

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

RICHARD ALAN FARMER

v.

Case No.: _____

RICHARD L. SWEARINGEN, in his
official capacity, and THE FLORIDA
DEPARTMENT
OF LAW ENFORCEMENT

COMPLAINT

The Plaintiff, Richard Alan Farmer (hereinafter Plaintiff), sues the Defendants, Florida Department of Law Enforcement (FDLE) and Richard L. Swearingen in his official capacity as interim Commissioner of FDLE and alleges:

**I. INTRODUCTION
JURISDICTION AND VENUE**

1. This is an action for declaratory and injunctive relief and for attorney's fees arising under 42 U.S.C. §1983 and §1988. This action alleges a violation of Plaintiff's rights under the United States Constitution, specifically, denial of equal protection of the law as guaranteed by the Fourteenth Amendment, denial of substantive due process and denial of procedural due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiff also makes claims under similar provisions of the Florida Constitution, Art 1, Section 9.

2. This Court has original jurisdiction of the action and the parties named herein, pursuant to 42 U.S.C. §1983 and §1988; the U.S. Constitution; the provisions of 28 U.S.C. §1331 and §1343.
3. Venue is posited in the United States District Court, Northern District of Florida, pursuant to 28 U.S.C. §1391 and N.D. Fla.Loc.R.3.1(a)(1).
4. The acts, omissions and practices described hereafter all occurred within the jurisdiction of the United States District Court for the Northern District of Florida.
5. At all times material hereto, the acts, omissions, practices, and other conduct of each of the Defendants were committed under color of state law.

II. PARTIES

6. The Plaintiff, Richard Alan Farmer, previously resided in the state of Florida and now resides in the Bahamas.
7. The Defendant, Florida Department of Law Enforcement (FDLE), is a state department and/or agency and is responsible for conducting law enforcement activities at the state level.
8. The Defendant, Richard L. Swearingen, in his official capacity as interim Commissioner of the Florida Department of Law Enforcement, is responsible for by directing the activities of the FDLE.

III. FACTS RELEVANT TO ALL COUNTS

9. The FDLE is responsible for creating and maintaining, under the authority of the Florida Sex Offender Act (herein after the Act), §943.0435 et sec, a registry of offenders convicted of qualifying sex offenses as defined in the Act who reside in

Florida.

10. The Act provides at §943.043(1) the FDLE may notify the public through the internet of any information regarding sex offenders which is not otherwise exempt from public disclosure. The Act also authorizes FDLE to provide to any person, upon request, a copy of the photograph of any sex offender which the FDLE maintains in its files and a printed summary of the information that is available to the public under this section. The FDLE and any individual or entity acting at the request or upon the direction of the FDLE are immune from civil liability for damages for good faith compliance with the statute. See §943.043(4), Florida Statutes.
11. The FDLE maintains on its official website a section entitled “Florida Sexual Offenders and Predators”. This section includes an offender search guide through which Florida sex offenders may be identified. Once an offender has been identified a web page appears with a photograph, release status, and address. The viewer may click “View Flyer” which then displays “Florida Department of Law Enforcement - Sex Offender/Predator Flyer”. The flyer includes a photograph of the offender, release status, personal identifying information, and an address. The flyer also includes information regarding the qualifying offense identifying adjudication date, the qualifying crime, and state of jurisdiction.
12. Before moving his residence to Florida in 2009, Plaintiff was a resident of Alabama. Plaintiff was designated as a sexual offender in Alabama and required to register in Alabama based on a conviction for a qualifying offense in Alabama

in 1992.

13. Upon moving his residence to Florida in 2009, Plaintiff contacted FDLE to determine whether he would be required to register under the Florida Sex Offender statute. FDLE advised Plaintiff that he was required to register. The Plaintiff was required to register pursuant to the provisions of §943.0435(1)(a)1.b. Under this provision of the Act if a person establishes a residence in Florida having been required to register as a sex offender in another state and would continue under such requirement were that person a resident of that state, then that person is required to register in Florida without regard to whether the conviction in another state otherwise meets the criteria for registration in Florida.
14. The Plaintiff registered as a sex offender in Florida in October of 2009. Were it not for the provision of §943.0435(1)(a)1.b the Plaintiff would not have been required to register in Florida as a sex offender because he had been released from sanctions imposed for the 1992 conviction in Alabama on or before October 1, 1997. See §943.0435(1)(a)1.a (II).
15. After Plaintiff registered as a sex offender in Florida his photograph and personal identifying information was displayed on the Florida Sex Offender section of the FDLE website as described in paragraphs 9 and 10 above.
16. In 2011 Plaintiff moved his residence to the Bahamas. Once Plaintiff moved his residence from Florida he was no longer subject to registration in Florida under the requirements of the Act. After Plaintiff moved his residence from Florida the FDLE continued its identification of Plaintiff as a Florida registered sex offender

including the on-going release of information through its website including the Plaintiff's photograph, release status, personal identifying information and address.

17. By letter of June 6, 2013, to FDLE, Plaintiff requested removal of his name from the Florida Sex Offender Registry.
18. The FDLE has acknowledged there is no current requirement for the Plaintiff to be registered in Florida as a sex offender, having moved his residence from Florida to another jurisdiction. FDLE refuses to remove Plaintiff's name and personal identifying information from the Florida registry and the FDLE website.
19. The current FDLE registry continues to depict the Plaintiff on the "Florida Department of Law Enforcement - Sex Offender/Predator Flyer" in the same manner as when he resided in Florida with the sole exception being his address in the Bahamas.
20. FDLE will not remove Plaintiff from the Florida Sex Offender Registry unless and until (1) he is no longer required to be registered in Alabama as a sex offender should he reside there, (2) Plaintiff satisfies the removal requirements of §943.0435(11), or (3) Plaintiff has been dead for one year.
21. Those persons who are registered sex offenders in other states or jurisdictions are not required to be registered under the Florida Sex Offender Act nor does the FDLE maintain identifying information on those out of state sex offenders in the Florida registry.
22. Sex offenders registered in other states or jurisdictions may travel to Florida for

business, personal, or recreational reasons without registration or notification to law enforcement in Florida so long as they do not establish residence in Florida on either a temporary or permanent basis. A temporary residence in Florida is established by being present in the state for five or more days in the aggregate during any calendar year. §775.21, Fl. Stat.

23. At all times material to this complaint with respect to the actions as alleged above, the FDLE and the interim commissioner of the FDLE, Richard L. Swearingen, and in their official capacities, have acted under color of law to deprive the Plaintiff of rights, privileges, or immunities secured by the Constitution and laws of the United States.

COUNT I
DENIAL OF DUE PROCESS (SUBSTANTIVE)

24. Plaintiff incorporates paragraphs 1 - 22 in support of this cause of action.
25. The Fourteenth Amendment to the United States Constitution protects individuals from unreasonable government interference and provides that no state shall deprive any person of life, liberty, or property without due process of law. Article I, Section 9, of the Florida Constitution also provides that no person shall be deprived of life, liberty, or property without due process of law.
26. In *Doe v Moore*, 410 F.3d 1337 (11th Cir. 2005) the Eleventh Circuit Court of Appeals reviewed the Florida Sex Offender Act where there were claims the Act

violated the substantive due process rights of those subject to registration. *Id.* at 1342. The Eleventh Circuit reviewed the substantive due process claims presented under the rational basis test. The Court recognized a rational legitimate governmental interest in registering sex offenders who reside in Florida so that the public could determine whether any offenders lived in their neighborhood and make an individual assessment of the risk and take precautions as appropriate under the circumstances. *Id.* at 1345.

27. Plaintiff does not reside in Florida. There is no legitimate governmental interest rationally justifying the FDLE continuing to list Plaintiff as a Florida registered sex offender and disseminating his information on the FDLE website with photograph, personal identifying information, and residence for the rest of his life.
28. The FDLE's refusal to remove Plaintiff from the Florida registry with continued publication of personal identifying information violates Plaintiff's right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 9, of the Florida Constitution

WHEREFORE, Plaintiff prays this Court enter an order declaring the Florida Sex Offender Act unconstitutional as applied to Plaintiff on substantive due process grounds with regard to the FDLE requirement that Plaintiff continue to be listed as a Florida registered sex offender and directing FDLE to remove Plaintiff's name and personal identifying information from the Florida registry and the FDLE website. Plaintiff prays this Court award reasonable attorney's fees and costs incurred in connection with this action.

COUNT II
DENIAL OF DUE PROCESS (PROCEDURAL)

29. Plaintiff incorporates paragraphs 1 - 27 in support of this cause of action.
30. Procedural due process, as distinct from substantive due process, requires notice and meaningful opportunity to contest government's deprivation of life, liberty, or property. The Plaintiff has a protected liberty interest with respect to the publication of his name as a registered sex offender in Florida accompanied by his photograph, personal identifying information, and address when he is not required, by the Florida Sex Offender Act, to be registered as a sex offender in Florida and is not a resident of the state of Florida.
31. There is no legitimate governmental interest rationally justifying the FDLE's refusal to remove Plaintiff's name, photograph, identifying information and personal address from the FDLE website. Procedural due process requires, at a minimum, notice and opportunity for a fair hearing and independent resolution of any claimed legitimate governmental interest to continue naming Plaintiff as a Florida registered sex offender for life and until one year after his death. Absent a factual basis supporting a rational legitimate governmental interest the FDLE's application of the Act to the Plaintiff violates the right to due process of law under the Fourteenth Amendment to the United States Constitution and Article I, Section 9, of the Florida Constitution.

WHEREFORE, the Plaintiff prays this Court enter an order declaring the Florida Sex Offender Act unconstitutional as applied to Plaintiff on procedural due process grounds in the

absence of a provision allowing for a hearing to determine whether the Plaintiff, as a non-resident of Florida, presents a danger to the public sufficient to require continued registration and public notification including FDLE dissemination through the internet of his photograph, personal identifying information, and address. Plaintiff prays this Court award reasonable attorney's fees and costs incurred in connection with this action.

COUNT III
DENIAL OF EQUAL PROTECTION

32. Plaintiff incorporates paragraphs 1 - 30 in support of this cause of action.
33. The equal protection clause of the United States Constitution, Amendment 14, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. The Florida Constitution provides at Article 1, Section 2, that all natural persons are equal before the law.
34. The Act requires those persons registered as sex offenders in another state or jurisdiction to register as a sex offender in Florida upon establishing residence in Florida. The Act does not require registration in Florida by any person who is a registered sex offender in another state or jurisdiction who is not a resident of Florida.
35. The Plaintiff does not reside in Florida. The Plaintiff is similarly situated to those residents of other states or jurisdictions who are registered sex offenders in the state of the qualifying offense but are not required to be registered as a sex

offender in Florida even when present in this state.

36. Plaintiff does not reside in Florida and there is no current requirement for Plaintiff to be registered in Florida as a sex offender. Despite Plaintiff's request, the FDLE refuses to remove Plaintiff's name, photograph, personal identifying information and address from the Florida registry and continues to make that same personal information available to internet services depicting Plaintiff as a Florida registered sex offender.
37. The FDLE, applies the Act by policy or practice to treat Plaintiff differently from those similarly situated persons as identified in paragraph 35 above. As a result the FDLE's application of the Act, FDLE intentionally discriminates against Plaintiff.
38. The FDLE's stated basis for refusing to remove Plaintiff from the Florida registry is that he was previously a Florida resident. The fact that Plaintiff previously resided in Florida does not serve a rational legitimate governmental interest justifying FDLE's refusal to remove Plaintiff from the Florida registry and FDLE's continued publication of Plaintiff's photograph, personal identifying information, and address as a Florida registered sex offender.
39. The FDLE's application of the Act to Plaintiff denies him the equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article 1, Section 2, of the Florida Constitution.

WHEREFORE, Plaintiff prays this Court enter an order declaring the Florida Sex Offender Act unconstitutional as applied to Plaintiff denying equal protection of the law with

regard to the FDLE requirement that Plaintiff continue to be registered as a Florida sex offender with resulting dissemination of personal identifying information and directing the Commissioner of FDLE to remove Plaintiff's name and personal identifying information from the Florida registry and the FDLE website. Plaintiff prays this Court award reasonable attorney's fees and costs incurred in connection with this action.

Respectfully submitted,

/s/ Joseph L. Hammons
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished to U.S. Attorney's Office by electronic filing this 2nd day of July, 2015

/s/ Joseph L. Hammons
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