



Internet Free Speech for People on Supervised Release from Prison

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The First Amendment protects the right of everyone to use the Internet to criticize government officials—including people on supervised release from prison.

Take the case of Darren Chaker, whose supervised release was revoked earlier this year because he criticized a law enforcement officer in a blog post. Specifically, he wrote that the officer had been “forced out” by a police agency. The government argues that Chaker violated the terms of his release, which instructed him not to “harass” anyone else, including “defaming a person’s character on the internet.” To us, this is a classic example of political speech that should be subject to the highest level of First Amendment protection.

So earlier this fall, EFF joined with other free speech groups to file an *amicus* [brief](#) supporting Chaker, and by extension the free speech rights of everyone else on supervised release. The brief, filed in the federal appeals court for the Ninth Circuit, argues that when the government seeks to punish speech that criticizes government officials, it must prove by clear and convincing evidence that the speaker acted with “actual malice,” meaning they knew the statement was false, or they acted with reckless disregard for whether it was false. Government must meet this high standard whether it calls the criticism “defamation,” or “intentional infliction of emotional distress,” or (as here) “harassment.”

The good news is that last week, the government’s [response](#) to the *amicus* brief made several significant concessions. First, the government acknowledged that a release condition against “harassment” must be limited to situations where the parolee actually intends to harass someone. Second, the government recognized that harassment does not occur when a parolee merely posts a complaint about police brutality on a message board, writes a negative Yelp review, or publishes an essay criticizing the criminal justice system. Third, the government conceded that the release condition against “defaming” someone else only applies to situations where there is harassment.

The bad news is that the government continues to insist that it may punish the defendant for criticizing a government official absent proof of actual malice. The government does so by blurring its allegations of harassment and defamation. This would eviscerate a half-century of First Amendment protection of political speech criticizing government officials. Also, the government’s overbroad definition of harassment includes actions not directed at the specific person who the government alleges was the victim of harassment.

We will continue to monitor this case. Everyone, including court-involved people, has the First Amendment right to criticize the government on the Internet.

The *amici* include the ACLU of San Diego and Imperial Counties, the Cato Institute, the Brechner First Amendment Project, and the First Amendment Coalition. The *amici*'s brief was prepared by Robert Arcamona and Patrick Carome of Wilmer Cutler Pickering Hale and Dorr LLP