec.) ¶ 3. He had to reveal how frequently he looks at pornography and whether he has ever suffered from impotence. *Id.* ¶ 4. He had to characterize how stimulated he would be by the thought of a young boy, or of two men having sex. *Id.* ¶ 5. The treatment provider asked him whether he has ever had sex with a dead animal or a dead person. *Id.* ¶ 6. It is difficult to imagine a set of questions that intrudes more deeply on the right to sexual privacy.

Second, the Special Sex Offender Aftercare Condition invades Mr. Wills' privacy by imposing government scrutiny on his sexual decisions—which, because they are of a piece with those decisions "dealing with matters relating to marriage, procreation, contraception, [and] family relationships," fall squarely within *Whalen*'s protected category of "important decisions." 429 U.S. at 600 & n.26 (internal quotation marks omitted). CSOSA's "treatment" is structured so that Mr. Wills' perfectly legal sexual decisions may result in adverse consequences—in the

form of further or more intensive "treatment"—simply because CSOSA itself believes that those decisions fit into some undefined model of sexual deviance.

In an analogous case, the Ninth Circuit held that the government violated the plaintiff's constitutional right to privacy when it subjected her to a polygraph examination, with questions regarding her sexual history, as part of her application to become a police officer. *Thorne v. El Segundo*, 726 F.2d 459, 471 (9th Cir. 1983). The polygraph examination in *Thorne*, which included questions covering "any social or sexual relations Thorne may have had within the police department, whether on duty or off," was intended, like the sexual history questions that CSOSA forced Mr. Wills to answer, to root out "sexual or perverted deviancies." *Id.* at 469. The court concluded that, as here, both *Whalen* privacy interests were implicated: the government had "invaded her right to privacy by forcing her to disclose information regarding personal sexual matters," and "they refused to hire her as a police officer based in part on her prior sexual activities, thus interfering with her privacy interest." *Id.* at 468. The court held that the questioning "bears on those matters acknowledged to be at the core of the rights protected by the constitution's guarantees of privacy and free association." *Id.* at 469.[14]

[14] Earlier this year, this Court held that a probationer's liberty interests were not implicated by a probation condition that required him to "undergo evaluation and complete sex offender therapy, which could include polygraph examinations." *Goings v. Court Servs. & Offender Supervision Agency*, 2011 U.S. Dist. LEXIS 51824, at *68-70 (D.D.C. May 3, 2011). That holding should not control the Court's analysis of Mr. Wills' liberty interests. The plaintiff in *Goings* did not raise, and the Court did not consider, the existence of the right to refuse unwanted mental health treatment or the right to avoid the stigma of the "sex offender" label. The plaintiff did raise one element of the right to sexual privacy—"the individual interest in avoiding disclosure of personal matters," *id.* at *68—and the Court held that his "treatment" did not implicate a liberty interest on that ground because the information he divulged there was "to be used for the purpose of the plaintiff's treatment and not for public dissemination," *id.* at *69-70. Again, however, the plaintiff in *Goings* did not cite, and the Court did not consider, the details of just how intrusive CSOSA's sex offender treatment is, as Mr. Wills has described. The Court also did not consider the second kind of privacy interest mentioned in *Whalen*—privacy in making important sexual decisions—or the fact that courts have recognized the liberty interest in sexual privacy even

2. The Risk of Erroneous Deprivation Will Remain High Absent Additional Procedural Safeguards.

The second *Mathews* prong requires consideration of the risk of erroneous deprivation in the absence of additional procedures. Here that risk is quite high, in light of the fact that, using its current procedures, the Parole Commission provided no meaningful justification for the Special Sex Offender Aftercare Condition and no meaningful opportunity for Mr. Wills to contest it. *See Mathews*, 424 U.S. at 349 (holding that procedures must ensure that the deprived person is "given a meaningful opportunity to present [his] case"). As the Fifth Circuit detailed in *Meza*, there are many reasons why such woefully inadequate process will often lead to unjust results:

> The grave risk of error that envelops the procedures used by the [Texas Parole] Board is most troubling. By not allowing the parolee to review the evidence presented against him, he is unable to correct any misinformation placed in his packet that the Board reviews. By not allowing the parolee to appear before the Board, the Board must act without mitigating or clarifying evidence from the parolee. By not allowing the parolee to confront opposing witnesses, the parolee is unable to refute damning statements made against his interest and the Board is unable to evaluate the credibility of the parolee against that of opposing witnesses.

Meza, 607 F.3d at 403. Indeed, the outcome in this very case—onerous sex offender treatment imposed indiscriminately on one who plainly has no need for it—is evidence of how high the

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when the sexual information disclosed is not disseminated outside the government. *See, e.g.*, *Thorne*, 726 F.2d at 462-63.

A further distinguishing factor is that whereas Mr. Goings had been convicted of a sex offense prior to imposition of "treatment," Mr. Wills has not. Although it seems clear that convicted sex offenders have the same liberty interests in avoiding compelled treatment as those who have not been convicted—the depth of the liberty intrusion wrought by forced mental health treatment in no way depends on whether the supervisee has been convicted of a sexual crime at some point in the past—some Circuits have held or implied to the contrary. In any event, Circuits have been unanimous in holding that persons who, like Mr. Wills, have not been convicted of a sex offense, do possess a liberty interest in avoiding classification and treatment as sex offenders.

risk of erroneous deprivation is under the process that the Commission routinely provides to supervisees situated similarly to Mr. Wills.

3. The Government's Interest, While Appreciable, Is Clearly Outweighed.

The government's interest, including consideration of any added financial burden of providing Mr. Wills adequate process, cannot counterbalance the strength of Mr. Wills' private interests and the risk of erroneous deprivation. The government surely has an interest in rehabilitating supervised releasees and ensuring public safety—but those interests are only served when decisions regarding release conditions are made accurately. *See Lassiter v. Dep't of Social Services*, 452 U.S. 18, 28 (1981) (a contested hearing prior to serious deprivation serves both the government and the private party because the government "shares the [private party's] interest in an accurate and just decision"). Here, absent any meaningful process or evidence that Mr. Wills is in need of treatment as a sex offender, there is no reason to believe that the Special Sex Offender Aftercare Condition advances the government's interest in rehabilitation or public safety—for there is no reason to believe that the condition is justified.

Moreover, the burden to the Parole Commission of providing Mr. Wills the process that he is constitutionally due will be minimal. The procedures that he requests are nearly identical to those required at parole revocation hearings, which the Commission conducts on a routine basis. *See Morrissey v. Brewer*, 408 U.S. 471, 489 (1972) (stating minimum due process requirements for parole revocation). While the Commission may argue that it will be unduly burdensome for it to provide additional process to all D.C. conditional releasees in Mr. Wills' position—a systemic improvement that it will have to make if the Court's ruling on Mr. Wills' motion is in accord with the law he cites—that argument was considered and rejected by the Fifth Circuit in *Meza*. There, the defendants presented evidence that "6,900 offenders currently incarcerated

may at some point require" the process that the Fifth Circuit had prescribed, and that "to provide these offenders with [that process] could cost $750,000." *Meza*, 607 F.3d at 403. After acknowledging that "the State has a significant interest in avoiding additional costs," the court held that "Meza's liberty interest in being free from the stigma of registering as a sex offender and avoiding highly invasive sex offender therapy is palpable. When balancing these significant interests with the likelihood of erroneous decision-making, we are convinced that the current procedure is unconstitutional." *Id.* The court concluded, "After weighing the factors of *Mathews v. Eldridge*, we find that the current Texas procedure . . . does not meet the constitutional requirements for procedural due process." *Id.*[15]

CONCLUSION

For the reasons stated, the Court should grant Mr. Wills' motion for summary judgment on his procedural due process claim. It should issue a declaration that the Parole Commission has violated Mr. Wills' Fifth Amendment rights and a permanent injunction ordering the Commission to refrain from re-imposing the Special Sex Offender Aftercare Condition without providing Mr. Wills advance written notice that it intends to impose the condition; disclosure of

[15] The *Meza* decision was the basis of a recent decision by the Texas Court of Criminal Appeals ("TCCA") affirming the process that is due before sex offender conditions can be imposed upon an individual who has never been convicted of a sex offense. In *Ex Parte Evans*, the TCCA held that the applicant, who was subject to sex offender conditions based on unsubstantiated allegations contained in his case file, was entitled to the same procedures as the appellant in *Meza*. 338 S.W.3d 545 (Tex. Crim. App. 2011). Of special significance is the TCCA's rejection of the argument, made by the Texas Department of Justice, that the financial burden of providing the requisite process to every individual subject to sex offender conditions would be too high; noting that the *Meza* court had considered the cost and nonetheless found Texas's procedures unconstitutional, the TCCA denied the state an evidentiary hearing on the issue. *Id*. at 556-57 & n.56 ("This case is a good example of why the procedural protections adopted in *Meza* are essential to enhance the accuracy of a decision as to whether a person who has not been convicted of a sex offense is, nonetheless, a sex-offender who should be subjected to the invasive and stigmatizing [sex offender conditions].")

any evidence against him; a hearing at which he can call and cross-examine witnesses and present documentary evidence; and a written statement of findings.

Respectfully submitted,

/s/ Sandra K. Levick
Sandra K. Levick (D.C. Bar No. 358630)

/s/ David A. Taylor
David A. Taylor (D.C. Bar No. 975974)

/s/ Tara Mikkilineni
Tara Mikkilineni (D.C. Bar No. 997284)

Public Defender Service for the District of Columbia
Special Litigation Division
633 Indiana Ave., N.W.
Washington, D.C. 20004
(202) 628-1200
slevick@pdsdc.org

Counsel for Plaintiff

Date: September 30, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOE L. WILLS Plaintiff, v. UNITED STATES PAROLE COMMISSION and COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA, Defendants.	)	Civil Action No. 11-1464 (BAH)

PROPOSED ORDER

Upon consideration of Plaintiff's Motion for Partial Summary Judgment, the Court hereby **Grants** Plaintiff's Motion, **Declares** that Parole Commission has violated Mr. Wills' Fifth Amendment right to procedural due process, and **Orders** the Parole Commission to refrain from re-imposing the Special Sex Offender Aftercare Condition without providing Mr. Wills advance written notice that it intends to impose the condition; disclosure of any evidence against him; a hearing before in impartial decisionmaker at which he can call and cross-examine witnesses and present documentary evidence; and a written statement of findings.

Ordered this ___ day of _____, 2011.

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Hon. Beryl A. Howell, District Judge