IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JASON TUCKER *et al*.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	18 cv 3154
	)	
ROB JEFFREYS, in his official capacity as Acting Director of the Illinois Department of Corrections,	)	Judge Lee
	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Pursuant to Fed. R. Civ. P. 65, Plaintiffs Jason Tucker, Daniel Barron, Jeffrey Kramer and Jasen Gustafson, individually and on behalf of all others similarly situated, respectfully request that this Honorable Court enter a preliminary injunction prohibiting the Illinois Department of Correction ("IDOC") from continuing to enforce its unconstitutional policies concerning Internet access for people on Mandatory Supervised Release ("MSR")[1] for sex offenses.

PROCEDURAL HISTORY

On May 2, 2018, Plaintiffs filed their initial complaint challenging the IDOC's blanket ban on Internet access for people on MSR for sex offenses. ECF No. 1. On July 10, 2018, the IDOC promulgated a new Internet policy. Exhibit 1. In response, Plaintiffs filed a First Amended Complaint, challenging the new policy's constitutionality on two separate grounds—one, that it violates the First Amendment and, two, that it violates the Fourteenth Amendment guarantee of procedural due process. *See* First Amended Complaint, ECF No. 28, at ¶¶57–60. Plaintiffs also filed a motion for preliminary Injunction. ECF No. 59. This Court set a discovery schedule and requested that Plaintiffs submit a new memorandum in support of their motion for a preliminary injunction, incorporating any relevant evidence obtained through discovery. ECF No. 72. This is the that revised memorandum. As set forth below, Plaintiffs are entitled to a preliminary injunction prohibiting IDOC from continuing to enforce it unconstitutional restrictions on Internet access.

---

[1] Any person sentenced to serve a period of incarceration in the IDOC, other than a natural life sentence, is also sentenced to a period of community supervision called mandatory supervised release ("MSR"). 730 ILCS 5/5-4.5-15(c). MSR is a period of community supervision that only begins after the completion of a prison sentence. 730 ILCS 5/5-4.5-15(c).

RELEVANT FACTS

I. The Challenged Policy

Illinois law gives the Department of Corrections discretion to decide whether individuals on MSR who are required to register as sex offenders can access the Internet. In particular, 730 ILCS 5/3-3-7 (b)(7.6)(i) provides that people required to register as sex offenders, if convicted for an offense committed on or after June 1, 2009, must "not access or use a computer or any other device with Internet capability without the prior written approval of the Department" while on MSR.

As set forth in the original complaint (ECF No. 1), it was the Department's longstanding policy to impose a blanket prohibition on Internet access for all people who have been convicted of sex offenses. While Plaintiffs' motion to enjoin enforcement of the blanket ban was pending, the IDOC promulgated a new Internet policy that was supposed to go into effect on August 10, 2018. Exhibit 1.

Under the new policy, individuals who were convicted of what the Department deems to be "Internet-related" offenses are still completely prohibited from accessing the Internet. *See* Ex. 1 at 1. For them, the new policy imposes a one-size-fits-all, blanket prohibition on Internet use. With regard to individuals who were convicted of crimes not related to the Internet, the Department still prohibits Internet access by default, but such individuals are allowed to "request" access. *Id*. Those requests are to be reviewed on a case-by-case basis by the Sex Offender Supervision Unit "containment team" (consisting of the parolee's parole agent, his therapist, and the parole commander). *Id*. The revised policy only allows people who obtain approval

from the Containment Team to use the Internet once the Department has installed approved monitoring software. *Id*. Once the monitoring software is installed, people subject to the policy may not:

- Visit or use any dating website or dating application or any website that provides pornographic or sexual material;
- Visit or use any social networking site or any site that focuses primarily on blogs, forum, and/or discussion groups; or
- Use any website, program, or application designed to mask, spoof, or obscure the offender's IP address, or any scrubbing device designed to delete data or transfer history.

Id. at 1–2.

II. The Effects of the Policy

The Department's broad restriction on access to the Internet constitutes a serious infringement of the constitutional rights of individuals on MSR for sex offenses. It severely inhibits these individuals' ability to work, access information and communicate with others and renders nearly all the activities of life incalculably more difficult. As the Supreme Court recognized in *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017), the Internet constitutes "what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge." *Id*. at 1737.

Being restricted from accessing the Internet is particularly burdensome for the members of the class because people on MSR for sex offenses are subjected to electronic home detention pursuant to Illinois law and IDOC policy. *See* 730 ILCS 5/5-8A-3 (g) ("A person convicted of an offense described in clause (4) or (5) of subsection

(d) of Section 5-8-1 of this Code shall be placed in an electronic monitoring or home detention program for at least the first 2 years of the person's mandatory supervised release term.") Because individuals on electronic home detention can only leave their host sites with the pre-approval of their parole agents, the Internet is an essential outlet for searching for work, communicating with family and friends, and interacting with the outside world.

In addition, the policy has substantial effects on the First Amendment rights of parolees' families because the Department frequently prohibits individuals on MSR for sex offenses from living at host sites that have Internet access and/or computers. As a result, family members who seek to provide a place for their loved ones to live must give up access to computers and Internet-accessible devices in their own homes.[2]

A. Jason Tucker

Jason Tucker was convicted in 2011 of predatory criminal sexual assault and sentenced to seven years in IDOC plus an MSR term of three years to life. Ex. 4, Decl. of Tucker, at ¶1–2. Tucker's crime had no connection to the Internet or computers. *Id.* at ¶3. On April 20, 2015, Tucker completed his prison sentence and became eligible

[2] The Department claims to have changed its policies concerning allowing people to parole to host sites where Internet access and/or computers are present. Ex. 2, Interrogatory Answers, at ¶10 ("as a general matter, the Department does not prohibit persons on parole or MSR for sex offenses from living at host sites with computers and/or Internet access. ... Some individuals with Internet-related crimes may be prohibited from living at such host sites; such determinations are made on a case-by-case basis.") But the evidence suggests that the Department has not changed its general prohibition on living at host sites that have Internet access. None of the Plaintiffs or the other class members who have given affidavits in this case are allowed to live at host sites with Internet access. *See* Exs. 4–12 (declarations of class members). Similarly, the current version of the Department's "Sex Offender Supervision Unit Protocols" still leaves the determination of whether a parolee may live at a host site with Internet totally in the hands of parole agents. Ex. 13, Dep of Dixon, at 88:23-89:5.

for release on MSR, but he was not released from because he could not find compliant housing. *Id*. at ¶4. Tucker spent an additional two years and seven months in prison before he was released. *Id*. at ¶5. IDOC rejected both of Tucker's proposed housing sites because they had Internet access. *Id*. He tried to live at his mother's house in Bunker Hill, Illinois, but her house was rejected as non-compliant by the Department of Corrections due to its having Internet access. Tucker's mother was unable to give up her Internet because it is the only way she can communicate with her other son who lives in New Zealand. Another proposed site in Alton, Illinois, was also rejected for the same reason and also that there was a dog on site. *Id*. at ¶6.

On November 28, 2017, Tucker was released to an approved host site in Alton, Illinois. *Id*. at ¶7. Since his release from prison, Tucker has been prohibited from having access to the Internet, smart phones, computers, and game systems. This remains the case even though the Department of Corrections supposedly promulgated a new Internet policy on August 10, 2018.

In fact, Tucker has seen no change since the IDOC's new Internet policy was supposedly promulgated. *Id*. at ¶8. Tucker has asked his parole officer at least five or six times about the new IDOC Internet policy and about his ability to use the Internet. *Id*. The agent told Tucker that at this time his office does not know how to implement the new Internet policy, including what monitoring software to use and how much it will cost. He has also explained that there is confusion as to how he is supposed to install the monitoring software and whether he is supposed to approve the purchase of a computer before he has the monitoring software on it. *Id*. at ¶9. The

agent further told Tucker that he will still be prohibited from having a smart phone while on MSR. *Id*.

The no-Internet policy affects Tucker's life in numerous ways:

(a) It hampers his ability to search for a new job because almost all jobs require that he fill out a job application on-line;

(b) It hampers his ability to communicate with family, including his brother who lives in New Zealand;

(c) It makes normal undertakings like applying for health insurance via healthcare.gov much more time consuming and costly. Tucker was forced to take off a day of work to apply for health insurance in person at the offices of a registered insurance agent;

(d) It greatly restricts Tucker's access to news and media;

(e) It hampers Tucker's ability to communicate with his lawyers, friends, family, support groups, or government (*i.e.*, IRS, Illinois Department of Employment Security, and Department of Human Services) via email or the Internet;

(f) It hampers his ability to follow the legal developments of important litigation related to his status as a registered sex offender by preventing him from downloading court documents from the Internet; and

(g) It prevents him from downloading tax forms and managing his personal finances online.

B. Daniel Barron

Daniel Barron was convicted of Criminal Sex Assault in 2014. He was sentenced to four years in prison at 85 percent and an MSR term of three years to life. Ex. 5, Decl. of Barron, at ¶1–2. His crime had no connection to the Internet or to use of computers. *Id*. at ¶4. On December 11, 2017, Barron was released to his parents' home in Downers Grove, Illinois, to serve his MSR term. *Id*. at ¶6. Barron is not allowed to access the internet for personal use such as to manage his bank accounts, search

and/or apply for jobs, communicate with friends, or read the news. *Id*. at ¶11. For approximately the past three months, Barron has been allowed to use a computer for school and work only. *Id*. The no-Internet policy affects his life in numerous ways:

(a) It hampers his efforts to find new employment due to the inability to look at job listings on-line;

(b) It interferes with his personal relationships because he is prohibited from visiting friends' and family members' homes that have Internet access; and

(c) It restricts his access news and entertainment sources.

Id. at ¶7–8. The Internet restriction also imposes a huge burden on Barron's family, since his parents and brother are also forced to abide by the restrictions in their home and must forego having Internet-accessible devices in the home. This has resulted in Barron's mom being forced to take time off work to download materials from the Internet for Barron in anticipation of his arriving home from prison; and more recently it has made it more difficult for Barron's mom, who is now unemployed, to seek employment due to her not being able to search for work from a computer at home. *Id*. at ¶9.

Although the Department allegedly changed its policy on Internet use in August, Barron is still prohibited from having Internet access at home and from using the Internet for any reason other than work or school. *Id*. at ¶10.

C. Jeffrey Kramer

Jeffrey Kramer was convicted of aggravated possession of child pornography in 2013. Ex. 6, Decl. of Kramer, at ¶1–2. He was initially sentenced to probation, but in December of 2015, his probation was revoked for violating a condition of his probation

(*e.g.*, accessing the Internet and visiting eBay and Netflix.) *Id*. at ¶3. He was then resentenced to 42 months in prison at 50 percent, plus an MSR term of three years to life. *Id*. His conviction was "related to the Internet" in that it involved downloading illegal pornography. *Id*. at ¶4.

On September 27, 2016, Kramer completed his prison sentence and became eligible for release on MSR, but he was not released from prison because he could not find compliant housing. He remained in prison for an additional 16 months. *Id*. at ¶5. On January 29, 2018, Kramer was released from prison to an approved host site, an apartment in Rockford, Illinois. *Id*. at ¶6.

The Internet restriction impacted Kramer's life in several ways. He had difficulty staying in touch with his family and friends who live outside of the Rockford area. This was especially problematic for Kramer because he was on house arrest while on MSR and was isolated from social contact. *Id*. at ¶8. He was limited in ability to research his areas of interest—World War II history and movies—because he couldn't use the Internet to do research or order books and was also prohibited from going to the local library. *Id*. He couldn't look up addresses of the locations that he was required to identify to his parole officer whenever he requested permission for movement and had to rely on family to look up addresses for him. *Id*. He couldn't do banking or pay bills online; and he couldn't manage his own medical care or research his own heart condition. *Id*.

After approximately eight months on MSR, Kramer felt it was impossible to continue without any access to the Internet, and he obtained a basic flip phone that

had the capability of accessing the web. He used the Internet to look up phone numbers and addresses that he needed; to get bank statements; to buy items he needed including books, a DVD, and shoes; and to look at CNN.com to read news stories about the potential impeachment of the president. He did not use the Internet to access pornography or for any sexual purposes, and there is no evidence or accusation that he did so. *Id*. at ¶10.

On November 3, 2018, Kramer's parole officer arrested him and took him back to prison after discovering the phone. *Id*. at ¶11. Kramer's MSR was revoked for two years for having used the Internet in violation of the conditions of his MSR. He is now serving an additional two-years in prison at Robinson Correctional Center in Robinson, Illinois. *Id*. at ¶12.

D. Jasen Gustafson

Plaintiff Jasen Gustafson was convicted of possession of child pornography in 2013. Ex. 7, Decl. of Gustafson, at ¶1. Gustafson's crime was "related" to the Internet in that he downloaded illegal images of minors from the Internet onto his computer. *Id*. On October 19, 2014, Gustafson was approved for release onto MSR by the Prisoner Review Board, but he was not released from prison until February 21, 2019, because he could not find an approved "host site" at which to serve his MSR. *Id*. at ¶2.

On February 21, 2019, Gustafson was released to an approved host site—a studio apartment located in Urbana, Illinois—where he now lives. *Id*. at ¶3. He is not permitted to have any Internet access. *Id*. at ¶4. The Department's Internet restriction places a severe burden on Plaintiff Gustafson in several ways, including

the following:

(a) He can't access public transit schedules;

(b) He wasn't able to fill out tax forms for a potential job and had to rely on his mother to fill out his paperwork for him;

(c) He can't read the news or order books online;

(d) He can't search for employment opportunities or apply for jobs; and

(e) He can't communicate with his family and friends via email.

Id. at ¶5.

Gustafson has discussed whether he will be allowed to have Internet access with his parole agent. The agent said that he and Gustafson's therapist will consider his request in the future, but gave him no time frame during which they will do so. *Id*. at ¶6. He was not given anything in writing concerning the Internet restriction. *Id*.

E. Other Class Members

The stories of the named Plaintiffs are not unique. People on MSR for sex offenses throughout the state are subjected to the same restrictions on their access to the Internet, and they suffer many of the same harms due to the policy—isolation from their families and friends; being cut off from news and information; difficulty managing their own financial affairs such as paying bills and banking; and challenges with searching out jobs and communicating with potential employers. See, Exs. 7–12 (declarations of class members).

III. The Implementation of the New Internet Policy

Defendant claims that its new Internet policy went into effect on August 10, 2018. Ex. 1 at 1. However, almost nothing has changed in the past ten months.

A. Most Parolees Are Still Under a Complete Internet Ban

First, the evidence shows that the Department still imposes a ban on Internet access for almost everyone on MSR for a sex offense. To date, only a tiny fraction of people under the Department's supervision have been allowed any access to Internet or computers. The Department currently supervises 738 people on MSR for sex offenses. Ex. 3, Resp. to Request to Produce, at ¶5. Only 15 people (2 percent) have been granted any Internet access whatsoever. Ex. 2, Resp. to Interrogatories, at ¶16. Of those 15, only five have been allowed to have internet access for personal purposes (such as reading the news, getting directions, looking for jobs, email, etc.); all others are limited to using a computer for work or school only. *Id*.

Moreover, the Department admitted in discovery that it still automatically prohibits Internet access when individuals are released from IDOC custody and sets no "definitive time frame" for review of the prohibition. Ex. 2, Resp. to Interrogatories, at ¶18.

B. The Department Has Not Approved Monitoring Software

Under the Department's new policy, no one on MSR for a sex offense may access the Internet without monitoring software. Ex. 13, Dep of Dion Dixon, at 75:2-18 ("Q. What is the Department's current policy right now about access to the Internet without monitoring software? A. As written, it states that there will be no Internet access. It's required.")[3] The Department has yet to identify what monitoring software

[3] Dion Dixon is the Deputy Chief of the Parole Division of the Illinois Department of Corrections. The IDOC produced him to testify as its 30(b)(6) witness concerning the IDOC's policies regarding Internet access.

it will use, and there is no clarity about when such software will be available. *Id*. at 79: 5-8 ("Q. How many companies has the Department identified who could potentially provide this service? A. We haven't identified any yet.") Indeed, the whole process of obtaining the monitoring software is in its infancy. *See* Ex. 2, Resp. to Interrogatories, at ¶ 12 ("the Department is not able to provide a definitive date for when the software will be available for purchase.") Deputy Chief Dixon testified that he does not even know how the software will work (*e.g.,* whether it will it block access to sites or simply monitor where individuals go on the Internet. Ex. 13 at 82:3-10.[4]

C. The Policy Remains Informal

Deputy Chief Dixon admitted in his deposition that the Department's policy is still "under development." Ex. 13, Dep. of Dixon at 25:9. The Department has yet to formalize any processes for ensuring that requests for Internet access are handled in a timely and fair manner.

- There is no formal process by which parolees can request Internet access. Ex. 2 at ¶5 (a)-(g); Ex. 13 at 35:18-21 ("Q. How does the parolee communicate that request? A. Right now it's verbally. Or -- and/or it may be in a letter or written form.");

- There is no written policy requiring parole agents to (a) inform parolees of their right to request Internet access; or (b) inform the other members of the containment team (*e.g.* the therapist and the parole commander) when a parolee has asked for Internet access. *Id*. at 18:11-20:10;

- There are no written criteria by which the containment team is to evaluate a parolee's request for Internet access. *Id*. at 22:13-15;

[4] This delay is particularly troubling in light of the fact that since 2009 Illinois law has explicitly directed that the Department may allow people on MSR for sex offenses to use the Internet with monitoring software. 730 ILCS 5/3-3-7 (a) (7.1) (iii) (requiring people convicted of certain sex offenses to "submit to the installation … at the offender's expense, one or more hardware or software systems to monitor the Internet use.")

- There is no time frame within which a parole agent must respond to a parolee's request for Internet access. *Id*. 16:2-11;

- There is no formal method of informing parolees of why a request to access the Internet is denied. Deputy Chief Dixon testified that the Department plans to use "forms" to inform parolees of restrictions on their Internet access and/or the conditions of use, but to date, such forms have not yet been developed. *Id*. at 26:8-9; 100:20-24;

- There's no formal process for a parolee to appeal restrictions on his or her access to the Internet. *Id*. at 199:15-19 ("Q: Is there a particular form the Department's using to allow this appeal to be made? A. No.");

- It is unclear whether parolees have been informed of their right to appeal a denial of Internet access. *Id*. at 29:1-12 ("Q: Have parolees been informed of their right to submit a written appeal…. A. I'm not sure.").

D. Host Sites Are Still Being Denied Because of the Presence of Internet

As described in footnote 2 above, the Department still generally prohibits people on MSR for sex offenses from residing at location that have Internet access. For example, Bryon DeMons was released from IDOC on MSR on February 14, 2019. Ex. 12, Decl. of DeMons, at ¶4. DeMons was convicted of criminal sexual assault in 1998. *Id*. at ¶1. His crime was unrelated to the Internet or computers. Indeed, the Internet was in its infancy at the time of his conviction. *Id*. at ¶6. A condition of DeMons' release to his mother's apartment was that she remove all Internet-capable devices (including her computer) from her home and disconnect her Internet service. *Id*. at ¶5. In addition, DeMons is prohibited as a condition of his MSR from having access to the Internet, smart phones, computers, and game systems. *Id*. at ¶6.

E. The Department Prohibits People Whose Offenses Were Unrelated to the Internet from Having Internet Access

The Department continues to impose a ban on Internet access for all people on MSR for sex offenses regardless of whether the parolee was convicted of an offense that involved use of the Internet. *See* Ex. 2, Decl. of Tucker, at ¶9–11 (explaining that "nothing has changed with regard to [his] ability to have access to the Internet." Tucker is still prohibited from using the Internet, and from having access to a computer, smart phone or game system, despite his requests to his parole agent); Ex. 9, Decl. of Billy Carney, at ¶9 (explaining that his parole agent told him nothing had changed about his right to have Internet access while on parole); Ex. 10, Decl. of Jennifer Tyree, at ¶3–4 (explaining that she is still prohibited from having any Internet access.)

IV. The IDOC's Written Policies Are Inconsistent with What It Claims Its Practices Are

Discovery has revealed that the IDOC's written policies relating to Internet use are at odds with its purported practices. The written policy says one thing; according to the testimony, the practices are different. For example, the written policy explicitly prohibits Internet use by anyone whose crime was "related" to the Internet. These crimes include "possession of child pornography on an Internet capable device, distribution of child pornography over the Internet, or luring a child on the Internet." Ex. 2, Resp. to Interrogatories, at ¶6. In contrast, Deputy Chief Dixon testified that such individuals may be allowed to have Internet access "on a case-by-case basis." Ex. 13 at 58:16-59:19. *See also* Ex. 2, Resp. to Interrogatories, at ¶6 ("While the policy

provides that, in general, 'persons convicted of Internet related sex offenses will not be allowed access to the Internet,' such individuals may request Internet access, and such requests will be evaluated on a case-by-case basis.")

ARGUMENT

To be entitled to a preliminary injunction, a plaintiff must establish four elements: (1) some likelihood of success on the merits; (2) the lack of an adequate remedy at law; (3) a likelihood that they will suffer irreparable harm if the injunction is not granted; and (4) the balance of hardships tips in the moving party's favor. *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001). As set forth below, Plaintiffs meet this standard and therefore requests that the Court grant a preliminary injunction prohibiting Director Baldwin from continuing his unconstitutional policy.

I. Plaintiffs Are Likely to Succeed on the Merits of Both their First and Fourteenth Amendment Claims

The Department's new policy violates Plaintiffs' First and Fourteenth Amendment rights to due process. For purposes of clarification, there are really three different policies at play: (1) the IDOC's formal written policy; (2) the purported policy as enunciated by Deputy Chief Dixon in his deposition and in the IDOC's Interrogatory Answers, which, as enunciated, will allow parolees to have Internet access on a case-by-case basis when and if the IDOC obtains monitoring software; and (3) the actual, existing IDOC practice, whereby virtually everyone on MSR for a sex offense is completely banned from having Internet access.

As discussed below, each one of these practices is constitutionally infirm under the First Amendment and the Fourteenth Amendment.

A. The Standard of Review for MSR Restrictions

Prior to addressing the constitutional inadequacies of the Department's Internet policies, it is necessary to set forth the standard of review to determine the constitutionality of a parole restriction.

Where, as here, a parole condition interferes with constitutionally protected rights, most federal courts have applied a standard akin to strict scrutiny. *See*, *e.g.*, *U.S. v. Myers*, 426 F.3d 117, 126 (2d Cir. 2005) (Sotomayor, J.) (finding that where "a parole condition impacts a fundamental right," the government bears the burden of showing that the restriction is "narrowly tailored to serve a compelling government interest.") (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)); *U.S. v. Loy*, 237 F.3d 251, 256 (3rd Cir. 2001) ("a condition that restricts fundamental rights must be narrowly tailored and directly related to deterring [the defendant] and protecting the public."); *see also Yunus v. Lewis-Robinson*, No. 17-cv-5839 (AJN), 2019 U.S. Dist. LEXIS 5654, at *49-50 (S.D.N.Y. Jan. 11, 2019) ("Under *Packingham*, blanket limitations on an individual's ability to access social media will receive intermediate scrutiny, even when imposed as conditions of parole.").

In the context of parole restrictions that interfere with First Amendment rights, the Seventh Circuit has emphasized the importance of guarding against overly broad restrictions. *See United States v. Adkins*, 743 F.3d 176, 193 (7th Cir. 2014) (vacating a special condition of parole that prohibited access to adult pornography and explaining that "pornographic materials enjoy First Amendment protection, which means that we must be sensitive to the possible overbreadth of the condition."); *see also United States v. Goodwin,* 717 F.3d 511, 525 (7th Cir. 2013) (vacating parole condition that

prohibited the parolee from "visiting 'any website … containing any sexually arousing material'" on overbreadth and vagueness grounds.).

B. The Department's Written Policy Violates the First Amendment

1. Plaintiffs' First Amendment Count Is Properly Brought Under §1983

Plaintiffs anticipate that Defendants will argue that Plaintiffs' motion for a preliminary injunction should be denied because substantive (rather than procedural) challenges to parole conditions must be brought under *habeas corpus* rather than §1983. *See* Def. Mot. to Dismiss, ECF No. 40 at 3–6. As explained in full in Plaintiffs' response to the motion to dismiss (ECF No. 50 at 4–11) and Plaintiffs' supplemental authority submission (ECF No. 54–1), Plaintiffs First Amendment count is properly brought under §1983 because it is not a challenge to their convictions or sentences, but rather is a challenge to an IDOC policy. Because these arguments have been set forth fully in other briefing before this court, Plaintiffs do not repeat these arguments here.

2. The First Amendment Protects Access to the Internet

The IDOC's Internet policies implicate First Amendment rights. Both the Supreme Court and the Seventh Circuit have recognized that the Internet is a vital outlet for free expression, as well as a critical mode of communication and information. *See Packingham v. North Carolina*, 137 S.Ct. 1730, 1737 (2017) ("In sum, to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights," explaining that "[b]y prohibiting sex offenders from using those websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads

for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.") The Seventh Circuit has also observed that an Internet ban implicates the First Amendment. *See United States v. Scott*, 316 F.3d 733, 737 (7th Cir. 2003) (explaining that the Internet is a "vast repository offering books, newspapers, magazines, and research tools" and thus "a total restriction [on a parolee's access to the Internet] rarely could be justified.")

3. The Department's Categorical Determination that All Persons Convicted of an 'Internet-Related' Offense Are Subject to an Internet Ban Violates the First Amendment

The IDOC's all-out, categorical ban on access to the Internet for those individuals whose crimes are deemed by the IDOC to be "related" to the Internet is an overly broad restriction that violates the First Amendment. This is so for three reasons: (1) the ban burdens substantially more speech than necessary to further the State's legitimate interests in protecting the public and preventing re-offense; (2) there exist more narrowly tailored means to protect the public (namely, computer monitoring software); and (3) the ban undermines the stated goals of MSR and is thus fundamentally irrational.

a. The Internet Ban Burdens Substantially More Speech than Necessary

In *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017), the Court unanimously held that a North Carolina law that made it a crime "for a registered sex offender to access a commercial social networking Web site" was unconstitutionally overbroad and violated the First Amendment. *Id*. at 1735, 1737. While acknowledging the state's interest in preventing the victimization of minors, the Court reasoned that the law

was not narrowly tailored to advance a legitimate government interest. The Court explained, "[i]t is not enough that the law before us is designed to serve a compelling state interest; it also must not burden substantially more speech than is necessary to further the government's legitimate interests." *Id*. at 1740 (citations omitted). The *Packingham* Court held that this statute was a "prohibition unprecedented in the scope of First Amendment speech it burdens" and was unconstitutionally overbroad. *Id*. at 1737.

The IDOC's policy is substantially more restrictive than the one at issue in *Packingham*. In *Packingham*, the bar was only to social media sites but allowed other Internet access. *Id*. at 1734 (the statutory bar did not apply to websites that "[p]rovid[e] only one of the following discrete services: photosharing, electronic mail, instant messenger, or chat room or message board platform" and did not include websites that have as their "primary purpose the facilitation of commercial transactions involving goods or services between [their] members or visitors.") (citations omitted). In contrast, the IDOC's policy with regard to people who have been convicted of "Internet-related" offenses bars all use of the Internet, including news organizations, government websites, email services, and online shopping. Thus, as in *Packingham*, the challenged IDOC policy fails for being overly broad.

The Seventh Circuit has also looked askance at total Internet bans, even when such bans are applied to people who have been convicted of child pornography offenses. In *United States v. Holm*, 326 F.3d 872 (7th Cir. 2003), the Seventh Circuit called a total prohibition on Internet access "a drastic measure" that amounted to the

"21st century equivalent of forbidding all telephone calls, or all newspapers." *Id*. at 878-79. The Court wrote as follows:

> [S]uch a ban renders modern life—in which, for example, the government strongly encourages taxpayers to file their returns electronically, where more and more commerce is conducted on-line, and where vast amounts of government information are communicated via website—exceptionally difficult. Various forms of monitored Internet use might provide a middle ground between the need to ensure that Holm never again uses the Worldwide Web for illegal purposes and the need to allow him to function in the modern world.

Id. at 877-78.

To be sure, the *Holm* case concerned only whether the imposition of a total Internet ban was unduly burdensome under federal sentencing laws — namely, 18 U.S.C. § 3583[5] — and thus did not address whether the Internet ban violated the First Amendment's overbreadth doctrine. But the Court's logic and observations are applicable here. In finding that a total ban on the Internet "sweeps more broadly and imposes a greater deprivation on Holm's liberty than is necessary and thus fails to satisfy the narrow tailoring requirement of § 3583(d)(2)," *id*. at 877, the Seventh Circuit emphasized (1) that there was no evidence that the accused was engaged in

[5] 18 U.S.C. § 3583 (titled "Inclusion of a term of supervised release after imprisonment") grants courts the authority to include a term of supervised releases as part of a sentence and to impose post-release conditions consistent with the criteria set forth in 18 U.S.C § 3553(a) (titled "Imposition of a sentence"). The criteria include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to afford adequate deterrence to criminal conduct; (3) the need to protect the public from further crimes of the defendant; and (4) the need to provide the defendant with needed [training], medical care, or other correctional treatment in the most effective manner. 18 U.S.C. § 3553(a)(1)-(2). In addition, post-release conditions cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the statutory goals. See 18 U.S.C. § 3583(d)(2).

the distribution and/or trafficking of "child pornographic materials." *Id*. at 876;[6] (2) that available alternatives existed to a total Internet ban. *Id*. at 878; and (3) that "[A total Internet ban] renders modern life…exceptionally difficult.") *Id*. at 877.

In short, the Seventh Court reasoned that an all-out Internet ban should only be selectively and cautiously imposed, not routinely and automatically imposed on anyone whose crime was "related" to the Internet. The Court's reasoning undermines the constitutional validity of the IDOC's total, all-out ban on the Internet for anyone whose crime was "related" in any way to the Internet. Cf. *United States v. Love*, 593 F.3d 1, 12 (D.C. Cir. 2010) (upholding a no-Internet ban only if the defendant has history of contact with minors and noting circuit courts consensus that such bans were not permitted for defendants with a record of only illegal possession of images).[7]

---

[6] The *Holm* Court emphasized that it may be permissible to impose an Internet ban on someone who has been convicted of the distribution and/or delivery of child pornography, but that such a restriction could not be upheld with regard to someone convicted of the mere possession of it. *Id*. 878. ("We find it notable that this court's concerns in *Scott* are reflected in the decisions of our sister circuits, which have also declined to uphold a total ban on Internet access by defendants convicted of receiving child pornography without at least some evidence of the defendant's own outbound use of the Internet to initiate and facilitate victimization of children.")

[7] In this preliminary injunction, Plaintiffs are challenging only the overbreadth of the total Internet ban applied to people convicted of "Internet-related" offenses. However, the restrictions the Department imposes on people who have been convicted of sex offenses not deemed to be related to the Internet can also be seen as overly broad because they prohibit access to many sources for news, information, and speech (*e.g.* social media websites and discussion boards) without a reasonable relationship to legitimate penological objectives. *See White v. Baker*, 696 F. Supp. 2d 1289, 1309 (N.D. Ga. 2010) ("A regulatory scheme designed to further the state's legitimate interest in protecting children from communication enticing them into illegal sexual activity should consider how and where on the internet such communication occurs."). On this point, as the Supreme Court in *Packingham* explained, the State could enact a "specific, narrowly tailored" law addressing "conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor." *Packingham*, 137 S. Ct. at 1737. But the IDOC's restrictions are not so limited.

b. Less Onerous Restrictions Would Serve the State's Interests in Promoting Rehabilitation, Preventing Recidivism, and Protecting the Public

There are readily available alternatives to the Department's categorical ban that could accommodate parolees' constitutional rights at a *de minimis* cost to valid penological interests. The use of such alternatives would be in accord with the guidance offered by both the Supreme Court and the Seventh Circuit."[8]

Two alternatives are obvious. First, the Department could monitor parolees' use of the Internet via monitoring software. The use of Internet-monitoring software is an option explicitly granted to the Department under state law. 730 ILCS 5/3-3-7 (a) (7.1) (iii) (requiring people convicted of certain sex offenses to "submit to the installation … at the offender's expense, one or more hardware or software systems to monitor the Internet use.")[9] And second, the Department could narrow its total Internet ban to a

---

[8] In *Packingham*, the Supreme Court explained that "preventative measures" and not absolute prohibitions "must be the State's first resort to ward off the serious harm that sexual crimes inflict," explaining that "this opinion should not be interpreted as barring a State from enacting more specific laws than the one at issue" and "[i]t can be assumed that the First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor." *Packingham*, 137 S.Ct. at 1737. *See also Holm*, 326 F.3d at 877-78 ("Various forms of monitored Internet use might provide a middle ground between the need to ensure that Holm never again uses the Worldwide Web for illegal purposes and the need to allow him to function in the modern world."); *Scott*, 316 F.3d at 737 ("There is no need to cut off ... access to email or benign internet usage when a more focused restriction ... can be enforced by unannounced inspections of material stored on [the defendant's] hard drive o removable disks.") (citing *United States v. Freeman,* 316 F.3d 386, 392 (3rd Cir. 2003). Of course, if an individual on MSR does not abide by conditions of release permitting benign and productive uses of Internet, it would be appropriate to impose more restrictive measures.

[9] Under federal sentencing guidelines, people convicted of possessing child pornography are not subjected to a blanket-ban on Internet access. Instead, such parolees are subject to having their Internet use monitored. *See* Federal Sentencing Guidelines 2018, §5B1.3(d), "Special

ban on selected sites, allowing for benign and productive uses of the Internet. *See United States v. Canfield*, 893 F.3d 491, 497 (7th Cir. 2018) (upholding the imposition of a narrow Internet restriction on viewing material depicting sexually explicit conduct, a restriction "directly related to Canfield's original offense.")

Revealingly, Deputy Chief Dixon agreed in his deposition that the use of monitoring software was an adequate and effective alternative to a blanket ban on Internet access (Ex. 13 at 79: 17-21). He also testified that it would not impose an undue burden on the IDOC's parole department to monitor the Internet use of people under Department supervision. *Id*. at 80: 19-24. Furthermore, Deputy Chief Dixon testified that he was only aware of one state—New York—that imposes a blanket Internet ban on some parolees. *Id.* at 85: 16-18. This reveals that other states have not found an Internet ban to be necessary to properly supervise parolees and prevent re-offense.[10]

Moreover, Illinois law provides that all people on MSR shall "consent to a search of his or her person, property, or residence under his or her control" as a condition of MSR. 730 ILCS 5/3-3-7(10). Likewise, people convicted of certain sex offenses must "consent to search of computers, cellular phones and other devices capable of accessing the internet or storing electronic files" as a condition of their parole. 730

Conditions Policy Statement: Sex Offenses," at p. 416 (available at: https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf)

[10] Deputy Chief Dixon's testimony that New York imposes an absolute Internet ban is not correct. *See Yunus v. Lewis Robinson*, 2019 U.S. Dist. LEXIS 5654, at *49-50 (finding parole condition that prohibited access to social media websites but allowed access to the Internet for "academic purposes," legal research, and other websites on a "case-by-case" basis violated the First Amendment).

ILCS 5/3-3-7 (7.9). These conditions further alleviate any risk to the public posed by allowing someone who has been convicted of an Internet-related offense to have access to the Internet.

c. The Internet Ban Is Irrational Because It Undermines the Goals of MSR

The consequence of denying individuals Internet access is to alienate them from society. The Second Circuit recently warned that "to consign an individual to a life virtually without access to the Internet is to exile that individual from society." *United States v. Eaglin*, 2019 U.S. App. LEXIS 1007 *3 (2nd Cir., January 11, 2019). Likewise, the Supreme Court has explained, "cell phones and the services they provide are 'such a pervasive and insistent part of daily life' that carrying one is indispensable to participation in modern society." *Carpenter v. United States*, 138 S. Ct. 2206, 2210 (2018) (quoting *Riley v. California*, 134 S. Ct. 2473, 2428 (2014));[11] *see also Packingham,* 137 S. Ct. at 1737 (emphasizing that people with criminal histories may benefit most from the connections and participation the Internet affords, explaining that "Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, in particular if they seek to reform and to pursue lawful and rewarding lives.")

[11] The IDOC's policy functionally bans members of the class from having smartphones. *See* Ex. 1 at 2 (prohibiting any Internet access except through "an approved desk top or lap top computer" with "monitoring software"). The ban on smartphones further undermines the rehabilitative goals of MSR by putting these ubiquitous devices off limits. *See* Pew Research Center Mobile Fact Sheet (noting that 81 percent of Americans have smartphones) (available at https://www.pewinternet.org/fact-sheet/mobile/).

The reasonableness and rationality of a condition of parole is interconnected with whether the condition serves the purposes of the statutory scheme of which it is part. *See State v. Valin*, 724 N.W.2d 440, 446-47 (Iowa 2006) ("[T]he inquiry into the reasonableness of a condition of probation boils down to whether the statutory goals of probation are reasonably addressed. As a result, whether a condition meets the statutory goals of probation and whether it is reasonable are questions that are best addressed together.")

Here, the policy of prohibiting Internet access undermines the stated goals of MSR. The Illinois Supreme Court has explained that the purpose of MSR is "to facilitate reintegration back into society, a purpose distinct from serving time in prison." *Round v. Lamb*, 2017 IL 122271, ¶ 21 (Ill. 2017) (citing 730 ILCS 5/3-3-7(a) (West 2016)). The Internet ban interferes with Plaintiffs' rehabilitation and undermines public safety by hampering their ability to find work, participate in the community, stay abreast of the news, pursue education and maintain relations with friends and family—all activities that foster rehabilitation and reintegration. *See* Ex. 4, Decl. of Tucker, at ¶12 (describing how the Internet ban interferes with housing, employment, communication with family, obtaining health insurance, reading the news and managing finances); Ex. 5, Decl. of Barron, at ¶8 (describing how the Internet ban interferes with education, employment, family relationships, and access to news); Ex. 9, Decl. of Billy Carney, at ¶10 (describing how the Internet ban interferes with his ability to work from home, communication with friends and family, obtaining health care and managing finances); Ex. 8, Decl. of Michael DiMichel, at

¶17–19 (describing how the Internet ban interferes with his search for employment, his communication with his friends, family and legal counsel, and his access to educational opportunities).

Moreover, the Internet ban undermines the rehabilitative goals of MSR by subjecting people to the potential of being punished for accessing the Internet for benign purposes. For example, Plaintiff Kramer was on MSR for ten months. He was stable and compliant with all conditions. Now he has been arrested and had his MSR revoked for two years solely because he accessed the Internet to read the news, manage his finances, and buy items he needs. Ex. 6, Decl. of Kramer, at ¶10–12. This further demonstrates how the Internet ban undermines the stated goals of MSR. Thus, the imposition of the Internet ban is fundamentally irrational.[12]

4. The Policy Fails First Amendment Scrutiny Because It Requires an Affirmative Act Before Engaging Speech

With regard to those individuals whose offenses are not deemed to be "related" to the Internet, the IDOC's policy also fails because it still bans all Internet use by default and requires the parolee to "request" Internet access from his or her parole

[12] The Internet ban is irrational in another sense too. The Internet is a medium of communication, and the misuse of a medium of communication for receipt of an illegal object does not mean you block use of the entire medium. By way of analogy, if an individual were found to be in possession of child pornography in the form of a book and/or a photograph delivered through the mail (as opposed to images downloaded from the Internet), would a total ban on use of the postal service be reasonable? Or, in a different context, if a person were convicted of securities fraud by selling bogus securities via the phone, would a total prohibition on the making of telephone calls be reasonable? *See United States v. Scott*, 316 F.3d at 737 ("[B]ecause the Internet is a medium of communication a total restriction rarely could be justified. … A judge who would not forbid a defendant to send or receive postal mail or use the telephone should not forbid that person to send or receive email or to order books at Amazon.com.")

agent before accessing the web. Ex. 1, Policy, at 1 ("All Internet access requests will be on a case by case basis and reviewed by the Sex Offender Supervision Unit Containment Team.")

Courts have repeatedly cautioned against regulations that require a person who wishes to engage in First Amendment protected activity to first take some affirmative act in order to be granted permission to do so. For example, in *Doe v. Marshall,* No. 2:15-CV-606, 2019 U.S. Dist. LEXIS 21578, at *30 (M.D. Ala. Feb. 11, 2019), the court found unconstitutional a state law that required people on the sex offender registry to report "[a]ny email addresses or instant message address or identifiers used" along with "a list of any and all Internet service providers used by the sex offender." *Id.* (citing Ala. Code § 15-20A-7(a)(9) and (a)(18)). The court concluded that the statute was not appropriately tailored because it "requires an affirmative act as a condition of First Amendment activity." *Id*. The Court noted that "conditioning speech on an affirmative act of notifying the government of some condition deters expressive activity." *Id*. (citing *Lamont v. Postmaster Gen.*, 381 U.S. 301, 307 (1965)).

C. The Department's Internet Policy as Described by Deputy Chief Dixon Violates the First Amendment

In the 30(b)(6) deposition of Deputy Chief Dixon and its responses to interrogatories, the Department claims that its actual policy is different from what is set forth in its written policy. In particular, the Department claims that the actual policy is to allow individuals convicted of "Internet-related" offenses to obtain access to the Internet on a "case-by-case" basis. Ex. 2, Dep. of Dixon, at 59:1-3 ("the policy also gives leeway for there to be case-by-case review as well."); Ex. 3, Resp. to

Interrogatories at ¶6 ("While the policy provides that, in general, 'persons convicted of Internet related sex offenses will not be allowed access to the Internet,' such individuals may request Internet access, and such requests will be evaluated on a case-by-case basis.")

Setting aside for the moment the serious problems with having a written policy that contradicts the actual policy, the policy as articulated by Deputy Chief Dixon also violates the First Amendment, and the Department should be enjoined from continuing to enforce it.

1. The Policy Is Still Functionally a Blanket Ban on Internet Access for People Whose Crimes Were 'Internet Related'

The policy articulated by Deputy Chief Dixon still functionally bans people whose crimes are deemed to be "Internet related" from having Internet access. Deputy Chief Dixon testified that the containment team can use various factors to decide whether to allow Internet access, including the parolee's criminal history, his compliance with MSR conditions, his participation in required therapy, and his honesty with his parole agent. Ex. 13, Dep of Dixon, at 21:22–22:11. But, Dixon testified, the most important factor (the "biggie," as he put it) is "the actual sex offense … whether it's Internet-related or not." *Id*. at 22:8-11. Thus, if a parolee's offense is deemed to be "Internet-related," the containment team has the discretion to use that fact to prohibit all Internet use for the parolee's entire MSR period.

As explained in full above, a blanket ban is not narrowly tailored when less restrictive measures, such as monitoring software, would adequately address the

Department's needs without imposing such a heavy burden on parolees' First Amendment rights.

2. The Department Restricts Internet Access Even When the Offense Was Unrelated to the Internet

A fundamental constitutional problem with both the written policy and the policy as stated by Deputy Chief Dixon is that a parole agent can prohibit Internet access even when the parolee's crime had no connection to the Internet or computers. As set forth in the Department's answers to Interrogatories, the Department automatically prohibits Internet access for all persons on MSR for sex offenses (whether related to the Internet or not) and will only consider allowing access if the parolee "requests" it. Ex. 2, Resp. to Interrogatories, ¶11(b) ("The IDOC requires sex offenders on MSR to request Internet access so that the Containment Team can evaluate whether allowing the sex offender to have Internet access is in the best interests of the public and the offender …") As a result, the Department prohibits hundreds of individuals whose offenses had nothing to do with the Internet from having Internet access for months or years based on nothing but speculation that they may misuse the Internet in the future. Ex. 2, Resp. to Interrogatories at ¶13 (of the 738 people on MSR for sex offenses, only 13 percent of have been convicted of "Internet-related" offenses, but 98 percent are prohibited from using the Internet).

As explained in full above, restrictions that affect First Amendment rights must be "narrowly tailored to serve a compelling government interest." *Glucksberg*, 521 U.S. at 721. A mere fear that some harm may result from First Amendment activity has never been held to satisfy the "compelling government interest" standard. In *Tinker v.*

Des Moines School District, 393 U.S. 503, 508 (1969) the Supreme Court wrote that "undifferentiated fear or apprehension of disturbance is not enough to restrict First Amendment rights."

Indeed, even in the prison context, where the government has much greater latitude to restrict First Amendment activity if the restriction is "reasonably related to legitimate penological interests" (*Turner v. Safley*, 482 U.S. 78, 89 (1987)), courts have cautioned that speculation that some harm may occur if prisoners are allowed to engage in a particular activity is not a permissible basis for an abridgement of First Amendment rights. *See Shimer v. Washington*, 100 F.3d 506, 509 (7th Cir. 1996) ("The prison administration must proffer some evidence to support its restriction of prison guards' constitutional rights. ... The prison administration cannot avoid court scrutiny by reflexive, rote assertions[.]"); *Reed v. Faulkner*, 842 F.2d 960, 963-64 (7th Cir. 1988) (The government may not pile "conjecture upon conjecture" to justify infringement of constitutional rights.).

Thus, the Department's policy allowing parole agents to prohibit Internet access for people whose crimes were unrelated to the Internet fails constitutional scrutiny.

3. The Policy As Articulated by Deputy Chief Dixon Vests the Containment Team with Unconstrained Discretion to Abridge First Amendment Rights

The Department has given parole agents broad discretion to prohibit Internet access for almost any reason they see fit. In his deposition, Deputy Chief Dixon testified that there are no written criteria that the containment team must take into account to evaluate a parolee's request for Internet access (Ex. 13 at 22:13-15) and

there is no time frame within which a parole agent must respond to a parolee's request for Internet access (*Id*. at 16:2-11). Dixon further testified that the containment team has the authority and discretion to decide that there's simply "too much risk posed by allowing someone to have Internet for personal use," and to deny Internet access on that basis. *Id*. at 113:8–12. Moreover, the unwritten criteria that Deputy Chief Dixon identified (*e.g.*, the nature of the offense, the quality of the parolees' participation in therapy, the parolees' overall "compliance" with parole conditions) are open-ended and manipulable, leaving parolees at the mercy of their individual parole agents' whims.

In the First Amendment context, the Supreme Court has repeatedly cautioned against policies that vest unconstrained discretion with individual government officials or agencies. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225–226 (1990) (An unconstitutional prior restraint typically is either "a scheme that places unbridled discretion in the hands of a government official or agency" or a restriction "that fails to place limits on the time within which the decisionmaker must issue the license."); *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958) ("[A]n ordinance which . . . makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official as by requiring a permit or license which may be granted or withheld in the discretion of such official is ... unconstitutional.")

The Department's policy as stated by Deputy Chief Dixon fails to meaningfully constrain its agent's discretion and thus fails First Amendment scrutiny.

D. The Practice on the Ground Violates the First Amendment

The evidence shows that, notwithstanding the written policy and what the Department says the policy is, the reality on the ground is that the Department continues to prohibit virtually everyone on MSR for a sex offense from having any access to the Internet whatsoever.

In particular, the evidence shows that the Department continues to prohibit individuals whose offenses were unrelated to the Internet from having Internet access. This remains the case ten months after it claims it changed its Internet policies. Jason Tucker, Billy Carney, Michael DiMichele, Nichole Uhlir, Bryan DeMons, and Jennifer Tyree have all been convicted of offenses unrelated to the Internet, yet all remain prohibited from having Internet access. *See* Exs. 4–12, Declarations. In its interrogatory answers, the Department stated that of the 738 people on MSR for sex offenses, "fewer than 100" (about 13 percent) have been convicted of offenses that "might be Internet-related." Ex. 2, Resp. to Interrogatories at ¶13. Yet, the Department still prohibits 98 percent of people on MSR for sex offenses from having any Internet access whatsoever. *Id*. at ¶16 (identifying only 15 people who have been allowed to have any Internet access).

Moreover, the Department continues to distribute documentation to parolees and parole agents that indicates Internet access is absolutely prohibited for all individuals on MSR for a sex offense. For example, the Department's manual for parole agents (the "Sex Offender Supervision Unit Protocols") states that "computers, internet, and internet capable devices should be viewed as a possible prohibited items" when

investigating proposed host sites (Ex. 14, SOSU Protocols, at 9); and that parole agents should be alert to the presence of "computers/ external hard drives/ zip drives/ modems /routers and other Internet related or accessible devices" when they search parolees' homes. *Id.* at 10. Similarly, the "Parole School" booklet given to IDOC prisoners preparing for release on MSR instructs that parolees who are required to register as sex offenders are "prohibited from accessing computers, internet … without prior written permission from [the] parole agent." Ex. 14, Parole School booklet, at IDOC000119.

A blanket ban on Internet access that applies to everyone on MSR for a sex offense is overly broad, particularly in light of the alternative less restrictive measures that the Department could implement instead. For all of the reasons set forth above, Plaintiffs have a likelihood of success on their First Amendment claim and are entitled to a preliminary injunction.

E. The Department's Written Policy Violates the Fourteenth Amendment

Plaintiffs are also entitled to a preliminary injunction because the Department's Internet policies violate the Fourteenth Amendment guarantee of procedural due process. The written policy violates the First Amendment in two ways: (1) it denies those who are subject to it adequate procedural protections before they are deprived of the First Amendment-protected right to access the Internet; and (2) the policy is unconstitutionally vague in that it fails to define its own key terms, including "Internet-related."

1. The Department's Process Is Fundamentally Inadequate

As the Supreme Court has long instructed, "[t]he essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348-49 (1976) (citing *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring)). Under the *Mathews* test, "identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id*. at 335 (citing *Goldberg v. Kelly*, 397 U.S. 254, 263-71 (1970)).

An analysis of the *Mathews* factors demonstrates that the Department's policy is procedurally inadequate in two ways. First, with regard to people who have been convicted of "Internet-related" offenses, it imposes a categorical Internet ban without any individualized determination. Second, with regard to people who have been convicted of offenses unrelated to the Internet, the policy does not provide adequate procedural safeguards against unwarranted deprivations of First Amendment rights.

a. First Amendment Rights Are At Stake

As to the first *Mathews* factor, there can be serious no dispute that interests at stake here involve constitutional rights protected by the First Amendment.

Restrictions on parolees' ability to access the Internet impact their right to receive news and information, to speak and listen in the public square, and to communicate with others. *See* discussion in §(C) above.

b. The Lack of Procedural Protections Under the Department's Policy Presents a Serious Risk of Erroneous Deprivations

As to the second *Mathews* factor, the risk of an erroneous deprivation under the Department's policy is great. First, with regard to people whose crimes are deemed to be "Internet-related," by its very terms, the Department's policy denies parolees access to any process whatsoever. *See* Ex. 1 at 1 ("Persons convicted of Internet related sex offenses will not be allowed access to the Internet.") Such parolees are not entitled to any individualized assessment, a hearing, an opportunity to contest the ban on Internet access or the Department's determination that their offense was "Internet related." A categorical and complete denial of the right to access the Internet presents a serious risk of erroneous deprivation.

Second, with regard to people whose offenses are not deemed to be Internet-related, the Department's new policy claims to provide a "case-by-case" determination of whether Internet access will be allowed. But the process by which the Department makes this determination is fatally flawed. First, the default is to impose a complete ban on Internet access unless the parolee "requests" access. Ex. 1 at 1. A default denial does not provide due process. Moreover, the Department's policy sets forth no criteria constraining the parole department's discretion to prohibit Internet use; no time frame in which the Department must make a decision about a parolee's request for Internet use; and no procedural protections such as a hearing, a neutral

decisionmaker, an appeal, or the requirement of a written decision setting forth why Internet access is being restricted. As a result, parole agents, along with the other members of the containment team, *i.e.*, the treating therapist and the parole commander, are vested with unconstrained discretion to prohibit people under their supervision from accessing the Internet for the entire time they are on parole.

While Plaintiffs recognize that parolees may be entitled to somewhat less due process than people who are not under the custody of the Department of Corrections, due process rights do not evaporate simply because a person is on MSR. Where, as here, a parolee is going to be subjected to a serious deprivation of a constitutionally protected right, due process requires more than a vague suggestion of a "case by case" decision by a parole agent and treating therapist such as that set forth in the Department's new policy.

For example, in *Felce v. Fiedler*, 974 F.2d 1484 (7th Cir. 1992), the Seventh Circuit found that a Wisconsin prisoner was entitled to due process before being required to take antipsychotic drug injections as a condition of his parole. *Id.* at 1486–88. In particular, the Court found that the decision to require the parolee to receive the injections could not be rendered by his parole agent and an examining psychiatrist because such decisionmakers are not sufficiently independent. *Id.* at 1498, 1500 ("we conclude that the defendants' current procedure — with its heavy emphasis upon the judgment of the individual parole agent — is constitutionally inadequate.")

Similarly, in *United States v. Scott*, 316 F.3d 733 (7th Cir. 2003), the Seventh Circuit expressed serious concern about vesting a parole officer with excessive discretion to decide what a parolee may view on the Internet.

> Courts should do what they can to eliminate open-ended delegations, which create opportunities for arbitrary action—opportunities that are especially worrisome when the subject concerns what people may read. Is the probation officer to become a censor who determines that Scott may read the New York Times online, but not the version of Ulysses at Bibliomania.com? … The rule of law signifies the constraint of arbitrariness in the exercise of government power.... It means that the agencies of official coercion should, to the extent feasible, be guided by rules—that is, by openly acknowledged, relatively stable, and generally applicable statements.... The evils to be retarded are caprice and whim, the misuse of government power for private ends, and the unacknowledged reliance on illegitimate criteria of selection. The goals to be advanced are regularity and evenhandedness in the administration of justice and accountability in the use of government power.

Id. at 736. The *Scott* court was also highly critical of the decision to impose a restriction on Internet access on a parolee without providing prior notice. *Id.* ("Scott is entitled to a new proceeding, at which he can offer alternatives to a flat ban [on internet access].")

In the absence of proper procedural protections, parolees are at the mercy of their parole agent's whims, subjecting them to a risk of arbitrary and baseless deprivations of their rights. *See Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 470 (1989) (Marshall, dissenting) ("One need hardly be cynical about prison administrators to recognize that the distinct possibility of retaliatory or otherwise groundless deprivations of visits calls for a modicum of procedural protections to guard against such behavior.") More broadly, the lack of procedural protections puts parolees at the risk that officials will continue the current "better-safe-than-sorry" approach that anyone who has

committed of a sex offense should be prohibited from using the Internet. But such an approach does not given due regard to the vitally important First Amendment rights at stake here.

Procedural protections such as (1) criteria and standards constraining parole agents' discretion; (2) written time limits; (3) a hearing before a neutral decisionmaker; (4) the requirement of a written decision setting forth the reasons for the decision and (5) the opportunity to appeal are warranted to appropriately balance Plaintiffs' rights and the Department's interests.

c. Providing Due Process Would Not Compromise the Department's Interests

As to the third *Mathews* factor, the Department's interests in preventing crime and promoting rehabilitation are of course important. However, absent specific evidence that a parolee is likely to use the Internet in commission of criminal conduct unless he is completely banned from accessing the Internet, the Department's interest in imposing an absolute ban on Internet use cannot be said to be compelling.

As for the fiscal or administrative burden that providing procedural due process would entail, the Department already has in place the infrastructure to provide a better process. The Prisoner Review Board conducts monthly hearings at every IDOC facility concerning parole conditions, revocations and other related matters. See, Illinois Prisoner Review Board, Operations and Hearing Information (available at: https://www2.illinois.gov/sites/prb/Pages/Operations.aspx).

Accordingly, based on the three-part *Mathews* test, if the Department seeks to prohibit a parolee from accessing the Internet and/or having Internet-accessible

devices in the home, it should be required to afford the parolee a hearing concerning the need for this condition. At a minimum, a parolee should have an opportunity to present evidence and rebut evidence presented against him or her; the decision about whether Internet access should be restricted should be rendered in writing by a neutral decision-maker rather than by a parole agent and the treating therapist; and the decision should be constrained by clearly defined criteria.

2. The Department's Policy Is Unconstitutionally Vague

The Department's written policy also violates the Fourteenth Amendment guarantee of procedural due process because it is unconstitutionally vague. The policy states that anyone who has been convicted of an "Internet-related" offense will be absolutely prohibited from accessing the Internet. The policy provides no definition of what constitutes an "Internet-related" offense. Such absence is a serious problem because it grants the Department total discretion to define a crime as "Internet related" and thereby prohibit access to the Internet in an arbitrary and capricious manner. There is nothing speculative about this concern, as shown by Michael DiMichele's declaration. In particular, DiMichele is on MSR for manufacturing child pornography pursuant to 720 ILCS 5/11-20.1(a)(1)(i). Ex. 8, Decl. of DiMichele, at ¶1–2. His crime had nothing to do with the Internet or with computers. His offense involved taking photos of himself and a 17-year-old partner with a still camera.[13] The

[13] It is an odd quirk of Illinois law that DiMichele's relationship was lawful because his partner was 17 years old—the age of consent in Illinois. 720 ILCS 5/11-9.1A. However it was a crime for DiMichele to take photos with his partner because it is considered to be child pornography to depict anyone under 18 years of age. 720 ILCS 5/11-20.1(a)(1).

photos were never uploaded or shared with anyone or even copied to a computer. At all times, the photos remained only on the camera. *Id.*

Nonetheless, when DiMichele requested that he be allowed access to the Internet, his parole officer said that his crime has been deemed to be "related" to the Internet because he met his partner on an Internet dating website and had a Facebook conversation with him. *Id.* at ¶14. Of course, neither of these acts are illegal and they are unrelated to the offense of which DiMichele was convicted. *Id.*

Second, the policy is unconstitutionally vague because it prohibits all access to "social networking site[s] or any site that focuses primarily on blogs, forum, and/or discussion groups." Ex. 1 at 1. The terms "social networking sites," "blogs," "forum," and "discussion groups," are not defined in the policy. This gives rise to the risk that different parole officers will interpret the terms differently and that parolees may be restricted from accessing wide swaths of the Internet that pose no real potential for facilitating contact with minors. For example, are news websites such as *Buzzfeed*, *Slate*, *CNN.com*, or the *Washington Post* "focused primarily on blogs"? Is the computer science website Github, where computer programmers share and comment on code, a "forum"? Are the classical music discussion forums on TalkClassical.com off limits? Is the entirety of Reddit.com, where users share and comment on the news, forbidden because it's a "discussion group"?

In *Packingham*, the Supreme Court expressed discomfort with a similarly ill-defined restriction on access to "commercial social networking website[s]" and noted that such a restriction has a "wide sweep" that could be interpreted to "preclude[]

access to a large number of websites that are most unlikely to facilitate the commission of a sex crime against a child." *Packingham v. North Carolina*, 137 S. Ct. at 1741. The Court noted that such a restriction could be applied to Amazon.com; WebMD.com; or WashingtonPost.com, all of which allow users to make comments and upload a photo. *Id*. at 741-42.

> As these examples illustrate, the North Carolina law has a very broad reach and covers websites that are ill suited for use in stalking or abusing children. The focus of the discussion on these sites—shopping, news, health—does not provide a convenient jumping off point for conversations that may lead to abuse. In addition, the social exchanges facilitated by these websites occur in the open, and this reduces the possibility of a child being secretly lured into an abusive situation. … Such websites would provide essentially no aid to a would-be child abuser.

Id. at 1743.

The restriction at issue here sweeps much more broadly than that at issue in *Packingham*, and contains even fewer limiting definitions. As in *Packingham*, the restriction at issue here leaves excessive discretion in the hands of enforcement authorities.

F. The Policy as Described by Deputy Chief Dixon Violates the Due Process Clause

As noted above, the Department claims in its interrogatory answers and Deputy Chief Dixon's deposition that its policy is somewhat different than the one set forth in its written policy. In particular, while the written policy is silent concerning a parolee's right to appeal, Deputy Chief Dixon testified that parolees can seek review of Internet restrictions by "verbally or in a letter" asking "the agent, the parole commander or the therapist" to "reconsider" restrictions on Internet access. Ex. 13,

35:13–21. Then, "whoever receives the request" has the authority to review and respond. *Id*. at 36:20–37:4. Dixon testified that there is no time limit within which the parole agent must respond to a request for review, and no requirement that responses to such requests be put in writing. *Id*. at 37:5–24.[14] This alleged review process does satisfy the demands of procedural due process for at least four reasons.

1. The Lack of Time Constraints

The policy articulated by Deputy Chief Dixon imposes no limit on how long a parolee can be prohibited from having Internet access before he can seek review of the prohibition and sets no time limit for the Department to respond to a parolee's request for review. The Department's interrogatory answers confirm the lack of time limits. Ex. 2 at ¶4(d) ("There is no guaranteed time frame for a response, but IDOC typically needs 30-45 days…")

Moreover, the containment team's decision about whether to allow Internet access will likely be delayed because of the factors they are supposed to consider, including the recommendation of the therapist and the parolee's "general compliance" with parole conditions. Ex. 2 at ¶3 (identifying "general compliance" and "the therapist's recommendation" as factors relevant to whether Internet access will be allowed); *see*

[14] Deputy Chief Dixon went on to testify that, in the future, the Department plans to implement a more formal appeals process modeled on the process Judge Feinerman ordered the Department to adopt for restrictions on contact between parents on MSR for sex offenses and their minor children in *Frazier et al. v. Baldwin*, 18-cv-1991. Ex. 16. This process sets forth that if parent-child contact is restricted, "the parolee may seek review of any restriction or prohibition from the Deputy Chief of Parole, and the Deputy Chief ... will respond in writing within 21 days." *Id.* at 1. This process also calls for an automatic review of restrictions on parent-child contact every 28 days. *Id.* at 2. To date, the Department has not implemented any similar process with regard to Internet restrictions.

also Id. at ¶14 ("The agent relies heavily on input from the offender's therapist regarding therapeutic timing to lift Internet restrictions.")

Practically speaking, a parole agent cannot evaluate a parolee's "general compliance" with parole rules, such as movement restrictions and regular participation in therapy, within a few weeks or even months. Nor can a therapist be expected to render an opinion on the potential benefits or risks of allowing a parolee to have Internet access after one or two sessions. In the absence of any written time limits, there is nothing to stop the containment team from taking months or years to decide whether a parolee has demonstrated sufficient compliance and sufficient progress in therapy so as to be granted Internet access.

As the Supreme Court stated in *Mathews*, the essence of due process "is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The Department's policy runs a substantial risk of denying parolees the right to be heard "at a meaningful time."

2. The Lack of a Neutral Decisionmaker

As explained in §E(1)(b) above, the Seventh Circuit has emphasized that due process calls for a neutral and independent decisionmaker to render decisions that impact parolees' constitutional rights. *See Felce,* 974 F.2d at 1500 ("the defendants' current procedure—with its heavy emphasis upon the judgment of the individual parole agent—is constitutionally inadequate.")

Here, the Department admits that there is no independent, neutral review of

Internet restrictions. The initial decision about whether to allow Internet access is rendered by the parole agent, the treating therapist and the parole commander (Ex. 2 at ¶2) all of whom have direct involvement in the supervision of the parolee. Deputy Chief Dixon testified that the same individuals who rendered the initial decision are authorized to respond to requests for reconsideration. Ex. 13 at 36:20–37:4 ("Q. So whoever receives the request would have the authority to respond to it? A. In many cases, yes."). In its interrogatory answers, the Department claims that a review will be conducted by "the Deputy Chief of Parole or the Sex Offender Coordinator" (Ex. 2 at ¶5(d)), but this too falls short of the requirement of neutrality because such individuals are directly responsible for supervising the persons who rendered the initial decision.

3. The Relevant Parties Have Not Been Informed of the New Policy

In its interrogatory answers, the Department emphasized the "substantial weight" that therapists' recommendations will be given in determining whether to allow a parolee to have Internet access. Ex. 2 at ¶2 ("This approval relies heavily on the recommendation of the therapist."); *Id*. at ¶3 ("the parolee's therapist's recommendation with regard to Internet is given substantial weight.") But Deputy Chief Dixon testified that the therapists who provide treatment to people on MSR have not even been given the Department's new policy about Internet access. Ex. 13, 108:13-22 ("I'm not sure that the actual…written policy, has been shared with every therapist that provides therapy for our parolees. They're a private entity.") It defies common sense to expect individuals who have not been informed of the Department's

policy to play a key role in implementing it.

Even more damningly, the Department admits that it has not informed parolees that they have a right to appeal restrictions on their Internet access. Ex. 2 at 4(b) ("Q: How is a parolee informed of his right to request Internet access? A: Parolees have not yet been given this information in writing."); Ex. 13 at 16:12–20 ("Q: Are parolees informed of their right to request Internet access? A: It's available to them through the policy, I believe … Q. Has that written policy been distributed to parolees? A. No.") How can an individual who has not been informed of his right to appeal be expected to exercise that right?

4. The Alleged Policy Is in Conflict with the Written Policy

Finally, the policy articulated by Deputy Chief Dixon is constitutionally deficient because it conflicts with the Department's written policy. Having an unwritten policy that contradicts a written policy has serious consequences. First, it is confusing and presents an unacceptable risk that the officials responsible for implementing the policy will not know which policy to follow and will thus violate parolees' rights. *See Kennedy v. Los Angeles Police Department*, 901 F.2d 702, 713 (9th Cir. 1989) ("A ham-handed approach to policy making runs the serious risk of infringing upon detainees' constitutional rights.") Second, having a written policy that states there is no right to appeal and that individuals convicted of "Internet-related" offenses are categorically barred from having Internet access will necessarily prevent people from even attempting to request Internet access.

G. The Practice on the Ground Violates the Fourteenth Amendment

In reality, neither the written policy nor the policy described by Deputy Chief Dixon has been implemented. Indeed, the Department admits in its interrogatory answers that its proposed forms and procedures for allowing parolees to appeal restrictions on Internet access are still being "developed." Ex. 2 at ¶4(f); *Id*. at ¶5(a). Predictably, the Department has yet to consider a single appeal. *Id*. at ¶17.[15]

The Department has been talking about "developing" new Internet policies for more than two years. *See* Ex. 17, Dep of Dixon from *Murphy v. Madigan*, at 82–83 ("Q: So, in the past, it's been applied to anyone who's classified as a sex offender; you cannot parole to a site where there's Internet access, true? A. Yes. Q: Has that changed? A: Case-by-case basis, yes. Q: When did that change? A: As a result of *Packingham*. … Q. So, … the department is now deciding on a case-by-case basis whether someone can parole to a home that has Internet access? A. That would be a pretty good assessment … But again, that language is being developed.")[16]

Given the fundamental rights at stake here and the very long time that the Department has been talking about changing its policies, it is necessary for the Court to intervene and mandate that the Department implement a policy that gives due regard to parolees' rights under the First and Fourteenth Amendments.

---

[15] The only person who has even tried to exercise the right to appeal is Jennifer Tyree, a parolee who is represented by undersigned counsel and was informed by counsel of her right to appeal. Ex. 2 at ¶17.

[16] Mr. Dixon testified as a 30(b)(6) witness for IDOC in *Murphy* on December 12, 2017. Ex. 17 at 1. *Packingham* was decided on June 19, 2017.

H. This Case Reveals a Structural Problem in Illinois' Administration of MSR

This case illustrates a serious structural problem with how MSR is administered in Illinois. In particular, Illinois law vests responsibility for setting the "conditions" of MSR with the Prisoner Review Board ("PRB"), an entity distinct from the IDOC. 730 ILCS 5/3-3-7(a). Most of the conditions the PRB imposes are mandated by Illinois law and are dictated by the offense of which the parolee was convicted. 730 ILCS 5/3-3-7. The IDOC, in turn, is permitted to give parolees any "instructions" that are consistent with the conditions set by the PRB. 730 ILCS 5/3-3-7 (a)(15) (parolees must "follow any specific instructions provided by the parole agent that are consistent with furthering conditions set and approved by the Prisoner Review Board or by law."). As a practical matter, the line between "conditions" and "instructions" is often blurred.

Here, the PRB gave each of the Plaintiffs an MSR "condition" mandated by Illinois law—*i.e.*, that they are not permitted to "access or use a computer or any other device with Internet capability without the prior written approval of the Department." 730 ILCS 5/3-3-7 (b)(7.6)(i). In response, the IDOC formulated the policies at issue here, which resulted in a *de facto* ban on Internet access for everyone on MSR for a sex offense. Ultimately, the IDOC has very broad discretion to make policies that, in effect, set the conditions of MSR under the guise of giving parolees "instructions."

Executive branch officials, who are charged with enforcing the law, should not also be making the law. The problems with giving executive branch officials such authority are clearly illustrated here. It is not realistic to think that officials who are charged with crime prevention and law enforcement will strike the right balance between

security and other values (*e.g.* constitutionally protected freedoms). It's all too predictable that the IDOC has adopted a "better-safe-than-sorry" approach that sacrifices constitutional rights to notions of public safety and crime prevention. As Justice Souter wrote in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004):

> In a government of separated powers, deciding finally on what is a reasonable degree of guaranteed liberty … is not well entrusted to the Executive Branch of Government, whose particular responsibility is to maintain security. For reasons of inescapable human nature, the branch of the Government asked to counter a serious threat is not the branch on which to rest the Nation's entire reliance in striking the balance between the will to win and the cost in liberty on the way to victory; the responsibility for security will naturally amplify the claim that security legitimately raises. A reasonable balance is more likely to be reached on the judgment of a different branch.

Hamdi at 545. Put simply, the IDOC and its parole agents are not in a position to properly balance constitutional rights with safety concerns. The Court's intervention is needed to rein in the Department's excesses.

II. Plaintiffs Are Suffering Irreparable Harm, and Any Harm to the Defendant's Interests Will Be Minimal

In addition to establishing a likelihood of success on the merits of their claim, Plaintiffs lack an adequate remedy at law and will suffer irreparable harm in the absence of a preliminary injunction. The Supreme Court and other federal courts have all held that a showing of a colorable First Amendment claim is sufficient to satisfy the irreparable injury requirement for a preliminary injunction. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The named Plaintiffs and the members of the proposed class are all suffering irreparable harm because they remain subject the challenged policies.

At the same time, any possible harm to the Defendant if an injunction is granted will be minimal. The Department will not be prohibited from enforcing any and all restrictions on Internet access; it will simply be required to adopt a policy that is properly tailored and to follow constitutionally permissible procedures for applying and enforcing that policy.

Moreover, the public interest is well served by the issuance of an injunction. The public has a powerful interest in protecting constitutional rights. *See ACLU v. Alvarez*, 679 F.3d 583, 589-90 (7th Cir. 2012) ("[T]he public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional.") Likewise, the public has a powerful interest in promoting the successful rehabilitation and reintegration of parolees. The current policy marginalizes people on MSR and cuts them off from community connections, educational resources, and employment opportunities, all of which undermine the rehabilitative goals of MSR and lead to a greater possibility that people will have their MSR revoked for innocent conduct such as emailing their families and friends, searching for jobs, or reading the news. Allowing people on parole to access the Internet would foster their reintegration and their success on parole. Thus the public interest is well served by the granting of an injunction here.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant a preliminary injunction enjoining Defendant from continuing to enforce its unconstitutional policies restricting access to the Internet and grant such additional and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mark G. Weinberg
/s/ Adele D. Nicholas
Counsel for Plaintiffs

Law Office of Mark G. Weinberg
3612 N. Tripp Avenue
Chicago, Illinois 60641
(773) 283-3913

Law Office of Adele D. Nicholas
5707 W. Goodman Street
Chicago, Illinois 60630
(847) 361-3869