

Nos. 16-50398, 16-50443, 17-50119

United States Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE

v.

DARREN DAVID CHAKER,
DEFENDANTS-APPELLANT

*On Appeal from the United States District Court
for the Southern District of California
15CR7012-LAB*

SUPPLEMENTAL EXCERPTS OF RECORD
VOLUME II OF III

ALANA W. ROBINSON
Acting United States Attorney

HELEN H. HONG
*Assistant U.S. Attorney
Chief, Appellate Section
Criminal Division*

*880 Front St., Rm. 6293
San Diego, CA 92101
(619) 546-6990*

TABLE OF CONTENTS

Page

Volume I

Excerpts Reporter's Transcript of Bond Revocation Hearing (SD Tex.) 11/6/13	1
Exhibits Submitted at Evidentiary Hearing on Bond Revocation (SD Tex.)	206

Volume II

(Continued) Exhibits Submitted at Evidentiary Hearing on Bond Revocation (SD Tex.)	209
Excerpts Reporter's Transcript of Sentencing Hearing (SD Tex.) 12/17/13	260
Defendant's Motion to Dismiss the Petition and Amended Petition	266
Excerpts Reporter's Transcript of OSC-Contested Hearing 3/23/15	274
Government's Motion to Dismiss the Petition 7/14/15 (R 77)	399

Volume III (Under Seal)

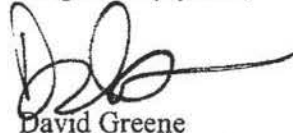
Government's Exhibit Supervised Release Revocation Hearing 3/23/15 (R 30-3)	402
--	-----

The Honorable Nancy F. Atlas
November 22, 2013
Page 3 of 3

constitutionally protected by the *Supreme Court in Organization for a Better Austin v. Keefe*, 402 U.S. 415, 417 (1971), that provided Keefe's home telephone number and urged the recipients of the leaflets to call Keefe and express to him disapproval of his real estate practices. The Court recognized that this practice implicated Keefe's personal privacy interests, but found those interests outweighed by his opponents' First Amendment interests. *Id.* at 419-20. Other courts have reached similar conclusions. *See, e.g., United States v. Carmichael*, 326 F. Supp. 2d 1267, 1272 (M.D. Ala. 2004) (rejecting the claim that the posting of personal information about informants on a website was more inherently threatening than a posting in another medium); *City of Kirkland v. Sheehan*, No. 01-2-09513-7, 2001 WL 1751590, at *1 (Wash. Super. Ct. May 10, 2001) (finding that website that posted police officers' addresses and telephone numbers was protected speech absent a credible specific threat of harm).

The website at issue cannot thus be found to contain "true threats."

Respectfully yours,



David Greene

Cal. Bar 160107

cc: Office of the United States Attorney
1000 Louisiana St., Suite 2300
Houston, TX 77002

Anthony Colombo
105 West F Street, 3rd Fl.
San Diego, CA 92101

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org

SER209

SER210



3200 N. Central Avenue, 20th Floor, Phoenix, AZ 85012

jaburgwilk.com

Maria Crimi Speth

mcs@jaburgwilk.com
602.248.1089 - Direct Phone
602.248.0522 - Main Fax

January 22, 2013

Re: Darren Chaker

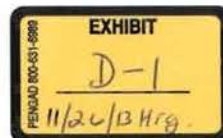
Gary J. Jaburg
Lawrence E. Wilk
Roger L. Cohen
Mitchell Reichman
Beth S. Cohn
Kraig J. Marron
Scott J. Richardson
Ronald M. Horwitz
Maria Crimi Speth
Neal H. Bookspan
Kathi M. Sandweiss
Mervyn T. Braude
Lauren L. Garner
Michelle C. Lombino
Janessa B. Koenig
Mark D. Bogard
David N. Farren
Valerie L. Marciano
David L. Allen
Lauren B. Hirsch
Susan E. Wells
Bridget O'Brien Swartz
Jennifer R. Erickson
Renee Gerstman
Nate D. Meyer
Kelly Brown
Adam S. Kunz
Laura A. Rogal
Amy M. Horwitz
Nichole H. Wilk
Gregory T. Harris
Jeffrey A. Silencio

Dear Law Enforcement Official:

The following chronology and supporting documents reflects a series of escalating harassment and threats from Darren Chaker toward me. Darren Chaker believes that by threatening me, he can force my client Xcentric Ventures, LLC d/b/a/ Ripoff Report to remove negative posts about him by his former girlfriend from its website on the Internet.

Mr. Chaker's behavior is frightening and has placed me in fear for my safety and the safety of my clients for three main reasons:

1. Mr. Chaker has a criminal history involving assault rifles.
2. Mr. Chaker's threats have become progressively more blatant.
3. Mr. Chaker specifically stated that he will continue to enjoy his Second Amendment right and that he is thankful that Arizona does not have a ban on assault weapons.
4. Mr. Chaker has included the home address of Deborah Waitkus, one of my firm's clients, in several of his emails, including the email threat about the Second Amendment. Ms. Waitkus has no relationship whatsoever to Xcentric Ventures. Mr. Chaker found her name by watching a client testimonial she did for our law firm which was posted on our website.
5. Mr. Chaker visited Deborah Waitkus' home and placed a letter in her mailbox. This was a clear statement to me that he is physically present in Arizona and knows where my client lives.



10297-74/MCS/dag/1047597_v1

SER211

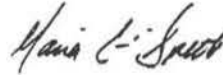
JABURG & WILK
Attorneys at Law

January 22, 2013
Page 2

I request that this matter be investigated. I fear that if Mr. Chaker is not stopped, he will cause physical harm to me or one of my clients.

Sincerely,

JABURG & WILK, P.C.



Maria Crimi Speth

MCS:dag

Enclosures

10297-74/MCS/dag/1047597_v1

SER212

Darren Chaker

Date	Event	Tab
6/7/2010	Chaker makes a routine, non-threatening request to Ripoff Report to remove a post and copies Maria Crimi Speth.	Available upon request
7/1/2010	Chaker emails David Gingras (counsel for Ripoff Report) a copy of a complaint which includes a photograph of himself holding an assault rifle.	Tab 1
10/6/2010	Chaker emails David Gingras (counsel for Ripoff Report): "my previous email was my last effort at diplomacy. You will not hear from me again."	Tab 2
10/6/2010	Chaker emails Speth and states that he may "decide to publish" information about Gingras and Jaburg & Wilk.	Tab 2
10/6/2010	Chaker posts on SEOMoz, "David, either you get that garbage off your site or there is going to [sic] a breakdown around here. I am not going to court. I am going to lose it."	Tab 3
11/18/2010	Chaker emails Ed Magedson at Ripoff Report and says he has been trying to deal with Gingras. Requests that the posts about him be removed "today by 3PM."	Available upon request
11/19/2010	Chaker emails Magedson and tells him he has 2300 hours of specialized training and provides a link to a You Tube video in which Chaker tells the City Council that during his law enforcement training he was trained to incite suspects to resist arrest and put tear gas in the air vents of cars.	Tab 4
12/24/2010	Chaker emails Speth and attaches the records from Gingras' Arizona State Bar disciplinary action from 2007. He also includes a DMCA notice (request for removal from Ripoff Report). He threatens to publish a website concerning Gingras and Jaburg & Wilk. He also threatens a "neighborhood mailing campaign." He includes Speth and Gingras' home addresses.	Tab 5
2/28/2011	Chaker emails Speth a draft of a State Bar complaint against Speth and Gingras. Asks for removal of the Ripoff Report about him.	Tab 6
6/2/2011	Chaker emails that a Jaburg-wilk-sucks.com	Available upon request

SER213

	website will be designed and published.	
7/18/2011	Chaker emails photographs of Gingras' residence and a copy of Speth's deed, along with a list of the home addresses of Jaburg & Wilk's clients (from website testimonials) and partners. One of the clients on the list is Deborah Waitkus' home address.	Tab 7
8/24/2011	Arizona State bar receives a bar charge from Darren Chaker against Speth. The charge is dismissed as without merit.	Available upon request.
10/6/2011	Chaker sends a DMCA notice requesting removal of his photograph from Ripoff Report.	Available upon request
10/8/2011	Chaker emails Speth, Gingras and a long list of Jaburg & Wilk attorneys. He requests removal again and threatens a second bar complaint, and publication of negative information about Gingras. He includes home addresses of clients, including Deborah Waitkus' home address. He states, "I may be aware of various people who have threatened the safety of Ed Magedson, but will not advocate injury to you, members of your firm, or family members, or even Gingras, while connecting who defends Ed Magedson with publicly available records." He ends with, "This is my last email to you. I have done all I can for now, and will take a different course of action."	Tab 8
10/16/2011	Chaker emails Speth, Gingras and a long list of Jaburg & Wilk attorneys. "Likewise, I will continue to enjoy my Second Amendment right as I recently had a former conviction for possessing an assault rifle with a sniper scope expunged, which allows me the joy of shooting. Thankfully, Arizona nor 38 other states do not have such laws concerning assault weapons as California does." This email includes the home address of Jaburg & Wilk clients, including Deborah Waitkus.	Tab 9
10/17/2011	Speth calls Phoenix police. Incident report number 1797977. There is no follow up from the police.	
12/16/2011	Chaker emails a DMCA notice. The notice is dated 12/16/2010 (one year earlier) and says it was sent by email and certified mail	Available upon request

2/28/2012	Chaker sends an email to Speth stating that he intends to us his time while visiting Arizona wisely.	Tab 10
9/11/2012	Chaker sends an email, "I am sure you are pleased to know I am in Arizona now."	Tab 11
9/24/2012	Chaker sends an email to Speth and a long list of Jaburg & Wilk attorneys attaching a December 16, 2010 DMCA notice, photographs of Gingras' home and public records about Gingras' He includes in the email the email addresses if approximately 100 phoenix lawyers who he says he will be emailing if he does not receive a response.	Tab 12
12/1/2012	Chaker emails Speth and a long list of attorneys at Jaburg & Wilk and threatens to release Gingras's booking photo from 1999. He states that he has emailed 140 Phoenix lawyers. He ends the email with, "and no...it won't end."	Tab 13
1/14/2013	Chaker leaves the December 16, 2010 DMCA notice in the home mailbox of Deborah Waitkus, a client of Jaburg & Wilk. This was not mailed, it was placed in the mailbox without an envelope.	Tab 14

Darren Chaker @ outskirts of Sedona, AZ

Pictures, photos and brochure from Sedona, AZ



Pictures of Darren Chalker @ outskirts of Sedona, AZ posted in the Sedona, AZ gallery

2002 • J. Neurosci., June 19, 2002 • 22(24):5491–5500 • 5491

 Journal of Interpersonal Violence 28(12) 2491–2507
© 2013 Sage Publications 10.1177/0886260513505111
jiv.sagepub.com

Ruggieri Abenteu / A. J. de la Cruz et al.

Latest Comments

Horatio Viggio
President

This pic scares the living crap out of me.

#1 Judge [0] (Rysal) (Mene) (Reply =

the grandma

Keywords:

12 | Judge III (Robert Alan) Reply v

Harris

You should be trusted. This guy is a misanthrope and a disturbed dad. As you can see, I am the child's grandma and I know. If you should ever come across this person, be very careful. He may be latching sticks and may know what could happen.

The rental

*** C.F. 90A.700**

FD- Judge 114 1 Report Abuse ; Reply =

(If you don't need to be served lunch, I've got some "make-up" lunch friendly" to share. Stay hydrated and loaded in all the right places for the boys.)

Tell me when this thread is updated!

150 4 pages 6 or more about this phone

Name You are already logged in as: **Domen Casker** [Log Out](#) [My Profile](#)



SECONDA NEWS

- Ray Casey 1935 - 2010
- Farmer's Marketplace Tour ending area, ph passed.
- Conference latest plan out for public comment
- CAPPA's New IOEIX Study Program W&T: 1st 2nd
- DepW&T 1st 2nd Plan Track Long hill-and-on 2nd 2nd
- Soling AZ 1st 2nd ...
- An Open Letter to the Mayor of Berkeley on 10/10/10
- Miranda suing 1st 2nd by U.S. Supreme Court V.
- Boston Film Festival Presents: Chief
- Kings Museum Soling Film Festival: 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th 101st 102nd 103rd 104th 105th 106th 107th 108th 109th 110th 111th 112th 113th 114th 115th 116th 117th 118th 119th 120th 121st 122nd 123rd 124th 125th 126th 127th 128th 129th 130th 131st 132nd 133rd 134th 135th 136th 137th 138th 139th 140th 141st 142nd 143rd 144th 145th 146th 147th 148th 149th 150th 151st 152nd 153rd 154th 155th 156th 157th 158th 159th 160th 161st 162nd 163rd 164th 165th 166th 167th 168th 169th 170th 171st 172nd 173rd 174th 175th 176th 177th 178th 179th 180th 181st 182nd 183rd 184th 185th 186th 187th 188th 189th 190th 191st 192nd 193rd 194th 195th 196th 197th 198th 199th 200th 201st 202nd 203rd 204th 205th 206th 207th 208th 209th 210th 211th 212th 213th 214th 215th 216th 217th 218th 219th 220th 221st 222nd 223rd 224th 225th 226th 227th 228th 229th 230th 231st 232nd 233rd 234th 235th 236th 237th 238th 239th 240th 241st 242nd 243rd 244th 245th 246th 247th 248th 249th 250th 251st 252nd 253rd 254th 255th 256th 257th 258th 259th 260th 261st 262nd 263rd 264th 265th 266th 267th 268th 269th 270th 271st 272nd 273rd 274th 275th 276th 277th 278th 279th 280th 281st 282nd 283rd 284th 285th 286th 287th 288th 289th 290th 291st 292nd 293rd 294th 295th 296th 297th 298th 299th 300th 301st 302nd 303rd 304th 305th 306th 307th 308th 309th 310th 311th 312th 313th 314th 315th 316th 317th 318th 319th 320th 321st 322nd 323rd 324th 325th 326th 327th 328th 329th 330th 331st 332nd 333rd 334th 335th 336th 337th 338th 339th 340th 341st 342nd 343rd 344th 345th 346th 347th 348th 349th 350th 351st 352nd 353rd 354th 355th 356th 357th 358th 359th 360th 361st 362nd 363rd 364th 365th 366th 367th 368th 369th 370th 371st 372nd 373rd 374th 375th 376th 377th 378th 379th 380th 381st 382nd 383rd 384th 385th 386th 387th 388th 389th 390th 391st 392nd 393rd 394th 395th 396th 397th 398th 399th 400th 401st 402nd 403rd 404th 405th 406th 407th 408th 409th 410th 411th 412th 413th 414th 415th 416th 417th 418th 419th 420th 421st 422nd 423rd 424th 425th 426th 427th 428th 429th 430th 431st 432nd 433rd 434th 435th 436th 437th 438th 439th 440th 441st 442nd 443rd 444th 445th 446th 447th 448th 449th 450th 451st 452nd 453rd 454th 455th 456th 457th 458th 459th 460th 461st 462nd 463rd 464th 465th 466th 467th 468th 469th 470th 471st 472nd 473rd 474th 475th 476th 477th 478th 479th 480th 481st 482nd 483rd 484th 485th 486th 487th 488th 489th 490th 491st 492nd 493rd 494th 495th 496th 497th 498th 499th 500th 501st 502nd 503rd 504th 505th 506th 507th 508th 509th 510th 511th 512th 513th 514th 515th 516th 517th 518th 519th 520th 521st 522nd 523rd 524th 525th 526th 527th 528th 529th 530th 531st 532nd 533rd 534th 535th 536th 537th 538th 539th 540th 541st 542nd 543rd 544th 545th 546th 547th 548th 549th 550th 551st 552nd 553rd 554th 555th 556th 557th 558th 559th 560th 561st 562nd 563rd 564th 565th 566th 567th 568th 569th 570th 571st 572nd 573rd 574th 575th 576th 577th 578th 579th 580th 581st 582nd 583rd 584th 585th 586th 587th 588th 589th 590th 591st 592nd 593rd 594th 595th 596th 597th 598th 599th 600th 601st 602nd 603rd 604th 605th 606th 607th 608th 609th 610th 611th 612th 613th 614th 615th 616th 617th 618th 619th 620th 621st 622nd 623rd 624th 625th 626th 627th 628th 629th 630th 631st 632nd 633rd 634th 635th 636th 637th 638th 639th 640th 641st 642nd 643rd 644th 645th 646th 647th 648th 649th 650th 651st 652nd 653rd 654th 655th 656th 657th 658th 659th 660th 661st 662nd 663rd 664th 665th 666th 667th 668th 669th 670th 671st 672nd 673rd 674th 675th 676th 677th 678th 679th 680th 681st 682nd 683rd 684th 685th 686th 687th 688th 689th 690th 691st 692nd 693rd 694th 695th 696th 697th 698th 699th 700th 701st 702nd 703rd 704th 705th 706th 707th 708th 709th 710th 711th 712th 713th 714th 715th 716th 717th 718th 719th 720th 721st 722nd 723rd 724th 725th 726th 727th 728th 729th 730th 731st 732nd 733rd 734th 735th 736th 737th 738th 739th 740th 741st 742nd 743rd 744th 745th 746th 747th 748th 749th 750th 751st 752nd 753rd 754th 755th 756th 757th 758th 759th 760th 761st 762nd 763rd 764th 765th 766th 767th 768th 769th 770th 771st 772nd 773rd 774th 775th 776th 777th 778th 779th 780th 781st 782nd 783rd 784th 785th 786th 787th 788th 789th 790th 791st 792nd 793rd 794th 795th 796th 797th 798th 799th 800th 801st 8

More Boston News from Tech:

SEODNA INFO

Sedona, Arizona is located in Yavapai County. Zip codes in Sedona, AZ include 86336, 86351, and 86350. More Sedona information

SEDONA YELLOW PAGES

Sedona - Specialty Food Stores
Sedona - Bklyn
Sedona - Diner
Sedona - Cn Hoppel
Sedona - Real Estate Agents
Sedona - Florists
Sedona - Plastic Surgeons
Sedona - Real Estate Agents
Sedona - Cardiologists

[Search]

SEDONA ENTERTAINMENT

Events	Tickets
Horoscopes	Movie Quotes
TV Listings	Lottery Results

SEIJOA DATNO

Page 9

<http://www.topix.com/album/detail/sedona-az/J11TP0CRAMH291ODE>

6/4/2010

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Wednesday, October 08, 2010 2:41 PM
To: Maria Crimi Speth
Cc: Gary J. Jaburg; Nikki A. Wilk; Kelly A. Brown
Subject: David Gingras—Sex Offense Case

Attorney Speth,

I am aware you represent Ripoff Report. It appears your firm associated with David Gingras who was not only suspended from the state bar for DUI and significant issues of apparent ethical issues pending the bar's investigation, but was also charged with a sex offense in 1999, Maricopa Court, #S-0700-CR-1999093685.

I have various documents from the public record. Mr. Gingras was Of Counsel at your firm. I may decide to publish information within the scope of my First Amendment right concerning Mr. Gingras, and your firm. As you know, Ripoff Report publishes pure defamatory statements concerning me. See, Ripoff Report #590904, Report #589878, Report: #589852 [alleging I am a pimp, criminal, etc.]

Nonetheless, although Mr. Gingras was never convicted of a sex offense, I was never convicted of pimping and do not stand convicted of any crime as well. Despite such, I would like to know whether your firm and its clients knew of the contents of testimony and the report against Mr. Gingras while it associated itself with Mr. Gingras. In fact, Mr. Gingras appears to associate himself with your firm. <http://lawvers.legalhelpmate.com/AZ-Lawyer-David-Gingras-74457.aspx>

This is an effort to clarify information. If anything above is incorrect, please advise me in writing no later than five days from today. A response to my question would be appreciated. Darren

----- Forwarded message -----

From: Darren Chaker <darrenchaker@gmail.com>
Date: Wed, Oct 6, 2010 at 1:28 PM
Subject: Re: FW: Defamation Lawsuit Attached----Remarks Report: #590904, Report #589878, Report: #589852
To: david@ripoffreport.com

Mr. Gingras,

Your presumption on the standard for determining who is a vexatious litigant is misplaced. In California, there are three standards, filing meritless pleadings, abuse of discovery, and losing 5 cases in 7 years. I qualified in 1996 as having lost 5 cases in 7 years. I was never sanctioned, nor were the lawsuits deemed meritless. However, in the end, I made cutting edge First Amendment law, spoken at law schools, and the case has been written about extensively and cited hundreds of times. The purpose of the vexatious litigant statute is to unclog the courts. My suggestion is they first start with government. For example, in 2008, the San Diego District Attorney voluntarily or involuntarily had almost 1,000 cases dismissed in one year, which burdens the court far more than my cases which were filed pro-per between 1994-96.
<http://www.sdcda.org/prosecuting/conviction.php> I have not filed a pro-per lawsuit in well over a decade. Inasmuch, I would rather be the pinnacle of vexatious litigants than an alleged pedophile. Maricopa Court, #S-0700-CR-1999093685.

Of course, past litigation is immaterial concerning my request to remove the content, or in court. Past civil litigation is immaterial as found in *Gastineau v. Fleet Mortg. Corp.* 137 F.3d 490 C.A.7 (Ind.), 1998, for the premise that under FRE 404(b) the lawsuits do not show "intent, motive, common pattern of practice and

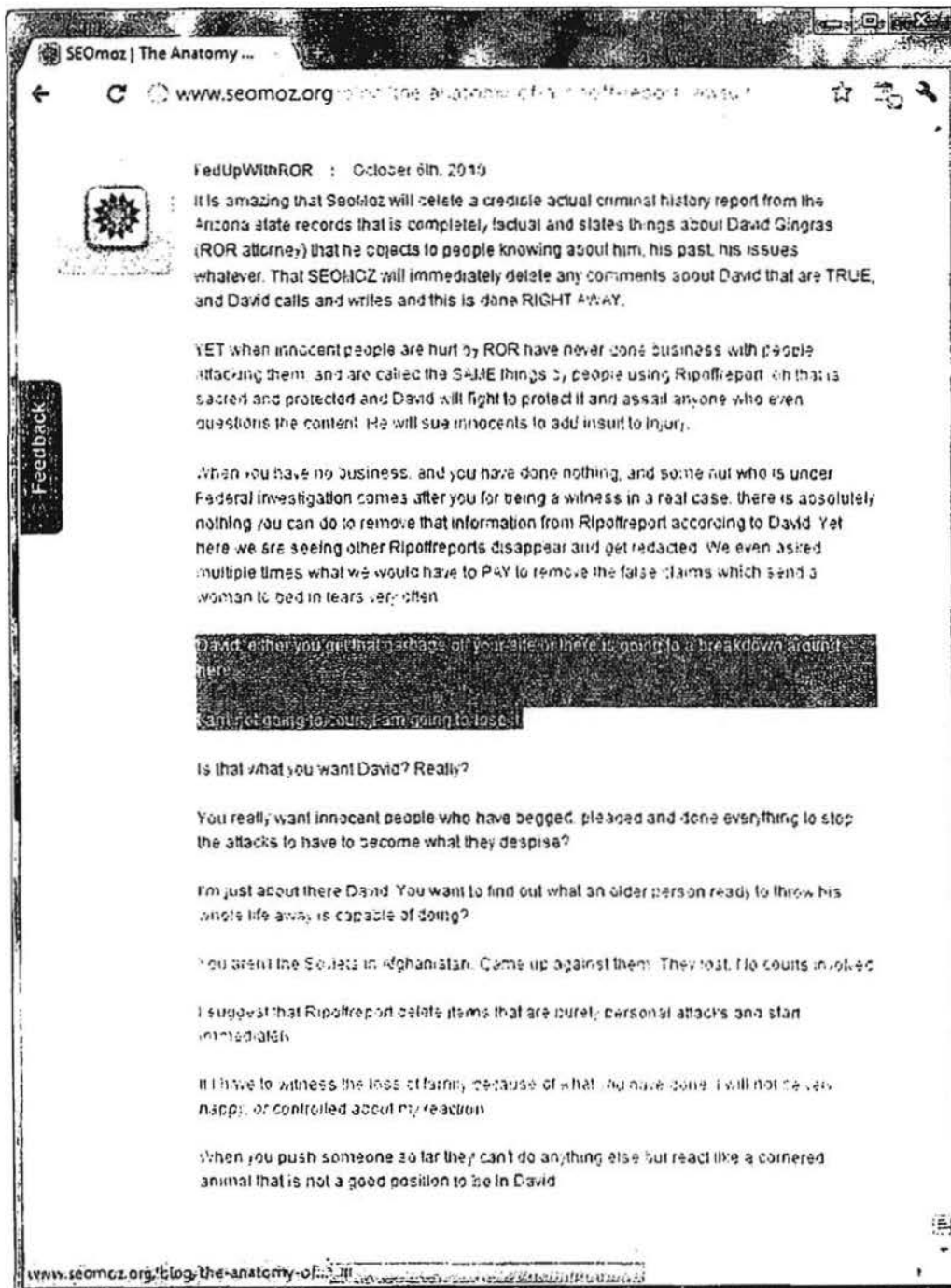
scheme to defraud the finance industry and judicial system." A far better indicator of my morals is reflected in past news interviews of being the only person to come to the aid of a woman whose husband was just murdered. <http://www.youtube.com/watch?v=cKMG6FS1dys&feature=related>

Further, calling me a vexatious litigant present date, is like calling you a pedophile, Maricopa Court, #S-0700-CR-1999093685, or a drunk, State Bar File No. 06-2059 Supreme Court No. SB-08-0157-D/R. The point is, we all have a past. The comments listed on Ripoff Report are not couched in opinion, but simply chain my name to words like "pimp" and "criminal" etc. Maybe public opinion should debate your integrity as I feel as an attorney, the public has a right to know about your past unproven and proven allegations just as you feel the public should know of mine---however, mine are not memorialized in court transcripts, state bar case, and a police report concerning a sex offense!

As I said, my previous email was my last effort at diplomacy. You will not hear from me again.

Best, to you. Darren

TAB 3



TAB 4

SER223

Maria Crimi Speth

From: ED - Rip-off Report <Editor@ripoffreport.com>
Sent: Friday, November 19, 2010 8:36 AM
To: david@ripoffreport.com
Cc: Maria Crimi Speth; Adam S. Kunz
Subject: a way to get Richeson and maybe Brewington = FW: Gingras State Bar File
Attachments: Gingras County Records - Copy.pdf; Gingras Basics.pdf

I wonder if I should get this guy to call me – if he can give me anything good Richeson – or get him to ask Richeson some good questions to see if Richeson admits to anything like, sending threatening letters, stuff he did with Brewington? .. I would get him to call me on my line first, then do a 3 way to Richeson – I could email him questions... ONLY if he has spoken with Richeson for sure. WHY DO THAT? so we can get Richeson on tap telling someone to do illegal things – along with anything Brewington may have told him – the putt putt video – the list goes on.
There is nothing wrong with me trying to get a recording and using it – if I can get this guy to help, as we discussed in the past, we would try and get an insider to get info..

First 2 email strings to me this morning are below – more to come - because of my suggestion above, I copied Maria and Adam. ADAM – see the entire email string below – he has been threatening the same crap as Richeson -. (more of his emails from this morning are on their way, in order.

From: Darren Chaker [mailto:darrenchaker@gmail.com]
Sent: Friday, November 19, 2010 2:11 AM
To: ED - Rip-off Report
Cc: David@ripoffreport.com
Subject: Re: Gingras State Bar File

Almost forgot, you may be interested in the fact I have 2,300 hours of specialized training. During that time I saw illegal methods to abuse people. I did the right thing, and went to the City Council, which is unheard of
<http://www.youtube.com/watch?v=NiKoiIhDPRO&feature=related>
Consider this info as covering issues which should give you pause to allow people to make such nasty comments about, when I have helped people, without cost or request for years. Of course, you can consider this as my last effort to rectify this matter so if my efforts are ignored, I will have a clear conscience what needs to be done --within the scope of the law.

Again, best to you, and believe the start of RipoffReport was with good intentions, however when you allow anyone to login and write what they write without any oversight--it creates opportunity for abuse. Please don't allow this to occur.

Darren

On Fri, Nov 19, 2010 at 1:02 AM, Darren Chaker <darrenchaker@gmail.com> wrote:
Dear Ed,

I have emailed arbitration@ripoffreport.com. Due to the short and concise sentences calling me a PIMP and CRIMINAL and inflammatory nature of the allegations, I would ask you remove the links pending the resolution of arbitration. Otherwise, to prove the falsity of the allegations, could I offer a notarized affidavit indicating I do not have any criminal convictions or have ever been arrested for, been charged with pimping?

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Friday, December 24, 2010 11:18 PM
To: Maria Crimi Speth
Cc: ED - Rip-off Report; Nikki A. Wilk; Larry E. Wilk; Gary J. Jaburg; david@ripoffreport.com
Subject: Maria Speth -- David Gingras
Attachments: Gingras Speth Pre Post - Copy.pdf; RipoffReport DMCA - Copy.pdf

Atty Speth,

I in receipt of the entire State Bar record of Mr. Gingras which is a public record. While reviewing roughly 300 pages, I find the absence of any record of his past criminal charges alleging sexual conduct with a minor. My question is whether you intentionally withheld this information from the State Bar, and only focused on Gingras' drinking and time at Betty Ford Clinic. I believe your effort to falsely state a federal court order concerning another party to not post information also related to I, is false, demonstrates outright misconduct, and is a matter of public concern. I will amend my complaint against you if further false statements of efforts to chill speech is made.

On a side note, it appears Gingras failed to notify the State Bar of the pending sexual misconduct allegation, which I believe he is obligated to do even as a law student and of course on his application even absent a conviction under Rule 36(A). I recognize Gingras was not convicted, however the case was dismissed on Due Process violations and not on factual innocence. However, let the public decide if a person is what is claimed if the case is dismissed on technical grounds. This is the last inquiry I have prior to publishing my website concerning your firm and Gingras. If you would like to clarify or indicate what facts I may wrong, please provide clarification no later than December 27, 2010. If you, or a member of your firm would like to discuss this matter, please let me know.

You will also find a DMCA request to remove my photographs from RipoffReport.

Last, a posting stating Gingras is a "Child Molester" does not originate from I.

<http://www.merchantcircle.com/business/Jaburg.And.Wilk.P.C..602-248-1000/review/read?cid=1181621>

Although a draft of a State Bar complaint and website is prepared to be published making public records available to the public, and a neighborhood mailing campaign may be conducted, making such a statement is incorrect since Gingras does not suffer a conviction for such conduct. Rest assure any statements made will include the word 'alleged', only disclose public records, and will not cross the line of defamation while any statement will be reasonably couched in opinion. A good website demonstrating a balanced opinion can be found here <http://lisalagua.blogspot.com/> where the attorney--who was running for judge--sued my mother whose client, a convicted felon with an outstanding warrant, ran a collection agency. That attorney had a peculiar past as you can see. Lawsuit was subsequently dismissed by the client.

RipoffReport.com
c/o David Gingras, Esq.
3447 E. Derringer Way
Gilbert, AZ 85297

Maria Speth
3105 E. Calire Drive
Phoenix, AZ 85032

Dear Counsel:

TAB 6

SER227

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Monday, February 28, 2011 1:10 AM
To: Maria Crimi Speth; Editor@ripoffreport.com; david@ripoffreport.com
Cc: Nikki A. Wilk; Larry E. Wilk; Gary J. Jaburg
Subject: State Bar Complaint
Attachments: Ltr Gingras Speth State Bar.pdf; RipoffReport_DMCA_-_Copy.pdf

Ms Speth & Mr Gingras

Please find a draft of my State Bar complaint against each of you. The voluminous State Bar and Court record related to sexual conduct with a minor will be submitted to the recipients under different cover. If you believe there are any inaccuracies you would like me to consider prior to distributing, please state your thoughts in writing. Please advise me of your thoughts no later than 3PM PST, on Monday, 2/28/11, as this issue will be resolved.

I am also emailing Editor@ripoffreport.com in accordance with the TOS of ROR, where I am, again, making a DMCA request to remove copyrighted material by attaching my second signed letter to you. Of course, each issue is separate, thus compliance with this request is not connected to my complaint.

--

Darren D. Chaker
Post Office Box 77
La Jolla, CA 92038
Tel: 213.915.6804
Fax: 916.679.1062

www.darrenchaker.com

www.facebook.com/darren.chaker

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

TAB 7

SER229

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Monday, July 18, 2011 12:36 PM
To: Maria Crimi Speth; ED - Rip-off Report; david@ripoffreport.com
Cc: Gary J. Jaburg
Subject: Repost of JB Clients, Partners, and Gingras
Attachments: David Gingras (1).JPG; David Gingras (2).JPG; gingras mountain vista residence.pdf; David Gingras Sexual Misconduct w Minor Release Form.pdf; maria speth deed.pdf; maria speth home.pdf

Prior to launching a website dedicated to your firm and its clients, as well as Gingras, I wanted to provide you the opportunity to object. You will find photographs of Gingras' residence, and material obtained from the public record. As you know photography is a form of speech, and reposting publicly available information is protected. See most recently, Harvard Law Review 124 Harv. L. Rev. 616 December, 2010 CONSTITUTIONAL LAW - FIRST AMENDMENT - FOURTH CIRCUIT HOLDS THAT REPUBLISHING SOCIAL SECURITY NUMBERS GLEANED FROM ONLINE PUBLIC RECORDS IS PROTECTED SPEECH. - OSTERGREN V. CUCCINELLI, 615 F.3D 263 (4TH CIR. 2010).

I attempted to contact Ms. Speth weeks ago to discuss this matter, however I was referred to voicemail. Nonetheless, please advise by the end of the day if any of the records attached have been sealed or are otherwise not publicly available. Absent such a response, I presume the attached material is not confidential in nature. Thank you for your efforts.

SIKORA SCOTT [TOMAR ELECTRONICS]
SIKORA CARRIE F
13403 S VAL VISTA DR
GILBERT, AZ 85296-4303

WAITKUS DEBORAH [GOLF FOR A CAUSE]
WAITKUS JOHN
4631 E PALOMINO RD
PHOENIX, AZ 85018-1719

JABURG GARY J [Named Partner]
DONALDSON SUSAN T
5359 E MERCER LN
SCOTTSDALE, AZ 85254-4776

SANDWEISS DAVID L [Partner]
SANDWEISS KATHI M
9514 N 49TH PL
PARADISE VALLEY, AZ 85253-1504

HIRSCH IVA
LAWRENCE DAVID [Partner]
2322 SHARLOT HALL
FLAGSTAFF, AZ 86001-4387
9329 N 58TH ST
PARADISE VALLEY, AZ 85253-1766

TAB 8

SER231

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Saturday, October 08, 2011 12:34 PM
To: Maria Crimi Speth; david@ripoffreport.com
Cc: Nikki A. Wilk; Kathi M. Sandweiss; Mitch Reichman; Laura A. Rogal; Sharon R. Sprague; Beth S. Cohn
Subject: Your Firm and Public Records
Attachments: Gingras Speth State Bar Complaint pdf; David Gingras (4).JPG; David Gingras (5).JPG

As you know, I am not content with posting on RipoffReport calling me a "pimp", "fraud", or that I "pick up street walkers" given the fact I have no such past, or past arrest for such. Nonetheless, a DMCA request to remove my photograph from ROR was submitted to your client. You are aware it is unlawful to allow a copyrighted photograph to remain when notified of its use without the photographers consent. To date, the photograph has not been removed. I will wait until October 13, 2011, to comply with the request prior to filing a second state bar complaint against yourself and Gingras. I have also noticed Gingras has made the below link a 'featured' listing only subsequent to filing a state bar complaint. I request the listing is removed as it is clearly retaliatory given the timing of making the listing a 'featured listing'.

<http://www.ripoffreport.com/liars/darren-chaker-101/darren-chaker-101-darren-denir-b96cc.htm>

Next, multiple items concerning your firm, Gingras, and other public records including the state bar complaint may be posted online and distributed freely. If you, your firm, Gingras, or anyone oppose publishing/distributing this information--please notify me no later than October 15, 2011. As you know this material is a public record or within the public domain. I am aware of past lawsuits filed to quiet people who voice opinions about your firm, so want it known you were provided to resolve this matter prior to filing another meritless lawsuit to chill speech. If you have any concerns or position on not distributing such material, please contact me no later than October 15, 2011. I may be aware of various people who have threatened the safety of Ed Madgedson, but will not advocate injury (Planned Parenthood v. American Coalition of Life Activists, 290 F.3d 1058; 2002 U.S. App. LEXIS 9314) to you, members of your firm, or family members, or even Gingras, while connecting who defends Ed Madgedson with publicly available records.

Further, I am allowed to voice my opinion concerning your firms hiring procedure when it allowed Gingras into its firm given his prior arrest for sexual misconduct with a minor. Although the case was dismissed on technical grounds, Gingras never made an effort to seal the record due to lack of probable cause for the arrest. Thus, either your firm doesn't care about past incidents of sexual misconduct with a minor, which is odd since your firm practices family law, thus interacts with minor children, or it simply failed to do a background check on Gingras.

This is my last email to you. I have done all I can for now, and will take a different course of action.

CC: Patricia Ramirez, State Bar Counsel by Certified Mail # 70101870000040162632

SIKORA SCOTT [TOMAR ELECTRONICS]

SIKORA CARRIE F

13403 S VAL VISTA DR

GILBERT, AZ 85296-4303

WAITKUS DEBORAH [GOLF FOR A CAUSE]

WAITKUS JOHN

4631 E PALOMINO RD

PHOENIX, AZ 85018-1719

JABURG GARY J [Named Partner]

DONALDSON SUSAN T

5359 E MERCER LN
SCOTTSDALE, AZ 85254-4776

SANDWEISS DAVID L [Partner]
SANDWEISS KATHI M
9514 N 49TH PL
PARADISE VALLEY, AZ 85253-1504

HIRSCH IVA
LAWRENCE DAVID [Partner]
2322 SHARLOT HALL
FLAGSTAFF, AZ 86001-4387
9329 N 58TH ST
PARADISE VALLEY, AZ 85253-1766

KOENIG CHRISTOPHER
KOENIG JANELSA [Partner]
30625 N 47TH PL
CAVE CREEK, AZ 85331-3878

MARCIANO JOSEPH G [Partner]
MARCIANO VALERIE L
211 E STATE AVE
PHOENIX, AZ 85020-4860

--

Darren D. Chaker
Post Office Box 77
La Jolla, CA 92038

www.darrenchaker.com

www.facebook.com/darren.chaker

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

TAB 9

SER234

>

> As you know, I am not content with posting on RipoffReport calling me a "pimp", "fraud", or that I "pick up street walkers" given the fact I have no such past, or past arrest for such. Nonetheless, a DMCA request to remove my photograph from ROR was submitted to your client. You are aware it is unlawful to allow a copyrighted photograph to remain when notified of its use without the photographers consent. To date, the photograph has not been removed. I will wait until October 13, 2011, to comply with the request prior to filing a second state bar complaint against yourself and Gingras. I have also noticed Gingras has made the below link a 'featured' listing only subsequent to filing a state bar complaint. I request the listing is removed as it is clearly retaliatory given the timing of making the listing a 'featured listing'.

> <http://www.ripoffreport.com/liars/darren-chaker-101/darren-chaker-101-darren-denir-b96cc.htm>

> Next, multiple items concerning your firm, Gingras, and other public records including the state bar complaint may be posted online and distributed freely. If you, your firm, Gingras, or anyone oppose publishing/distributing this information--please notify me no later than October 15, 2011. As you know this material is a public record or within the public domain. I am aware of past lawsuits filed to quiet people who voice opinions about your firm, so want it known you were provided to resolve this matter prior to filing another meritless lawsuit to chill speech. If you have any concerns or position on not distributing such material, please contact me no later than October 15, 2011. I may be aware of various people who have threatened the safety of Ed Madgedson, but will not advocate injury (Planned Parenthood v. American Coalition of Life Activists, 290 F.3d 1058; 2002 U.S. App. LEXIS 9314) to you, members of your firm, or family members, or even Gingras, while connecting who defends Ed Madgedson with publicly available records.

>

> Further, I am allowed to voice my opinion concerning your firms hiring procedure when it allowed Gingras into its firm given his prior arrest for sexual misconduct with a minor. Although the case was dismissed on technical grounds, Gingras never made an effort to seal the record due to lack of probable cause for the arrest. Thus, either your firm doesn't care about past incidents of sexual misconduct with a minor, which is odd since your firm practices family law, thus interacts with minor children, or it simply failed to do a background check on Gingras,

> This is my last email to you. I have done all I can for now, and will take a different course of action.

> CC: Patricia Ramirez, State Bar Counsel by Certified Mail # 70101870000040162632

> SIKORA SCOTT [TOMAR ELECTRONICS]

> SIKORA CARRIE F

> 13403 S VAL VISTA DR

> GILBERT, AZ 85296-4303

>

> WAITKUS DEBORAH [GOLF FOR A CAUSE]

> WAITKUS JOHN

> 4631 E PALOMINO RD

> PHOENIX, AZ 85018-1719

>

> JABURG GARY J [Named Partner]

> DONALDSON SUSAN T

> 5359 E MERCER LN

> SCOTTSDALE, AZ 85254-4776

>

> SANDWEISS DAVID L [Partner]

> SANDWEISS KATHI M

> 9514 N 49TH PL

> PARADISE VALLEY, AZ 85253-1504

>

> HIRSCH IVA

> LAWRENCE DAVID [Partner]

> 2322 SHARLOT HALL
> FLAGSTAFF, AZ 86001-4387
> 9329 N 58TH ST
> PARADISE VALLEY, AZ 85253-1766

> KOENIG CHRISTOPHER
> KOENIG JANESEA [Partner]
> 30625 N 47TH PL
> CAVE CREEK, AZ 85331-3878

> MARCIANO JOSEPH G [Partner]
> MARCIANO VALERIE L
> 211 E STATE AVE
> PHOENIX, AZ 85020-4860

>
> --

> Darren D. Chaker
> Post Office Box 77
> La Jolla, CA 92038

> www.darrenchaker.com

>
> www.facebook.com/darren.chaker

> Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

--
Darren D. Chaker
Post Office Box 77
La Jolla, CA 92038

www.darrenchaker.com

www.facebook.com/darren.chaker

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the

intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

TAB 10

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Tuesday, February 28, 2012 1:02 AM
To: legal@ripoffreport.com; Maria Crimi Speth
Cc: Nikki A. Wilk; Larry E. Wilk; Gary J. Jaburg
Subject: Re: ROR Representative

Mr. Speth/Mrs. Gingras,

I am informed Ripoffreport.com has failed to adhere to my most recent certified letter requesting my photo and link to my website, www.darrenchaker.com, are removed. As you know, copyright registration was provided to you and would expect the same force and effect of copyright registration is given to me, as to you, JW, or your photographs. If you intend to comply with the request, please do so by tomorrow afternoon as it will be addressed in a state bar complaint against each of you.

Likewise, if you have any actual authority that posting public records online concerning your firm or its clients is unlawful or would otherwise be, as you put it, "intentional interference with a business relationship" please provide me with such by tomorrow as well. If none is provided, tossing around a phantom cause of action to suppress speech is not only laughable, but also unethical and will be a focal point of a state bar complaint. Time is of the essence as I intend to use my time while visiting Arizona wisely, so ask you provide me with any actual authority than your own by tomorrow.

Enjoy your night, Darren

On Wed, Feb 8, 2012 at 10:20 PM, Darren Chaker <darrenchaker@gmail.com> wrote:
Mr. Gingras/Mrs. Speth,

I have recently received multiple phone calls from a person who identified himself as Anthony Ross of Louisiana. I called "Anthony" back at 985 718 9564. Anthony identified himself as a "representative" of ROR and stated he has spoken to you at length about me. Anthony further stated he heard information concerning your public records were to be distributed to various members of Lewis and Roca and each person located on JW's client list located on YouTube. Anthony asked why I would do such a thing. I simply replied that distributing public records is not unlawful and would not discuss such further.

For example due to continued posts by Michael King of Wikiwarnings.com, this prompted a further review of various records. Consequently, a recent motion to unseal records originating from a fraudulent fee waiver (possibly filed by the Mateo) was filed in court and distributed to various websites and members of various organizations who want to know more about police misconduct. See attached.

Likewise, a letter was recently sent to Constable Ron Hickman, who employs Steven Mateo, father of the person who defamed me on ROR and Wikiwarnings. The letter informed Hickman a website dedicated to publishing the home address of his entire department was forthcoming. I am awaiting a response to an open records act request a list of his employees [TX Govt Code Sec.552.022 (2)]. Thus far, most of his administration has been compiled:

MARK H HERMAN, MELISSA A HERMAN, 2407 SWEETGUM HILL CT, SPRING, TX 77388-5446;
RYAN GABLE, 21934 WILLOW SHADOWS DR, TOMBALL, TX 77375-2107; HENRY R WIEGHAT,
1314 SPRING STUEBNER RD, SPRING, TX 77373-8201; STEVE E CUPIT, KATHLEEN A CUPIT 13911
PAWNEE TRAILS DR, CYPRESS, TX 77429-4144; STEVEN H WHITTON, JO WHITTON 6615 COVE

TAB 11

SER241

On Tue, Sep 11, 2012 at 10:35 AM, Darren Chaker <darrenchaker@gmail.com> wrote:

Atty Speth,

I am sure you are pleased to know I am in Arizona now. Likewise, I have made use of my time for a project and discovered Gingras' police report. Please advise me if Gingras has an order sealing records no later than the end of today. If no reply, it shall be deemed he does not have such an order and the police report and complaint remain a public record. Similarly, if you have any legal opposition to not distributing the attached, please advise.

Best, Darren

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

--

Darren Chaker
1140 Wall Street, #77
La Jolla, CA 92038

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

TAB 12

SER243

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Monday, September 24, 2012 8:27 PM
To: Maria Crimi Speth; ED - Rip-off Report; legal@ripoffreport.com
Cc: Nikki A. Wilk; Larry E. Wilk; Gary J. Jaburg; Craig J. Marton; Ronald M. Horwitz; Laura A. Rogal; Gregory T. Harris; Renee B. Gerstman; Kelly A. Brown; Michelle C. Lombino; Laurence B. Hirsch; Lauren L. Garner; Mervyn T. Braude
Subject: Re: Gingras Police Report
Attachments: ltr ROR DMCA 12.11 Exhibits.pdf; David Gingras www.jaburgwilk.pdf; David Gingras (1).JPG; David Gingras (2).JPG

Dear ROR & Maria Speth,

Please find the attached DMCA request to remove specific links. I have not received a reply despite the letter being mailed with certified mail and email. I ask you reply to it. If I do not receive a reply I will have no choice than to request legal services starting with the below attorneys since I have important legal rights to enforce and need an attorney. Of course I cannot disclose the content of my request for representation, or can it be disclosed by any of the below attorneys, but it may include reference to public records like attachment two in an effort to provide detailed background or where Gingras lives as - attached pics. To clarify, you or Gingras have not stated anything in attachment #2 has been sealed, therefore no doubt such is a public record and free for distribution. Please reply by this Thursday or you have my absolute word the requests will go out and continue to go out until a suitable law firm is found. Any opinions of the attorneys I contact or who they share information with is not my concern as long as it serves my objective - to find an attorney of course.

Best,

Darren

Lewis & Roca

AAltshuler@LRLaw.com

KDemarchi@LRLaw.com

MEngle@LRLaw.com

KHolmstrom@LRLaw.com

SHulsman@LRLaw.com

JMoortel@LRLaw.com

L.Pasqualone@lrlaw.com

GPau@LRLaw.com

MSimonson@LRLaw.com

JWeiss@LRLaw.com

HTaylor@LRLaw.com

MPatc@LRLaw.com

ROGara@LRLaw.com

LMitchell@LRLaw.com

FHaynes@LRLaw.com

K.Holmstrom@ILR.law.com

LKasten@LRLaw.com

EBayton@LRLaw.com

Jennings Strauss

jboshes@jsslaw.com

achambers@jsslaw.com

wclarke@jsslaw.com

adumenil@jsslaw.com

jevinger@jsslaw.com

adumenil@jsslaw.com

sfrerichs@jsslw.com

khodges@jsslaw.com

jhutchison@jsslaw.com

norma@jsslaw.com

rjarvis@jsslaw.com

cjohnsen@jsslaw.com

tleach@jsslaw.com

amcclellan@jsslaw.com

srhodes@jsslaw.com

bspector@jsslaw.com

sundlof@jsslaw.com

ttuggle@isslaw.com

pwelch@isslaw.com

Perkin Coie – Brown Bain

JNomkin@perkinscoie.com

DBagatell@perkinscoie.com

MBerman@perkinscoie.com

RBain@perkinscoie.com

TAustin@perkinscoie.com

CSCampbell@perkinscoie.com

CColeman@perkinscoie.com

PEckstein@perkinscoie.com

JGreen@perkinscoie.com

KHettinger@perkinscoie.com

TKerr@perkinscoie.com

JMais@perkinscoie.com

AMarks@perkinscoie.com

JNomkin@perkinscoie.com

RSetlow@perkinscoie.com

SSwindle@perkinscoie.com

JWeiss@perkinscoie.com

MWorthington@perkinscoie.com

Quarles Bradley

lisa.duran@quarles.com

joe.drazek@quarles.com

charlie.heri@quarles.com

brian.metcalf@quarles.com
jim.murrow@quarles.com
robert.moya@quarles.com
craig.oloughlin@quarles.com
geoff.ossias@quarles.com
peter.terry@quarles.com
jacque.westling@quarles.com
jeffrey.fugal@quarles.com
john.craiger@quarles.com
karen.dickinson@quarles.com
christine.cassetta@quarles.com
bob.bornhoft@quarles.com
scott.berg@quarles.com
trisha.baggs@quarles.com
krystal.aspey@quarles.com
sarah.anchors@quarles.com
lyzzette.bullock@quarles.com
megan.scanlon@quarles.com
ilene.slate@quarles.com
rowan.smith@quarles.com
andrea.tazjoli@quarles.com
peter.terry@quarles.com
susan.trujillo@quarles.com
james.ullman@quarles.com
brad.vynalek@quarles.com
marvann.welsh@quarles.com

TAB 13

SER248

Maria Crimi Speth

From: Darren Chaker <darrenchaker@gmail.com>
Sent: Saturday, December 01, 2012 11:05 PM
To: Marla Crimi Speth; Gregory T. Harris; Kelly A. Brown; Craig J. Marton; Laura A. Rogal; Laurence B. Hirsch; Lauren L. Garner; Michelle C. Lombino; Mervyn T. Braude; Renee B. Gerstman
Cc: Nikki A. Wilk; Larry E. Wilk; Gary J. Jaburg; legal@ripoffreport.com; ED - Rip-off Report
Subject: Re: Gingas Police Report
Attachments: David_Gingras Jaburg_Wilk Booking Photo2.pdf; ROR DMCA 12.11.pdf

Good evening,

Please advise if you have any objection of the release of David Gingras' booking photo from San Francisco. Please state any opposition by Monday at 11AM.

Further, I have not received a reply concerning removing copyrighted photos and copyrighted domain from ROR. As a result, I have been forced to email about 140 attorneys in Phoenix for representation, but cannot disclose the exact nature of the communication as to not waive privilege. Of course, merely contacting attorneys for representation is not actionable. Another set of attorneys may be emailed this week to seek representation until the right attorney is found. however if you intend to reply, please let know by this Tuesday.

And no...it won't end...

--

Darren Chaker
1140 Wall Street, #77
La Jolla, CA 92038

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(t) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

TAB 14

SER250

Jan 14 13 02:25p

Debbie Waitkus

602-954-2681

p.1

Certified Mail #70112000000071484896

DARREN D. CHAKER

Mailing Address
Post Office Box 77
La Jolla, CA 92038

left in my home
mailbox 1/14/13

-Deb waitkus

December 16, 2010

Xcentric Ventures, L.L.C.
c/o Maria Speth, Esq.
Jaburg & Wilk, P.C.
Phoenix, AZ 85012

DMCA NOTICE TO REMOVE MATERIAL

By Email & Certified Mail

Dear Attorney Speth:

I, Darren Chaker, of the above address below, swear under penalty of perjury that I have detected infringements of my copyright interests as detailed in the report below.

I have reasonable good faith belief that use of the material in the manner complained of in the report below is not authorized by myself, my agents, or the law. The information provided herein is accurate to the best of my knowledge. Therefore, this letter is an official notification to effect removal of the detected infringement listed in the report below. The report below specifies the exact location of the infringement.

I hereby request that you immediately remove or block access to the infringing material, as specified in the copyright laws, and insure the user refrains from using or sharing with others the unauthorized materials in the future (see, 17 U.S.C. 512).

Please send a prompt response indicating the actions you have taken to resolve this matter.

Nothing in this letter shall serve as a waiver of any rights or remedies of Darren Chaker with respect to the alleged infringement, all of which are expressly reserved. If you need to contact me, my contact information is located at the bottom of this letter.

Infringed Work(s) are copyrighted photographs, See attached Copyright Certificates. The infringing URLs are:

SER251

Jan 14 '13 02:26p

Debbie Waikus

602-954-2681

p 2

Certified Mail #70112000000071484896

www.ripoffreport.com/directory/darren-chaker.aspx
<http://www.ripoffreport.com/liars/darren-chaker-101/darren-chaker-101-darren-denir-b96cc.htm>
<http://www.ripoffreport.com/liars/darren-chaker-101/darren-chaker-101-darren-denir-b96cc.htm>
<http://www.ripoffreport.com/questionable-activities/darren-chaker/darren-chaker-darren-chaker-r-67e07.htm>
<http://www.ripoffreport.com/questionable-activities/darren-chaker/darren-chaker-darren-chaker-r-67e07.htm>

Last, linking is not allowed and the website, see www.darrenchaker.com/tos.htm and its domain are copyrighted, see attached. Consequently, I request link to darrenchaker.com is removed from:

<http://www.ripoffreport.com/computer-fraud/darren-chaker-counte/darren-chaker-counter-forensic-6b8a4.htm>

Sincerely,


Darren Chaker

SER252

Maria Crimi Speth

From: Gary J. Jaburg
Sent: Sunday, August 18, 2013 10:36 PM
To: Maria Crimi Speth
Subject: Fwd: Darren wants you to take action on "Boycott Jaburg Wilk Attorney Arrested for Molestation"!

If u haven't seen

Sent from my iPad

Begin forwarded message:

From: <darrenchaker@outlook.com>
Date: August 18, 2013, 10:26:55 PM MST
To: <gjj@jaburgwilk.com>
Subject: Darren wants you to take action on "Boycott Jaburg Wilk Attorney Arrested for Molestation"!

Darren Chaker has just read and signed the petition: [Boycott Jaburg Wilk Attorney Arrested for Molestation](#)

You can view this petition at: <http://www.thepetitionsite.com/729/301/932/boycott-jaburg-wilk-attorney-arrested-for-molestation/>

Message from Darren Chaker:

Hi, I signed the petition "Boycott Jaburg Wilk Attorney Arrested for Molestation". I'm asking you to sign this petition to help us reach our goal of 1,000 signatures. I care deeply about this cause, and I hope you will support our efforts.

ThePetitionSite.com provides tools and empowers individuals to make a difference and effect positive change through online activism. Get connected with the causes you care about, take action to make the world a better place, and start your own petition at <http://www.ThePetitionSite.com!>

ThePetitionSite.com is powered by Care2, the largest and most trusted information and action site for people who care to make a difference in their lives and the world. www.care2.com



Maria Crimi Speth

From: Gary J. Jaburg
Sent: Wednesday, August 14, 2013 11:10 AM
To: 'Gary Bialowas (96)'
Cc: Maria Crimi Speth
Subject: RE: Jaburg Wilk Law and Darren Chaker:Jaburg Wilk Clients Support RipoffReport

He is a lunatic. I'll explain at lunch. What time will you be here? Want to meet someplace or pick me up?

GARY J. JABURG | SHAREHOLDER | 602.248.1020

JABURG|WILK
Attorneys at Law

From: Gary Bialowas (96) [<mailto:gbialowas@acerelocation.com>]
Sent: Wednesday, August 14, 2013 10:37 AM
To: Gary J. Jaburg
Subject: FW: Jaburg Wilk Law and Darren Chaker:Jaburg Wilk Clients Support RipoffReport

Received this moments ago, was sent to everyone here at Ace.....who is this guy??

From: Darren [<mailto:reciprocity@aol.com>]
Sent: Wednesday, August 14, 2013 10:28 AM
To: Phoenix
Subject: Jaburg Wilk Law and Darren Chaker:Jaburg Wilk Clients Support RipoffReport

Darren has sent you a link to a blog:

Gary Bialowas' home address is online as a Jaburg Wilk client. Mind?

Blog: Jaburg Wilk Law and Darren Chaker
Post: Jaburg Wilk Clients Support RipoffReport
Link: <http://jaburgwilk.blogspot.com/2013/08/jaburg-wilk-darren-chaker.html>

--
Powered by Blogger
<http://www.blogger.com/>

The information being transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material.

Maria Crimi Speth

From: Neal H. Bookspan
Sent: Wednesday, August 14, 2013 8:39 AM
To: Gary J. Jaburg; Brenda S. Edwards
Cc: Maria Crimi Speth
Subject: RE: Jaburg Wilk Law and Darren Chaker:RipoffReport Attorneys

Maybe this site has been around for a while, but don't like that it lists our female attorneys' names and home addresses or some clients' names and home addresses.

From: Gary J. Jaburg
Sent: Wednesday, August 14, 2013 8:38 AM
To: Neal H. Bookspan; Brenda S. Edwards
Cc: Maria Crimi Speth
Subject: RE: Jaburg Wilk Law and Darren Chaker:RipoffReport Attorneys

Maria,
You know about this one?

GARY J. JABURG | SHAREHOLDER | 602.248.1020

JABURG | WILK
Attorneys at Law

From: Neal H. Bookspan
Sent: Wednesday, August 14, 2013 8:28 AM
To: Brenda S. Edwards; Gary J. Jaburg
Subject: FW: Jaburg Wilk Law and Darren Chaker:RipoffReport Attorneys

This is messed up. Is this the same guy Maria has been dealing with for the last few years?

From: Darren Chaker [<mailto:darrenchaker@gmail.com>]
Sent: Wednesday, August 14, 2013 1:35 AM
To: Neal H. Bookspan
Subject: Jaburg Wilk Law and Darren Chaker:RipoffReport Attorneys

Darren Chaker has sent you a link to a blog:

Time to be amicable?

Blog: Jaburg Wilk Law and Darren Chaker
Post: RipoffReport Attorneys
Link: <http://jaburgwilk.blogspot.com/2013/08/darren-chaker-ripoffreport.html>

--
Powered by Blogger
<http://www.blogger.com/>

More Next Blog»

Create Blog Sign In

Jaburg Wilk Law and Darren Chaker

Jaburg Wilk, www.jaburgwilk.com, David Gingras, are the attorneys who represent Xcentric Ventures, LLC dba www.RipoffReport.com, Ed Magedson and typically defend it in court. The attorneys for www.RipoffReport.com and a few clients are listed here to aid the public to open lines of communication. My thought is, if you cannot find Ed Magedson to 'communicate' with, then seek out the attorneys who defend it, or client's who support the firm. Darren Chaker welcomes you to this site!

Tuesday, August 13, 2013

RipoffReport Attorneys

Darren Chaker agrees that despite the deat some people may feel against Ed Magedson who started www.RipoffReport.com and remains in hiding per Forbes, it should not be forgotten it is the lawyers concocted ways to keep Xcentric Ventures LLC dba www.RipoffReport.com to exist and churning money for the website and its attorneys. Darren Chaker does not promote injury to the lawyers but does provide home addresses of its female attorneys, since females appear to listen better, in an effort to keep open channels of communication. Of course, publishing home addresses is legal despite how a third party may use the information. See, *Planned Parenthood v. Am. Coalition of Life Activists*, 290 F.3d 1058, 1070 (9th Cir 2002) [placing home addresses of doctors online who perform abortions was legal speech, but not advocating death]. The home addresses of attorneys Jaburg Wilk, www.jaburgwilk.com, David Gingras, are the attorneys who represent and typically defend www.RipoffReport.com in court. Without the attorneys, the company could not defend itself in court.

In short, Darren Chaker, <http://darrenchaker.us>, notes a public record is public for the purpose of being distributed. See, *Ostergren v. Cuccinelli*, 615 F.3d 263 [court found republishing social security numbers online harvested from physical public records to be lawful]. So enjoy and use the home addresses of the attorneys in a proper, lawful, manner. Records about Jaburg Wilk allowing a sexual offender, David Gingras, to work for them can be seen here www.slideshare.net/jaburg-wilk/ and here <http://www.scribd.com/doc/125736113/David-Gingras-Sexual-Misconduct>.

Nonetheless, here are a few home addresses of Jaburg Wilk attorneys:

Nonetheless, here are a few home addresses of Jaburg Wilk attorneys:

David Gingras (arrested for sexual molest of minor)
4072 E. Mountain Vista Drive
Phoenix, AZ 85048

Jennifer R. Erickson
2524 E. Desert Willow Drive
Phoenix, AZ 85048

Nichole H. Wilk
750 E Northern Ave. # 2082
Phoenix, AZ 85020

Janessa Koenig
30625 N. 47th Place
Cave Creek, AZ 85331

Michelle C. Lombino
3214 E. Desert Cove, Apt. A
Phoenix, AZ 85028



Blog Archive

▼ 2013 (6)

▼ August (6)

Jaburg Wilk Attorney Unfit to Practice Law
Media Coverage About Jaburg Wilk Client RipoffRepo...
David Gingras Molestation Arrest
David Gingras Sexual Molestation Charges
RipoffReport Attorneys
Jaburg Wilk Clients Support
RipoffReport

<http://jaburgwilk.blogspot.com/2013/08/darren-chaker-ripoffreport.html>

11/20/2013

SER256

Laura A. Rogal
8702 E. Tether Trail
Scottsdale, AZ 85255

Renee Gerstman
4820 E. Clearwater Parkway
Paradise Valley, AZ 85253

Kathi M. Sandweiss
9514 N 49TH PL
Paradise Valley, AZ 85253

Suzanne Mari Wells
9971 W. Hawthorn Drive
Sun City, AZ 85351

Valerie Marciano
211 E. State Avenue
Phoenix, AZ 85020

Michelle Lombino
3214 E. Desert Cove Avenue Apt. A
Phoenix, AZ 85028

Posted by Darren Chakerat 6:21 AM

 Recommend this on Google+

Labels: darren-chaker, david-gingras, <http://darrenchaker.us>, jaburg-wilk, janessa-kooing, kathi-sandweiss, laura-rogal, ripoffreport-attorney, suzanne-wells
Location: Manhattan, New York, NY, USA

No comments:

[Post a Comment](#)

Comment as: [Select profile...](#)

[Publish](#)

[Preview](#)

[Newer Post](#)

[Home](#)

[Older Post](#)

[Subscribe to: Post Comments \(Atom\)](#)

Simple template. Powered by [Blogger](#).

More Next Blog»

Create Blog Sign In

Jaburg Wilk Law and Darren Chaker

Jaburg Wilk, www.jaburgwilk.com, David Gingras, are the attorneys who represent Xcentric Ventures, LLC dba www.RipoffReport.com, Ed Magedson and typically defend it in court. The attorneys for www.RipoffReport.com and a few clients are listed here to aid the public to open lines of communication. My thought is, if you cannot find Ed Magedson to 'communicate' with, then seek out the attorneys who defend it, or client's who support the firm. Darren Chaker welcomes you to this site!

Tuesday, August 13, 2013

Jaburg Wilk Clients Support RipoffReport

A few client's of Jaburg Wilk located on the law firm's Youtube channel <http://www.youtube.com/watch?v=8HLxBxb0xj0&list=TL9JxuFYRGUwc> can be found below.

Although some people may focus anger toward the client's of Jaburg Wilk, it should be noted the below addresses are derived from public records. Darren Chaker notes in *Bartnicki v. Vopper*, the Supreme Court found, "[I]t would be quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed in order to deter conduct by a non-law-abiding third party." 532 U.S. at 529-30, 121 S.Ct. 1753. In *Planned Parenthood v. Am. Coalition of LifeActivists*, 290 F.3d 1058, 1070 (9th Cir.2002) the Court found placing home addresses of doctors online who perform abortions was legal speech, but not advocating the doctor's death. Here, it is encouraged to voice opinion about Jaburg Wilk, but to not injure its attorneys or clients. Nonetheless, here are a few client home addresses to voice concerns over a business you believe who should not support a Jaburg Wilk due to its representation of www.RipoffReport.com or employing an attorney. David Gingras, who was charged with sexual molestation:

Scott Sikora
1315 S Val Vista Drive
Gilbert, AZ 85296

Gary Bialowas
18203 N 52ND WAY
Scottsdale, AZ 85254

Debbie Waitkus
4631 E Palomino
Phoenix, AZ 85018
and
375 Navajo Trail
Sedona, AZ 86336



Blog Archive

▼ 2013 (6)

▼ August (6)

Jaburg Wilk Attorney Unfit to Practice Law
Media Coverage About Jaburg Wilk Client RipoffRepo...
David Gingras Molestation Arrest
David Gingras Sexual Molestation Charges
RipoffReport Attorneys
Jaburg Wilk Clients Support
RipoffReport

<http://jaburgwilk.blogspot.com/2013/08/jaburg-wilk-darren-chaker.html>

11/20/2013

SER258

Kenneth R. Colburn
21613 N 152ND Drive
Sun City West, AZ 85375

Lamonte Jackson
9762 W. Yukon Drive
Peoria, AZ 85382

Jack McClure
17601 S Copper Cut Trail
Vail, AZ 85641

Posted by Darren Chaker at 5:33 AM

 +1 Recommend this on Google

Labels: darren-chaker, david-glegras, Debbie-Walikus, Gary-Bialowas, <http://darrenchaker.us>, jaburg-wilk, marta-speth, Scott-Sikora, www.ripoffreport.com
Location: Calabasas, CA, USA

[Newer Post](#)

[Home](#)

Simple template. Powered by [Blogger](#).

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA \$ CASE NO. 4:12-cr-00168-1
 \$ HOUSTON, TEXAS
VERSUS \$ TUESDAY,
 \$ DECEMBER 17, 2013
DARREN DAVID CHAKER \$ 10:49 A.M. TO 1:03 P.M.

SENTENCING

BEFORE THE HONORABLE NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR PLAINTIFF/DEFENDANT: SEE NEXT PAGE
COURT RECORDER: PAULA CRAWFORD
COURT CLERK: SHELIA ASHABRANNER

TRANSCRIPTION SERVICE BY:

JUDICIAL TRANSCRIBERS OF TEXAS, LLC
935 ELDRIDGE ROAD, #144
SUGAR LAND, TEXAS 77478
Tel: 281-277-5325 ▼ Fax: 281-277-0946
www.judicialtranscribers.com

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 60 days after the release from custody.

2 While in prison, the Defendant shall, in
3 accordance with the inmate financial responsibility program,
4 pay 25 percent of his earnings in -- to defray the fine if
5 permitted. If Mr. Chaker chooses he may give as much of his
6 earnings to his family to help support them as he chooses.
7 That is something that is done administratively.

8 I'm also going to -- I'm also going to recommend
9 to the Bureau of Prisons that Mr. Chaker, the -- given some
10 mental health counseling to deal with his son and his
11 relationship there or his mother or anything else that's on
12 his mind. So mental health counseling.

13 As a special condition, I have several for
14 supervision. I have been involved with the parties in
15 several hearings. The most important of which being the
16 hearing on Mr. Chaker's bond revocation and I have received
17 extensive information about conduct by Mr. Chaker that is
18 invasive.

19 I don't know if it's illegal. Since he's not been
20 charged with it, I'm not saying it's criminal. I too,
21 Mr. Chaker, believe in the first amendment as I told you at
22 the end of the last hearing. But there's a difference
23 between protecting your own first amendment rights and
24 harassing or invading the privacy of others.

25 So one of your conditions is that you may not

1 stalk or harass others.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I'm going to for the supervision
4 period, recommend that there be mental health counseling and
5 anger management, just as you have already acknowledged.

6 If as and when you are upset with someone who you
7 think has been unfair or mistreated you, you need to deal
8 with it through the counselor and make considered and
9 careful judgments. You have the right of first amendment
10 right and a right of free speech. But when you start
11 threatening to indirectly invade people's privacy or harm
12 them by putting things up on the internet such as home
13 addresses with comments that you are going to -- you won't
14 harm someone but you know others who may, that's not your
15 problem.

16 That's upsetting to others. And just like in this
17 case, I have agreed to seal many papers on your behalf. And
18 just like in many of your other proceedings, you have take
19 or orders seal things so your privacy would not be invaded.
20 I want you to understand that you need to give the same
21 courtesies to others. They have the same sensibilities that
22 you do.

23 I have deferred to your Counsel's request, but you
24 need to understand what's good for the goose is good for the
25 gander. And if you insist on perusing publicizing things

1 that you say are public, which in fact may or may not be to
2 the ordinary person who's checking, then I will have to
3 relook at what your and my version of privacy is.

4 I haven't done a close analysis of every paper
5 that you have filed or your counsel have filed because I
6 deferred to your sensibility that you want things private.
7 Despite some people's view, that's not fair or appropriate.
8 But I want you to understand that what I've tried to do for
9 you, given many courtesies, I want you to remember to do to
10 others.

11 Part of your teaching for your community service
12 that you've been undertaking is to teach people what it
13 feels like to help them, lead them to a straighter or better
14 path. You also have to follow that straighter or better
15 path. Take the high road.

16 We're not talking about legal. We're not talking
17 about first amendment. We're talking about give people the
18 benefit of the doubt. Are you following me?

19 THE DEFENDANT: I do.

20 THE COURT: Okay.

21 THE DEFENDANT: I just don't want there to be
22 ambiguity later on if someone comes ask permission saying
23 they feel harassed or they feel threatened.

24 THE COURT: Well, be careful -- be careful about
25 your communications. Be careful and if they do contact

1 communicate to Probation, I'll deal with it and you'll have
2 every right to respond to them and to me.

3 But just be sensitive. You don't need to be
4 publicizing people's personal information whether it's legal
5 or not. And if you feel strongly that you should have that
6 right and you're not sure, then I'll have to deal with it.
7 But you come to us and you deal with it with us first. That
8 way we won't get cross ways. Okay. I'm not telling you
9 you're not allowed to have your free speech rights or go on
10 the computer. I'm not saying that.

11 What I'm saying is be courteous. What I'm saying
12 is be respectful. That's what you expect. That's what
13 we've here have tried to do. You and I have disagreed about
14 findings I've made. I'm sure you disagree. You have that
15 right. You have every right under the law to appeal or
16 whatever. But let's just try and the counseling is designed
17 to help you make these determinations to treat others as you
18 hope to be treated yourself, okay? That's what it is.

19 And I will craft this requirement very carefully
20 so that I'm not stepping on your toes. But I want you to
21 know that I will be looking and watching because your
22 behavior is important. There is a requirement you not break
23 the law.

24 There are requirements you follow Court Orders.
25 That's part of the law. And I don't want to have to deal

1 with that with you because I don't want you to even be that
2 close to it, but if you feel the need to deal with it, then
3 we'll have to deal with it, okay?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: I will recommend that the Defendant be
6 placed as close to -- as close to San Diego as possible.
7 The Bureau of Prisons, Mr. Chaker, makes these
8 determinations. I make recommendations, which I've just
9 done, so you can be as close to your family as possible.

10 But you need to understand that it's the Bureau of
11 Prisons power to make the classification decisions and the
12 decisions regarding placement and what courses you do or
13 don't get into, et cetera. I have no power.

14 THE DEFENDANT: I understand.

15 THE COURT: I cannot control that. I make the
16 recommendations here and that is it. After that they have
17 all the power and I have none.

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: Okay.

20 MR. COLOMBO: Might the recommended camp as close
21 to San Diego as possible. I understand it's just a
22 recommendation.

23 THE COURT: A camp?

24 MR. COLOMBO: Yes.

25 THE COURT: You mean the lowest level?

KIMBERLY S. TRIMBLE
 California State Bar No.: 288682
FEDERAL DEFENDERS OF SAN DIEGO, INC.
 225 Broadway, Suite 900
 San Diego, California 92101-5008
 Telephone: (619) 234-8467
 Kimberly_Trimble@fd.org
 Attorneys for Mr. Darren David Chaker

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE LARRY ALAN BURNS)

UNITED STATES OF AMERICA,	)	CASE NO.:	15-cr-7012-LAB
	)		
Plaintiff,	)	DATE:	March 2, 2015
	)	TIME:	2:00 p.m.
v.	)		
	)	DEFENDANT'S MOTION TO	
DARREN DAVID CHAKER,	)	DISMISS THE PETITION AND	
	)	AMENDED PETITION	
Defendant.	)		
	)		

TO: LAURA E. DUFFY, UNITED STATES ATTORNEY, AND
 SCOTT JONES, ASSISTANT UNITED STATES ATTORNEY:

Mr. Darren David Chaker ("Mr. Chaker"), the defendant in this case, through counsel, Kimberly S. Trimble and the Federal Defenders of San Diego, Inc., files the following motion to dismiss the petitions alleging that he violated the terms of his supervised release. Mr. Chaker reserves the right to challenge the petitions on other grounds at the hearing on March 2, 2015.

I.
BACKGROUND

A. The sentencing hearing

On December 17, 2013, Mr. Chaker was sentenced to fifteen months in BOP custody followed by three years of supervised release. At that hearing, the Honorable Nancy F. Atlas, United States District Judge for the Southern District of Texas, imposed conditions of supervised release. Those conditions included the standard condition that Mr. Chaker “shall not commit any other Federal, State or Local crimes,” *see United States v. Chaker*, 4:12-cr-00168 (S.D. Tex. Dec. 17, 2013), ECF No. 337 at 79, as well as, inter alia, the following special condition:

So one of your conditions is that you may not stalk or harass others.

Id. at 80-81 (attached as Exhibit A). The court explained that when Mr. Chaker “start[s] threatening to indirectly invade people’s privacy or harm them by putting things up on the internet such as home addresses...that’s upsetting to others.” *Id.* at 81.

The court expressly explained, “You have the right of first amendment right and a right of free speech.” *Id.* at 81. When Mr. Chaker sought clarification by stating, “I just don’t want there to be any ambiguity later on if someone comes ask permission saying they feel harassed or they feel threatened,” *id.* at 82, the court explained that he should “be careful,” “be sensitive,” “be courteous, and “be respectful.” *Id.* at 83. Importantly, the court expressly told Mr. Chaker that it was “not telling you you’re not allowed to have your free speech rights or go on the computer,” *id.* at 83, but elaborated that it did not want Mr. Chaker to “even be that close to it [violating the special condition].” *Id.* at 84.

B. The written judgment

The written judgment phrases that special condition as follows: “The defendant may not stalk and/or harrass [sic] other individuals, to include, but not limited to, posting personal information of others or defaming a person’s character on the internet.”

C. The petition and amended petition.

The petition and amended petition at issue together include a total of four allegations of non-compliance. All four allegations relate to the special condition that Mr. Chaker “may not stalk and/or harrass [sic] other individuals, to include, but not limited to, posting personal information of others or defaming a person’s character on the internet.”

Allegations 3 and 4 also purportedly relate to the standard condition that Mr. Chaker may not commit another federal state, or local crime. *See* Pet., ECF No. 4; Am. Pet., ECF No. 10.

II.

**THE CONDITION PROHIBITING POSTING OF PERSONAL
INFORMATION OR DEFAMATORY SPEECH ON THE INTERNET WAS
NEVER IMPOSED**

Review of the sentencing transcript from December 17, 2013 reveals that the special condition that Mr. Chaker must refrain from “posting personal information of others or defaming a person’s character on the internet” was never orally imposed. Rather, the special condition related to speech that was orally imposed was only that Mr. Chaker “may not stalk or harass others.” *Id.* at 78-79. Therefore, to the extent this petition alleges Mr. Chaker violated the portion of the special condition relating to

posting others' information on the internet or defaming a person's character on the internet, it must be dismissed.

"In cases where there is a direct conflict between an unambiguous oral pronouncement of sentence and the written judgment ... the oral pronouncement, as correctly reported, must control." *United States v. Jones*, 696 F.3d 932, 938 (9th Cir. 2012) (internal quotation marks and citations omitted) ("Here, the district court's oral pronouncement of sentence was unambiguous. In reading aloud the special conditions of supervised release, the court did not include the residency restriction. That pronouncement controls over the inconsistent written judgment including that restriction."). Warnings to a defendant that his behavior—and particularly his offensive speech—is considered inappropriate and should be avoided in the future does not create an additional condition of supervision. *Accord United States v. Montaque*, 584 Fed. App'x 765 (9th Cir. 2014) ("In context, it is clear that this was just a warning by the district judge that the defendant's offensive and scurrilous retort to a proper inquiry by the Probation Officer was entirely inappropriate, particularly when as the District Court went on to say, the Probation Officer was simply trying to help the defendant. No additional condition was imposed and there would be no basis for filing a future specification for any supposed violation of this non-existent condition.").

The court did discuss the possibility that Mr. Chaker would post information on the internet including others' home addresses. *Id.* at 81. However, in the same discussion, the court told Mr. Chaker that he had "the right of first amendment right and a right of free speech." *Id.* The court was unambiguous in instructing Mr. Chaker that the condition was not intended to infringe on his rights under the First Amendment. Thus, the court's oral pronouncement of the supervised release conditions unambiguously assured Mr. Chaker that his First Amendment rights were not restricted. *See United States v. Chaker*, 4:12-cr-00168 (S.D. Tex. Dec. 17, 2013),

1 ECF No. 337 at 83 (attached as Exhibit A) (“I’m not telling you you’re not allowed to
2 have your free speech rights or go on the computer. I’m not saying that.”).

3 At the very least, the court’s instructions to Mr. Chaker gave him the reasonable
4 expectation that he would not be in violation of the condition unless he actually
5 criminally stalked or harassed someone. *See United States v. O’Brien*, 789 F.2d 1344,
6 1347 (9th Cir. 1986) (“A truly ambiguous pronouncement can provide no guidance.
7 Equally important, a truly ambiguous pronouncement does not create any expectations
8 on the part of the defendant who hears it in open court.”). The mere posting of
9 “personal information” on the internet when it was obtained through public searches
10 does not qualify as stalking or harassing or making threats, especially when that
11 information pertains to public figures and public information. *See Org. for a Better*
12 *Austin v. Keefe*, 402 U.S. 415, 419 (1971) (“The claim that the expressions were
13 intended to exercise a coercive impact on respondent does not remove them from the
14 reach of the First Amendment. Petitioners plainly intended to influence respondent’s
15 conduct by their activities; this is not fundamentally different from the function of a
16 newspaper.... Petitioners were engaged openly and vigorously in making the public
17 aware of respondent’s real estate practices. Those practices were offensive to them, as
18 the views and practices of petitioners are no doubt offensive to others. But so long as
19 the means are peaceful, the communication need not meet standards of acceptability.”);
20 *City of Kirkland v. Sheehan*, No. 01-2-09513-7 SEA, 2001 WL 1751590, at *6 (Wash.
21 Super. May 10, 2001) (“In this case, as in numerous others, in the absence of a credible
22 specific threat of harm, the [online] publication of lawfully obtained addresses and
23 telephone numbers, while certainly unwelcome to those who had desired a greater
24 degree of anonymity, is traditionally viewed as having the ability to promote political
25 speech.”). This type of speech is protected by the First Amendment, so it cannot be the
26 basis of finding Mr. Chaker was in violation of this condition. *See Planned*
27 *Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 244 F.3d 1007,
28 1020 n.10 (9th Cir. 2001) *on reh’g en banc*, as amended (July 10, 2002) 290 F.3d 1058

(9th Cir. 2002) (noting that the question of whether speech is protected by the First Amendment is distinct from whether a person may be liable in a civil suit for such speech). The Ninth Circuit has recognized the importance of protecting one’s free speech rights when the statements are made in a public forum about political issues. *Id.* at 1019 (“With respect to such speech, we must defer to the well-recognized principle that political statements are inherently prone to exaggeration and hyperbole. If political discourse is to rally public opinion and challenge conventional thinking, it cannot be subdued.” (citation omitted)).

The special condition of supervision pronounced at sentencing did not prohibit Mr. Chaker from posting personal information of others on the internet or posting criticisms of others that are protected by the First Amendment. To the extent the petition and amended petition allege that Mr. Chaker has violated the terms of his supervised release through this type of speech, the petitions must be dismissed.

III. **THE SPECIAL CONDITION RELATING TO MR. CHAKER’S SPEECH IS UNCONSTITUTIONAL**

Restraints on speech are generally presumed to be unconstitutional. *Vance v. Universal Amusement Co.*, 445 U.S. 308 (1980). However, in the context of conditions of supervised release, some restriction of First Amendment rights is permissible. Nonetheless, courts must be cautious when imposing conditions that affect fundamental rights, including First Amendment rights. *United States v. Wolf Child*, 699 F.3d 1082, 1089 (9th Cir. 2012).

Here, the special condition imposed at sentencing was unconstitutionally vague and, if followed, would have a chilling effect on constitutionally permissible speech. When Mr. Chaker directly asked the district court to clarify the condition imposed, the court explained that he should “be careful,” “be sensitive,” “be courteous, and “be respectful,” *id.* at 83, and that it did not want Mr. Chaker to “even be that close to it

1 [violating the special condition].” *Id.* at 84. This vague guidance not only fails to alert
2 Mr. Chaker to what conduct is prohibited, but has a chilling effect on speech that could
3 not lawfully be prohibited under these circumstances.

4 The breadth of the condition poses a problem both for probation officers, who
5 must decide what constitutes a violation, and for Mr. Chaker, who should not be left
6 guessing what he permissibly may say. *United States v. Gnirke*, 775 F.3d 1155, 1162
7 (9th Cir. 2015) (“The breadth of the condition poses a problem both for probation
8 officers, who must decide what constitutes a violation, and for Gnirke, who should not
9 be left guessing where he permissibly may go.”). Additionally, because the condition
10 is so vague, it does not satisfy the requirement that any special condition imposed is
11 “*necessary* to accomplish the goals of supervised release and involves no greater
12 deprivation of liberty than is reasonably necessary.” *Id.* at 1160 (internal quotations
13 and citation omitted).

14 Even if the court was permitted to impose this vague condition of supervision,
15 the condition as imposed has a chilling effect on speech that cannot be covered by this
16 condition. By telling Mr. Chaker to not even be that “close” to what would qualify as
17 a violation, the court conveyed a message that Mr. Chaker could be placed in custody
18 for engaging in constitutionally protected behavior while the court “deal[s] with” the
19 allegations (to no doubt ultimately find that the condition was not violated given that
20 the court expressly told Mr. Chaker his rights under the First Amendment were not
21 restricted by this condition). That in and of itself shows that this condition is
22 impermissible.

23 IV.

24 **THE CONDITION MUST BE CONSTRUED IN A MANNER TO RENDER IT** 25 **CONSTITUTIONAL**

26 The special condition at issue unquestionably implicates Mr. Chaker’s First
27 Amendment right to free speech. “[A] condition [of supervised release] may not
28 restrict more liberty than is reasonably necessary under § 3582(d)(2). . . .” *Gnirke*, 775

1 F.3d at 1163. Therefore, the special condition must be construed narrowly. *United*
2 *States v. Goddard*, 537 F.3d 1087, 1089 (9th Cir. 2008) (construing a facially broad
3 condition more narrowly to avoid a greater deprivation of defendant's liberty than was
4 reasonably necessary).

5 Here, the special condition restricting Mr. Chaker's speech must be construed to
6 only limit speech that is criminal in nature.

7
8 **VI.**
9 **CONCLUSION**

10 In the event this Court denies Mr. Chaker's motion to dismiss the petitions based
11 on his Constitutional challenges, he reserves the right to contest whether he violated
12 the conditions of his supervised release at the hearing on March 2, 2015 at 2:00 p.m.
13 before this Court.

14
15 Respectfully submitted,

16
17 Dated: February 20, 2015

/s/ Kimberly S. Trimble

18 **KIMBERLY S. TRIMBLE**
19 Federal Defenders of San Diego, Inc.
20 Attorneys for Mr. Chaker
21
22
23
24
25
26
27
28

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 15-CR-7012 LAB
) OSC-Contested Hearing
DARREN DAVID CHAKER,)
)
Defendant.) Monday, March 23, 2015
)

Before the Honorable Larry A. Burns
United States District Judge

Appearances:

For the Plaintiff: Laura E. Duffy
UNITED STATES ATTORNEY
Scott T. Jones
ASSISTANT U.S. ATTORNEY
880 Front Street, Suite 6293
San Diego, CA 92101

For the Defendant: Kimberly S. Trimble, Esq.
FEDERAL DEFENDERS OF SAN DIEGO
225 Broadway, Suite 900
San Diego, CA 92101

Official Court Reporter: Debra M. Henson, CSR, RPR
U.S. Courthouse Annex
333 W. Broadway, Suite 420
San Diego, CA 92101
(619) 238-4538
courtreporterusdc@sbcglobal.net

Record produced by stenographic reporter

SER274

1 San Diego, California - Monday, March 23, 2015

2 THE CLERK: Calling number 11 on the calendar,
3 15-CR-7012, United States of America versus Darren David
4 Chaker. Counsel could state their appearance for the record,
5 please.

6 MS. TRIMBLE: Kimberly Trimble, Federal Defenders,
7 on behalf of Mr. Chaker.

8 MR. JONES: Good afternoon, your Honor. Scott
9 Jones for the United States.

10 THE COURT: All right. Good afternoon to you both.

11 USPO HERNANDEZ: Good afternoon, your Honor.
12 Carlos Hernandez for Probation.

13 THE COURT: All right, Mr. Hernandez. Mr. Chaker,
14 you can have a seat at counsel table.

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. Ms. Trimble, Mr. Jones, are
17 you ready?

18 MS. TRIMBLE: Yes, your Honor.

19 MR. JONES: Yes, your Honor.

20 THE COURT: Pending before the Court is a motion to
21 dismiss the allegations of supervised release. Ms. Trimble
22 contends that the allegation should be dismissed for several
23 reasons. First, she alleges that the oral judgment of the
24 Court, which I have received and reviewed -- it came in the
25 form of a pronouncement of sentence that's contained in the

1 sentencing transcripts -- is inconsistent with the alleged
2 condition that was violated here, or, at a minimum, that it's
3 ambiguous and that any ambiguity between the written and the
4 oral judgment must be resolved in favor of the oral judgment.
5 The second basis for dismissal is that the condition itself
6 is nebulous or not clear enough to give fair notice to
7 Mr. Chaker as to what type of conduct is prohibited or was
8 prohibited. And then the third basis is that the condition,
9 even if construed narrowly, is improper because it impinges
10 on fundamental First Amendment rights that he has and,
11 therefore, the condition is -- was illegal at the time that
12 it was imposed.

13 Have I understood that those are the -- correctly,
14 Ms. Trimble, those are the -- that's the challenge to the
15 action and the basis for the motion to dismiss?

16 MS. TRIMBLE: Yes, your Honor, although I do have
17 some additional information to provide the Court --

18 THE COURT: Sure.

19 MS. TRIMBLE: -- for today's argument.

20 THE COURT: Okay.

21 MS. TRIMBLE: First, I'd like to -- and I'm giving
22 a copy to the government as well -- both of these
23 documents -- the first is a brief in support from the
24 Electronic Frontier Foundation. I had asked how would be the
25 best way to get this to the Court, but it's just providing

1 some background information about the First Amendment.

2 THE COURT: Okay.

3 MS. TRIMBLE: The second is a letter that was
4 written from my client to the judge in Texas; it's dated
5 October 13, 2014.

6 THE COURT: You're asking these be considered in
7 connection with the motion to dismiss?

8 MS. TRIMBLE: Yes, your Honor.

9 THE COURT: Okay.

10 MS. TRIMBLE: This specific letter is lodged as
11 docket number 339 in the Texas court. And the reason that I
12 think this is relevant is because if you read the sentencing
13 transcript from the hearing in Texas, the judge specifically
14 tells Mr. Chaker that if he has misunderstanding about any of
15 his conditions, that he should contact the court in advance.
16 This letter was filed almost immediately after my client
17 became apprised of these conditions, and it lays out many of
18 the concerns that I laid out in my motion to dismiss, saying,
19 for example, that the posting of personal information of
20 others and defamation had not been explained to him at
21 sentencing. So this is in support --

22 THE COURT: Was it answered?

23 MS. TRIMBLE: -- of my -- no, no action was taken
24 on this letter.

25 THE COURT: All right. Do you have any objection

1 to the Court receiving these in connection with the pending
2 motion, Mr. Jones?

3 MR. JONES: No, your Honor.

4 THE COURT: The pertinent portion of the letter to
5 the judge is found in pages 3 to 8; is that correct, Ms.
6 Trimble?

7 MS. TRIMBLE: Yes, your Honor.

8 THE COURT: The other conditions are not of concern
9 here, the other conditions that he complains about?

10 MS. TRIMBLE: No, not at this time.

11 THE COURT: All right. I have read both the
12 pertinent portion of Mr. Chaker's letters to the sentencing
13 judge, also what amounts to sort of an amicus-type support
14 for the motion to dismiss from David Green, who's a senior
15 staff attorney for the Electronic Frontier Foundation, which
16 I'm told is a nonprofit civil liberties organization
17 organized to protect consumer interests and free expression
18 in the digital world. I have those things in mind. Do you
19 have any further argument, Ms. Trimble, on the motion to
20 dismiss?

21 MS. TRIMBLE: Yes, your Honor. I'd just like to
22 clarify the many levels at which I think this condition can't
23 actually be enforced against Mr. Chaker. First and foremost
24 I think goes to the actual sentencing hearing itself, the
25 transcript. The condition that was imposed against Mr.

1 Chaker was do not stalk or harass, and then the judge very
2 clearly moves on to the next condition, which is mental
3 health counseling. And it wasn't until after that second
4 condition was imposed that the Court starts talking about
5 posting information of others and contacting others on the
6 Internet.

7 THE COURT: Right.

8 MS. TRIMBLE: So it's very clear from reading the
9 transcript itself that that was a separate condition and that
10 in a way this conversation about how to deal with other
11 people was really related to counseling. Your Honor, it
12 occurs to me -- I think we have witnesses who are present in
13 the courtroom. Could we possibly ask them to be excluded if
14 they intend to testify?

15 THE COURT: All right. If the witnesses will step
16 out while this is argued.

17 MS. TRIMBLE: Thank you, your Honor. And so I
18 think on two levels, the portion of the condition that says
19 not to post personal information of others or not to defame
20 others on the Internet can't be enforced against Mr. Chaker
21 first because it wasn't clearly imposed against him, but also
22 because it's somewhat nonsensical. The way the condition is
23 written is do not stalk or harass to include but not limited
24 to posting personal information of others or defaming others.
25 So the way that it's framed, defamation or posting personal

1 information could only be used to enforce this condition
2 against Mr. Chaker if it also qualifies as stalking or
3 harassment; it's not a separate condition. So the only
4 condition that was actually imposed in either order is do not
5 stalk or harass.

6 By way of example, I might post personal
7 information about a friend of mine on the Internet saying
8 that she's running in a marathon and please donate to her
9 cause. That would be posting personal information about that
10 person, but it's certainly not stalking or harassing that
11 individual.

12 THE COURT: Right. But the problem I found with
13 that argument though is one can certainly stalk or harass by
14 posting information on the Internet, right?

15 MS. TRIMBLE: Certainly. So the point being to the
16 extent that this condition was imposed, it's not a separate
17 condition to say you can't post personal information. It
18 could only be enforced as a violation if what he did actually
19 qualifies as stalking or harassment.

20 THE COURT: Okay. I agree with that. But
21 you've -- and I -- isn't that the way it appears in the
22 formal conditions? They blend stalking and harassing and use
23 of the Internet into a single condition, right?

24 MS. TRIMBLE: Yes. That's my point, your Honor. I
25 don't think it's appropriate for the defamation and posting

1 information to be written into the judgment at all, but to
2 the extent that it is, it's only included under the umbrella
3 term of stalking and harassment. So, for example, if the
4 government could prove that Mr. Chaker defamed someone but
5 not in a way that qualifies as stalking and harassment under
6 the law, that would not be sufficient to support a violation.

7 THE COURT: All right. I'm looking back at the
8 allegations here -- I just checked them again -- and there
9 are two, that he posted personal information that defamed
10 Ms. Fazel's character on the Internet, and the probation
11 officer takes the position that that violates the stalk or
12 harass condition. And the second one is to the same effect
13 with respect to Mr. McMillan posting personal information,
14 and it is said to have violated the same condition. So your
15 position is if he defamed somebody on the Internet, that's
16 not the same as harassment?

17 MS. TRIMBLE: Exactly, your Honor.

18 THE COURT: Why isn't defaming harassing?

19 MS. TRIMBLE: I think -- well, this goes to my
20 argument that this condition is actually void for vagueness.
21 The only way that this condition would not be void for
22 vagueness, if we take the definition of stalk and harass from
23 a legal definition, criminal stalking or criminal harassment,
24 which appears to be what the government has actually agreed
25 to in its response -- the government seems to be agreeing

1 that this condition is only limiting actions by Mr. Chaker
2 that violate the law. So defamation is a civil tort; it's
3 not a criminal offense. There is such a thing as criminal
4 stalking and criminal harassment; there is no such thing as
5 criminal defamation. It would not be constitutional to
6 criminalize defamation.

7 THE COURT: What do I do about the definition
8 that's accepted by the Ninth Circuit 2014 in the Osinger
9 case? This is the one cited in their response, 753 F.3d 939
10 at 945. You may not have that at hand.

11 MS. TRIMBLE: I don't, your Honor.

12 THE COURT: The argument was made that "harass" is
13 an esoteric term and that needs further definition. Ninth
14 Circuit rejects that. They say that the term there was not
15 harass or engage in a course of conduct that causes
16 substantial emotional distress. Defendant was revoked,
17 claimed that those two terms are too vague to be commonly
18 understood. At 945 the Ninth Circuit, page 945, the Ninth
19 Circuit says contrary to Osinger's argument, "harass" and
20 "substantial emotional distress" are not esoteric or
21 complicated terms devoid of common understanding. They go on
22 to cite the Black's Dictionary definition of "harass" as
23 including words, conduct, or actions, usually repeated or
24 persistent, that are directed at a specific person and annoy,
25 alarm, or cause substantial emotional distress in that person

1 and serve no legitimate purpose. And they go on from there.
2 But the gist of this is that those are not devoid of meaning,
3 not so vague as to be unconstitutional provided the Court
4 reads into the condition the scienter requirement, which of
5 course I would do, that is, that he has to intend by his
6 actions to harass or annoy.

7 MS. TRIMBLE: Yes, your Honor. And I think we're
8 skipping to my next argument, focusing just on the defamation
9 as an included condition. My point is if it was defamation
10 without falling into the definition of harassment, it could
11 not be the basis of a violation.

12 THE COURT: Okay. I agree with that, but I
13 don't -- I think you can harass somebody by defaming them
14 too. I think you can. The context is very important here.
15 Have you looked at the original probation report in this
16 case?

17 MS. TRIMBLE: Yes, your Honor, I have.

18 THE COURT: And of course the original probation
19 report outlines a course of conduct -- and I note was not
20 objected to during the sentencing hearing; there was no
21 objection to the information in the probation report; the
22 judge was entitled to rely on it -- but it's a course of
23 conduct by Mr. Chaker that involves defamation, harassment,
24 probably stalking as that term is commonly understood against
25 various people, and using the Internet, among other forms of

1 media or communicating messages. I know he sent some naked
2 pictures of people to their school district or their
3 employers, that type of thing. But when I look at this
4 condition and consider the context in which the judge to
5 impose it, it makes perfect sense to me.

6 MS. TRIMBLE: Well, your Honor, so there's a few
7 responses to that. With respect to whether this condition
8 was actually objected to at the time, my understanding from
9 Mr. Chaker as well as the attorneys who represented him is
10 that he actually did object to this condition at the time.
11 There was an attorney -- he himself did; he asked his
12 attorney to object -- there was an attorney conflict hearing
13 where his attorney was then relieved. His -- the attorney
14 who's currently representing him on appeal, who may be
15 relieved at some point in the future, but the one who's
16 currently noticed on his appeal has indicated to me an intent
17 to object to this condition.

18 THE COURT: Well, I'm talking about at the time.
19 I've read the sentencing transcript. No objection is made to
20 that information, no request to correct.

21 MS. TRIMBLE: Yes.

22 THE COURT: I had the docket pulled. There's no
23 Rule 32 motion filed saying these are unreliable facts or we
24 contest these things, none of that.

25 MS. TRIMBLE: Yes. So, your Honor, my

1 understanding is that that was the basis for -- part of the
2 basis for the conflict hearing is that this objection -- Mr.
3 Chaker wanted this objection to be made, this objection was
4 not made. What I can also represent --

5 THE COURT: Was he granted new counsel?

6 MS. TRIMBLE: Yes, your Honor. Well, trial counsel
7 was relieved, and he's now got different counsel for an
8 appeal.

9 THE COURT: Oh, okay.

10 MS. TRIMBLE: That's actually reflected in this
11 letter itself is that he no longer had trial --

12 THE COURT: I want to make sure I understand the
13 sequence. Was the motion to relieve counsel made before the
14 sentencing or after?

15 MS. TRIMBLE: I believe it was after. It was
16 after.

17 THE COURT: Well, okay. I mean the arrow's sort of
18 left the bow at that point.

19 MS. TRIMBLE: Well, he --

20 THE COURT: You can't say well -- you know, unless
21 it's an incompetency of counsel that he, you know, he didn't
22 advise me, I would be pretty skeptical of that in light of
23 the proficiency with the law and the cases in Mr. Chaker's
24 personal letter to the judge; he appears to be well beyond
25 the ken of -- is he a lawyer?

1 MS. TRIMBLE: No, your Honor, but I think --

2 THE COURT: Does he have legal training?

3 MS. TRIMBLE: He's not Barred. He's certainly
4 not -- he can't practice on his own in the law.

5 THE COURT: Has he gone to law school?

6 MS. TRIMBLE: I believe there's some law training.

7 THE COURT: Yeah because the letter looks it's
8 written by a lawyer, the personal letter to the judge, and I
9 would think that if the lawyer didn't make the objection, Mr.
10 Chaker was certainly in a position, given, you know, what
11 I --

12 MS. TRIMBLE: Well --

13 THE COURT: -- given the competency that I see in
14 this letter to the judge afterwards to say judge, hold on a
15 second here, I don't think you can impose a condition like
16 that.

17 MS. TRIMBLE: Well, in fact, your Honor, I think he
18 did do that. My review of many of the transcripts here
19 reflects that Mr. Chaker was always represented by an
20 attorney, and many of his filings that he did without his
21 attorney were not recognized. That letter itself indicates
22 that Mr. Chaker's requesting appointment of counsel to
23 challenge these very conditions.

24 THE COURT: Yeah, but it comes late. I mean the
25 conditions have been imposed. He had an opportunity at the

1 time of the sentencing to address the judge, and I agree with
2 you, as I read this, he did address the judge. He asked for
3 clarification, the judge provided it -- that's what led to
4 the bifurcated discussion of how one harasses somebody
5 else -- and then Mr. Chaker says yeah, I get it -- because
6 the judge said in essence, do you understand what -- the gist
7 of this, and tried to say this isn't a blanket prohibition on
8 you expressing First Amendment rights, but I don't want you
9 harassing or stalking, and -- I mean the obvious context of
10 this is here's a probation report with all these instances in
11 it where he's done things and the judge doesn't want him to
12 do those things anymore, and Mr. Chaker clarifies that, and
13 the judge sets some limits on the extent of restriction of
14 First Amendment rights, and Mr. Chaker says okay, I get it.

15 MS. TRIMBLE: Well, your Honor, and that's why it's
16 so important to recognize that the condition about posting
17 information of others and defamation was not discussed at
18 sentencing as a specific condition against Mr. Chaker, and so
19 he didn't have the opportunity to object to that portion of
20 the condition at the sentencing hearing. When he saw the
21 written judgment, he responded by explaining exactly that to
22 the judge; that's what's in this letter is him explaining
23 that this portion of the condition was not sufficiently
24 explained to him at sentencing and shouldn't be a part of his
25 written judgment.

1 THE COURT: Was this letter written after the
2 petition was filed or before?

3 MS. TRIMBLE: Before.

4 THE COURT: All right.

5 MS. TRIMBLE: And, your Honor, that brings me
6 actually to the petition itself. There's actually two
7 petitions; I'm not sure your Honor has them both in front of
8 you. There's an amended petition --

9 THE COURT: Let me make sure. I'm operating off
10 one that just has two allegations. Is there something more
11 than that?

12 MS. TRIMBLE: Yes, your Honor, there's an amended
13 petition with allegations 3 and 4.

14 THE COURT: Oh, oh. You know what? I remember
15 that now because that was produced to me. So 3 is that he
16 committed harassment in violation of a Nevada statute; and 4
17 is that he made contact with -- I'm assuming it's Ms. Fazel
18 and --

19 MS. TRIMBLE: Four relates to Mr. McMillan I
20 believe.

21 THE COURT: Four relates to --

22 MS. TRIMBLE: Mr. McMillan.

23 THE COURT: -- Mr. McMillan, okay, yeah, in
24 violation of California statutes.

25 MS. TRIMBLE: Yes, your Honor. And so this

1 petition and the police reports that were relied upon to
2 write this petition, the police reports specifically were
3 provided to me after our hearing in this case and after I
4 filed my motion. You may recall that at the time of the
5 hearing, I was challenging the third allegation specifically,
6 saying that the allegations written in the petition itself
7 didn't support a finding that this condition had been
8 violated and therefore that there was no probable cause to
9 believe the condition had been violated.

10 I am reraising that argument now because having
11 received the actual police report, which was provided to me
12 by the probation office, there is a specific finding by the
13 law enforcement agency which says, quote, all of the evidence
14 was reviewed and doesn't rise to the level of criminal
15 harassment. And so I think the probation office here filed a
16 petition, asserted allegations that there was probable cause
17 that this had actually occurred, that he had violated the
18 law, when the only information they relied upon actually
19 refuted that conclusion and said there was --

20 THE COURT: I'm not sure I'd read that police
21 report that way. They may not think there's a prosecutable
22 in case beyond a reasonable doubt; that doesn't mean that
23 they're saying there's no probable cause to believe that he
24 could be arrested for it or charges could be considered
25 against him.

1 MS. TRIMBLE: Respectfully, your Honor, I think the
2 phrase "doesn't rise to the level of criminal harassment" can
3 only mean that it doesn't give rise to the conclusion that
4 harassment occurred, not that it shouldn't be prosecuted, but
5 that all of the evidence does not support a finding of
6 harassment.

7 THE COURT: Of course that -- I don't think those
8 reports were presented to me. I got a summary in the form of
9 the amended petition --

10 MS. TRIMBLE: Yeah, that was an objection that I
11 made at the prior hearing, that they hadn't been provided to
12 me. Now that they have been provided to me, I think they
13 support my argument that allegation 3 should be dismissed
14 outright.

15 THE COURT: But I'm certainly not bound by their
16 conclusion, right?

17 MS. TRIMBLE: Well, your Honor, I think you're
18 bound to determine whether this petition is supported by
19 allegations to show probable cause.

20 THE COURT: Right.

21 MS. TRIMBLE: This petition was written -- I mean
22 before there's a hearing.

23 THE COURT: Right. But I don't have to agree with
24 the cops' take on it. I mean I look at the Nevada statute
25 and say does this conduct in my judgment amount to probable

1 cause, and --

2 MS. TRIMBLE: Certainly.

3 THE COURT: -- only if I say no, it doesn't does
4 that --

5 MS. TRIMBLE: Certainly, your Honor, if it was
6 appropriate to get to the point of a hearing. My point is
7 this petition was written -- it's akin to a probable cause
8 statement that doesn't include probable cause in it. You
9 can't go forward on a complaint that didn't -- wasn't
10 supported by probable cause at the time that it was filed.

11 THE COURT: It's a question of who gets to decide
12 that, and I think the probation officer has the right to make
13 an independent determination. He's not bound by the police's
14 determination either. I mean --

15 MS. TRIMBLE: Well --

16 THE COURT: -- he can look at the facts and look at
17 the statute and say yeah, I think there's probable cause that
18 he violated the --

19 MS. TRIMBLE: Well, your Honor, and that leads to
20 another concern that I have about this condition, which is
21 related to my argument I made about the case -- I believe
22 it's called Gnirke -- it starts with a G -- which is that
23 this condition is not the type of condition that probation
24 officers normally are expected to police basically, and I
25 don't think they -- actually this reading supports my

1 conclusion that this probation officer is not -- and I mean
2 no disrespect here --

3 THE COURT: Right.

4 MS. TRIMBLE: -- but he's not familiar with the
5 legal definition of defamation or stalking or harassment
6 particularly because defamation is a civil tort; it's not
7 something that he would ever deal with in his day-to-day --

8 THE COURT: Why do I have to reach 3 and 4 anyway?
9 They just look like restatements of 1 and 2. I mean the
10 difference is that they tie it in to some criminal statute
11 and say he violated the other conditions about not committing
12 another federal, state, or local crime. I mean if 1 and 2
13 are --

14 MS. TRIMBLE: Well --

15 THE COURT: -- sustained, who cares about whether
16 he also violated a local statute, whether Nevada or
17 California?

18 MS. TRIMBLE: Well, your Honor, it's -- the amended
19 petition is the only one that asserts that he violated the
20 condition of not committing another federal, state, or local
21 crime, and I don't think it's sufficiently supported, so I
22 think we can only go forward on a hearing as to whether he
23 violated the conditions of stalking.

24 THE COURT: Do you agree that the probable cause is
25 lacking for condition -- or allegation 3?

1 MR. JONES: I don't, your Honor. I think the fact
2 that a police officer in Nevada determined in his judgment
3 that there wasn't -- I think the Court's observation he was
4 probably referring to beyond a reasonable doubt is correct.
5 The observation by an officer in Nevada that he didn't think
6 the state of Nevada could prove the case beyond a reasonable
7 doubt has no bearing whatsoever both because the Court is not
8 bound by that officer's determination but also because
9 probable cause and reasonable doubt are two completely
10 different standards, and --

11 THE COURT: Did he get arrested by authorities in
12 Nevada?

13 MS. TRIMBLE: No, your Honor, and he was never
14 arrested by the authorities in California for the California
15 statute either.

16 THE COURT: That interpretation would make more
17 sense if he'd been arrested because I would think a Nevada
18 police officer or supervisor or somebody reviewing reports of
19 arresting officers would be very reluctant to say this wasn't
20 a good arrest, it was not founded on probable cause because
21 that would lead to civil liability. So that sort of supports
22 what Ms. Trimble is saying about the effect that should be
23 given to this languages that he used -- what was it again,
24 the conclusion?

25 MS. TRIMBLE: All evidence was reviewed, and it

1 does not rise to the level of criminal harassment.

2 MR. JONES: Your Honor, we decide --

3 THE COURT: If he's not arrested, then I could see
4 him saying that because they say, you know, we don't -- we
5 don't find it. But to me it -- typically when they say that,
6 Ms. Trimble, it means they don't think they've got a case
7 that they can prove in court, not that they can't arrest a
8 guy and keep him in custody for a while based on it. But
9 it's unclear here what's meant by that.

10 MR. JONES: Your Honor, we routinely decline to
11 indict people that we have probable cause --

12 THE COURT: No, I know.

13 MR. JONES: -- committed an offense, and --

14 THE COURT: Yeah, I know. Here's the bottom line.
15 Even -- even if that was his intention, that he thinks
16 there's no probable cause, that doesn't bind me, it doesn't
17 bind the probation officer in interpreting a condition of
18 federal supervised release. But then the next question is in
19 the Nevada Revised Statutes that forbid harassment, do we
20 know how that's defined or what the elements are or --

21 MR. JONES: We do, your Honor. I have printed out
22 that statute as well as the California statute for the --

23 THE COURT: Do you have a copy of that, Ms.
24 Trimble?

25 MS. TRIMBLE: Not from the government, your Honor.

1 THE COURT: So let me deal with that issue first;
2 I'll deal with the issue whether probable cause, the
3 challenge now, should be sustained, but I need to look at the
4 statute.

5 MR. JONES: May I approach?

6 THE COURT: Yeah, please.

7 MR. JONES: I'm handing up both the California
8 statute and the Nevada statute.

9 THE COURT: Now, which -- Mr. Jones, which
10 provision? Because Nevada says you can harass somebody in
11 four discrete ways: Cause bodily injury to the future -- in
12 the future to the person threatened; that's not implicated
13 here, right?

14 MR. JONES: It actually might be, your Honor.

15 THE COURT: Well, I mean is there -- what language
16 would you point to in anything in the petition --

17 MR. JONES: Your Honor, Mister -- the government
18 believes that Mr. Chaker made comments -- it's not a direct
19 threat -- Mr. Chaker made comments s regarding Investigator
20 Fazel's family that could only be interpreted as potentially
21 threatening -- well, not could only be but --

22 THE COURT: Well, which one specifically? I mean
23 I'm looking at page 2 of the amended petition, and it
24 essentially accuses the Nevada AG investigator of perjury,
25 right?

1 MR. JONES: Among other things, your Honor, yes.

2 THE COURT: Well, they talk about online rants, but
3 the gist of what I see in the paragraph is he goes online and
4 says she's a perjurer --

5 MR. JONES: Your Honor, if I could draw your -- the
6 Court's attention to the bottom paragraph on page 2 of the
7 original -- bottom paragraph of the original --

8 THE COURT: -- petition?

9 MR. JONES: Yes, sir. Towards the middle of that
10 paragraph, there's a sentence: Ms. Fazel interpreted the
11 comments Mr. Chaker made about speaking to her neighbors and
12 that he had personal information about her family members to
13 be implied threats. Now, the petition doesn't contain the
14 substance of those communications, but I intend to prove them
15 in the hearing.

16 THE COURT: Let me deal with the other ways that a
17 person commits harassment under the Nevada statute. There's
18 no allegation that he threatened to cause physical damage to
19 property, right?

20 MR. JONES: No.

21 THE COURT: No allegation that he subjected anyone
22 to the threat of physical confinement or restraint?

23 MR. JONES: No.

24 THE COURT: And I'm not sure about the fourth one,
25 to do any act intended to substantially harm a person,

1 threaten, or any other person with respect to his or her
2 physical or mental health or safety. You think that that is
3 implicated, physical safety?

4 MR. JONES: I think both physical and mental
5 health.

6 THE COURT: All right. Well, so the question is is
7 there probable cause to believe that 4 -- on the face of the
8 amended petition and without regard to knowing what
9 harassment is under Nevada law, then I'd say yes; but when I
10 look at this, I too would have a question about whether
11 technically -- I mean we've got a couple of degrees of nuance
12 here, Mr. Jones. First, I'm not sure I agree with her that
13 whatever Mr. Chaker said implied a threat to physically harm
14 anyone; that's one. I mean the actual words, do they lend
15 themselves to that, the reasonable construction?

16 The second is this is all coming through the filter
17 of the investigator. She's says I took it that way. Well,
18 that's great, but this statute doesn't focus on, you know,
19 the subjective feelings of an intended victim. I think it's
20 an objective analysis of whether what the person does would
21 be construed by a reasonable person to say that's likely a
22 threat to somebody's physical safety.

23 MR. JONES: Your Honor, I have that -- the
24 statement made by Mr. Chaker. It's somewhat unusual to try
25 to introduce it now, but I can read it for the Court, and I

1 believe that -- well, that's what I have.

2 THE COURT: What is it?

3 MS. TRIMBLE: Well, your Honor, at this point I
4 would just point out that's not actually in the petition, so
5 I'm not sure that it can support --

6 THE COURT: Right.

7 MS. TRIMBLE: -- the Court's finding of probable
8 cause as alleged in the petition.

9 MR. JONES: Of course, it's not just the
10 allegation, it's -- the paragraph on page 2 of the original
11 petition -- the allegations on this -- in the amended
12 petition should be read in context of --

13 THE COURT: Yeah, I agree, I agree with that.

14 MR. JONES: Also, as the probation officer points
15 out, Mr. Chaker's numerous requests for Ms. Fazel's personal
16 information.

17 THE COURT: Well, okay. Here's how I'm going to
18 treat this. I don't find it lacking in probable cause on the
19 face. I -- depending on what the witness says, I think it's
20 going to turn on whether the -- whatever he allegedly said
21 was -- could be interpreted by a reasonable person as a
22 threat of some kind of physical harm or threatens somebody's
23 safety. If it doesn't, if it's not susceptible to that, then
24 I'll under -- I'll entertain your challenge to dismiss that
25 for lack of probable cause, but I think that's going to take

1 evidence. I'm not prepared to dismiss it in light of the --
2 I agree with Mr. Jones that the two petitions, the amended
3 and the original, should be read in light of one another and
4 in conjunction with another one. There is additional
5 information. She says -- you know, and I'm crediting
6 somebody who I think has a law enforcement position and is
7 saying that, you know, I interpreted this to be a threat of
8 physical harm. I probably should have underscored that and
9 said tell me exactly what was said and why she interpreted it
10 that way, but I think there was enough for me sign off on it.
11 Now, that doesn't foreclose you from saying wait a minute,
12 it's not as it seems, it was lacking in probable cause.

13 MS. TRIMBLE: Yes.

14 THE COURT: So I'll leave that -- I'll leave that
15 to an evidential portion. And maybe it won't matter if your
16 other -- if your other arguments are accepted anyway, right?

17 MS. TRIMBLE: Yes, your Honor. And since the
18 government passed forward the statute that relates to
19 allegation 4, I would just make the same argument there that
20 the allegations contained in the petition don't support a
21 finding that this statute was violated.

22 THE COURT: This is in terms of California law?

23 MS. TRIMBLE: Yeah, this section 653 (m). So the
24 petition alleges that he violated this statute through, if
25 you read the last paragraph, it's 13 emails in the last three

1 months to Mr. McMillan. Mr. McMillan is the attorney of
2 record in a custody proceeding that Mr. Chaker is
3 representing himself in. So if you look at the statute
4 itself, section B specifically says that nothing in this
5 subdivision applies to telephone calls or electronic contacts
6 made in good faith or during the ordinary course and scope of
7 business. And if you read the petition, it's explicitly
8 discussing how Mr. Chaker is contacting Mr. McMillan about
9 the custody proceeding.

10 THE COURT: How can it be in good faith? The
11 allegation that he alleges Mr. McMillan molested his
12 daughter, right?

13 MS. TRIMBLE: Well, your Honor, actually the
14 allegation is that in the emails he's demanding partial
15 custody and visitation rights to his son.

16 THE COURT: I don't have a problem with that. I
17 don't think that's the gist of the allegation because he's in
18 a custody dispute and Mr. McMillan's representing the mother
19 of the child. That's not harassment for him to communicate
20 directly with the lawyer about that. This -- the focus of
21 this is that on some public posting he's alleging that
22 McMillan molested his own daughter --

23 MS. TRIMBLE: Well, your Honor --

24 THE COURT: -- and that's very different, right?

25 MS. TRIMBLE: -- I don't think allegation 4 relates

1 to any public posting. My reading of this petition is that
2 allegation 4 is simply talking about these 13 emails because
3 it's specifically alleging a violation of this statute, which
4 is only about electronic communications.

5 THE COURT: I read 4, as I mentioned, in connection
6 with 2, and I thought that by -- what's alleged in 2 is that
7 he posted personal information that defamed Mr. McMillan's
8 character on the Internet. I read that in conjunction with 4
9 and believed that those are the postings that 4 relates to or
10 electronic communications containing the same information.

11 MS. TRIMBLE: Well, your Honor, I think reading the
12 amended petition, the explanation of allegation 4 is not
13 referring back to allegation 2; it's just talking about these
14 13 emails, and it's talking about how the police reviewed
15 these 13 emails.

16 THE COURT: Yeah, but it's tied -- it's tied to a
17 threat. It says, In the emails Mr. Chaker demanded that he
18 get partial custody and visitation rights to his son or else
19 he would spread false accusations to over 200 lawyers in San
20 Diego that Mr. McMillan's a child molester and that his
21 daughter is the victim.

22 MS. TRIMBLE: Well, first, your Honor, I would take
23 an objection to saying false accusations there, which this
24 will come out at the evidentiary hearing, but I think
25 Mr. Chaker had a basis for believing these accusations to be

1 true. But nonetheless, my point is that --

2 THE COURT: But why -- I mean what's okay about
3 threatening to expose that to 200 lawyers as kind of a quid
4 pro quo: Do what I want or I'm going to disseminate this to
5 other lawyers in San Diego. And --

6 MS. TRIMBLE: Your Honor -- and this is where it's
7 very important to remember that Mr. Chaker is not an
8 attorney. I think the substance of this email, the majority
9 of the email is discussing his custody proceedings.
10 There's --

11 THE COURT: Well, you and I have a different view
12 of his level of sophistication. I mean, honestly, the
13 impression one gets from both reading the transcript of the
14 sentencing and looking at the probation report is that this
15 is a very capable, wily guy, knows what the law is, or at
16 least thinks he does, and does a very credible job, whether
17 he's a licensed lawyer or not. And the impression I get is
18 it's a guy that's trying to exploit what he thinks are
19 loopholes in -- in language used.

20 MS. TRIMBLE: Well --

21 THE COURT: That's the impression I get. So it's
22 not like he bungled into this and didn't understand what he
23 was doing; I think he -- it strikes me as all very
24 deliberate. Now, you know, that could be and it could still
25 not be a violation, so I accept that, but I don't have the

1 impression at all from looking at everything, including pages
2 3 through 8 of the original probation report and the
3 sentencing transcript, that this is really a question about
4 him not legitimately understanding.

5 MS. TRIMBLE: Well --

6 THE COURT: The impression I get is he understood
7 full well and he's trying to exploit what he thinks are
8 loopholes or insufficiencies in the judge's sentencing
9 pronouncement.

10 MS. TRIMBLE: Yes, your Honor. And just for
11 clarity of my argument, I had requested from the government
12 that they provide me with all 13 of these emails so that I
13 could review them themselves. Mr. Jones has expressed to me
14 that they were provided to me in the course of about 400
15 pages of discovery. From what I've uncovered, the emails
16 that I can identify as maybe being one of these 13 -- because
17 they were never pulled out for me separately -- I think they
18 do not -- I don't think they relate to the child molestation
19 allegation. I think --

20 THE COURT: Well, does it say something like what's
21 repeated here or what's represented here that, you know, do
22 this or else I'm going to expose you as a child molester? Is
23 there an email that the gist of which says that?

24 MS. TRIMBLE: My recollection of the email is if we
25 can resolve this custody dispute, the blog will be taken

1 down.

2 THE COURT: Okay.

3 MS. TRIMBLE: And the blog had posting -- the
4 majority of the postings on the blog are actually -- connect
5 links to some of Mr. McMillan's prior cases that he had lost,
6 and so that's what Mr. Chaker's talking about when he's
7 saying it's not helping him to get any business.

8 THE COURT: Mr. Jones, have you turned over all 13
9 emails? I mean you may have turned them over along with a
10 bunch of other stuff. I assume you didn't shuffle the deck,
11 it's just the way it came out and you turned all this stuff
12 over?

13 MR. JONES: That's correct, your Honor. And I
14 haven't -- I haven't counted them. I don't know -- as I told
15 counsel before the hearing, I don't know that there are 13.
16 There are certainly some.

17 THE COURT: Who used the number 13, Mr. McMillan?

18 MS. TRIMBLE: Yes.

19 MR. JONES: It was in the -- I don't know how it
20 got -- I'm not sure of the origin of it, your Honor.

21 THE COURT: All right. So, Ms. Trimble, here's how
22 I'll resolve -- Ms. Trimble, here's how I'll resolve that.
23 I'm going to reserve on the challenge to probable cause as to
24 allegation 4. You will be permitted -- you know, if we need
25 to get to that, you will be permitted to examine Mr.

1 McMillan, and you can ask him directly -- I'm assuming he's
2 got a file with him -- about the 13, where the number came
3 up, whether he has those with him today. You can certainly
4 look at those if they're the basis of his allegation to the
5 police or the probation officer.

6 Anything else on the -- on the motion other than
7 what's been addressed in the papers and by you today, Ms.
8 Trimble?

9 MS. TRIMBLE: Your Honor, I think I already
10 addressed that I think this condition is inappropriate in the
11 sense that the probation office is not equipped to evaluate
12 whether it's been violated to the extent that we're -- that
13 they're arguing that it includes civil harassment, civil
14 stalking, or civil defamation because when it comes to those
15 civil statutes, there are many defenses that are available to
16 Mr. Chaker should Mr. McMillan or Ms. Fazel file a lawsuit
17 against him, including anti-SLAPP and the litigation
18 privilege. And so I think when you include this as a
19 allegation -- as a condition of supervised release, that is
20 suppressing or chilling Mr. Chaker's First Amendment rights.
21 That's the purpose of the anti-SLAPP statute is to make sure
22 not to infringe on First Amendment rights. And so I think --

23 THE COURT: Well, wait, wait. And see, here's
24 where I'm in partial disagreement with you. I think a
25 condition can be set that does impair First Amendment rights.

1 They're not exactly sacrosanct when it comes to supervised
2 release. I mean obviously, you know, people have a First
3 Amendment right to browse the Internet, right, and look for
4 information, but we tell people convicted of trafficking in
5 child porn you can't look at the Internet, you can't have
6 access to it. Now, somebody might say no, that violates my
7 rights. Well, yeah, it does, but you don't have the same
8 rights as somebody who's not been convicted of a felony --

9 MS. TRIMBLE: Certainly, your Honor.

10 THE COURT: -- and as long as the condition
11 reasonably relates to the objectives of supervised release,
12 it can be set.

13 MS. TRIMBLE: Now --

14 THE COURT: I understand -- I understand greater
15 scrutiny is given to conditions that impinge on fundamental
16 rights, but I disagree that a Court can't set a condition
17 that impinges fundamental rights.

18 MS. TRIMBLE: Right, your Honor.

19 THE COURT: It can under certain circumstances.

20 MS. TRIMBLE: I actually agree with you. I just
21 don't think the Court did in this instance because the Court
22 so very clearly at the sentencing hearing assured Mr. Chaker
23 that he maintained all of his First Amendment rights, so --

24 THE COURT: Told him -- told him in another breath
25 though that they didn't want him to harass other people.

1 MS. TRIMBLE: Well --

2 THE COURT: -- using the Internet.

3 MS. TRIMBLE: -- as a discussion of the counseling
4 that he should receive and the way he should handle his anger
5 in the future.

6 THE COURT: Look, we can't overlook that the judge
7 had read the probation report, and the probation report
8 documented instances where he had harassed other people using
9 the Internet, and he --

10 MS. TRIMBLE: Yes, your Honor, but one of my
11 concerns about just relying on the probation report is Ninth
12 Circuit law is very clear that any special condition like
13 this needs to be specifically supported by arguments from the
14 government, who did not support this condition; this was
15 imposed by the judge on its own, and --

16 THE COURT: That's an interesting -- there's an
17 interesting question here. Is there -- I mean this is a --
18 this is a petition from the what, Fifth Circuit, right?

19 MS. TRIMBLE: Fifth Circuit, yes, your Honor.

20 THE COURT: So I mean is it Ninth Circuit gloss on
21 supervised release that I have to follow? I took this as a
22 transfer petition, and ultimately, you know, he's still
23 answerable I assume -- I mean -- and the case hasn't been
24 transferred to me for all purposes, just for this.

25 MS. TRIMBLE: Yes, your Honor. That was a question

1 I wasn't actually able to answer in my own research. I
2 argued pursuant to Ninth Circuit law because I think fairly
3 now he's being supervised in the Ninth Circuit and so the
4 Ninth Circuit law should be controlling here, and --

5 THE COURT: That makes sense to me. You agree with
6 that?

7 MR. JONES: I don't know the answer to that
8 question, your Honor, and --

9 THE COURT: We don't even -- we don't even know
10 that Fifth Circuit law is different, right, at this point --

11 MS. TRIMBLE: Right, your Honor.

12 THE COURT: -- or do we?

13 MS. TRIMBLE: No, I don't know, your Honor.

14 MR. JONES: If it is, I don't know that applying
15 Ninth Circuit law retroactively to a decision of a district
16 court sitting in the Fifth Circuit is the appropriate thing
17 to do. I have done zero research on the topic --

18 THE COURT: All right. We'll leave that as an open
19 issue. I'm inclined to agree, particularly since no one can
20 say well, there's a difference between the way the two
21 circuits have interpreted this provision. I'm inclined to
22 think it's not going to matter, but we can get to that. All
23 right. Anything else, Ms. Trimble?

24 MS. TRIMBLE: No, your Honor.

25 THE COURT: Mr. Jones?

1 MR. JONES: No, your Honor. Thank you.

2 THE COURT: On the motion to dismiss, which I think
3 I properly characterized as consisting of three parts, now
4 four, a challenge to probable cause too, the Court finds as
5 follows. First, let me say this generally about supervised
6 release conditions -- and I acknowledge that this is the law
7 of the United States, not peculiar to the Ninth Circuit as I
8 understand it, but the law of the United States -- with
9 respect to supervised release conditions, they must
10 reasonably relate to the nature and circumstances of the
11 offense or the history and characteristics of the defendant.
12 That is pursuant to statute, 18 USC 3583 (d) (1) and 18 USC
13 3583 (a) (1); both either directly say that or imply that.

14 So the first question I ask is are these conditions
15 reasonably related either to the offense or to Mr. Chaker.
16 They're not so much related to the offense here, maybe a
17 little bit because looked like he engaged in some threatening
18 conduct with respect to the underlying offense, but it was,
19 after all, a bankruptcy fraud, right? Wasn't that what it
20 was? And so it's not directly related to that; however, I do
21 find that the conditions, all four of them, leaving aside for
22 a minute the question about whether what he did amounts to
23 harassment under the respective Nevada and California
24 statutes, leaving that aside, I do find that the
25 characteristic -- excuse me -- that the conditions relate to

1 characteristics of the defendant that the judge was
2 well-aware of because they were documented to -- they were
3 documented in what was an unobjected-to probation report. I
4 mean there are serial instances of him harassing people and
5 trying to extort people by threatening to expose information
6 and then actually exposing people and using information -- I
7 won't call it defamatory, but that was certainly
8 humiliating -- I mean naked pictures of your ex-girlfriend
9 disseminated at her workplace -- and I'm convinced that the
10 judge who sentenced Mr. Chaker had that conduct in mind along
11 with parallel conduct with respect to the offense of
12 conviction where there was some threats, some bullying that
13 went into the investigation of that. So for starters, I
14 believe that the conditions were properly set.

15 Ms. Trimble has argued that well, they were too
16 ambiguous in the sentencing pronouncement, there was
17 ambiguity between the sentencing pronouncement and the
18 written conditions. And I agree with her that if there is
19 such of ambiguity, that the judge's oral pronouncements of
20 sentencing control over anything written. What I don't agree
21 with is that's there's ambiguity. What I see is that the
22 written conditions essentially track and augment the judge's
23 oral comments that were not as specific. There's certainly
24 no inconsistency in the written conditions and the oral
25 conditions. The written conditions specify forms of

1 harassment that Mr. Chaker can't engage in, and the judge was
2 very clear in telling him I don't want you harassing people,
3 and alluding to the Internet and Internet harassment. And
4 one reading the transcript in conjunction with the probation
5 report can only understand the judge's oral comments to be a
6 reflection of the judge's concern that he didn't want Mr.
7 Chaker doing what he'd done in the past with people, you
8 know, threatening to harass them in those ways.

9 So I don't find ambiguity between them. I don't
10 find that this is a situation where oral conditions trump
11 written conditions. A judge isn't required to tick off all
12 of the conditions. There's certain standard conditions, and
13 as long as there's no inconsistency, there's no occasion for
14 this Court to say well, the oral pronouncements trump the
15 written pronouncements. I see them -- I see the oral --
16 excuse me -- the written pronouncements as essentially an
17 elaboration and a specification. And it makes perfect sense
18 that the judge would want to do that in light of Mr. Chaker
19 questioning the judge at the time and them having a colloquy
20 about just what's permitted and what's not. And, again, I
21 note that Mr. Chaker at the end of his inquiries was told by
22 the judge what would be permitted, what the latitude was, and
23 then indicated in the sentencing transcript that he
24 understood the judge's explanation at the time.

25 So I deny the motion to the extent it's based on

1 inconsistency between the written judgment and the oral
2 pronouncements of the Court. Again, I see no inconsistency,
3 and I don't even really see ambiguity. I just see the pencil
4 being sharpened when the written conditions that he received
5 are given, and the written conditions much more specifically
6 and in a more articulate way reflect the oral statements of
7 the judge at the hearing.

8 The next question has to do with the conditions
9 themselves and whether they were constitutional to impose.
10 I've already found that the conditions are proper supervised
11 release conditions because at a minimum they reflect concerns
12 about the history and characteristics of the defendant. And
13 I've touched on this, and Ms. Trimble has said to me that in
14 a theoretical way she agrees with the concern I have voiced,
15 and this is the problem that I find with Mr. Chaker's letter
16 to the judge as well. The letter, and to some extent the
17 arguments made in favor of the motion to dismiss, presume
18 that a judge cannot set a condition that touches on First
19 Amendment conditions or restricts them. I mean that's in
20 essence what Mr. Chaker says. And the identification of
21 cases both in his letter and in the defense papers here cite
22 to cases where people are being tried for these offenses and
23 whether the proof is sufficient to make out the charge.
24 Well, of course you've got an array of defenses like true
25 threat, mentioned both in his letter and in your paperwork,

1 that would be defenses to the charge. We're beyond that
2 point. We're talking about conditions of supervised release.
3 He's a convicted felon at this point, and the same defenses
4 don't apply to the setting of supervised release conditions.

5 What is true is when rights and liberty interests
6 are implicated by a supervised release condition, the Ninth
7 Circuit at least scrutinizes these conditions more closely
8 and will strike them if they're not supported by the record
9 or they're inconsistent with the limitations imposed by 3583
10 (d). So unlike a clean slate where we're talking about
11 whether a person can be convicted of making a true threat and
12 there may be defenses to that, the supervised release
13 standard is different; they may be imposed, but they have to
14 be closely tied to an important objective of sentencing for
15 the offender, and they're given closer scrutiny than just
16 general conditions that don't implicate important rights and
17 liberty interests.

18 I've given these conditions that close scrutiny
19 here, and I do find that under the Ninth Circuit standard --
20 forget about Fifth Circuit law because I don't even know what
21 it is on these -- that here the conditions that are set, at
22 least conditions 1 and 2 in the original petition that are
23 challenged -- well, condition 1 -- there are two allegations
24 of violation of condition 1 -- relate to a condition that
25 forbade the defendant from stalking and/or harassing other

1 individuals, including but not limited to posting personal
2 information of others or defaming their character on the
3 Internet.

4 You know, whether a judge could order that in a
5 civil proceeding or order that in the absence of a conviction
6 and a person's being subject to supervised release is a
7 question I don't have to answer here. The answer seems clear
8 to me that in connection with the conviction of a felony and
9 a track record like that documented at pages 3 through 8 of
10 the probation report, that it's an entirely proper condition.
11 Yes, it impinges on Mr. Chaker's rights and liberties, but
12 no, it's -- I don't think it should be stricken given the --
13 what was at the time an uncontested background of harassing
14 people using the Internet and otherwise.

15 As to the precision of the language used, I've
16 already answered that to some extent in the denial of the
17 motion to dismiss based on ambiguity or alleged ambiguity
18 between the oral pronouncement and the written pronouncement.
19 But like the government, I rely on the Osinger case. I agree
20 that the terms "harass" and "substantial" -- well, not
21 substantial emotional duress, but "harass" and "stalk" are
22 terms that lend themselves to common understanding. And
23 again, the context is very important here. We're not writing
24 on a clean slate. We're talking about a fellow who, at least
25 according to the probation report, engaged in this kind of

1 conduct. The judge has read it. The judge then makes
2 pronouncements about what he can and can't do, and
3 specifically refers to posting defamatory information about
4 people on the Internet, and it had to be at the time Mr.
5 Chaker understood that that's what the judge was talking
6 about: I don't want you to do that type of thing, I don't
7 want you to extort people with threats that you're going to
8 expose things, I don't want you to do things like send naked
9 pictures of ex-girlfriends in exchange for getting your way.

10 So the language doesn't pose any problem either.
11 The words "harass" and "stalk" I think are -- lend themselves
12 to common understanding, and I find no defect in the
13 conditions that way.

14 Let's see. That leaves the probable cause
15 questions. Those are concerns to me. I think the petition
16 on its face asserted probable cause. That does not foreclose
17 at this point Ms. Trimble or Mr. Chaker from challenging
18 conditions 3 and 4 by saying look, all the conduct that they
19 can prove that he committed still doesn't fit within this --
20 Nevada's case, the case in Nevada law, a threat to personally
21 harm someone. I'll wait and hear what the evidence is on
22 that before I rule on that. I'm dubious that the kind of
23 things -- kinds of things that he did before, if that's
24 what's alleged here, that he did those again, amount to a
25 threat to do injury to someone, and I'll be interested in

1 what the witness says about why she thought or perceived that
2 it was a threat to her family. Likewise with respect to Mr.
3 McMillan and the California statute 653 (m). That statute
4 forbids annoying people by use of electronic communication
5 with, among other things, obscene language, threats to
6 inflict injury on person or property. So it appears to me
7 the California statute may be a little bit broader because
8 the threat -- I'm sorry -- intent to annoy -- actually it
9 appears to be the same. You agree with that, Mr. Jones, that
10 both statutes appear to forbid threats to inflict injury to
11 the person or property of another?

12 MR. JONES: Your Honor, I handed my copy of that
13 statute to Ms. Trimble.

14 MS. TRIMBLE: I'll give you that back.

15 MR. JONES: If I can. Yes, I'd agree with that.

16 THE COURT: Okay. So I'll judge both challenges to
17 the probable cause of allegations 3 and 4 on the basis of
18 whether anything fairly comes out as a threat to hurt
19 somebody, injure them, or injure their property. But with
20 respect to the other bases that I'm not reserving at this
21 point, the motion to dismiss, with all respect, is denied.
22 It's not a frivolous motion at all and particularly in light
23 of the fact that, as I said, the Ninth Circuit takes a very
24 close look at this. But I do find, to sum up, that it was a
25 proper condition given the history and characteristics that

1 the defendant presented, that were known to the judge, that
2 implicated to some extent the offense conduct -- not the
3 elements of the offense, bankruptcy fraud, so much but some
4 of the information on how that offense was committed and
5 actions taken by Mr. Chaker during the course of the
6 investigation of that case.

7 All of these things kind of screamed out, would
8 have screamed out to me as a sentencing judge, needed a
9 condition that this guy not threaten people anymore or harass
10 people or threaten to expose them because he's doing that,
11 and that's not -- not right. I think the condition was
12 proper, I think it was clear, I think it's legal. The motion
13 to dismiss with the exception of probable cause challenges to
14 3 and 4, which I'm reserving on, is denied.

15 Now, why don't we start at least with that so I can
16 complete the motion to dismiss. Let me hear from Mr.
17 McMillan and Ms. Fazel; is she here?

18 MS. TRIMBLE: Well, your Honor, if I could have a
19 brief moment, we may be able to reach a resolution given the
20 Court's decision --

21 THE COURT: Okay.

22 MS. TRIMBLE: If I can have a brief moment --

23 THE COURT: Sure, sure.

24 MS. TRIMBLE: -- with Mr. Chaker.

25 THE COURT: I'm willing to let you examine them on

1 just what was said that constitutes a threat to their safety
2 or to property. I don't even know that property is
3 indicated. I mean Ms. Fazel, I'm told, thought it was a
4 threat to her family, personal threat to her family. I don't
5 know what McMillan thought about that, but -- so that's what
6 is open to you if you want to go forward. Go ahead and speak
7 with Mr. Chaker.

8 MS. TRIMBLE: Okay.

9 MR. JONES: Your Honor, while Ms. Trimble speaks to
10 her client, may I confer with my witnesses?

11 THE COURT: Sure.

12 (Brief pause in the proceedings.)

13 MR. JONES: Your Honor, I believe we may have a
14 resolution.

15 THE COURT: Of the whole case?

16 MR. JONES: Of the whole case.

17 THE COURT: Okay. Sure.

18 MR. JONES: And I'm going to recite those terms in
19 terms of our agreement as I understand them and invite
20 Ms. Trimble to correct me if I misstate any of them.

21 THE COURT: So he says that there may be a
22 resolution to the allegations here.

23 MS. TRIMBLE: Yes, your Honor, with some evidence
24 entered to preserve the record.

25 THE COURT: Okay. Go ahead.

1 MR. JONES: Your Honor, it's my understanding that
2 Ms. Chaker is willing to admit all four violations contained
3 in both the original violation report and the supplemental
4 violation report -- or just the first two? Mr. Chaker's
5 prepared --

6 THE COURT: First two?

7 MR. JONES: Mr. Chaker's prepared to admit
8 allegations 1 and 2 in exchange for a government
9 recommendation of six months in custody. Mr. Chaker further
10 agrees that some documents that I have already shown to Ms.
11 Trimble can be introduced as they would constitute the
12 testimony of the witnesses if they were to be called.

13 THE COURT: Why do we need that if he's admitting
14 to the allegations? Why do we need proof -- I mean it's
15 either one or the other usually, right? Either you prove it
16 or a person admits it.

17 MS. TRIMBLE: Yes. Maybe I can provide some
18 clarity. Mr. Chaker's willing to admit to the behavior in
19 the allegations. What we're preserving is our legal argument
20 as to whether the behavior constitutes a violation of the
21 conditions.

22 THE COURT: Okay. But that really was sharpest
23 with respect to 3 and 4, which are being dropped.

24 MS. TRIMBLE: Your Honor, they are actually -- I
25 maintain those arguments with 1 and 2. It's just that I

1 had -- there was enough specificity in the petition there,
2 but --

3 THE COURT: Okay. All right. So I'll permit you
4 to put those in evidence then.

5 MR. JONES: Also Ms. Trimble has apparently three
6 documents that she has subpoenaed; we've agreed that the
7 Court can consider those as well, although those three
8 documents we would ask be sealed because they deal with
9 personal information of people not related to this case.

10 THE COURT: All right.

11 MR. JONES: And Ms. Trimble has agreed to recommend
12 six months in a halfway house should the Court choose to
13 impose that sanction.

14 THE COURT: What's the government's recommendation,
15 six months in custody?

16 MR. JONES: Six months in custody.

17 THE COURT: Okay.

18 MS. TRIMBLE: And, your Honor, just to be clear,
19 this agreement is to preserve Mr. Chaker's right to appeal
20 the legal issues --

21 THE COURT: Okay.

22 MS. TRIMBLE: -- based on the evidence presented.

23 THE COURT: Okay. All right. I'll accept the
24 agreement. Allegations 3 and 4 will be dismissed once he
25 admits to 1 and 2. I want to say a little bit more about

1 what I believe are the propriety of the conditions and the
2 Court's findings with respect to the motion to dismiss.

3 I've thought about this a little bit more, done a
4 little bit more looking at Ninth Circuit law. I'm going to
5 make this decision on the basis of Ninth Circuit law. It may
6 be -- and the government hasn't forfeited this argument;
7 they've frankly said they hadn't thought about it much. It
8 may that be that when a case comes on transfer from another
9 Court and the conditions were imposed by that other Court
10 that the law of that circuit applies. I don't know that, but
11 I'm going to assume otherwise; I'm going to assume Ninth
12 Circuit law applies here.

13 And with respect to that, if this sentencing had
14 taken place in the Ninth Circuit -- and it didn't; it took
15 place in Texas -- the Ninth Circuit has said that although a
16 district court is not ordinarily required to articulate its
17 reasons for imposing a condition of supervised release, an
18 exception applies when the condition implicates a, quote,
19 particularly significant liberty interest, end quote. I
20 assume that that includes First Amendment rights, that
21 they're included among the particularly significant liberty
22 interests, they are subsumed within the meaning of that term.
23 If a Court in the Ninth Circuit as a condition of supervised
24 release imposes such a condition, the district court is
25 required to support its decision by reference to record

1 evidence and must provide an explanation of why the
2 condition's necessary to support the condition and must also
3 be guided by the requirement that even if it does impose a
4 condition that impinges on a particularly significant liberty
5 interest, that the deprivation be no greater than necessary
6 to support the sentencing objective.

7 Here, again, applying that -- you want to listen to
8 this -- applying that Ninth Circuit standard, I have reviewed
9 the sentencing transcript, and -- I'm sorry, I've lost the
10 judge's name. Let me take a close look at this. It's Judge
11 Atlas, A-t-l-a-s, Judge Nancy Atlas, who sentenced Mr.
12 Chaker. And again, the context of this is it goes to a
13 condition that's related to his personal characteristics that
14 she thought important to police. At page 80 of the
15 transcript, she says this: "As a special condition, I have
16 several for supervision. I've been involved with the parties
17 in several hearings, the most important of which being the
18 hearing on Mr. Chaker's bond revocation, and I've received
19 extensive information about the conduct by Mr. Chaker that is
20 invasive. I don't know if it's illegal -- she's referring to
21 the conduct -- since he's not been charged with it, I'm not
22 saying it's criminal -- I too, Mr. Chaker, believe in the
23 First Amendment, as I told you at the end of the last
24 hearing -- but there's a difference between protecting your
25 First Amendment rights and harassing or invading the privacy

1 of others. So one of your conditions is that you may not
2 stalk or harass others." Mr. Chaker responds: "Yes, your
3 Honor." "And I'm going to for the supervision period
4 recommend that there be mental health counseling." She goes
5 on: "If, as, and when you are upset with someone who you
6 think has been unfair or mistreated, you need to deal with it
7 through the counselor and make considered and careful
8 judgments. You have the right of First Amendment right and a
9 right of free speech, but when you start threatening or
10 indirectly invading people's privacy or harm them by putting
11 things up on the Internet such as home addresses with
12 comments that you're going to -- you won't harm someone but
13 you know others may, that's not your problem, that's
14 upsetting to others. And just like in this case, I've agreed
15 to seal many papers on your behalf" -- she's referring here
16 to privacy interests involved -- "just like in the many cases
17 of your other proceedings, you have take or order seal things
18 so your privacy would not be invaded. I want you to
19 understand that you need to give the same courtesies to
20 others. They have the same sensibilities that you do."

21 So here I find that the judge's pronouncement is
22 specific, and the reason that the condition is set is
23 explained by reference to record evidence. Again, the judge
24 read the probation report, and five pages of the probation
25 report chronicle harassing actions by the defendant to some

1 extent involving the Internet and things being said on the
2 Internet and threats to expose people's privacy, make public
3 private matters on the Internet.

4 The Ninth Circuit requires that before setting a
5 condition, the district court has to undertake an
6 individualized review. I find that that happened here. The
7 judge's comments can't be interpreted any other way except
8 that through these series of bond hearings and reading the
9 probation report, she was aware of the defendant's proclivity
10 to resort to this kind of conduct. So the individualized
11 review I find was conducted on the record, and the judge was
12 well-aware of the nature of the relationship between the
13 defendant and other people who he gets sideways with and the
14 way he reacts to that. And I do find that that requirement,
15 perhaps not peculiar to the Ninth Circuit but certainly in
16 place here, was adhered to and that the restriction that the
17 judge placed on Mr. Chaker not to stalk or harass people
18 using the Internet was necessary to accomplish the goals of
19 deterrence and protecting the public and his own
20 rehabilitation in that regard complies fully with the
21 guidance in the recent case of United States v. Wolf Child at
22 699 F.3d 1082-1099, Ninth Circuit, 2012. So those are my
23 findings in support of the motion -- denial of the motion to
24 dismiss.

25 The probable cause challenge did not go to

1 allegations 1 and 2, so with 3 and 4 being dismissed -- you
2 know, I had thought about it some more, whether I dismiss it
3 for lack of probable cause or just because they can't make it
4 on the merits because the conduct doesn't amount to either
5 harassment under the Nevada or California statute doesn't
6 make a difference, but it's going away anyway. So if you
7 want to present some additional record evidence, you may do
8 so.

9 MR. JONES: We do, your Honor. And I've previously
10 shown these to Ms. Trimble. I will just hand them up to the
11 Court.

12 MS. TRIMBLE: And, your Honor, just for
13 clarification, I think we've actually agreed to just stick
14 with allegation 1 and leave allegation 2.

15 MR. JONES: That's correct.

16 THE COURT: Does 1 -- does 1 relate to Mr. McMillan
17 or Ms. Fazel?

18 MR. JONES: Ms. Fazel, your Honor.

19 THE COURT: So 2 is out?

20 MS. TRIMBLE: Yes, your Honor. They're all the
21 same grade, so we're just --

22 THE COURT: No, I understand. I mean it's up to
23 you. I'll -- look, technically he's on supervised release to
24 the Court, so the government -- it's not like executive
25 prerogative is in the -- or prosecutorial discretion, and I'm

1 a little concerned because the allegations as to Mr.
2 McMillan, you know, if untrue, are very defamatory, and I
3 don't like the fact it was kind of a quid pro quo, you know,
4 knock it off or I'm going to publish this to other lawyers.
5 I don't like that. I mean if that happened, I think that
6 needs to be accounted for too. All that to say I'm not sure
7 I'm prepared to dismiss allegation 2.

8 MR. JONES: May we have a minute?

9 THE COURT: Ms. Trimble, if you want to look -- you
10 know, if the problem is you haven't had a chance to talk to
11 Mr. McMillan or look at the emails that set up what is
12 alleged to be stop this or I'm going to publish this to 200
13 lawyers, then, you know, if that's the problem, then
14 certainly I want you to have an opportunity to look at
15 that --

16 MS. TRIMBLE: That's not the problem.

17 THE COURT: -- and make sure the allegation's
18 grounded in fact. But if that's the allegation, that's an
19 important allegation, and I don't want to just let it go. I
20 mean he's a lawyer, but he deserves the same kind of
21 protection from harassment, defamation --

22 MS. TRIMBLE: Well --

23 THE COURT: -- through harassment that Ms. Fazel
24 does.

25 MS. TRIMBLE: Your Honor, I think part of the

1 concern is he can also file a civil lawsuit against Mr.
2 Chaker, and --

3 THE COURT: Yeah, he can, but I mean that ignores
4 the fact that Mr. Chaker's on felony supervised release and
5 he was forbidden from doing this kind of thing, so --

6 MS. TRIMBLE: No, certainly, your Honor. I'm not
7 trying --

8 THE COURT: -- I don't want to set up open season
9 on lawyers just because they may have, you know, the ability
10 to deal with this in ways that lay people can't.

11 MS. TRIMBLE: No, your Honor. That's not what I
12 meant to be suggesting. What I'm explaining here is this.
13 It's not as if this is the only avenue for relief for Mr.
14 McMillan or any civilian. And were this to go forward now,
15 the standards of proof are different in civil lawsuits versus
16 criminal lawsuits, and --

17 THE COURT: I get that. I get all that.

18 MS. TRIMBLE: -- I think Mr. Jones would agree with
19 me that review of the entirety of the record, many questions
20 which won't come in here show the history between
21 Mr. McMillan and Mr. Chaker that perhaps the Court doesn't
22 want to get into, and we can resolve this with just
23 allegation 1.

24 THE COURT: Well, look. I get the gist of it just
25 by looking at the letter to the judge and, you know, reading

1 the probation report. But as I said, if -- and I'm
2 concentrating just on the one thing that's pretty discrete
3 here, that Mr. McMillan was essentially threatened that, you
4 know, you stop this, you give me visitation, you give me
5 custody rights to my kid or if you don't, I'm going to
6 publish on the Internet that you're a child molester. Now,
7 if that happened, I'm not going to let that go. We're going
8 to have to go to a hearing on 2 unless he admits that because
9 just because Mr. McMillan can sue him, I don't think that
10 absolves Mr. Chaker on the supervised release violation. I'm
11 not going to dismiss that.

12 MS. TRIMBLE: Your Honor, there's one -- I hate to
13 be a nuisance about this, but if I could just ask the
14 witnesses to step outside while we're working these out.
15 Again, they've reentered the courtroom.

16 THE COURT: All right.

17 MS. TRIMBLE: Your Honor, this -- with regards to
18 allegation 2 for Mr. McMillan, one of the allegations is
19 about a posting made on December 5. That posting
20 specifically was a comment that says someone who helps a
21 child molester. Mara Larkins read the report and
22 investigation into the crime of Scott McMillan, who was
23 arrested for molesting a child. And then it links to the
24 child molestation report. Mr. Chaker can admit to making
25 that posting if that would --

1 THE COURT: No. You know, look. Here's where you
2 may be righteous in saying if all he's doing is reporting on
3 things that are public record. That's not what troubles me.
4 What troubles me is what I view, if the allegation is
5 correct -- and it's in the summary -- as some extortion where
6 he's saying do this or I'm going to do this.

7 MS. TRIMBLE: Yeah. We clarified that, your Honor.
8 That email was sent before supervision began.

9 THE COURT: So it's not operative then?

10 MR. JONES: That's correct, your Honor. That --

11 THE COURT: Okay. Well, I don't want you to search
12 around for something that -- you know, to make out the
13 violation. That's what I thought the gist of it was.

14 MR. JONES: Your Honor, there was a pattern of
15 conduct that began actually the day before he was -- he went
16 on supervised release. That -- on September 18 he sent a
17 letter that the government would argue is extortionate.

18 THE COURT: Is that before he was on --

19 MR. JONES: One day before he was on supervised
20 release.

21 THE COURT: But it doesn't count then, right?

22 MR. JONES: It doesn't, your Honor. I intended to
23 introduce it as 404 (b) to show his intent, lack of mistake,
24 et cetera --

25 THE COURT: But it gets cloudy though because if

1 he's representing himself and Mr. McMillan's representing
2 his -- the mother of the child and they're back and forth on
3 things -- I mean unless it's something that amounts to a
4 threat like this day-before letter to expose McMillan if he
5 doesn't do a certain thing, then maybe there's not a basis in
6 fact for the second allegation. What else did he do after he
7 was on supervision that would amount to stalking or harassing
8 against Mr. McMillan?

9 MR. JONES: Your Honor, there was a series of
10 events. On December 3 Mr. Chaker sent Mr. McMillan an email
11 address from Mr. McMillan's email address. I believe it --

12 MS. TRIMBLE: Well --

13 MR. JONES: I don't how to answer the questions
14 without --

15 MS. TRIMBLE: Yeah. My only concern, your Honor,
16 is some of these allegations, the reason that we're
17 suggesting we can get around it without getting into it is I
18 think what Mr. Jones just pointed is an email sent from
19 Mr. McMillan's email address to Mr. McMillan's email address.
20 There's nothing to connect it to Mr. Chaker --

21 THE COURT: Except he's done that before, hasn't
22 he?

23 MS. TRIMBLE: I don't think so, your Honor.
24 Nothing that I've reviewed has shown him doing this before.
25 And, you know, I mean no disrespect to Mr. McMillan, but some

1 of what's alleged here are things that have occurred to me in
2 my own life, and I have no reason someone's doing it to me
3 like getting a warning from PayPal that someone's hacking
4 into my account and --

5 THE COURT: Oh, I get that. I thought there were
6 -- I thought there was evidence -- and I may be mistaken
7 because there's been a lot of material that I've reviewed --
8 but I thought that there was evidence that Mr. Chaker knew
9 how to appropriate somebody's email address and send emails
10 as if they were coming from that person. Is the only --

11 MS. TRIMBLE: It's Mr. Chaker's --

12 THE COURT: -- evidence of that that McMillan says
13 he thinks Chaker did it to him on this occasion?

14 MS. TRIMBLE: That's my reading of the evidence.

15 THE COURT: And what's the -- do you have an IP
16 address? Is there any proof that Mr. Chaker sent the email
17 to Mr. McMillan?

18 MR. JONES: Your Honor, I would be arguing that it
19 was consistent with -- consistent with the pattern of
20 behavior over that time period and --

21 THE COURT: Well, that may be, but is there any
22 evidence that links it to him?

23 MR. JONES: I can't prove it up to the Court.

24 THE COURT: Okay. Well, what else is there then?
25 I mean maybe I would reconsider dismissing 2 if there's not

1 anything more substantive. I was basing it mostly on an
2 email that you say now was sent before he was actually on
3 supervision. Is there anything else that would amount to --
4 that can be proved that amounts to harassment or stalking?
5 That kind of --

6 MR. JONES: I think it's --

7 THE COURT: -- infighting, that kind of infighting
8 would occur between lawyers on any domestic case I imagine,
9 you know, where they're sending things back and forth and I'm
10 going to put this in or I'm going to do that. That -- that
11 wouldn't qualify as harassment or stalking in my judgment.

12 MR. JONES: Your Honor, I think it's fair to
13 describe the content of the letter -- the email sent the day
14 before he went on supervised release as the government's best
15 evidence --

16 THE COURT: Okay.

17 MR. JONES: -- of harassment or stalking. And I
18 take the Court's comments about it not being executive
19 privilege to move to dismiss or to dismiss supervised release
20 allegations --

21 THE COURT: I said executive privilege. I'm caught
22 up in that because we have an executive that keeps using
23 that. I meant prosecutorial discretion. I don't -- I don't
24 think you have that here with respect to allegations of a
25 violation of essentially a court order.

1 MR. JONES: I agree with that, your Honor, and I --
2 please understand I didn't go into the agreement that he
3 would only admit to allegation 1 without thinking about
4 things like my ability to prove allegation number 2 or
5 otherwise --

6 THE COURT: Okay. All right. With that further
7 explanation and clarification then, I'll accept the agreement
8 with an admission only to allegation 1. That's what you
9 wanted, Ms. Trimble?

10 MS. TRIMBLE: Yes, your Honor.

11 THE COURT: Okay. You can ask the witnesses to
12 come back in if you want because I think Mr. McMillan
13 deserves to hear why, you know, his -- the allegations
14 respecting him are going by the by and by.

15 MS. TRIMBLE: Sure, your Honor. Just a moment to
16 explain to Mr. Chaker.

17 THE COURT: I note Mr. McMillan's present now.
18 And, Mr. McMillan, I was not inclined to dismiss the
19 allegations relating to you for the reasons that I said. It
20 turns out that the allegation that concerned me the most had
21 to do with what I view as an attempted extortion: Do this in
22 relation to the case or I'm going to publish facts that may
23 be untrue and defamatory against you.

24 The government concedes that the problem was that
25 email came to you one day before he was on supervised

1 release, so it cannot be the basis for a condition that was
2 not yet imposed; can't be the basis for finding a violation
3 on a condition that wasn't imposed yet. It's a day before he
4 was placed on supervised release that he sent that. Had he
5 sent it afterwards, then everything I said would apply, but
6 it was sent before, I'm told. So that said, the government
7 says that's their best evidence; that document was the best
8 evidence that Mr. Chaker stalked and harassed you. I'm going
9 to accept his admission to the first allegation, which
10 relates only to Ms. Fazel, but -- this will be some comfort
11 to you -- I'm going to place him again on supervised release,
12 and the conditions are going to be much more specific insofar
13 as they relate to both you and Ms. Fazel.

14 MS. TRIMBLE: Your Honor, just to be clear, the
15 admissions are admitting to posting what's on the Internet.
16 We still would like to argue as to whether those postings
17 actually violated the condition. So he's admitting to the
18 behavior, not to the violation. We're expediting the
19 evidentiary portion of the hearing.

20 THE COURT: All right. I understand. Was there
21 things that you wanted to file or make a matter of record
22 here?

23 MR. JONES: Yes, your Honor. I just have one
24 document that I've already shown --

25 THE COURT: And you have three that you wanted to

1 file under seal?

2 MS. TRIMBLE: Less of them now, your Honor.

3 THE COURT: Okay. All right.

4 MR. JONES: And I apologize for the condition of
5 this document. This is not how I expected to proceed here
6 today.

7 THE COURT: So is this gist of this then two --
8 pages 2 and 3 that -- I'm assuming those are posts by Mr.
9 Chaker.

10 MR. JONES: That's correct, your Honor.

11 THE COURT: Okay. Ms. Trimble, I'm happy to hear
12 from you about the substance of this.

13 MS. TRIMBLE: Yes, your Honor. And I have
14 responses to my subpoenas to provide the Court for some
15 context as to these postings. I provided them to the
16 government already. Did I give you the transcript?

17 MR. JONES: Yes.

18 MS. TRIMBLE: I'm providing a response to the
19 subpoena that we sent to Mr. Roddy at the superior court and
20 a response to the subpoena that we sent to the sheriff's
21 department.

22 THE COURT: All right.

23 MS. TRIMBLE: And also --

24 THE COURT: Do you have copies of these, Mr. Jones?

25 MR. JONES: I do, your Honor.

1 THE COURT: All right.

2 MS. TRIMBLE: And also the relevant portion of a
3 bond revocation hearing from November 26, 2013.

4 THE COURT: This was involving Mr. Chaker --

5 MS. TRIMBLE: Yes, your Honor.

6 THE COURT: -- in front of Judge Atlas. She had
7 talked about --

8 MS. TRIMBLE: I believe it was Judge Atlas. It was
9 one where Ms. Fazel testified.

10 THE COURT: Ms. Trimble, I'm sorry. Who's the
11 witness in the transcript?

12 MS. TRIMBLE: It's Ms. Fazel.

13 THE COURT: Okay. Let me make sure I understand
14 the three documents I've received regarding whether anyone
15 other than a member of the San Diego Sheriff's Department is
16 authorized to bring a firearm into the county court. Appears
17 to me that the answer is no, that only sheriffs are
18 authorized because they have bailiff responsibilities over
19 there and in protection of the judge and public, to bring
20 firearms in. I'm assuming that the rule is other law
21 enforcement officers, sworn peace officers, have to check
22 weapons before going into the building. Is that what
23 everybody understands the rule to be?

24 MS. TRIMBLE: Well, your Honor, that's precisely
25 where my argument comes from.

1 THE COURT: Is that what you understand the rule to
2 be over there?

3 MS. TRIMBLE: That's certainly what these documents
4 tend to show, so --

5 THE COURT: So I'm -- honestly, I've looked at the
6 allegations of harassment here. I'm not -- I'm not concerned
7 so much about the allegations that she, Ms. Fazel, brought a
8 firearm in which was not authorized, I'm more concerned about
9 what's said up at the first paragraph where he identifies her
10 as a member of the Attorney General's Office, Nevada Attorney
11 General investigator, well known for making false statements
12 in federal court, and then, you know, purports to say that
13 she's committed perjury, alludes to an interesting background
14 of family, says she was forced out by the LA -- Las Vegas
15 Metropolitan Police Department, has other credible
16 information for impeaching her. Then he states opinion,
17 which I'm -- again, I don't think that's operative. But, you
18 know, what do you have to say about the allegations that this
19 sworn law officer is a perjurer, he has other information on
20 impeachment, she was forced out of the -- and this, as I
21 understand it, this person that was involved in investigating
22 him --

23 MS. TRIMBLE: Yes. Well --

24 THE COURT: -- and he retaliates by putting this
25 stuff online?

1 MS. TRIMBLE: No. Well --

2 THE COURT: So forget about whether she was
3 authorized to bring a gun in or not; I assume that she was
4 not.

5 MS. TRIMBLE: Well, your Honor, I actually can't
6 forget about that. That's why I put all this information in
7 front of your Honor.

8 THE COURT: All right.

9 MS. TRIMBLE: The way that the evidence is front of
10 your Honor -- there's just clips from these blog postings
11 that my client posted -- but the gist of what he was getting
12 at or gist of just what he was getting at is that her
13 testimony at the bond revocation hearing was that she was
14 permitted to carry a firearm into the superior court, and she
15 was under oath at that time. Mr. Chaker after that
16 interaction with her at the superior court did his own
17 follow-up, which we replicated in our subpoenas --

18 THE COURT: Right.

19 MS. TRIMBLE: -- to determine whether she was in
20 fact allowed to have a firearm in federal court. Based on
21 his investigation, he concluded that she was not, and
22 therefore, by testifying under oath at a federal proceeding
23 that she was allowed to have a firearm --

24 THE COURT: But it's not simple as that though.
25 You and I and, I daresay, Mr. Chaker knows that perjury is

1 willful falsity during sworn testimony, and doesn't look --
2 there's nothing that I saw that Ms. Fazel knew it. I don't
3 know how she got in the building. But aside from that, it
4 doesn't appear to me that she was aware that as a peace
5 officer she couldn't bring a firearm in, and so how is that
6 perjury?

7 MS. TRIMBLE: And so this is where I think Obsidian
8 becomes very relevant, which is the case that I cited in my
9 bond hearing but also have referred to in prior filings in
10 this Court. Obsidian is talking about the way that --
11 whether a blog can be defamatory. Part of it is that
12 something only counts as defamation if it is an assertion of
13 fact, and the way that these postings have gone, your Honor
14 just recognized yourself it's clearly opinion; at the end,
15 for what he's saying, she appears to treat this like a soap
16 box.

17 THE COURT: Right.

18 MS. TRIMBLE: Now, I am not --

19 THE COURT: And I don't think that's harassment. I
20 mean that's what I'm focusing on is whether it's harassment
21 and stalking. On the other hand, you have somebody that's
22 investigating for something and you post information that
23 says --

24 MS. TRIMBLE: Right.

25 THE COURT: -- this law enforcement officer's a

1 perjurer, I have other impeachment evidence against her, she
2 got forced out of the -- where is the proof of any of that?

3 MS. TRIMBLE: Well, your Honor --

4 THE COURT: That's not -- those aren't -- those are
5 statements of fact, those aren't statements of opinion.
6 Where -- where's the background for that?

7 MS. TRIMBLE: Well --

8 THE COURT: And, again, the context, Ms. Trimble,
9 is here's somebody who he views as having antagonistic --

10 MS. TRIMBLE: Well, your Honor, true context
11 actually is Ms. Fazel was actually investigating -- Mr.
12 Chaker began her investigation. He contacted her because his
13 child had been taken out of state, so it wasn't as if she was
14 investigating him from the beginning. That's their first
15 initial contact.

16 THE COURT: No, but it's a -- tell me this. At the
17 point these postings are made, doesn't he perceive that she's
18 acting in a manner antagonistic to his interests?

19 MS. TRIMBLE: At -- but, your Honor, that's where
20 it becomes important, the standard when you determine whether
21 something qualifies as defamation, and particularly because
22 Ms. Fazel is a public official, so the standard is higher
23 here in terms of what Mr. Chaker had to do before posting
24 this information.

25 The Ninth Circuit has recognized that he as a

1 blogger enjoys journalistic privilege, and there would be a
2 higher standard for what would qualify as defamation of a
3 public official.

4 THE COURT: Wait, wait. Is that with respect to an
5 original charge being brought against somebody or a condition
6 of supervised release? Because I -- I've already
7 distinguished between those two things; there's a shorter
8 string on people who are on supervised release --

9 MS. TRIMBLE: Well, your Honor --

10 THE COURT: -- less latitude.

11 MS. TRIMBLE: Your Honor, I agree with you that
12 supervised release can limit a person's First Amendment
13 rights; I think that's clear from my papers. What I'm
14 arguing here is that that was not in fact done to Mr. Chaker,
15 who was told that he maintained his First Amendment rights at
16 this revocation proceeding. Therefore, when we're talking
17 about whether he violated his condition, I think the only way
18 this condition was clear for Mr. Chaker is to use -- to
19 import the law of defamation. And so I don't think that
20 there's a distinction whether this would fall into the
21 definition of defamation for civil purposes or the definition
22 of defamation for the purposes of this hearing; I think we
23 have to use that higher standard at this hearing.

24 THE COURT: What evidence is there that she was
25 forced out of the Las Vegas Metro Police Department?

1 MS. TRIMBLE: Well, your Honor, I think the
2 important links here is the investigation -- I think we've
3 shown that Mr. Chaker has done his own investigation into
4 these allegations that he -- well, it's not even --

5 THE COURT: So I'm asking you what evidence is
6 there. I mean you're suggesting look, even though there's no
7 evidence that she intentionally misstated something at the
8 bond hearing, that she had a right to have a firearm in the
9 county courthouse, you know, you know, maybe it's within the
10 realm for him to say well, yeah, I think she did, I'm going
11 to infer that she knew that she couldn't and she's lying
12 about that. Fine. That's a --

13 MS. TRIMBLE: I'm sorry, your Honor. I think she
14 testified that she had left the Metropolitan Police
15 Department I think after four years if I'm remembering right.

16 THE COURT: Well, what's forced out about that? I
17 mean I left the job at the U.S. Attorney's Office. Nobody
18 forced me out.

19 MS. TRIMBLE: And, your Honor, this is why -- this
20 is why the law of defamation is so important here because the
21 context that this posting was made is -- and this is where
22 Obsidian becomes very relevant -- the context where this was
23 made takes away the conclusion that it can be taken as a full
24 assertion of fact, partly because of the terms of use on the
25 blog itself, which say these reports are just being offered

1 to the public, you need to do your own investigation is done,
2 but also the very language that Mister -- that the postings
3 used, saying "in my opinion" or -- and also I would point
4 out --

5 THE COURT: But he doesn't say that though. He
6 doesn't say in my opinion, she was forced out; he just said
7 "she was forced out."

8 MS. TRIMBLE: Well, your Honor, I think you have to
9 read the full context of the posting here. First of all, the
10 posting is offering this information only to attorneys who
11 could evaluate it themselves, which is criminal defense or
12 civil right attorney, material may be shared with you. So
13 he's obviously saying you evaluate for yourself if you reach
14 out for the actual information that he has to support this.
15 He indicates what kind of information he's done investigation
16 about and then says in his opinion based on review of that
17 information, she exaggerates and thinks court is a soap
18 opera. At no point --

19 THE COURT: I'm not considering that. I agree with
20 you that that's opinion, not actionable. What evidence did
21 he have that she was forced out of the Las Vegas Police
22 Department? Because in the case of a law enforcement
23 officer, that implies wrongdoing and moral turpitude, and
24 it's -- you know, no law enforcement officer would want that
25 kind of information disseminated on them. Now, you know, if

1 it's true and he has information that she was forced out,
2 that may be some defense, but what information supports that
3 statement?

4 MS. TRIMBLE: Your Honor, I think the best
5 information supporting that statement is that she left that
6 department in a short period of time.

7 THE COURT: Well, that's a stretch. Like I said,
8 somebody leaving a job, and you infer that they're forced
9 out? How long was she with the Las Vegas --

10 MS. TRIMBLE: But, your Honor --

11 THE COURT: -- Police Department?

12 MS. TRIMBLE: -- this is where journalistic
13 privilege becomes very important and the way that we view the
14 content on this blog --

15 THE COURT: We keep going back and forth though.
16 We're not writing on a clean slate. We're talking about a
17 convicted felon who has a history of harassing people using
18 the Internet and making false postings about people and
19 otherwise invading their privacy; and we're talking about a
20 situation where a judge has already told him don't do that,
21 you value your privacy, don't do that to other people and I'm
22 concerned about that as being one of the objectives of
23 sentencing here in promoting your rehabilitation, I don't
24 want you making false postings about people.

25 MS. TRIMBLE: Certainly --

1 THE COURT: So it's a stretch for him to say -- how
2 long was she with the Las Vegas Police Department --

3 MS. TRIMBLE: Well, your Honor --

4 THE COURT: -- four years?

5 MS. TRIMBLE: I believe so, your Honor. But if we
6 can just --

7 THE COURT: Maybe she got a promotion. I mean
8 it's -- this sounds like a heavier job as a investigator for
9 the Nevada Attorney General than just being a police officer.

10 MS. TRIMBLE: But, your Honor, I think -- your
11 Honor's explanation would be appropriate if we were talking
12 about a modification of conditions here, to encompass more
13 behavior, but this is not about modifying his condition to
14 include more than what's already included under the law of
15 defamation. If this is not civil defamation, this is not a
16 violation of this condition regardless of Mr. Chaker's
17 background or reasons that the Court may be concerned about
18 this behavior.

19 THE COURT: Why isn't this harassment? I mean he's
20 jumping to what I think is an unsupportable, unreasonable
21 conclusion: She was forced out. And you say his basis for
22 making that is she was there four years and then left to
23 another job.

24 MS. TRIMBLE: Well --

25 THE COURT: That's irrational, that's not a reason

1 that, you know -- how long you been at Federal Defenders now?

2 MS. TRIMBLE: Well, your Honor --

3 THE COURT: You envision like a career in private
4 practice at some point?

5 MS. TRIMBLE: No, your Honor.

6 THE COURT: So you want somebody posting online
7 that Ms. Trimble was forced out at Federal Defenders? You
8 want to start your other legal career that way?

9 MS. TRIMBLE: And that, your Honor --

10 THE COURT: I think that's harassment, particularly
11 if it's used -- being used as a wedge.

12 MS. TRIMBLE: Well, that, your Honor --

13 THE COURT: Yeah. I told you I was going to infer
14 a requirement of scienter here, that he did it with the
15 intent to harass, but that seems manifest to me here.

16 MS. TRIMBLE: Well, your Honor, that's why it's
17 also essential to remember that Ms. Fazel is a public
18 official, and there's numerous cases that explain that in a
19 position when you're important to the public, these are
20 issues of public interest, and --

21 THE COURT: I get it. If we're talking about civil
22 defamation, New York Times v. Sullivan, maybe she's a public
23 figure, I don't know, but we're not talking about that; we're
24 talking about a convicted felon with a history of harassing
25 people who have interests that are -- that he perceives are

1 antagonistic to his --

2 MS. TRIMBLE: So, your Honor --

3 THE COURT: -- and a judge who says don't do that
4 anymore going forward, and here he is right back at it again.

5 MS. TRIMBLE: So, your Honor, let me -- just to
6 make sure I understand the Court's position, the Court's
7 position is that this condition is more restrictive than the
8 law of defamation, stalking, and harassment.

9 THE COURT: I'm saying in the context of a
10 supervised release condition, with the history that is
11 included in the sentencing transcript and the probation
12 report, which was well-known to both Mr. Chaker and to the
13 judge -- and the judge alludes to something I don't have,
14 which was a bond revocation; I'm reading between the lines
15 there. I have a feeling the U.S. Attorney came in and said
16 revoke his bond because he's harassing people.

17 MS. TRIMBLE: No, your Honor, that's not true.

18 THE COURT: Well, what -- what relevance did the
19 revocation -- the reference to having presided over the
20 revocation hearings have? Because the judge mentions that in
21 connection with --

22 MS. TRIMBLE: Your Honor --

23 THE COURT: -- setting these conditions about not
24 harassing people.

25 MS. TRIMBLE: If your Honor would be heard at

1 sidebar, I can provide some information about that, but it is
2 something that's under the -- supposed to be under seal, that
3 information.

4 THE COURT: Okay. But you're telling me -- maybe I
5 don't need to hear it. You're telling me it had nothing to
6 do with harassing people, the reference to the bond
7 revocation proceeding?

8 MS. TRIMBLE: Well --

9 THE COURT: Because the way that this judge
10 explains it, it's sort of like, you know, I have a background
11 in this because I presided over the revocation hearings and
12 you have a history of harassing people and that's the reason
13 I'm setting the condition. That's what it appears from the
14 sentencing transcript.

15 MS. TRIMBLE: I'm trying to recall what portion of
16 the sentencing transcript you're talking about, but I think
17 it's actually referring to this revocation hearing that I
18 just gave you a portion of the transcript of.

19 THE COURT: You mean the one about the gun?

20 MS. TRIMBLE: Yeah. Yes.

21 THE COURT: Okay. Let me go back to it then. This
22 is on page 80 of the sentencing transcript, and the judge is
23 just about to announce the special condition that Mr. Chaker
24 not harass or stalk people, harass -- stalk others or harass
25 others. The judge says this: "As a special condition, I

1 have several for supervision. I've been involved with the
2 parties in several hearings, the most important of which
3 being the hearing on Mr. Chaker's bond revocation, and I've
4 received extensive information about conduct by Mr. Chaker
5 that is invasive. I don't know if it's illegal since he's
6 not been charged with it, I'm not saying it's criminal." And
7 then he goes on to -- she goes on to say, "I believe in the
8 First Amendment -- I told you that at the end of the last
9 hearing -- but there's a difference between protecting your
10 First Amendment rights and harassing or invading others."

11 So the context suggests to me that something came
12 up at the bond hearing that was some exposition of harassing
13 behavior on his part, and the judge is alluding to that in
14 saying don't do that anymore.

15 MS. TRIMBLE: Yes, your Honor. Now that you've
16 refreshed my memory on the sentencing hearing, I think he's
17 actually referring to this portion of the bond hearing, which
18 I've already --

19 THE COURT: You one you just gave me.

20 MS. TRIMBLE: Yeah, the one Ms. Fazel is testifying
21 about what happened at the superior court.

22 THE COURT: So -- yeah. Did -- does the judge know
23 about the posting that --

24 MS. TRIMBLE: No, there's nothing in this -- in the
25 bond hearing about posting anything. Ms. Fazel testified --

1 testifies a concern about Mr. Chaker taking her picture
2 outside of court and a concern about him waiting outside
3 after the court hearing.

4 THE COURT: Okay. All right.

5 MS. TRIMBLE: And then --

6 THE COURT: But tell me again -- I mean if the only
7 basis for him posting that is that he assumed that because
8 she only stayed four years, she was forced out --

9 MS. TRIMBLE: I just conferred with Mr. Chaker.
10 It's actually from Googling and seeing other blogs about Ms.
11 Fazel, so it was independent --

12 THE COURT: So what evidence is that she was forced
13 out?

14 MS. TRIMBLE: That came from other blogs, your
15 Honor.

16 THE COURT: What is it? I mean -- I mean first you
17 told me no, it was just the length of time that she was
18 there --

19 MS. TRIMBLE: Yeah, that was my -- my
20 misunderstanding. I just asked Mr. Chaker if there was
21 anything to support that, and he said that he had seen other
22 blog postings about her.

23 THE COURT: Okay. And what did they say? I mean
24 what suggests she was forced out? Be unusual to me that
25 somebody'd be forced out of a law enforcement agency and then

1 hired by another law enforcement agency. Sometimes happens,
2 but, you know, you get blackballed, you're usually
3 blackballed from law enforcement.

4 MS. TRIMBLE: Yes, your Honor. I think -- my
5 understanding is this is a conclusion that he came to based
6 on his own research, but this is why it's so important --

7 THE COURT: But no specific facts?

8 MS. TRIMBLE: I don't think so, your Honor, but
9 this is why it's so important to recall that this is a
10 posting on a blog, a blog that specifically is posting about
11 issues of public interest. This is essentially an individual
12 who's writing about concerns about someone who's working for
13 the government, inviting others to do their own
14 investigation --

15 THE COURT: Why did he do this?

16 MS. TRIMBLE: Well --

17 THE COURT: -- I mean for the public good or
18 because he's mad at -- at Ms. Fazel on her, you know,
19 pursuing investigation different from the one he wanted or
20 reaching conclusions that he didn't agree with?

21 MS. TRIMBLE: Well, your Honor --

22 THE COURT: I mean if that's it, then, you know,
23 he's intending to harass her by putting this stuff on there.
24 I mean that's the conclusion --

25 MS. TRIMBLE: Your Honor, I think actually --

1 THE COURT: -- I'd draw.

2 MS. TRIMBLE: -- one of the later postings about
3 this actually explicitly says this is about police
4 accountability. Of course the reason that Mr. Chaker ever
5 got -- ever had contact with Ms. Fazel is due to his own
6 personal experiences, but at the end of the day, he's talking
7 about a public official and his experiences he had with the
8 public official, and those do relate to issues of the public
9 interest. I guess it would be strange to be posting about
10 someone you had no personal experience with. The fact that
11 he had personal experience in her capacity as a public
12 official may have made him focus his attention on her, but
13 that doesn't change the fact that she's a public official and
14 she's subject to this kind of scrutiny and should expect it.
15 There's Ninth Circuit case law that essentially supports the
16 idea that when you're in a public office, you should expect
17 to receive some criticism and you basically have a thicker
18 skin because of that.

19 THE COURT: Yeah. Again, the context in which a
20 condition like that is set or enforced makes all the
21 difference in the world. If we're talking about somebody
22 with a history of harassing people, posting private
23 information about people, sending naked pictures, and a judge
24 says look, this isn't good for you, it's going to get you in
25 trouble when you're on supervised release, if you do that,

1 you're going to end up being back in front of me on a
2 revocation hearing, so I want to take steps to prevent you
3 from engaging in that kind of behavior. That's a completely
4 different context than somebody suing someone and saying this
5 amounts to civil defamation, and the usual defenses that I
6 may have is public figure or any of these other things would
7 apply doesn't apply here.

8 MS. TRIMBLE: Okay. So the Court's holding is that
9 this condition restricts more behavior than the --

10 THE COURT: Than would be --

11 MS. TRIMBLE: -- law of defamation.

12 THE COURT: -- restricted against a nonfelon for
13 whom the judge doesn't have a concern about using the
14 Internet to stalk and harass, yes. Yeah, I think given those
15 special conditions here, that the judge, as I've read from
16 Ninth Circuit case law, was at liberty to restrict First
17 Amendment conditions and explain why she was doing it.

18 MS. TRIMBLE: Okay. I would just register my
19 objection. I think the judge very clearly says she's not
20 restricting any speech other than --

21 THE COURT: She doesn't. She says I'm mindful in
22 First Amendment and I don't want this to be overly broad or
23 construed overly broad, but then she narrows it by saying
24 here's the context, you like privacy, so don't do this, don't
25 stalk or harass, which Ninth Circuit has said "harass" at

1 least has a commonly understood meaning, don't do that, and
2 provides some context by saying you wouldn't want this to
3 happen to you so don't do it to people. That's not a broad
4 prohibition on him posting opinions or expressing himself,
5 it's just saying don't invade other people's privacy in a way
6 that is designed to harass.

7 MS. TRIMBLE: Your Honor --

8 THE COURT: Here, Ms. Trimble, the context is, you
9 know, he's at odds with Ms. Fazel, and, you know, I don't
10 know exactly why, but it, you know, it's gone off the rails,
11 and he's mad at her, and this is a way of getting back at her
12 by suggesting I find, falsely, that she was dismissed from
13 the Las Vegas Police Department. So he's doing exactly what
14 the judge said don't do.

15 MS. TRIMBLE: And, your Honor, I would just point
16 to page 83 of the sentencing transcript where the judge --
17 this is a later portion of the sentencing transcript when the
18 judge specifically tells Mr. Chaker I'm not telling you
19 you're not allowed to have your free speech rights. So I
20 think you're right --

21 THE COURT: That's right. Yeah, he's not, and I
22 wouldn't either. I mean I don't how I'd clarify this. Yes,
23 you can post opinions, you know, you don't like a candidate,
24 you don't like, you know, go ahead, go ahead, none of that's
25 prohibited, but in the discrete situation of trying to get

1 back at somebody that you're at odds with, don't post false
2 information about them, don't reveal facts that are otherwise
3 private about them, don't send naked pictures of them, you
4 know, those are exceptions to your otherwise broad First
5 Amendment rights, not -- you know, a judge can't possibly
6 canvass all of the possibilities for expression, couldn't do
7 that --

8 MS. TRIMBLE: Certainly, your Honor.

9 THE COURT: -- so it has to be understood in the
10 context of what he'd done before, what the judge knew he'd
11 done before, and this kind of vindictive behavior -- I mean
12 that's really what it is; it's vindictive behavior against
13 somebody. It's not just the expression of opinions or
14 disagreement. It's I'm doing this to get back at you, I'm
15 doing this to needle you --

16 MS. TRIMBLE: And --

17 THE COURT: -- and that's what I think is going on
18 here with Ms. Fazel.

19 MS. TRIMBLE: -- your Honor, the reason that I'm
20 focusing on what definition the Court is using is because I
21 think if this speech -- if what's written on the blog here
22 doesn't qualify as civil defamation, but I think it is
23 protected by the First Amendment -- and I'm talking about if
24 it doesn't qualify as defamation considering all the civil
25 defenses --

1 THE COURT: Even for a guy who's been forbidden
2 from harassing people on the Internet --

3 MS. TRIMBLE: Yeah. And, your Honor, if it's --

4 THE COURT: -- as a condition of felony supervised
5 release?

6 MS. TRIMBLE: Right. If it's not criminal
7 stalking, criminal harassment, or civil defamation, under the
8 definitions that state law applies, then I think it does
9 enjoy First Amendment protection. And that's why I think we
10 have to analyze whether any of the defenses to defamation
11 apply here, one of which --

12 THE COURT: Okay.

13 MS. TRIMBLE: -- is a reasonable search for truth,
14 one of which is whether the gist or sting is appropriate.
15 And I think both of those would protect Mr. Chaker from civil
16 liability here. Now --

17 THE COURT: You're a little at odds with the
18 definition that Osinger embraces, and I read you that
19 earlier --

20 MS. TRIMBLE: Well, and, your Honor --

21 THE COURT: -- they refer to Black's Dictionary,
22 and they say look, it's words or conduct or actions that are
23 directed at a specific person that annoy -- and I'd be pretty
24 annoyed if somebody said well, you left the U.S. Attorney's
25 Office, you must have been forced out, or you left some job;

1 that would be annoying to me, particularly if I'm concerned
2 about my public reputation as a lawyer or a law enforcement
3 officer would be -- alarms, or causes substantial emotional
4 distress. Well, that's not implicated here, but the gist of
5 it is don't be vindictive by making up stuff about people
6 that you're crossways with, don't do that.

7 MS. TRIMBLE: Your Honor --

8 THE COURT: That's the gist of it. I mean --

9 MS. TRIMBLE: And, your Honor, I --

10 THE COURT: -- screams out from the transcript.

11 MS. TRIMBLE: And I think, your Honor, that -- here
12 I guess we get a little confused with jurisdiction, but the
13 investigation that I did into the definition of harassment
14 with relation to Ms. Fazel was Nevada because that's where
15 Nevada is, and I don't think that this would qualify as
16 harassment under the Nevada law.

17 THE COURT: I don't see this as tied into a
18 particular state definition. The Ninth Circuit didn't do
19 that. I mean Black's Law Dictionary doesn't purport to give
20 a state definition of the term; it's a general definition
21 which, as I mentioned to you, at page 943, the Ninth Circuit
22 says "harass" is not so esoteric or complicated a term as to
23 be devoid of common understanding. So this --

24 MS. TRIMBLE: And --

25 THE COURT: -- this really kind of transgresses,

1 you know, specific state definitions.

2 MS. TRIMBLE: Well, yes, your Honor --

3 THE COURT: I'm with you that -- that, you know,
4 what he said doesn't amount to threat to physically harm
5 anybody; that's not apparent to me at all, and I probably
6 would have dismissed 3 and 4, you know, for failure to prove
7 or failure of an element had they not been dismissed by
8 stipulation, but this is something different. And I'm
9 focusing in not on the whole thing because, as you say,
10 certain parts of it are opinion and he's entitled to give
11 opinions. You know, I have blogs out there have that
12 opinions about me that I don't share, but they're opinions,
13 and there's nothing I can do about that, you know, part of
14 being in the United States where free expression is
15 guaranteed.

16 But here is a different context, and maybe this, as
17 you've said a couple of times or acknowledged a couple of
18 times, this is maybe where you and I disagree. I think
19 there's a different standard for a fellow who's on felony
20 supervised release with a history of being vindictive toward
21 people, using the Internet to harass them, who says this
22 woman was forced out of Las Vegas PD when there's no basis
23 for that at all. That's disparaging to her reputation. He's
24 doing it because he's mad at her and vindictive. It's not
25 like he's trying to get the word out to people because, as

1 you've explained it, there's no basis in fact for that
2 allegation, there really isn't, I mean --

3 MS. TRIMBLE: I mean --

4 THE COURT: -- unless you say oh, she was only
5 there four fears, so I'm going to assume, you know, it's a
6 bad conduct discharge --

7 MS. TRIMBLE: And, your Honor --

8 THE COURT: -- no one would assume that.

9 MS. TRIMBLE: Your Honor, you've actually touched
10 on a further issue with respect to whether this would qualify
11 as harassment, and that is the fact that this was posted on
12 an Internet blog, and I believe my reading of California law
13 is that there has to be actual harm to Ms. Fazel for this to
14 have qualified as harassment.

15 THE COURT: Why do you keep talking about
16 California law or Nevada law? This is a general condition
17 imposed by a Texas Court on a guy who's got a history of
18 harassing people using the Internet --

19 MS. TRIMBLE: Well, your Honor --

20 THE COURT: -- and we're told harassment has a
21 common understanding. I think I understand what the common
22 word is, and it's, you know, don't be vindictive and post
23 false things about people.

24 MS. TRIMBLE: Well, your Honor, I keep talking
25 about the law because I think we have to the way that the

1 sentencing hearing went because the judge was so clear to Mr.
2 Chaker in his instructions that --

3 THE COURT: Hers.

4 MS. TRIMBLE: -- in her instructions -- my
5 apologies -- that this was not supposed to be restricting his
6 free speech rights, and so I have --

7 THE COURT: But there's nothing to suggest it's
8 tied into particular state law. And I can't imagine the
9 judge would have tried to tie it into California or Nevada
10 law; they're in Texas at the time.

11 MS. TRIMBLE: Your Honor -- I understand what
12 you're saying, your Honor. I think that we need to be
13 looking at cases about stalking and harassment in order to do
14 any kind of analysis here, and so that's where my legal
15 research focuses on, figuring what would normally qualify
16 here. And so that's where I think it's particularly
17 important to remember that Ms. Fazel's a public official
18 here. There's a lot of criticism about public officials.
19 Just because you're being criticized doesn't mean you're
20 being harassed. And I mean no disrespect to Ms. Fazel when
21 I'm saying this, but this is one independent blog from
22 someone who has had a bad experience with her. I don't think
23 that rises to the level of harassment here. In fact, I think
24 that's supported -- I mean I know this relates to the other
25 allegations, but I think that's supported by the fact that

1 when she, a law enforcement officer, went to other law
2 enforcement officers, they didn't think that they needed to
3 take action. And so I think that's very revealing about that
4 a reasonable person's reading of this behavior would be:
5 Other law enforcement officers didn't think that this was
6 giving rise to concern.

7 THE COURT: Do these exhibits really need to be
8 sealed, the last three? They don't look like they're
9 confidential at all to me.

10 MS. TRIMBLE: Your Honor --

11 THE COURT: It just the sheriff saying here's what
12 the --

13 MS. TRIMBLE: Yeah.

14 THE COURT: -- toting gun rule is. I mean people
15 ought to know that I would think --

16 MS. TRIMBLE: I think that --

17 THE COURT: -- in some other jurisdictions ought to
18 know that. Why do we need to seal that?

19 MS. TRIMBLE: Yes. I think the concern of sealing
20 was related to a document we didn't end up having to submit
21 here, your Honor.

22 THE COURT: So do we need to seal these three
23 defense exhibits?

24 MS. TRIMBLE: Yeah, let me --

25 THE COURT: I don't see any reason for it.

1 MS. TRIMBLE: Not just a final -- well, perhaps not
2 final, but one point of clarification for -- with respect to
3 the posting that indicates Ms. Fazel had said -- made false
4 statements during her testimony, if you look at the
5 revocation proceeding --

6 THE COURT: He actually said perjury, right?

7 MS. TRIMBLE: At one point he said perjury, at one
8 point he said false statements. I think as a nonlawyer,
9 those -- most nonlawyers think perjury and false statements
10 in court are the same thing.

11 THE COURT: Maybe all that's true, but somebody as
12 sophisticated as Mr. Chaker gets that distinction. I mean
13 there's -- when I read his letter to the judge, this is a guy
14 that -- this is a guy that's, you know, has acumen, legal
15 acumen well beyond that of the average person. You read this
16 thing, looks like it's been written by a lawyer; he's citing
17 cases, he's arguing the meaning of cases to the judge. And
18 this is a very narrow point, you know, that -- look, the
19 guy's a very smart lawyer like you and me and Mr. Jones on
20 the other hand. So I don't see him as some kind of
21 nincompoop that stumbled into, you know, a mistaken
22 allegation of perjury. I mean we all know what perjury
23 means; means it's intentionally testifying under oath in a
24 false way --

25 MS. TRIMBLE: And, your Honor --

1 THE COURT: -- and I think that's a dubious claim
2 here.

3 MS. TRIMBLE: -- that's what this stipulation is
4 about. The testimony, which is page 139 of the document that
5 I gave you --

6 THE COURT: Okay.

7 MS. TRIMBLE: -- there's an explanation by
8 Ms. Fazel about the interaction outside of the courthouse,
9 when she was coming out of the courthouse --

10 THE COURT: This says shouting to have her
11 arrested, citizen's arrest, and --

12 MS. TRIMBLE: Yeah, she stated that she was
13 specifically asked if he was calling, yelling, or radically
14 yelling, how loud was he, and she says he was aggressively
15 yelling and demanding the bailiff to place me under citizen's
16 arrest, he demanded they call their sergeant. And early on
17 the top of that, she tried to leave -- sorry -- when she
18 walked down the stairs to exit the building, Mr. Chaker and
19 his sister were standing by the door yelling at the
20 bailiffs -- at the bailiffs to place them under arrest.

21 THE COURT: Right.

22 MS. TRIMBLE: And I have a video of this
23 interaction. Mr. Jones has agreed to stipulate to the
24 contents of the video rather than watching it together.

25 THE COURT: Okay.

1 MS. TRIMBLE: Mr. Chaker was standing behind a
2 rope, so there's no way that he was blocking the doorway from
3 Ms. Fazel.

4 THE COURT: I haven't relied on that at all.

5 MS. TRIMBLE: I know, your Honor. I just want --

6 THE COURT: Because a lot of these things I'm in
7 agreement with you. Look, let me put it this way. I think
8 Mr. Chaker knows better. I think he's a guy that's got chalk
9 all over his shoes because he knows where the line is and he
10 deliberately walks very close to the line, and then he comes
11 in and tries to misrepresent his degree of understanding of
12 things and "I'm confused." I don't believe he's confused at
13 all. I mean that's the impression that I get.

14 Now, walking close to the line is not walking over
15 the line, and I get that. And he can only be found
16 responsible for a supervised release violation if he steps
17 over the line. What I've focused on is a posting that I find
18 to be vindictive that contains false information, that is,
19 that she was forced out of the Las Vegas Police Department.

20 MS. TRIMBLE: Okay. And so --

21 THE COURT: In context of all the other harassment
22 he does of people or had a history of doing things to people,
23 he shouldn't have done this, and the judge specifically told
24 him don't do that with people that you get crossways with,
25 don't do that --

1 MS. TRIMBLE: Okay. So, your Honor --

2 THE COURT: -- and he did. So that's what I'm
3 focused on. These other things I'm either looking the other
4 way on them or I agree with you that they're matters of
5 opinion that he was privileged to opine on.

6 MS. TRIMBLE: Okay. So --

7 THE COURT: It's not the whole of these postings
8 that I'm --

9 MS. TRIMBLE: Only being forced out of the police
10 department.

11 THE COURT: -- focusing on. Yeah. That was an
12 out-and-out lie I think by him that he's trying to exploit to
13 get her to back off or do what he wants. And that's the gist
14 of this is that it's using information as a lever, a wedge
15 against people and threatening in an extortionate way.
16 That's what's implicated here, and that's what the problem
17 was with these other things he was doing before that are
18 documented 3 through 8 on the probation report. So it's that
19 narrow.

20 MS. TRIMBLE: Okay. Thank you. One moment, your
21 Honor.

22 (Brief pause in the proceedings.)

23 THE COURT: Anything else, Ms. Trimble?

24 MS. TRIMBLE: Just one moment.

25 (Brief pause in the proceedings.)

1 MS. TRIMBLE: Thank you for the indulgence. I
2 would just --

3 (Brief pause in the proceedings.)

4 MS. TRIMBLE: Nothing further, your Honor.

5 THE COURT: Mr. Jones, anything more?

6 MR. JONES: I would just briefly add, your Honor,
7 the Court has focused largely on the comment related to the
8 Las Vegas Metropolitan Police Department. I would point out
9 that that is certainly sufficient to constitute harassment;
10 however, there are other statements and actions by Mr. Chaker
11 that could also constitute harassment. Specifically in the
12 same -- in the same posting, interviews with former neighbors
13 dot, dot, dot, along with interesting background of family.
14 The suggestion that someone had taken the time to interview
15 an individual's neighbors and gone into the neighborhood to
16 talk to those persons, that alone would constitute
17 harassment.

18 THE COURT: You allege that that did not happen;
19 that's not true?

20 MR. JONES: I'm sorry?

21 THE COURT: You allege that that did not happen,
22 that that's not true, that Mr. Chaker made that up, that he
23 hadn't interviewed any neighbors and he was unaware of any
24 neighbors speaking ill of Ms. Fazel?

25 MR. JONES: Your Honor, it doesn't matter what --

1 it's the government position that it doesn't matter whether
2 it's true or not because making that comment would cause Ms.
3 Fazel, a reasonable person, to believe that it had been done.

4 THE COURT: All right. You have whatever argument
5 you want on the basis of the proof that's been submitted.
6 I'll admit your proof, I'll admit the three exhibits that Ms.
7 Trimble submitted. The Court is focusing only on that
8 portion of the one exhibit that I've talked about because I
9 think it's clear with respect to that statement, number 1,
10 that it was false; it's not even a reasonable inference as
11 far as I'm concerned if the basis for this was that he
12 thought because she left after four years, she was forced
13 out; that's not a reasonable inference. People leave jobs
14 all the time, lot of times for promotional sake. As I said,
15 my take on it would be if she's now an investigator with the
16 Attorney General's Office, that's some higher or better
17 position than being a police officer with the Las Vegas
18 Metropolitan Police.

19 The point is that there's no basis for a statement
20 that suggests unprofessional conduct on her part, which is
21 what that does. The context in which that blog was posted
22 was he was unhappy with her because he'd gone to her in
23 relation to this child custody thing generally and she wasn't
24 doing what he wanted and they were sideways. And I find that
25 he had the intent to be vindictive when he did this and that

1 he posted a false statement about her reputation,
2 professional reputation, in an attempt to intimidate her or
3 get her to back off or do what he wanted.

4 Now, when I look at that in the context of his
5 background and the necessity the judge found for setting a
6 condition forbidding that, seems to me that meets exactly
7 what the judge's interest was. And I've already determined
8 that it was a proper condition for the judge to set, that
9 there wasn't anything vague about it, once the pencil was
10 sharpened, that he was told don't harass people over to
11 Internet, and when I take into consideration the judge's
12 comments that were illustrative to Mr. Chaker at the time and
13 which he appeared to understand: Don't do this, don't reveal
14 private things, don't make stuff up about people that you're
15 sideways with and post it in order to get leverage, and
16 that's what it looks like he was doing. So I make my finding
17 on the basis, that narrow basis, that he was in violation
18 when he did that.

19 The other things that you're free to argue and Ms.
20 Trimble can continue to press the case against them, I am --
21 and I've said this, I'll reiterate it -- I am finding that
22 the degree of protection under the First Amendment is less
23 for a person who's on felony supervised release who has a
24 history of harassing people using the Internet, that a judge
25 can address that by saying stop doing that, don't harass

1 people using the Internet, don't make up false things and try
2 to leverage people and their performance of their official
3 duties by posting false things, and that's what I think Mr.
4 Chaker did here. So I do find he's in violation of condition
5 1 based on that proof.

6 Now, concerning the disposition, Mr. Chaker, look.
7 You're a bright guy. I mean I look at this pleading. Like I
8 said, you're no novice. You understand this. And I don't
9 want to play games with you, and I think you know from the
10 several appearances in front of me, I'm not a guy that'll get
11 ensconced in the technicalities. I mean if I have a general
12 impression that you're horsing me around, then you're going
13 to answer for it. There shouldn't be anything confusing
14 about what's happened here I don't think, and I'm going to
15 follow your lawyer's recommendation, frankly, because we've
16 narrowed this down to one thing that you did, you know, in
17 light of all the -- in spite of all the allegations, there's
18 one thing that's been proved against you, and I don't think
19 that one thing justifies six more months in jail. But I do
20 think that some sanction is appropriate to remind you that we
21 mean business and that you need to stop doing what
22 instinctively you've done, which is to be vindictive toward
23 people and get back at them by harassing or trying to extort
24 them into action you want by threatening or making up stuff
25 about people. You know, if honestly the basis for your

1 accusation against the investigator was because she left
2 after four years, she was forced out, that's totally
3 irrational, and a smart guy like you is not going to reach an
4 irrational conclusion like that, which is why I conclude you
5 did it to be vindictive and to try to get your way and to try
6 to influence her. But you got to stop -- hold on, Ms.
7 Trimble. I'll give you plenty of time, then I'm going to
8 give him a chance to talk too -- you got to stop doing that
9 stuff because that, you know, you know what's going to
10 happen. If you do something that's even close to this again,
11 they're going to file another petition on you, you're going
12 to get arrested, and you're going to have to answer for this.
13 So don't do that, don't do that anymore.

14 Now, I'm hesitant to tell you what you can do, you
15 know, because, you know, the range of freedoms available to
16 you are quite broad. You want to opine on matters of public
17 interest? You get to do that. I think that's what Judge
18 Atlas was suggesting when she said I'm not trying to inhibit,
19 you know, your total right of expression under the First
20 Amendment. Neither am I. But what I'm telling you is in the
21 context of your background, the fact that you're on felony
22 supervised release for this, and you have a documented
23 history of trying to harass people or extort people by
24 posting stuff, don't do that anymore, don't do that. I don't
25 want you to have any contact with Ms. Fazel unless it's, you

1 know, necessary through official proceedings. Is there still
2 something that's going on that she's involved with you and
3 your interests in Nevada?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Okay. So don't have any contact with
6 her. What's the status of your relationship with Mr.
7 McMillan? I don't mean good or bad, but are you representing
8 yourself in a child custody matter still where he's
9 representing the mother of the child?

10 THE DEFENDANT: He is representing the mother of my
11 son, there is ongoing litigation, everything is done in
12 writing.

13 THE COURT: Are you representing yourself in that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Okay. Well, I'm not going to forbid
16 you from having contact through pleadings with him, but look,
17 be smart about this. If you send a letter saying I'm going
18 to expose this or you expose something about him personally,
19 you know how that's going to be regarded; that's going to be
20 regarded as you trying to get leverage by making something up
21 against an opponent. Don't do that. I mean you can cut what
22 comes between you on the child custody dispute without being
23 personal about it, you can. So don't -- you know, don't make
24 him the object of it. Your object is to get custody or
25 visitation --

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: -- right? Yeah, so stick to that.

3 You're a smart enough guy. Like I said, I read this
4 pleading, and you're fully capable of expressing yourself in
5 a way that is acceptable and professional. So I get the
6 sense that, you know, I'm bouncing things off of you that you
7 already know, and I hope your thought isn't well, here's how
8 I can evade this or here's how I can get around it. I hope
9 you're not trying to be shrewd or tricky with me.

10 THE DEFENDANT: I actually have a proposition to
11 the Court.

12 THE COURT: Okay. Tell me. And you have fully a
13 right to address the Court before I make a final decision on
14 what sanction is appropriate. I think your lawyer is right,
15 and, you know, you've been in jail for a while, and now you
16 know what you're dealing with here if you stay in the
17 Southern District of California: Your case is likely to come
18 back to me, and I'm likely to view it the way I viewed it
19 here. So that's some additional information for you.

20 THE DEFENDANT: Yes, your Honor. First of course
21 I'd like to apologize to Ms. Fazel for making any statements
22 that she finds to be meritless. Second, if the Court
23 would -- would not place me in custody, what I would do on my
24 accord would actually remove any blog postings concerning Ms.
25 Fazel and Mr. McMillan during the pendency of my sentence.

1 THE COURT: You mean is there still stuff online?

2 THE DEFENDANT: There are blogs that are active.

3 THE COURT: And you're going to take it down you
4 say?

5 THE DEFENDANT: I will voluntarily do it.

6 THE COURT: Well, your lawyer's recommended a
7 halfway house, which I'm ready to embrace. I don't think you
8 need to be in jail anymore, particularly because this thing
9 got narrowed down considerably from what the accusations
10 were, so I'm prepared to do that. What are you suggesting?

11 THE DEFENDANT: Split time between a halfway
12 house -- my primary issue is going to and from doctor
13 appointments, getting surgery on my eye; that's the primary
14 issues.

15 THE COURT: I would permit you to leave for medical
16 appointments, just as I did when I set the bail conditions.

17 THE DEFENDANT: Okay. You know, I don't think that
18 I did things specifically spiteful. I did things I think
19 that were proper that I had evidence behind --

20 THE COURT: You know, what evidence was there
21 behind an allegation that she got forced out of the Las Vegas
22 Police Department?

23 THE DEFENDANT: Just simply republishing other
24 blogs or republishing other --

25 THE COURT: You can't do that. You know, if you do

1 that, even in a civil context, the republication of
2 defamatory material makes you responsible.

3 THE DEFENDANT: I didn't even know that, see?

4 THE COURT: Yeah.

5 THE DEFENDANT: But what I propose is if the Court
6 would have some leniency on me, I'd actually --

7 THE COURT: I'm sorry, ask --

8 THE DEFENDANT: If the Court were to have some
9 leniency on me, I would -- I'd remove any reference to Ms.
10 Fazel, I'd remove the blog concerning Mr. McMillan and Mr.
11 McMillan's law firm, and -- and I'd ask the Court to take
12 note that despite my per se sophistication, et cetera, if I
13 was really smart about it, if I really wanted to do horrific
14 things, I wouldn't post things under my own name, I wouldn't
15 email people and say by the way, look at this blog or -- in
16 terms of use, et cetera.

17 I have some genuine belief that the materials that
18 I was posting had some -- had some merit to it. It's very
19 easy to create a blog and just throw stuff up; anyone can do
20 it. I'm sure your -- you have knowledge of that. I did have
21 some belief that I had meritorious things to have said on the
22 Internet.

23 THE COURT: Okay. And I'm not disagreeing with you
24 as to some of these things. As you heard me recite my -- as
25 you heard me recite the ruling, Mr. Chaker, it was very

1 narrow. I agreed with your lawyer that some of these things
2 were really matters of opinion that are not actionable, and I
3 didn't act on the basis of those. I narrowed it down to one
4 false -- one thing that I thought to be false and I thought
5 that you published in a vindictive, spiteful way despite what
6 you say now. And, you know, am I going to make a huge deal
7 about that? No, I'm not, except it concerned me very much
8 when I looked back at that history of you doing this type of
9 thing, and the judge who sentenced you was obviously very
10 concerned about that; that's why she said I'm going to set a
11 special condition and did. So I don't want you to do that
12 type of thing; it's not good for you because, like I said,
13 you're going to be hailed into court, you're going to get
14 arrested -- as long as supervised release is still active,
15 you're subject to being arrested for this, not just sued. I
16 mean you want to go on with your life and pursue your
17 interests, including pursuing visitation with your child, you
18 know, go ahead, you can do that, but you got to do it in a
19 legitimate way that doesn't involve harassment of people
20 using the Internet, revelation of private facts, just as
21 Judge Atlas told you, on the Internet. And I mean I assume,
22 as an example, that your former girlfriend consented to have
23 you take naked pictures of her at some point; what she didn't
24 consent to is you sending is those around. So I mean that
25 really kind of illustrates the difference between what you

1 can do and what you can't do. Right?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So, you know, I will grant the leniency
4 you requested. Your lawyer's requested six months in a
5 halfway house, and I will set that as the sanction in this
6 case with the proviso that you be permitted to make doctors'
7 appointments, get your eye treatment as necessary.

8 I'm not going to forbid you from being on the
9 Internet, just as Judge Atlas did, but I want you to
10 understand, no more posting stuff to get leverage against
11 people. No more doing that. No more posting false
12 information, right? No more revealing private facts about
13 people or threatening to do that in exchange for getting
14 conduct from them, and that would include specifically
15 Ms. Fazel and Mr. McMillan. I know you're, you know, legally
16 in an antagonistic position to Mr. McMillan, but there's a
17 way to a handle that. That's -- you know, we have courts of
18 law, and the judge told you that. I mean did you go see a
19 counselor? The judge had counseling as part of it and told
20 you to consult with a counselor if you're confused at all
21 about what you should or can do. Did you do that?

22 THE DEFENDANT: I went to see my doctor, and I had
23 an appointment on the 17th when I was remanded.

24 THE COURT: Okay. All right. Well, I'm going to
25 leave the condition as it is, as Judge Atlas set it in the

1 written condition; that applies now. So I don't find any
2 ambiguity, and I'm putting you on notice now that that
3 written condition that's been the subject of litigation here
4 applies to you. I'm adding to the supervised release
5 conditions that you not do any of the three things I told you
6 about: Reveal private information about people on the
7 Internet, threaten people by posting false information in
8 exchange for some kind of action from them, or disparage
9 people or defame people in exchange to try to get them to
10 change behavior. Don't do that because all of those three
11 things constitute harassment.

12 I'm not otherwise forbidding you from posting
13 opinions on the Internet, posting information, reposting
14 truthful information; you can do all that. I don't -- I
15 suppose I could restrict you altogether, but I think that
16 would be unnecessary under this circumstance. The concern I
17 have is the same as Judge Atlas had is that you not be
18 vindictive and use the Internet as a tool for getting back at
19 people or trying to extort people, and that's what I think
20 has happened, so don't do that. And I can't possibly canvass
21 all the applications where you might do that. Mr. Jones?

22 MR. JONES: Your Honor, would the Court consider
23 adding a condition that he remove all blog postings that he's
24 created about Ms. Fazel and Mr. McMillan?

25 THE COURT: He said he'd do that. I'm a little

1 reluctant to order that because, like I said, some of it is
2 opinion and I think it's -- he's authorized to do it, but
3 he's -- you're offering to do that anyway, right?

4 THE DEFENDANT: I will do that, yes.

5 THE COURT: Okay. Good. Well, I --

6 THE DEFENDANT: -- pending the time I'm under the
7 Court's sentence.

8 THE COURT: What do you mean pending the time?
9 You're going --

10 THE DEFENDANT: As long as I'm under the Court's
11 sentence --

12 THE COURT: Okay.

13 THE DEFENDANT: -- so I don't want there to be any
14 issues --

15 THE COURT: All right. Yeah. You don't want --

16 THE DEFENDANT: -- I will voluntarily --

17 THE COURT: -- to be --

18 THE DEFENDANT: -- remove them.

19 THE COURT: Right --

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: -- right. Because you recognize
22 there's a difference between what you can do as a free
23 citizen not obligated by supervised release and what you can
24 do while you're under supervised release; you understand that
25 distinction, right?

1 THE DEFENDANT: I do, your Honor.

2 THE COURT: Okay. Well, I'll ask you then to
3 remove the information about Ms. Fazel and Mr. McMillan, to
4 deal with them professionally, without spite, vindictiveness,
5 without doing the three things I've forbidden you from doing
6 as an added condition. You'll be released -- is there a
7 halfway house available right now for him? Mr. Hernandez, is
8 there a halfway house available for --

9 USPO HERNANDEZ: Your Honor, if I can add a couple
10 of --

11 THE COURT: -- requests --

12 USPO HERNANDEZ: Yeah.

13 THE COURT: -- for conditions?

14 USPO HERNANDEZ: Yes, sir.

15 THE COURT: Sure.

16 USPO HERNANDEZ: Well, I'd like to state what my
17 recommendation is on the record, your Honor. It is six
18 months' custody with 33 months' supervised release --

19 THE COURT: How long has he been in now, in
20 custody?

21 USPO HERNANDEZ: Thirty-three -- 35 days, your
22 Honor to today, 35 days.

23 THE COURT: Okay.

24 USPO HERNANDEZ: So that's my recommendation, your
25 Honor, six months with 33 months of supervised release under

1 the same terms and conditions. We're also recommending, your
2 Honor, a computer monitoring condition that will enable us to
3 monitor his emails and Internet activities. The language for
4 that condition, if your Honor does agree to order that, is on
5 page 13 of the amended petition.

6 The other thing, your Honor, is I have a concern
7 about him using the computer at the halfway house because
8 that's precisely where he sent that letter that we were not
9 able to use as proof during his last day of BOP custody,
10 so --

11 THE COURT: You mean the one the day before
12 supervised release began?

13 USPO HERNANDEZ: Yes. So I don't think it was
14 mentioned that -- it was just mentioned that it didn't happen
15 on the day of supervised release, it was just mentioned it
16 was before. It happened inside a halfway house while he was
17 in BOP custody, so I have concerns about that, and so I am
18 really concerned about him using the computers at the halfway
19 house. I just don't think --

20 MS. TRIMBLE: Your Honor, I don't think he was at
21 the halfway house; he was on home confinement.

22 USPO HERNANDEZ: Still in BOP custody, your Honor.

23 THE COURT: Yeah, but at his house. So it would be
24 covered if I impose a new condition that allows computer
25 monitoring?

1 USPO HERNANDEZ: Yes.

2 THE COURT: What's your position on that? I mean
3 why can't we just put something on his computer and it's not
4 a problem unless somebody gets something that they think is
5 extortionate and spiteful and doing one of the things I've
6 forbidden, and then there's a means of verifying it by
7 looking at his computer?

8 MS. TRIMBLE: Your Honor, I don't think that would
9 be necessary or appropriate at this point. I mean obviously
10 if anybody's receiving any emails, they certainly know how to
11 respond. The concern is that Mr. Chaker's attorneys are
12 actually -- they're not here in San Diego. Much of their
13 communication is via email about --

14 THE COURT: I don't think it works -- this would be
15 an opportunity -- this would be the prevailability of the
16 right to go in and look at the computer if you get a
17 complaint that he's done something that violates the
18 conditions again. It wouldn't be ongoing monitoring, would
19 it?

20 USPO HERNANDEZ: It's actually --

21 THE COURT: I wouldn't burden him with a condition
22 that said you get to read all of his correspondence; I think
23 that's too far.

24 USPO HERNANDEZ: It would be ongoing monitoring.

25 THE COURT: Yeah. No, I'm not going to do that. I

1 will do this, Mr. Hernandez. In the event that a complaint
2 comes in while he's on supervised release, I'm going to give
3 you the right to go in and inspect his computer and copy the
4 hard drive or do whatever you have to to verify that he was
5 the source of the subject complaint.

6 USPO HERNANDEZ: The other thing that we've done
7 also, your Honor, in certain cases is we've just had him
8 bring in their computer periodically and we just review it
9 and then it goes back to them. It's not a --

10 THE COURT: That sounds like -- yeah, but you're
11 not prepared to do that on a half-hour basis or something,
12 right? It's like a forensic exam that --

13 USPO HERNANDEZ: We have an in-house forensic
14 examiner that does that. I wouldn't do it myself.

15 THE COURT: Here's how I'm going to resolve it.
16 I'm going to limit it to this: I'm going to expand the
17 search condition to include his computer in the event you get
18 a complaint from anybody that he's harassing again or
19 stalking. If you get that, then you can go in. And I would
20 expect that you'd come to the Court first, get a Court order
21 to do that; and I'm telling you, Mr. Chaker, that I would
22 authorize such an order if I have reason to believe that
23 you've sent a harassing email. I'm going to allow them to
24 come in and inspect or seize your computer as a condition,
25 so, you know, bear that in mind. I'm not going to allow

1 ongoing monitoring; I think that's too invasive.

2 MS. TRIMBLE: Your Honor, if I could be heard as to
3 that condition. I'd object to that condition, but at
4 minimum, if it is imposed, I'd ask that defense counsel or
5 Mr. Chaker be present when the request to search is made so
6 that we can address that at --

7 THE COURT: I'm not going to do that. I mean when
8 the cops come and ask for an arrest warrant, they don't say
9 well, we better get a lawyer here to argue against the
10 issuance of a warrant.

11 MS. TRIMBLE: Well --

12 THE COURT: This is only in the event he's got
13 probable cause to believe that Mr. Chaker's violating the
14 supervised release condition again by harassing someone using
15 a computer. At that point I'm going to give him the right to
16 go in, and I'll sign a Court order that allows him to get the
17 evidence of that.

18 MS. TRIMBLE: And I would object to that condition.

19 THE COURT: All right. Objection is noted. It's
20 overruled. So that condition is added. That's the comprise
21 on that. So don't send -- don't send harassing and
22 threatening messages on your computer --

23 THE DEFENDANT: I understand, your Honor.

24 THE COURT: -- because it's going to come back to
25 me, and I'm going to look at it, and if it indeed,

1 Mr. Chaker, is just a statement of opinion or something like
2 some of these things, then I wouldn't authorize it; on the
3 other hand, if I think, you know, you're leveraging somebody
4 again, trying to extort somebody to do something by
5 threatening to expose some private information or make
6 something up about them or there's something, you know,
7 that's blatantly false, then you can expect they're going to
8 show up with a warrant to seize the computer or my order that
9 allows them to do that.

10 THE DEFENDANT: I would ask -- because the Court
11 knows I'm involved in ongoing litigation and communication
12 with my appellate attorneys in Houston and ongoing litigation
13 concerning my son -- there's legally privileged material on
14 the computer, so if the Court were to authorize such a
15 search, that a special master actually conduct the search.

16 THE COURT: All right. I mean that's fair enough
17 and we'll, if we get to that -- I hope we don't get to that,
18 don't you?

19 THE DEFENDANT: I don't believe so, but what I
20 don't want to happen is this --

21 THE COURT: You don't want people prowling through
22 your private or privileged or attorney-client privileged
23 documents. I get that --

24 THE DEFENDANT: Correct.

25 THE COURT: -- and I'm not going to permit that to

1 happen.

2 THE DEFENDANT: And I don't want someone to say
3 well, Mr. Chaker sent me 13 three emails concerning
4 litigation and he goes on to La Mesa Police Department, who
5 doesn't act on the conduct, or somebody who is from Las Vegas
6 Metro and says we're not going to arrest Mr. Chaker, but
7 that's used to seize the computer.

8 THE COURT: Look, look. We're conjuring up ghosts
9 that I don't think exist here.

10 THE DEFENDANT: Okay.

11 THE COURT: What I'm talking about is you doing
12 something like what you did to Ms. Fazel. That's very
13 discrete, can be described very easily; it's making up
14 something false and posting it in order to get leverage
15 against a person. Don't do that.

16 THE DEFENDANT: I won't.

17 THE COURT: As long as you don't do that, you don't
18 have any problems. I don't want to see your email
19 correspondence, and no one has a right to.

20 THE DEFENDANT: Okay.

21 THE COURT: So that's what I'm talking about.
22 Don't step out of line, and none of these, you know, host of
23 horribles are going to occur, okay?

24 THE DEFENDANT: Okay.

25 THE COURT: And honestly, look, I don't want you to

1 play games with this, but if you have any hesitation about,
2 you know, something being appropriate or not appropriate,
3 call Ms. Trimble and run it by her first. And, Ms. Trimble,
4 if you think it's something that he's, you know, righteous
5 and gets to do and doesn't violate the condition but you're
6 not exactly sure, put it back on calendar.

7 MS. TRIMBLE: Yes, your Honor.

8 THE COURT: Okay?

9 THE DEFENDANT: Okay.

10 THE COURT: So you have recourse here. I'm here
11 all the time, and, you know, you can put it on calendar and
12 if you can stall it for a day or two, we'll get an expedited
13 hearing, and I'll give you a up or down on whether the thing
14 constitutes harassment. Now, I hope I'm not doing that all
15 the time because you're a guy who's smart, has common sense,
16 and ought to realize for yourself what crosses the line.
17 This was an easy call I think, this, you know, saying that
18 she got, you know, potentially fired or drummed out of the
19 Las Vegas Police Department; there's no basis in fact for
20 that. So if it's something like that, you ought to be able
21 to come to that on your own or something, Ms. Trimble would
22 say, oh, well, what supports that, you can't say that about
23 somebody, it's going to look like you're being vindictive.
24 It ought to be resolved like that. But if it's a closer
25 question, you think you're righteous but you don't, you know,

1 you don't want to get arrested, then call Ms. Trimble and you
2 put it on calendar for, you know, modification or
3 clarification of the condition. That's the best I can do.
4 As I said, very difficult to try to forecast every single way
5 that this could play out, and the best I can do to you is
6 just say don't harass or stalk people using the Internet,
7 just as Judge Atlas did. You know how I view that now, you
8 know what I think constitutes harassment, so you've got that
9 going for you.

10 The Court finds as a sanction that Mr. Chaker
11 should spend six months in a halfway house. The conditions
12 will be that he's permitted to leave to go to medical
13 appointments, verified medical appointments. No walkabouts
14 now; you go to your appointment and you come back, nowhere --
15 don't go anywhere else in the meantime.

16 I'm not going to forbid you from using the Internet
17 at the halfway house, but, you know, be mindful, whether
18 you're in a halfway house, home, someplace else, you're under
19 this condition of not harassing people. And, you know, I
20 should say that we focused on the Internet. Doesn't relate
21 solely to the Internet. Don't send stuff out to like
22 employers of people accusing them of things that are false.
23 No nude pictures. I'm sure you don't have any naked pictures
24 of Mr. McMillan, but none of that type of thing. Right?

25 THE DEFENDANT: Not that I checked last, correct.

1 THE COURT: Okay. Mr. Jones?

2 MR. JONES: Your Honor, I don't think this request
3 is conjuring a ghost. The Court -- it sounded like the
4 Court's intent in authorizing a potential search of Mr.
5 Chaker's email -- or of his computer, excuse me -- would be
6 for future evidentiary purposes. There is encryption
7 software that is very difficult, if not impossible, for even
8 the government to break. Given Mr. Chaker's admitted and
9 obvious skill with computers, I would ask you order him not
10 to use any kind of encryption software --

11 THE COURT: Are you using that now, Mr. Chaker?
12 Are you using encryption software?

13 THE DEFENDANT: Always. And I would say that I
14 have a Fifth Amendment right to not disclose password
15 information. I even write blogs about it, darrenchaker dot
16 com --

17 THE COURT: Well, like I said, that may be if we're
18 writing on a clean slate. We're not. You're a guy whose,
19 you know, Fourth Amendment protections at least are -- can be
20 restricted, and, you know, Fifth Amendment protection, I
21 don't know. Are you talking about disclosing the password
22 for the encryption?

23 THE DEFENDANT: Correct, to --

24 THE COURT: Here's the problem. How do we verify
25 that you're not doing something you're not supposed to unless

1 they have access to your computer without encryption?

2 THE DEFENDANT: Well, if you're going to send
3 something from a computer to post something defamatory,
4 harassing, et cetera, it's going to go from the computer from
5 the Internet, it's not going to go from something
6 encrypted --

7 THE COURT: So you say there would be some
8 independent basis for attributing it to your computer like an
9 IP address, something like that?

10 THE DEFENDANT: Could be an IP address, MAC
11 address. Every computer has an M-A-C --

12 MR. JONES: That's not necessarily the case, your
13 Honor. There is this thing called the Tor network. It's
14 a -- there are ways of anonymizing IP addresses. Perhaps Mr.
15 Chaker -- I'm not suggesting that we need to look at what's
16 already on his computer, but since the Court imposed the
17 condition desiring that there be evidence of any future
18 harassment, perhaps Mr. Chaker could use a new computer --
19 they're not particularly expensive these days -- while he's
20 at the halfway house that would not have encryption
21 software --

22 THE COURT: Well, he's not going to have his own
23 computer at the halfway house, right? He's going to have to
24 use theirs --

25 MR. JONES: So we're not asking for any access to

1 what is encrypted now, but we are asking that he not be
2 allowed to encrypt or use encryption on anything that he has
3 access to at the halfway house.

4 THE COURT: Going forward you mean?

5 MR. JONES: At least during the six months that he
6 is in the halfway house, your Honor. I think --

7 THE COURT: Well, okay. All right. That's a fair
8 request. They're going to limit it to the six months you're
9 in the halfway house. It doesn't sound like you're going to
10 have access to your own computer stuff then, right?

11 MR. JONES: Your Honor, we would object to that
12 condition.

13 THE COURT: Well, wait, wait. Let's see if there's
14 even, you know, a basis for it. Can you bring your own
15 computers in or does the halfway house say no, you can't have
16 your own stuff, you got to use ours?

17 THE DEFENDANT: You can't bring your own computer
18 in, and you can only use their computers if you're doing a
19 job search, and there's an attendant there within 5 feet of
20 you.

21 THE COURT: Okay. That takes care of it then.
22 I'll accept that. And I will order that while you're in the
23 halfway house, you not encrypt anything. You don't encrypt
24 anything. Simple enough. You're using somebody else's
25 stuff. As long as you don't seek to encrypt it, you'll be

1 fine.

2 THE DEFENDANT: Using someone else's computer.

3 THE COURT: That's the only one you can use while
4 you're there, right?

5 THE DEFENDANT: That is fine.

6 THE COURT: Okay. So that's it.

7 THE DEFENDANT: Well, but of course, my attorney
8 objects, so --

9 THE COURT: Yeah. Well, she can object, but it's a
10 nonstarter. One other thing occurs to me. I don't want you
11 to send emails except by you. I don't want you to -- if you
12 know how to send an email to somebody using theirs, or turn
13 it around, you know, bogus emails, don't do that; that's a
14 condition going forward of supervised release.

15 The new term of supervised release will be 30
16 months from today going forward, and those conditions will be
17 in effect. I add to it, you know, this sanction --
18 alternatively as a sanction, as a condition of supervised
19 release, that he spend six months in a halfway house.

20 Here's the last thing. Obey the conditions at the
21 halfway house, okay? You're there in lieu of jail. Now, you
22 may not agree with them, they may seem arbitrary to you; if
23 they say no fraternizing with the women, no cell phones, this
24 and that, whatever the conditions are, you go along with them
25 because you're there instead of being in jail where I can

1 assure you you won't have a phone and you won't have all
2 these other things. So I have people sometimes, Mr. Chaker,
3 that go into the halfway house and then they get attitude and
4 say well, I'm not doing this, I'm not doing that, halfway
5 house throws them out. If that happens, your next stop will
6 be the Graybar Hotel, okay?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Anything else, Ms. Trimble?

9 MS. TRIMBLE: Your Honor, just with respect to the
10 halfway house, I think we've been searching for a bed with
11 Pretrial to be available --

12 THE COURT: Is there something available tomorrow?

13 USPSO RABBAN: Mari Rabban with Pretrial Services.
14 The thing is he's on supervised release, he's not on pretrial
15 release.

16 THE COURT: Right.

17 USPSO RABBAN: I contacted CAI last week. They do
18 have bed space available for Pretrial Services. However, I
19 think Probation is a little different as far as them being
20 able to get bed space. Considering this is over today -- and
21 I'm not sure what would happen to the bond that was set --

22 THE COURT: Well, the --

23 USPSO RABBAN: -- whether it would be exonerated --

24 THE COURT: -- yeah, the bond will be set aside now
25 he's going to be released subject to the supervised release

1 conditions, one of which is he goes to a halfway house, so
2 he's not on bond --

3 USPSO RABBAN: Then --

4 THE COURT: -- unless you want me to maintain the
5 bond until he gets in.

6 USPSO RABBAN: No --

7 MS. TRIMBLE: We wouldn't ask for that. We've been
8 having trouble getting an appraisal for the house.

9 THE COURT: Okay. So the bond is canceled, but
10 he's still in custody, and I want him to make a seamless
11 transition to the halfway house, but I want him to do it
12 right away; I don't want him to spend any extra time in jail.

13 USPO HERNANDEZ: Your Honor, it would take close to
14 three weeks to get him into the halfway house as a supervised
15 release person.

16 THE COURT: Well, what can we call him so he gets
17 in before then?

18 USPO HERNANDEZ: A pretrial body?

19 USPSO RABBAN: But then he'd have to post bond for
20 him to get out on pretrial release.

21 THE COURT: Why don't we make the bond in effect
22 for three more weeks, and then that would facilitate his
23 immediate transfer to the halfway house.

24 MS. TRIMBLE: So my concern is the bond that was
25 posted -- that was set was a property bond, and Mr. Chaker's

1 mother, though willing to put up her property as part of the
2 bond, is unable to get an appraisal for that, and I was --

3 THE COURT: What if I modify the bond to a personal
4 signature signed by Mr. Chaker?

5 MS. TRIMBLE: I think that would be fine.

6 THE COURT: Will that do it?

7 USPSO RABBAN: Yes, and that -- so I'd recommend
8 that probation supervise him while he's out for those three
9 weeks.

10 THE COURT: Can you normally do that, Mr.
11 Hernandez?

12 USPO HERNANDEZ: Yes, your Honor.

13 THE COURT: Okay. Bond is modified to a personal
14 surety signed by Mr. Chaker in the amount of \$25,000. The
15 condition that it be fully supported by property is deleted.
16 And I'm doing that to facilitate your transfer. Once you're
17 in there -- we'll cancel the bond altogether once you're in
18 bed over there, okay?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right. Now, look, Mr. Chaker, I've
21 done my best to be flexible and sensible about this, to not
22 overreact to it, but I want you to assure me that there's no
23 confusion on your part, that you and I have a meeting of the
24 minds about what's permissible because, frankly, I'm
25 skeptical that you don't get it, that you don't get what you

1 can't do; I'm skeptical about those claims. You seem like a
2 very shrewd -- and I don't mean that in a negative way -- you
3 sound like a very shrewd, smart guy that gets the uptake on
4 stuff, and it's not good for you to be back here, and I don't
5 want to see you back here. So if you don't do this stuff,
6 you won't be back here. Do you have any question about
7 anything I've said? Is there any ambiguity in your mind?
8 And, you know, if something does arise that we couldn't have
9 contemplated and accounted for now that I've set a procedure
10 in place for you, contact Ms. Trimble, and if it's still
11 confounding, she can come to me and we'll sort it out here.
12 With all that said, any confusion about what your
13 responsibilities are going forward?

14 THE DEFENDANT: With the definition of personal
15 information would be any nonpublic information?

16 THE COURT: Yeah --

17 THE DEFENDANT: Okay.

18 THE COURT: -- yeah, nonpublic and information that
19 tends to put somebody in a bad light, I mean particularly
20 something that you have not verified. There are allegations
21 here that you're accusing somebody of a molestation who, you
22 know, has never been charged or accused of that. That type
23 of thing is what I'm talking about. Don't do that.

24 THE DEFENDANT: Okay.

25 THE COURT: Don't do that because it looks like

1 you're being vindictive again, and that's one of the things
2 that Judge Atlas was trying to stem based on this history of
3 doing that kind of thing.

4 THE DEFENDANT: Okay. And not admitting that I
5 have done any of that, but do not threaten, extort --

6 THE COURT: Yeah. Right.

7 THE DEFENDANT: -- harass, that would give rise to
8 probation being allowed to look at the computer.

9 THE COURT: Maybe. Yeah, maybe. I mean they'll
10 come to me and ask me for an order to do that, and I've
11 already signaled to you that, you know, if there's probable
12 cause to believe you're doing that again and using your
13 computer, I'm going to let them get the proof of that; I
14 think that's justified, so --

15 THE DEFENDANT: Okay.

16 THE COURT: -- but believe me, I have no intention
17 of letting anybody look at your computer for no good reason,
18 only if it's -- if there's some suggestion supported by
19 probable cause that you violated supervised release using the
20 computer in the way that you have in the past. If you do
21 that, then the computer's a problem; otherwise, you know,
22 your musings on the computer are your own.

23 THE DEFENDANT: Okay.

24 THE COURT: So we're clear, you're clear with me?
25 You don't have any questions about this?

1 THE DEFENDANT: No. And don't use encryption while
2 at the halfway house or --

3 THE COURT: Yeah, that's a nonissue because you're
4 not going to have your own devices, nothing to encrypt,
5 right?

6 THE DEFENDANT: I wouldn't use -- correct. I won't
7 be using the computer to --

8 THE COURT: Okay. All right. Okay. We're set
9 then. That concludes the hearing. As soon as he's
10 transfered, I'll sign the -- I'm signing the new bond now.
11 As soon as he's transfered, I'll -- or the bed's available,
12 I'll sign the release order.

13 MS. TRIMBLE: Thank you, your Honor. And I'm
14 filling out bond conditions now if your Honor would allow.

15 MR. JONES: Thank you, your Honor.

16 THE COURT: Yeah. Ms. Trimble, here's the last
17 thing. Will you have one of your investigators, once the
18 order's signed, pick him up and take him to the halfway
19 house?

20 MS. TRIMBLE: Yes, we can arrange that somehow.

21 THE COURT: Okay. All right. We're in recess.

22 MS. TRIMBLE: Well, actually can I ask which
23 halfway house this is?

24 USPSO RABBAN: It's going to be CAI, your Honor.

25 MS. TRIMBLE: Where is that?

1 USPSO RABBAN: It's about ten minutes from here.

2 (Off-the-record conversation takes place between Ms.

3 Trimble and USPSO Rabban.)

4 THE COURT: Can you get the address and give it to

5 Ms. Trimble?

6 USPSO RABBAN: Yes.

7 (The proceedings were concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 LAURA E. DUFFY
2 United States Attorney
3 SCOTT T. JONES
4 Assistant U.S. Attorney
5 Washington State Bar No. 44635
6 Office of the U.S. Attorney
7 880 Front Street, Room 6293
8 San Diego, CA 92101
9 Tel: 619-546-8248
10 Email: Scott.Jones@usdoj.gov

11 Attorneys for the United States

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 DARREN DAVID CHAKER,

18 Defendant.

Case No.: 15-cr-7012-LAB

Date: March 2, 2015

Time: 2:15 p.m.

**GOVERNMENT'S MOTION TO
DISMISS THE PETITION**

19
20 The UNITED STATES OF AMERICA, by and through its counsel, Laura E.
21 Duffy, United States Attorney, and Scott T. Jones, Assistant United States Attorney,
22 respectfully requests that the Court dismiss the pending supervised release violation
23 petition in the above-cited case. Defendant's counsel has been contacted and indicates
24 that the Defendant does not oppose this motion.

25 As the Court noted during the July 13, 2015 hearing, the case seems to be "in
26 equipoise" – were the matter to proceed, the Court would be faced with two
27 conflicting drug tests. The first, a urine sample taken by the residential rehabilitation
28 facility in which the Court ordered Chaker placed and analyzed by a certified

laboratory, indicates that he consumed or used methamphetamine while on supervised release. The second, a hair sample collected by the defense in the presence of staff of the Metropolitan Correctional Center and analyzed, similarly, by a certified laboratory, indicates that he did not.

A review of the two methods of testing suggests that both are reliable. Like any scientific test, however, both can and (very infrequently) do err and return either a false positive (no drug use but a positive result) or a false negative (drug use with a negative result). Neither is reliable unless appropriate chain-of-custody protocols are followed.

It is unlikely that the Government would be able to provide evidence to satisfy the required standard of proof, even if it were to expend the significant resources necessary to bring all individuals involved in both tests to a hearing. It is therefore in the interest of justice that the Court not proceed on the pending petition.

CONCLUSION

For the above stated reasons, the United States respectfully requests that the Court dismiss the pending petition.

DATED: July 14, 2015

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

s/Scott T. Jones
Scott T. Jones
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARREN CHAKER,

Defendant.

Case No. 15CR-7012-LAB

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Scott T. Jones, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of:

GOVERNMENT'S MOTION TO DISMISS THE PETITION

on the following party:

Defendant, via counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 14, 2015

s/Scott T. Jones
SCOTT T. JONES