UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, Plaintiff,	:	
V.	:	CASE NO. 3:99CV314(RNC)
DR. HENRY C. LEE, ET AL., Defendants.	:	

MEMORANDUM OPINION ON

DEFENDANTS' MOTION FOR STAY OF PERMANENT INJUNCTION

In a telephone conference earlier today, the Court granted plaintiff's motion for a permanent injunction on behalf of the due process class, entered the injunction, and denied defendants' motion for a stay of the injunction, stating that this memorandum opinion addressing the denial of the stay would follow.

Defendants have moved pursuant to Rule 62(c) for a stay of the permanent injunction pending appeal or, in the alternative, for a more limited stay to permit them time to seek a stay from the Court of Appeals. The merits of the stay have been briefed and were argued on May 15. After careful consideration, I have concluded that the motion for stay pending appeal must be denied and that, in the extraordinary circumstances presented in this case, even the more limited stay should not be granted.

In evaluating a Rule 62(c) motion for stay of an injunction, the Court must consider (1) whether the applicant has made a strong

showing that it is likely to succeed on the merits of the appeal; (2) whether the applicant will be irreparably injured unless a stay is granted; (3) whether a stay will substantially injure other parties interested in the proceeding; and (4) the public interest. See Rodriguez v. DeBuono, 175 F.3d 227, 234 (2d Cir. 1999) (citing Hilton v. Braunskill, 481 U.S. 770, 776 (1987)).

Defendants have not made a strong showing that they are likely to prevail on appeal. They have presented no new evidence or authority since the due process claim was briefed and decided. The fact that the Second Circuit has not previously considered the due process issue presented here is relevant but by itself plainly insufficient to justify a stay. Of the cases cited by the defendants, only two involve an undifferentiated registry. See Akella v. Michigan Dep't of State Police, 67 F. Supp. 2d 716 (E.D. Mich. 1999); Lanni v. Engler, 994 F. Supp. 849 (E.D. Mich. 1998). Neither case establishes that the defendants are likely to succeed on appeal.

The defendants have been urged to identify any harms that could arise from entry of the injunction barring them from continuing to make the undifferentiated Registry publicly available while the case is on appeal. At oral argument on May 15, their counsel was unable to identify any harm that is not more than adequately addressed by the careful tailoring of the injunction. See May 15th Hearing on Motions, Tr. at 10-23. In the telephone conference this morning,

the defendants were given another opportunity to comment but declined to do so.

One example of asserted harm that the State has singled out for special emphasis both in court and in the media hypothesizes a situation in which a dangerous sex offender relocates his residence to a dwelling across the street from a school for young children. If that were to happen in the real world, reasonably diligent law enforcement officials in that city or town could readily discover the offender's change of residence simply by checking the Registry, which will continue to be updated and remain available to law enforcement officials and agencies at all times. Moreover, if that situation were to occur, nothing in the injunction would prevent law enforcement officials from taking steps to inform everyone at the school and everyone in the neighborhood of the registrant's prior offenses. The injunction would prevent law enforcement officials from providing the Registry itself to the public, identifying the registrant as being included in the Registry, or publicly disclosing the registrant's Registry information in a manner that revealed his inclusion in the Registry. The defendants have not shown that those limitations would cause anyone any harm.

The only other harm defendants have mentioned is an asserted risk that the injunction could cause the State to lose federal funds because of the restrictions imposed by the Wetterling Act. Assuming that the loss of federal grant money that would follow from a state's noncompliance with the Wetterling Act could constitute

irreparable harm, the State need have no such concern in this case because the injunction permits it to make the disclosure required by federal law, that is, disclosure of information necessary to protect the public from a specific person. See 42 U.S.C. § 14071(e)(2). The injunction only requires that, in releasing such information, law enforcement not identify the specific person as being included in the Registry. This limitation in no way dilutes or diminishes the effectiveness of the warning because inclusion in the Registry reflects no assessment of a person's dangerousness and hence the fact of inclusion adds nothing to the information law enforcement can otherwise provide.

This is not a situation in which denial of the stay will eliminate any meaningful opportunity for the defendants to seek review in the Court of Appeals. See, e.g., Providence Journal Co. v. FBI, 595 F.2d 889, 890 (1st Cir. 1979) (injunction ordering FBI to turn over confidential documents to newspaper should be stayed pending appeal; disclosure of documents will utterly destroy the status quo and moot FBI's right of appeal). However, granting the stay would permit the defendants to violate the due process rights of all current and future registrants on an ongoing basis until the appeal was resolved, which necessarily would cause substantial, irreparable harm to them. See Jolly v. Coughlin, 76 F.3d 468, 482 (2d Cir. 1996) (a "presumption of irreparable injury . . . flows from a violation of constitutional rights"), overruled on other grounds by City of Boerne v. Flores, 521 U.S. 507 (1997).

With regard to the public interest, the interests in public safety and effective law enforcement have already been addressed above. As explained there, the injunction does not threaten any harm to those interests. In addition to those interests, the Court must also be concerned about the public interest in not having the State engage in conduct that results in an ongoing violation of federal constitutional rights and, as plaintiff's counsel have correctly pointed out, there is a distinct public interest in having this Court discharge its duty to protect and enforce those rights. The State has unambiguously taken the position that in the absence of class certification it would refuse to extend the benefit of this Court's ruling to anyone except the named plaintiff. See May 15th Hearing on Motions, Tr. at 24. Though hardly dispositive of the issues presented by the State's request for a stay, the State's deliberate refusal to give similarly situated registrants the benefit of the Court's ruling on the due process issue in the absence of an order providing classwide relief cannot be overlooked.

Turning to the defendants' request for a brief stay while they try to obtain a stay from the Court of Appeals, ordinarily such a request would be granted if only to avoid causing undue hardship to counsel and the Court of Appeals. However, extraordinary circumstances presented here make it necessary to deny even such a brief stay. Anticipating today's order granting plaintiff's request for a permanent injunction barring public disclosure of the Registry, a local television station filed yesterday a Freedom of

Information Act request for a copy of the Registry database, presumably because the station would like to provide public access to the Registry through its own website. The defendants have informed the Court that action on the FOIA request is not required until Tuesday, and that they would endeavor to complete and file their stay application in the Court of Appeals by Monday. This gives no assurance that the Registry would not be released to the station on Tuesday. Moreover, the station's request highlights the risk that persons unaffiliated with the defendants have been, are, or would be taking steps to download the information in the Registry. Plaintiff's counsel's reference this morning to the recent Napster controversy is a helpful reminder of the ease with which information provided over the Internet can be copied and disseminated. The Court is also aware that before New York State put any part of its sex offender registry on the Internet, a private group copied the subdirectory of high risk offenders and created its own website. See http://www.parentsformeganslaw.com/html/offender.lasso. It therefore appears that leaving the defendants' website up and running even for only a few more days would needlessly risk enabling third parties to download and print the contents of the database. If such a project were accomplished, the Registry would continue to be publicly available. Dissemination of such a copied registry by private parties would not be reachable under the Fourteenth Amendment, but it would have been made possible only

because of the State's prior violation of registrants' due process rights.

In sum, the balance of equities on the request for a stay tips decidedly in favor of denying the stay and the defendants' request for a stay is therefore denied.

It is so ordered this 18th day of May 2001.

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Robert N. Chatigny
United States District Judge