

1 Peter J. Eliasberg (SBN 189110)
Email: peliasberg@aclusocal.org
2 Lydia Gray (SBN 310338)
Email: lgray@aclusocal.org
3 ACLU Foundation of Southern California
1313 West 8th Street
4 Los Angeles, CA 90017
Telephone: (213) 977-9500
5 Facsimile: (213) 977-5297

6 *Counsel for Plaintiff*
(Additional counsel for plaintiff on following page)
7
8

9 **UNITED STATES DISTRICT COURT FOR THE**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SHERMAN MANNING, an individual,

Plaintiff,

v.

JERRY POWERS, in his official
capacity; KAREN THACKER, in her
official capacity; DOUGLAS
BROOME, in his official capacity;
SEAN WILSON, in his official
capacity; and DOES 1 through 10,

Defendants.

CASE NO. 2:17-CV-7832

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Jennifer Stisa Granick (SBN 168423)
2 American Civil Liberties Union
3 Speech, Privacy, and Technology Project
4 39 Drumm St.
5 San Francisco, CA 94111-4805
6 Telephone: (415) 343-0758
7 Email: jgranick@aclu.org

8 Erin Darling (SBN No. 259724)
9 Law Offices of Erin Darling
10 3435 Wilshire Blvd., Suite 2910
11 Los Angeles, CA 90010
12 Telephone: (323) 736-2230
13 Email: erin@erindarlinglaw.com

14 Daniel Mach (*pro hac vice application forthcoming*)
15 American Civil Liberties Union Foundation
16 Program on Freedom of Religion and Belief
17 915 15th St., NW
18 Washington, DC 20005
19 Telephone: (202) 548-6604
20 Email: dmach@aclu.org

21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331 (in that they arise under the Constitution of the United States), § 1343(a)(3) (in that they are brought to redress deprivations, under color of state authority, of rights, privileges, and immunities secured by the United States Constitution), § 1343(a)(4) (in that they seek to secure equitable relief under 42 U.S.C. § 1983), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

2. Venue is proper in the Central District of California under 28 U.S.C. § 1391(b) because a substantial part of the acts or omissions giving rise to the claims herein occurred in this District.

3. This Court has the authority to grant damages, declaratory and injunctive relief, and any other appropriate relief pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1343; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

INTRODUCTION

4. Parole officials do not have untrammelled authority to burden the First Amendment rights of people on parole to express themselves and exercise their religion just because they remain under the supervision of the criminal justice system.

5. Parole officials may not impose blanket restrictions on use of social media sites and other Internet sites, which the Supreme Court has recently described as “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard,” and whose use the Court has held is protected by the First Amendment right to freedom of expression. But Defendants and their agents are doing exactly that – Mr. Manning is prohibited from using and accessing all social media sites, social network sites, peer-to-peer networks, and computer or cellular instant messaging systems.

6. This Internet restriction bears no relation to the crime for which Mr.

1 Manning is on parole, nor to any previous crime for which he has been convicted.
2 In other words, no criminal act in Mr. Manning's past was committed on the
3 Internet or through use of social media; he did not meet any of the victims of his
4 crimes through social media, nor is there even the faintest connection between
5 social media and any of his past criminal acts. Accordingly, Defendants' attempt
6 to bar him completely from using or accessing social media for any purpose
7 involves a greater deprivation of his fundamental liberty interest than is reasonably
8 necessary to effectuate the purposes of supervised release.

9 7. Nor may parole officials completely bar the doors to houses of
10 worship to people on parole. Yet Defendants are doing precisely that. They or
11 their agents have repeatedly told Mr. Manning that one of his conditions of parole
12 bars him from attending church as a member of the congregation and from
13 preaching in church, and they have threatened to have him arrested if he does, even
14 though these practices are protected under the Free Exercise and Establishment
15 Clauses of the First Amendment. Moreover, Mr. Manning is an ordained Baptist
16 minister who has been invited to preach by pastors at numerous Baptist churches in
17 the Los Angeles area, all of whom are aware that he is on parole and released from
18 prison less than two years ago.

19 8. This churchgoing restriction bears no relation to the crime for which
20 Mr. Manning is on parole, nor to any previous crime for which he has been
21 convicted. In other words, no criminal act in Mr. Manning's past was committed
22 in church, he did not meet any of the victims of his crimes in church, nor is there
23 even the faintest connection between church and any of his past criminal acts.
24 Accordingly, Defendants' attempt to bar him from attending church involves a
25 greater deprivation of his fundamental liberty interest than is reasonably necessary
26 to effectuate the purposes of supervised release.

27 9. The crime for which Mr. Manning is on parole is forcible sodomy and
28 forcible oral copulation with an adult male in 1995. He was also convicted of two

1 prior sex offenses. The first, aggravated sodomy and sexual assault on a 17 year
2 old male, occurred in 1990 in Georgia when Mr. Manning was 24 years old. A 17
3 year old is not a minor under Georgia law. *See* Ga. Code §§ 16-6-2 and 16-6-4.
4 The second was a conviction for misdemeanor sexual battery in Virginia in 1992.
5 Similarly, this was not charged as a sexual offense with a minor, because age is not
6 an element of misdemeanor sexual battery under Virginia law. *See* Va. Code §
7 18.2-67.4. To the best of Mr. Manning's recollection, this offense involved a male
8 between 16 and 18 years old. Therefore, Mr. Manning has never been charged
9 with, and has not ever pleaded guilty to, any sexual crime with a minor.

10 10. While Mr. Manning was in prison in California, he was also convicted
11 of making threats against a peace officer, which extended his sentence. The threat
12 was communicated by mail in a letter to which he signed his own name and hand
13 delivered to a prison guard for posting. He did not communicate the threat on the
14 Internet, or research the person against whom the threat was made on the Internet,
15 nor did the Internet have any other connection or relation to the crime. Nor did
16 the threat have any connection to a church.

17 11. Finally, the First Amendment prohibits government officials from
18 retaliating against individuals for exercising their First Amendment right to
19 petition government for redress of grievances. Yet Defendants Broome, Wilson,
20 and possibly others, are doing exactly that. Mr. Manning sought the assistance of
21 the ACLU, which wrote a letter on his behalf to Defendants and their agents,
22 explaining why two of his parole conditions violated his First Amendment rights.
23 In response, Defendants retaliated against him, subjecting him to searches he had
24 never once experienced in about 16 months on parole before the ACLU wrote
25 parole on his behalf. Worse still, his parole agents repeatedly warned him against
26 further associating with his legal counsel, the ACLU, and informed him that the
27 problems he was experiencing with parole would not have happened if he hadn't
28 "got[ten] the ACLU on [their] ass."

1 **PARTIES**

2 12. Plaintiff is an ordained Baptist minister who lives in Los Angeles.
3 He is on parole, under the supervision of the Adult Parole Division of the
4 California Department of Corrections and Rehabilitation.

5 13. Defendant Jerry Powers is the Director of the California Division of
6 Adult Parole Operations (DAPO), a division of California's Department of
7 Corrections and Rehabilitation. DAPO is divided geographically into two regions,
8 Northern and Southern, and employs all parole agents who supervise adults on
9 parole. He is sued in his official capacity.

10 14. Defendant Karen Thacker is a Regional Parole Administrator for the
11 Southern Region of DAPO and is responsible for the day to day operations of
12 supervision of all adults on parole in the Southern California area, including Los
13 Angeles. She is sued in her official capacity.

14 15. Defendant Douglas Broome is a parole supervisor who works in the
15 Southern Region of DAPO. He is sued in his official capacity.

16 16. Defendant Sean Wilson is a parole agent who works in the Southern
17 Region of DAPO. He is sued in his official capacity.

18 17. The true names and capacities of Defendants Does 1 through 10 are
19 unknown to Plaintiff who therefore sues these Defendants by fictitious names.
20 Doe Defendants include any DAPO employees who ordered or otherwise
21 participated in the retaliation of Plaintiff for exercising his First Amendment rights.

22 18. All of the Defendants' actions were taken under color of state law.

23 **FACTUAL ALLEGATIONS**

24 **Mr. Manning's Religious Beliefs and Practice**

25 19. Mr. Manning has long-standing religious beliefs that date to his youth.
26 He became an ordained minister at the age of 18 in Atlanta, Georgia at the First
27 Corinth Baptist Church in 1984, after completing a five-year mentorship program.

28 20. He views preaching as his life's calling and would like to deliver

1 sermons, or at least be in church, five times per week.

2 21. After his release from prison and before one of his parole agents
3 barred him from attending church, he was devoting about 30 hours per week to his
4 religious activities, with approximately 10-12 of those hours being spent in church.

5 22. Preaching is not only a calling for Mr. Manning, it is also a profession
6 that enables him to support himself and remain off government assistance, such as
7 welfare and food stamps. He receives donations when he preaches sermons as a
8 “guest preacher” by invitation.

9 23. Attending church is also critical to Mr. Manning’s preaching activity
10 because it gives him the opportunity to meet pastors and develop relationships that
11 frequently lead to his being invited to deliver guest sermons at their churches.

12 24. Mr. Manning continues to pursue his calling to be a better pastor. He
13 recently attended the Word Handlers Workshop at the invitation of its organizer,
14 Dr. R. A. Williams. Dr. Williams is the pastor at the McCoy Memorial Baptist
15 Church in Los Angeles. Dr. Williams invited Mr. Manning to attend and gave him
16 a scholarship to cover the ordinary \$350 cost of the conference. The workshop is
17 designed to help pastors become better and more effective preachers and directors
18 of their churches. Mr. Manning attended a variety of sessions, including some
19 devoted to learning Hebrew and Greek because those are the original languages in
20 which the Bible was written.

21 **The Role of Social Media in Supporting Mr. Manning’s Efforts to Preach and**
22 **Strengthen His Connections to His Faith Community**

23 25. Social media would be an essential tool for Mr. Manning to spread his
24 message and religious beliefs more widely in at least three ways. First, posting
25 videos of his sermons on sites such as YouTube and Facebook – two of the world’s
26 largest and most used social media sites – would enable him to deliver his message
27 to people who do not live in the Los Angeles area or are otherwise unable to attend
28 churches when and where he is delivering sermons. Second, having his sermons

1 on YouTube and Facebook would allow people whom he does not know, but who
2 may be interested in his message, to contact him, and to communicate with him
3 and learn about his future guest sermons. This would also allow other pastors to
4 learn about him and evaluate the quality of his preaching, which increases the
5 number of invitations he may receive to deliver guest sermons. Third, there is a
6 fellowship among ministers, and social media sites are a means of strengthening
7 that fellowship. Given the incredible number of people who use social media,
8 including pastors, Defendants' barring Mr. Manning from social media prevents
9 him from connecting with religious figures from his past in Atlanta as well as
10 preventing them from re-connecting with him.

11 **The Conviction for Which Mr. Manning Is on Parole and the Challenged**
12 **Parole Conditions**

13 26. Mr. Manning is on parole for a 1995 conviction for forcible sodomy
14 and forcible oral copulation with Ricardo Calvario, a 20 or 21 year old man. He
15 had solicited Mr. Calvario on the street. He had never met him before. He did not
16 communicate with Mr. Calvario on the Internet, research him on the Internet, nor
17 did the Internet have any other connection or relation to the crime. He also did not
18 meet Mr. Calvario in church or on church property, have sex with him at church or
19 church property, nor was there any other connection between the crime and church.

20 27. Mr. Manning was sentenced to 16 years in prison. While he was in
21 prison, he was also convicted of making threats against a peace officer. The threat
22 was communicated by mail in a letter to which he signed his own name and hand
23 delivered to a prison guard for posting. He did not communicate the threat on the
24 Internet, or research the person against whom the threat was made on the Internet,
25 nor did the Internet have any other connection or relation to the crime. Nor did
26 the threat have any connection to a church.

27 28. He was released from California prison in February 2016. Shortly
28 after his release, his first parole agent Mr. Turner, presented Mr. Manning with a

1 set of conditions of parole from the Adult Parole Division; they were not
2 conditions imposed by the court. There were more than 100 conditions, most of
3 which were similar to the current set of conditions he was given in April 2017 by a
4 subsequent parole agent, Ms. Schindler, and that still apply to him. Special
5 Condition 018 in both the February 2016 and April 2017 conditions provided:
6 “You shall not enter or loiter within 250 feet of the perimeter of places where
7 children congregate, (e.g., day care centers, schools, parks, playgrounds, video
8 arcades, swimming pools, state fairgrounds, county fairgrounds, etc.)” Mr.
9 Manning did not understand that condition to bar him from preaching at or
10 attending church, nor did Mr. Turner or his next two parole agents suggest that the
11 condition barred him from doing so.

12 29. Condition 084 in the April 2017 set of conditions bars him from,
13 among other things, using social media sites like YouTube, Facebook, and Twitter.
14 That condition states: “You shall not use or access social media sites, social
15 networking sites, peer-to-peer networks, or computer or cellular instant message
16 systems: e.g. Facebook, Instagram, Twitter, Snapchat, Lync, Gmail, Yahoo, KIK
17 Messenger, Tumblr, etc. This would include any site which allows the user to have
18 the ability to navigate the internet undetected.”

19 **Mr. Manning’s Church Attendance and Guest Ministry After His Release**
20 **from Prison**

21 30. After his release from prison, Mr. Manning attended a wide variety of
22 Baptist and Evangelical churches regularly. He attended at least five services a
23 week. He introduced himself to the pastors of the churches he attended, and some
24 of them referred him to other churches and pastors. He also attended the weekly
25 Baptist Ministers’ Conference in Los Angeles, where he frequently spoke with
26 pastors about his interest in doing guest sermons.

27 31. Mr. Manning received his first guest ministry job about a month after
28 his release. After a while, he was working as a guest minister about once a week,

1 usually on Sunday morning, Sunday evening, or Thursday evening services. He
2 was invited to preach by, among others, Pastor Stan Richards of the Beacon Light
3 Baptist Church, Pastor Michael Rowles of Wrecking Crew for Christ, Pastor
4 Kenneth Pitchford of Greater Hopewell Full Gospel Baptist Church and Rehoboth
5 Missionary Baptist Church, and Pastor Terry Wilson of Good News Missionary
6 Baptist Church.

7 32. All of these pastors were pleased with Mr. Manning's sermons and
8 behavior in church. Pastor Richards, for example, described Mr. Manning as a
9 "model congregant," and Pastor Rowles described Mr. Manning as "respectful and
10 "welcome at [his church] anytime."

11 33. When Mr. Manning went to church after his release from prison, he
12 was frequently accompanied by a friend, Jorge Gandarilla, a former prison guard
13 from the Arizona Department of Corrections. As he got to know the pastors at the
14 churches he attended, he generally would be invited to sit in the pulpit area with
15 them, not in the pews. It is not uncommon for there to be children with their
16 families at church, but Mr. Manning made no effort to interact with them.

17 **Mr. Manning's First Few Parole Agents' Knowledge that He was Attending**
18 **Church**

19 34. Mr. Manning shared his love of preaching with his first parole agent,
20 Mr. Turner, after his release from prison in February 2016. He also told Mr.
21 Turner that he was earning money through guest preaching. Mr. Turner was very
22 encouraging about both his going to church and preaching.

23 35. In May 2016, a Court determined Mr. Manning had violated parole by
24 logging onto Facebook and by not following his 10 pm curfew. He was sentenced
25 to 120 days and served about 60 of them.

26 36. Upon his release, he was assigned to a new parole agent, Mr.
27 Sandoval. Mr. Manning assumed Mr. Sandoval knew he was attending church,
28 given that Mr. Manning wore a GPS monitor. Mr. Sandoval never told Mr.

1 Manning that doing so was a problem.

2 37. Mr. Manning was assigned to another parole agent, Tim Tottress, a
3 few months later. Mr. Manning told Mr. Tottress about his church attendance and
4 his preaching. Like Mr. Turner, he was very encouraging about the activities.

5 **Parole Interprets Special Condition 018 to Bar Mr. Manning from Attending
6 Church**

7 38. Mr. Manning was arrested for a parole violation in December 2016 on
8 allegations that he had violated two of his conditions of parole by a) logging onto
9 Facebook and b) using the computer for a “purpose which might further sexual
10 activity.” Parole officers did *not* arrest him for violating the condition barring him
11 from using “the computer for any purpose that might further sexual activity with
12 minor children.” The court found there was no probable cause to believe he had
13 used the computer for a “purpose which might further sexual activity” and
14 dismissed that charge. The court did find he had logged into Facebook. He was
15 sentenced to a term of 100 days for this Facebook violation.

16 39. When Mr. Manning was released in late April 2017, he was assigned
17 to a new parole agent, Ms. Schindler, who provided him with a new set of parole
18 conditions.

19 40. At their first meeting (or one of the first) at the parole office Ms.
20 Schindler told Mr. Manning, in sum and substance, that he “needed to get a real
21 job, because this preaching stuff is not going to work.” Mr. Manning was very
22 surprised and explained to her that preaching was not just his work, but his faith.
23 She responded that she wanted Mr. Manning to provide her with a letter from the
24 pastor of every church he was attending acknowledging that they knew not just that
25 he had been in prison, but why he had been in prison. Although Mr. Manning had
26 told some of the pastors why he had been in prison, he did not think it was right
27 that he had to tell all of them and get letters from them to give to her, so he
28 responded that he could not do that. Ms. Schindler then said, “You should not be

1 going to church anyway, I could arrest you for that.”

2 41. Mr. Manning was shocked by her statement and asked her on what
3 basis she could bar him from going to church, and she responded by identifying
4 Special Condition 018.

5 42. Mr. Manning was upset with Ms. Schindler’s claim that Special
6 Condition 018 forbade him from going to church. So, he returned to the parole
7 office the next day to see Mr. Arcee, who he believed was Ms. Schindler’s direct
8 supervisor. Mr. Arcee told Manning that he was not going to require him to get
9 letters from all the pastors acknowledging why he had been in prison and said he
10 was skeptical that barring him from going to church was permissible and said he’d
11 discuss it with Ms. Schindler. Mr. Manning asked Mr. Arcee to put in writing that
12 it was ok for him to go to church, but Mr. Arcee refused to do so.

13 43. Concerned that he had no written assurance he could go to church,
14 Mr. Manning returned to the office two days later to see Mr. Arcee’s supervisor,
15 Douglas Broome. He, too, said he did not think it should be an issue for Mr.
16 Manning to attend church, but he also refused to put it in writing, as Manning
17 requested.

18 44. About a week later, Mr. Manning went to see the District
19 Administrator, Vincent Thompson. Thompson called Messrs. Arcee and Broome
20 into the office. During the meeting, Thompson said he thought church attendance
21 was a “gray area,” and ultimately it is up to Mr. Manning and his agent. Mr.
22 Manning asked for a written commitment that he could go to church, and
23 Thompson refused, again saying it was up to Manning and his agent.

24 45. Unable to obtain any assurance that he could exercise his faith by
25 preaching and attending church, Mr. Manning telephoned Chief Deputy of Parole,
26 Enrique Gonzalez at Parole Headquarters in Walnut Creek. Mr. Gonzalez told Mr.
27 Manning he had never heard of such a parole condition and that he thought it was
28 great Mr. Manning was preaching. He also said he would call Vincent Thompson

1 to discuss the issue. When Mr. Gonzalez called Mr. Manning back, he told him
2 attending church was not a problem, but he, too, refused to put it in writing.

3 46. A few hours later Mr. Manning got a telephone call from Douglas
4 Broome. Mr. Broome sounded very angry and demanded that Mr. Manning come
5 into the parole office. When Mr. Manning spoke with Mr. Broome in person, he
6 criticized Mr. Manning for calling Mr. Gonzalez and told him he agreed with Ms.
7 Schindler that Mr. Manning cannot go to church.

8 47. Believing that this condition was illegal, Mr. Manning telephoned
9 Karen Thacker, Director of Adult Parole Supervision. When they spoke, she did
10 not take a position on whether this was a legitimate restriction but she told him she
11 would look into it.

12 48. Mr. Manning did not hear back from Ms. Thacker. But, Douglas
13 Broome called him into the parole office where Mr. Manning met with him and
14 Vincent Thompson. They confirmed that he was barred from going to church by
15 Special Condition 018 and they also changed his Sharper Future sex therapy
16 appointments to conflict with the weekly 11 am Monday Baptist Minister's
17 Conference that Mr. Manning regularly attended. Mr. Broome also told him that
18 he was going to call Pastor Richards to tell him that he was on parole, and asked
19 him to leave the office. When he returned to the office, they reiterated that Mr.
20 Manning was prohibited from going to church, and they would arrest him for doing
21 so, or find some other reason to arrest him if he went to church.

22 **The ACLU Writes a Letter on Mr. Manning's Behalf**

23 49. At this point, Mr. Manning was so upset about the Defendants'
24 barring him from attending church that he reached out to the ACLU. On June 2,
25 2017, the ACLU sent a letter on Mr. Manning's behalf – along with a copy of his
26 ordination certificate and a letter from Pastor Stan Richards who had invited Mr.
27 Manning to deliver a sermon at his church – to officials of the Adult Parole
28 Division. The letter stated that conditions 084 and 018 – as interpreted to bar him

1 from attending church or preaching – violated Mr. Manning’s First Amendment
2 rights.

3 50. The letter did not cause his parole agent or supervisors to change their
4 position. In fact, in the months since then, Ms. Schindler and others in parole have
5 reiterated that he may not attend church and have made a number of threatening
6 comments about his seeking the assistance of the ACLU.

7 **Harassment by Parole Agents Since the ACLU Wrote a Letter on Behalf of**
8 **Mr. Manning**

9 51. Ever since the ACLU wrote a letter on Mr. Manning’s behalf, he has
10 received verbal abuse, threats, and retaliatory searches and administrative burdens
11 from a number of people in Adult Parole.

12 52. Upon information and belief, the retaliatory actions may have been
13 ordered by unknown DAPO employees, including those who received and read the
14 ACLU letter, which the ACLU did send to Defendants Broome, Wilson, or another
15 parole agent, Ms. Schindler, who have engaged in the retaliatory actions alleged
16 herein.

17 53. In the 16 months between Mr. Manning’s release from prison and the
18 ACLU’s sending a letter on his behalf, Manning had consistently interacted with
19 parole twice a month. He had one in person meeting at the parole office and one
20 meeting in the field. On information and belief, parole claims the authority to do
21 compliance checks, at which they locate a parolee in the field or where the parolee
22 is living, not at the parolee’s regularly scheduled twice a week meetings. During
23 those compliance checks, they may search the parolee, the place the parolee is
24 staying, look at the parolee’s phone, computer, etc. But, Mr. Manning did not have
25 a single compliance check between the time he was released from prison in
26 February 2016 and June 2, 2017, when the ACLU transmitted its letter.

27 54. Within a few days of the ACLU’s transmitting its letter, Mr.
28 Manning’s then-parole agent, Ms. Schindler, a supervising agent, Mr. Broome, and

1 some other people wearing jackets that said “Parole” on them, knocked on the door
2 of the house where Mr. Manning was staying at 5 am in the morning. They said
3 they were there for a “compliance check.” When Mr. Manning asked them what it
4 was all about and why they were searching his residence for the first time after he
5 had been on parole for more than a year, Mr. Broome answered, “you should have
6 thought about that when you contacted the ACLU.”

7 55. A few days later, Mr. Broome and Ms. Schindler pulled into a parking
8 lot where Mr. Manning was and told him they were conducting another compliance
9 check. Mr. Manning complained and said, “you just did a compliance check a few
10 days ago, this is harassment.” Mr. Broome said in a sarcastic tone, “contact the
11 ACLU, maybe they can help you.” He also said to Mr. Manning that he “should
12 have thought about it before you got the ACLU on our ass.”

13 56. A day or two later, Mr. Manning was driving in his car with his
14 friend, Jorge Gandarilla, when he received a telephone call from Douglas Broome.
15 He put the call on speaker so Mr. Gandarilla could hear it. During the call Mr.
16 Broome said to Mr. Manning, “you should leave the ACLU alone and your
17 problems will stop. But, if you keep communicating with them, it will be your
18 worst nightmare.” He was arrested the next day for four different offenses:
19 accessing Facebook, having an open container in his car, a curfew violation, and
20 accessing pornography. The Facebook, open container, and pornography charges
21 all stemmed from the compliance checks Mr. Broome and Ms. Schindler did at the
22 house where Mr. Manning was staying and of Mr. Manning’s car when they
23 confronted him in the parking lot. Mr. Manning pled to three of the charges, but
24 not the Facebook charge, and served about 75 days in jail.

25 57. When Mr. Manning was released after serving time on his parole
26 revocation, he was assigned a new parole agent, Mr. Wilson. The two met a few
27 times including on Friday, September 8, 2017. During that meeting, Mr. Wilson
28 said to Mr. Manning, “Word to the wise, I’d leave the ACLU alone.” Mr.

1 Manning asked him “why?” and Wilson responded in so many words, “You are a
2 smart man, you should know your last arrest was about you and the ACLU. I have
3 many guys on Facebook, and I do not lock them up.”

4 58. Mr. Wilson also started to call Mr. Manning into his office daily,
5 including two days in a row at one point, even though the ordinary practice is for a
6 person on parole to meet with his agent twice a month. When Mr. Manning asked
7 him why he was calling him in like this, he said “this is not my doing, they want
8 me to monitor you closely. If I were you, I’d leave the ACLU alone.”

9 59. The next day, Mr. Wilson asked Mr. Manning what he was planning
10 to do that day, and he told him he was going to contact the ACLU. After Mr.
11 Manning told him where he intended to go, Mr. Wilson ordered him stay in the
12 office most of the day – about six hours. When Mr. Manning asked him why, Mr.
13 Wilson simply said was “checking paper work” on him. As a result, Mr. Manning
14 ended up missing the appointment he had scheduled with a lawyer at the ACLU.

15 60. Prior to his spending six hours at the parole office and the ACLU’s
16 sending a letter on Mr. Manning’s behalf, his average meeting with his parole
17 agents at the office or in the field lasted 10-20 minutes. He had never had a
18 meeting last more than an hour.

19 61. During a period of time that Mr. Wilson was unavailable, Mr.
20 Manning met with a different parole agent, Mr. Rosales, and his supervisor, Ms.
21 Han. On October 23, 2017, Mr. Wilson came to where Mr. Manning was located
22 and told him he was “back on the job” and that he “looked at [Mr. Manning’s]
23 tracks” and discovered he had gone to the ACLU office while Mr. Wilson was
24 gone. Mr. Wilson told Mr. Wilson he “controls [Mr. Manning’s] life” and Mr.
25 Manning is “subject to arrest at any day.” If Mr. Manning continued meeting with
26 the ACLU, Mr. Wilson threatened to change his curfew to 8 or 9 in the evening
27 and to “make [his] life a living hell.”

28 **Mr. Manning’s Most Recent Parole Agents Reiterate that He May not Go to**

Church

1
2 62. In late August 2017, Mr. Manning reported to Judy Han, a parole
3 supervisor, because his line parole agent was not available. During their meeting
4 Mr. Manning asked whether he could attend church and preach. Ms. Han
5 responded that she was not going to overrule Mr. Thompson, and that the rule was
6 that he could not go to church. When Mr. Manning asked her why Mr. Turner, an
7 agent Ms. Han supervised, had permitted and even encouraged Mr. Manning to go
8 church, she refused to answer.

9 63. In September 2017, Mr. Manning was assigned to a different parole
10 agent, Mr. Rosales. They had their first meeting on Thursday September 21, 2017
11 at the Carl's Jr. at Martin Luther King Jr. Boulevard and Vermont Avenue. At that
12 meeting, Mr. Rosales told Mr. Manning that he may not go to church or preach at
13 church. He did not equivocate in any way about the prohibition.

14 64. On October 23, 2017, Mr. Wilson told Mr. Manning again that he
15 could not go to church and that if he did not go to church, he “would never go back
16 to jail.”

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Violation of the First Amendment, Freedom of Speech Clause; 42 U.S.C. §
1983
(Against All Defendants)**

17
18
19
20
21 65. Plaintiff realleges and incorporate the foregoing paragraphs as if set
22 forth herein.

23 66. Defendants' actions described herein violate the Freedom of Speech
24 Clause of the First Amendment to the United States Constitution by prohibiting
25 Plaintiff from accessing social media sites thereby barring his access to the richest
26 sources of information, religious and political interaction, and widest audience
27 available through any medium in the world.

28 67. Plaintiff faces immediate threat of irreparable injury, i.e., injury for

1 which there is no adequate damages remedy, by being barred from accessing social
2 media to communicate and receive information.

3
4 **SECOND CAUSE OF ACTION**

5 **Violation of the First Amendment, Free Exercise Clause; 42 U.S.C. § 1983**
6 **(Against All Defendants)**

7 68. Plaintiff realleges and incorporates the foregoing paragraphs as if set
8 forth herein.

9 69. Defendants' actions described herein violate the Free Exercise Clause
10 of the First Amendment to the United States Constitution by prohibiting Plaintiff
11 from attending church or preaching.

12 70. Plaintiff faces immediate threat of irreparable injury, i.e., injury for
13 which there is no adequate damages remedy, by being barred from exercising his
14 faith by attending church and preaching.

15 **THIRD CAUSE OF ACTION**

16 **Violation of the First Amendment, Establishment Clause; 42 U.S.C. § 1983**
17 **(Against All Defendants)**

18 71. Plaintiff realleges and incorporates the foregoing paragraphs as if set
19 forth herein.

20 72. Defendants' actions described herein violate the Establishment Clause
21 of the First Amendment to the United States Constitution by prohibiting Plaintiff
22 from attending church or preaching.

23 73. Plaintiff faces immediate threat of irreparable injury, i.e., injury for
24 which there is no adequate damages remedy, by being barred from exercising his
25 faith by attending church and preaching.

26 **FOURTH CAUSE OF ACTION**

27 **Violation of the First Amendment, Petition Clause/Retaliation;**
28 **42 U.S.C. § 1983**
(Against Defendants Broome, Wilson, and Does 1-10)

74. Plaintiff realleges and incorporate the foregoing paragraphs as if set

1 forth herein.

2 75. Defendants' actions described herein violate the Petition Clause of the
3 First Amendment by retaliating against Plaintiff for working with legal counsel to
4 petition government to eliminate two of his conditions of parole and dissuade him
5 from continuing to work with legal counsel to redress his concerns with these
6 conditions.

7 76. Plaintiff faces immediate threat of irreparable injury, i.e., injury for
8 which there is no adequate damages remedy, by being barred from exercising his
9 faith by attending church and preaching.

10
11 **PRAYER FOR RELIEF**

12 77. Plaintiff therefore respectfully requests that the Court enter a
13 judgment including:

- 14 a. A declaratory judgment that Defendants' actions as described herein
15 violate the Speech, Free Exercise, Establishment, and Petition Clauses
16 of the First Amendment to the United States Constitution;
- 17 b. A preliminary and permanent Injunction barring Defendants from
18 enforcing Special Condition of Parole 084;
- 19 c. A preliminary and permanent injunction barring Defendants from
20 threatening to arrest Mr. Manning for, or otherwise barring him from,
21 attending church or preaching in church;
- 22 d. A Preliminary and Permanent Injunction Barring Defendants from
23 Retaliating Against Mr. Manning for Exercising his First Amendment
24 Rights;
- 25 e. Reasonable attorneys' fees and costs; and
- 26 f. Any other relief as may be just and proper.
- 27
28

1 Dated: October 25, 2017

Respectfully Submitted,

2 ACLU FOUNDATION OF SOUTHERN
3 CALIFORNIA

4 LAW OFFICE OF ERIN DARLING

5 AMERICAN CIVIL LIBERTIES UNION
6 SPEECH, PRIVACY, AND
7 TECHNOLOGY PROJECT

8 AMERICAN CIVIL LIBERTIES UNION
9 PROGRAM ON FREEDOM OF
10 RELIGION AND BELIEF

11
12 By: s/ Peter Eliasberg

13 PETER ELIASBERG

14 Attorney for Plaintiff

15

16

17

18

19

20

21

22

23

24

25

26

27

28