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FOR FREEDOM OF THE PRESS

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By email

April 8, 2020

Stephen Sinclair
Secretary
Department of Corrections
PO Box 41100
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Kecia Rongen
Chair
Indeterminate Sentence Review Board
PO Box 40907
Olympia, WA 98504-0907

Re: Conditions of parole for Jeremiah Bourgeois

Dear Secretary Sinclair and Chairwoman Rongen,

The Reporters Committee for Freedom of the Press, an unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights of journalists and news organizations, writes in support of Jeremiah Bourgeois, a formerly incarcerated Washington state resident. Since his release on parole, Mr. Bourgeois has written frequently about his experiences in prison and potential reforms to the criminal justice system. He is a regular contributor to *The Crime Report*, a national criminal justice news and resource site produced by John Jay College of Criminal Justice, and he was also among 14 journalists awarded grants from the Solitary Confinement Reporting Project in 2019.

We understand that Mr. Bourgeois's community corrections officer (CCO) recently instructed him to stop advocating for prisoners and prisoners' rights. We also understand that as a condition of his parole, Mr. Bourgeois is required to comply with any written or oral directives from his CCO. While it does not appear that this instruction was motivated by Mr. Bourgeois's reporting, it is nevertheless chilling his journalistic activities. Given the ambiguity of his CCO's instruction, Mr. Bourgeois understandably fears that engaging in newsgathering activities and/or publishing his work might be deemed a parole violation. In subsequent conversations, the CCO has not provided any clarification about whether the condition applies to Mr. Bourgeois's journalism.

The CCO's instruction to Mr. Bourgeois is vague and overbroad, burdening freedoms of speech and press. A parole condition that prohibits Mr. Bourgeois from reporting or publishing commentary about, for example, prison conditions or the criminal justice system would violate the First Amendment. Such a restriction

would also remove a valuable perspective from the ongoing public discussion about reforms to the criminal justice system.

The Washington Supreme Court has held that when a probation or parole restriction “implicates First Amendment speech, it must be narrowly tailored to further the State’s legitimate interest.” *State v. Padilla*, 416 P.3d 712, 718 (Wash. 2018). Speech-burdening probation or parole conditions also “must be reasonably necessary to accomplish essential state needs and public order.” *Id.*; see also *State v. Bahl*, 193 P.3d 678, 688 (Wash. 2008) (en banc). Conditions that lack this necessary specificity and tailoring will be struck down as unconstitutionally vague and overbroad under the First Amendment. *Id.* That is because “a vague condition infringing on protected First Amendment speech can chill the exercise of those protected freedoms.” *Padilla*, 416 P.3d at 716 (citing *Grayned v. City of Rockford*, 408 U.S. 104 (1972)). “[I]ndividuals who are uncertain of the meaning of a [condition] will steer far wider than necessary in order to ensure compliance.” *Id.*

A legal mandate from the State, such as a parole condition, is vague and overbroad if “(1) it does not sufficiently define the proscribed conduct so an ordinary person can understand the prohibition or (2) it does not provide sufficiently ascertainable standards to protect against arbitrary enforcement.” *Padilla*, 416 P.3d at 715; *Bahl*, 193 P.3d at 685. In *Padilla* and *Bahl*, the Washington Supreme Court considered community custody conditions prohibiting the possession or accessing of pornography and struck them down as vague and overbroad under the First Amendment. *Id.* The Court found that the conditions—which could have applied not only to truly obscene materials but also to movies like *Titanic* or TV shows like *Game of Thrones*, *Padilla*, 416 P.3d at 717—failed to provide the individuals governed by those conditions with sufficient guidance on what was and was not prohibited, and thus left them open to arbitrary enforcement.

The instruction given to Mr. Bourgeois not to advocate on behalf of prisoners is more vague and overbroad than those that the Washington Supreme Court struck down in *Padilla* and *Bahl*. Among other things, this instruction could be interpreted to prohibit Mr. Bourgeois from publishing journalism about prison conditions or the criminal justice system, which is core First Amendment activity. See *N.Y. Times. Co. v. U.S.*, 403 U.S. 713, 717 (1971) (“In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. . . . The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government.”). The State can have no legitimate interest in preventing Mr. Bourgeois from publishing truthful information on this matter of public concern. Such a parole condition could not be reasonably necessary or narrowly tailored to accomplish any essential State purpose and, therefore, would be unconstitutional.

Beyond its constitutional infirmity, a parole condition of this kind is also ill-advised. Particularly in recent years, politicians, concerned citizens, and activists have hotly debated potential reforms to the criminal justice system, with much of this exchange of ideas taking place through the news media. As a group directly affected by criminal justice policies, especially those related to prison administration, current and former inmates like Mr. Bourgeois have an important and uniquely valuable perspective to share. See, e.g., Jeremiah Bourgeois, *A (Not So Fond) Farewell to Prison Life*, *The Crime Report* (Oct. 28, 2019), available at <https://perma.cc/7B95-AMJZ>.

Parolees like him should be encouraged to communicate about their experiences, not silenced arbitrarily. Our nation's dedication to free speech demands no less.

For the foregoing reasons, we urge the Department of Corrections to clarify that it is not a condition of Mr. Bourgeois's parole that he limit or cease his journalistic activities.

Respectfully,

The Reporters Committee for Freedom of the Press