



LEXSTAT 18 U.S.C. 2250

UNITED STATES CODE SERVICE  
 Copyright © 2010 Matthew Bender & Company, Inc.  
 a member of the LexisNexis Group (TM)  
 All rights reserved.

\*\*\* CURRENT THROUGH PL 111-198, APPROVED 7/2/2010 \*\*\*

TITLE 18. CRIMES AND CRIMINAL PROCEDURE  
 PART I. CRIMES  
 CHAPTER 109B. SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

**Go to the United States Code Service Archive Directory**

*18 USCS § 2250*

§ 2250. Failure to register

(a) In general. Whoever--

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)

(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice [10 USCS §§ 801 et seq.]), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Affirmative defense. In a prosecution for a violation under subsection (a), it is an affirmative defense that--

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

(c) Crime of violence.

(1) In general. An individual described in subsection (a) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice [10 USCS §§ 801 et seq.]), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years.

(2) Additional punishment. The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a).

**HISTORY:**

(Added July 27, 2006, P.L. 109-248, Title I, Subtitle B, § 141(a)(1), 120 Stat. 602.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

## References in text:

The "Sex Offender Registration and Notification Act", referred to in subsec. (a), is Title I of Act July 27, 2006, P.L. 109-248. For full classification of such Act, consult USCS Tables volumes.

**NOTES:**

## Related Statutes &amp; Rules:

Sentencing Guidelines for the United States Courts, *18 USCS Appx §§ 2A3.5, 2A3.6.*

This section is referred to in *8 USCS § 1227; 18 USCS §§ 1001, 3142; 42 USCS § 16991.*

## Research Guide:

## Am Jur:

*8A Am Jur 2d, Bail and Recognizance § 57.*

## Immigration:

1 Immigration Law and Procedure (rev. ed.), ch 2, The Development of the Immigration Laws § 2.04.

## Annotations:

Validity, Construction, and Application of Federal Sex Offender Registration and Notification Act (SORNA), *42 U.S.C.A. §§ 16901 et seq. [42 USCS §§ 16901 et seq.]*, its Enforcement Provision, *18 U.S.C.A. § 2250 [18 USCS § 2250]*, and Associated Regulations. *30 ALR Fed 2d 213.*

Validity, Construction, and Application of State Statutes Imposing Criminal Penalties for Failure to Register as Required Under Sex Offender or Other Criminal Registration Statutes. *33 ALR6th 91.*

## Law Review Articles:

Logan. Parole and Probation: Sex Offender Registration and Community Notification: Past, Present, and Future. *34 NE J on Crim & Civ Con 3*, Winter 2008.

## Interpretive Notes and Decisions:

.1. US Supreme Court Alert 1. Generally 2. Constitutionality 3. Indictment 5. Miscellaneous

**.1. US Supreme Court Alert**

US Supreme Court Case Alert--On September 30, 2009, Court granted petition for writ of certiorari to Seventh Circuit on question of whether, under Sex Offender Registration and Notification Act (SORNA) provision (*18 USCS § 2250(a)*), which imposed criminal penalties of up to 10 years of imprisonment on anyone who was required to register, traveled in interstate or foreign commerce, and knowingly failed to register or update registration--where U.S. Attorney General (through provision codified at *28 CFR § 72.3*) assertedly had applied SORNA's registration requirements retroactively to persons who were convicted before date when then President had signed SORNA into law--(1) person whose underlying offense and travel in interstate commerce both allegedly predated SORNA's enactment could properly be criminally prosecuted under § 2250(a) for failure to register; and (2) *Federal Constitution's Art. I, § 9, cl. 3*

prohibition against ex post facto laws precluded prosecution under § 2250(a) of such person. *United States v Dixon* (2008, CA7 Ind) 551 F3d 578, cert gr (US) 174 L Ed 2d 631.

### 1. Generally

In case in which defendant was convicted of violating 18 USCS § 2250 and there was no applicable U.S. Sentencing Guideline for that offense, district court committed plain error by not deferring to U.S. Sentencing Commission (Commission); evidence of Commission's policies and goals was publicly available to district court in form of proposed Guideline, now USSG § 2A3.5, and it was undisputed that defendant's sentencing range under § 2A3.5, would be significantly less than 60 month sentence imposed by district court. *United States v Sanchez* (2008, CA5 La) 527 F3d 463.

Because defendant's indictment under 18 USCS § 2250 concerned his failure to register as sex offender during gap period between enactment of Sex Offender Registration and Notification Act and Attorney General's retroactivity determination under 42 USCS § 16913(d), defendant could not be prosecuted for violating Act. *United States v Madera* (2008, CA11 Fla) 528 F3d 852, 21 FLW Fed C 745.

Defendant, who was convicted of sex offense before enactment of Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, was properly charged under 18 USCS § 2250(a) with failing to register as sex offender as required by SORNA; 42 USCS § 16913(b) and (d) concerned only initial registration and did not apply to defendant, so it was not necessary for U.S. Attorney General to have designated SORNA's applicability to past offenders in order for defendant to be subject to 18 USCS § 2250(a). *United States v May* (2008, CA8 Iowa) 535 F3d 912.

Defendant was improperly convicted pursuant to 18 USCS § 2250(a)(2)(B), part of Sex Offender Registration and Notification Act (SORNA), for failure to register after traveling in interstate commerce because his interstate travel-unreported move from Oklahoma to Missouri-was completed prior to July 27, 2007, SORNA's effective date, and statute's plain language made it clear that it operated prospectively only; U.S. Congress's use of present tense form of verb "to travel" indicated, pursuant to 1 USCS § 1, that SORNA's coverage was limited to those individuals who travelled in interstate commerce after SORNA's effective date. *United States v Husted* (2008, CA10 Okla) 545 F3d 1240.

Based on Sex Offender Registration and Notification Act's plain language, 18 USCS § 2250(a)(2)(B) does not apply to individual whose interstate travel was completed before July 27, 2006. *United States v Husted* (2008, CA10 Okla) 545 F3d 1240.

Defendant's 18 USCS § 2250 conviction for failing to register pursuant to Sex Offender Registration and Notification Act was proper because, after interpreting 42 USCS § 16913(d), court determined that sex offenders who failed to register during "gap period" between Act's enactment and U.S. Attorney General's Interim Rule violated registration requirements of § 16913(a). *United States v Hinckley* (2008, CA10 Okla) 550 F3d 926.

18 USCS § 2250 does not require that defendant's travel in interstate commerce postdate Act, any more than it requires that conviction of sex offense that triggers registration requirement postdate it; language of § 2250(a)(2)(B) is designed to establish constitutional predicate for statute rather than to create temporal requirement. *United States v Dixon* (2008, CA7 Ind) 551 F3d 578.

18 USCS § 2250(a) unambiguously applied to defendant, who had obligation to register as sex offender beginning on February 28, 2007--date that United States Attorney General enacted 28 CFR § 72.3 and therein determined that Sex Offender Registration and Notification Act's registration requirements applied to all offenders, like defendant, who were convicted before July 27, 2006--and travelled in interstate commerce, from Florida to California and back, on July 9-11, 2007, which was well after effective date of statute. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21 FLW Fed C 1596.

District court properly denied defendant's motion to dismiss indictment charging him under 18 USCS § 2250 for failing to register as sex offender under Sex Offender Registration and Notification Act (SORNA), 42 USCS § 16913, because defendant had received notice of state law registration requirements under Cal. Penal Code § 290(b) (2009); defendant cited no authority for his argument that lack of 42 USCS § 16917 notice was defense to prosecution under 18 USCS § 2250(a); and there was no reason to believe that SORNA notice provision was intended to dilute effect of state notice requirements, given stated congressional intent in 42 USCS § 16901 to protect public by establishing comprehensive national system for registration of sex offenders. *United States v Baccam* (2009, CA8 Ark) 562 F3d

1197.

District court did not abuse its discretion in concluding that non-binding decision from another court did not constitute fair and just reason under *Fed. R. Crim. P. 11(d)(2)(B)* for defendant to withdraw his guilty plea to single count of failure to register as sexual offender in violation of 18 USCS § 2250(a), enforcement provision of Sex Offender Registration and Notification Act; decision was not intervening circumstance of sufficient weight to constitute fair and just reason entitling defendant to withdraw his plea. *United States v Ensminger (2009, CA9 Mont) 567 F3d 587.*

Because Maryland had pre-Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., and 18 USCS § 2250, program under which defendant could register and indeed was required to register, defendant could not claim that there was no place to register simply because Maryland had not implemented enhanced standards of SORNA; thus, under plain reading of SORNA, defendant's failure to register in Maryland was federal crime under 18 USCS § 2250(a), subject to federal punishment--result consistent with SORNA's purpose of strengthening and increasing effectiveness of sex offender registration laws. *United States v Gould (2009, CA4 Md) 568 F3d 459.*

Having been charged with being federally convicted sexual offender who had engaged in interstate travel, and having pleaded guilty to that offense, defendant could not later delete interstate travel facts from his case; those facts were part of his conduct as charged in indictment for his violation of 18 USCS § 2250 to which he pleaded guilty. *United States v George (2009, CA9 Wash) 579 F3d 962.*

Violation of sex offender registration requirement of 42 USCS § 16913 as prohibited in 18 USCS § 2250, is continuing offense. *United States v George (2009, CA9 Wash) 579 F3d 962.*

Because Sexual Offenders Registration and Notification Act (SORNA), explicitly required Attorney General (A.G.) to specify applicability of Act to persons convicted prior to effective date of SORNA, and because A. G. did not promulgate regulation making that determination in compliance with Administrative Procedure Act, defendant was not subject to SORNA's requirements during period indicated in indictment and his motion to dismiss indictment should have been granted. *United States v Cain (2009, CA6 Ohio) 583 F3d 408, 2009 FED App 361P.*

Because Sex Offender Registration and Notification Act was applied retroactively to sex offenders, and it was undisputed that Alabama maintained sex offender registry during relevant time period which required sex offenders to register and provide updated information upon changing residences, defendant's failure to register caused his conviction to be affirmed. *United States v Brown (2009, CA11 Ala) 586 F3d 1342, 22 FLW Fed C 264.*

Defendant admitted that he knew he was required to register in Alabama upon moving but did not register, which was sufficient to violate 18 USCS § 2250(a); defendant cited no authority for proposition that lack of notice by federal government of his Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq., obligations was element of, or defense to, prosecution under 18 USCS § 2250(a). *United States v Griffey (2009, CA11 Ala) 589 F3d 1363, 22 FLW Fed C 328.*

When Sex Offender Registration and Notification Act was enacted, every State had registration requirements for sex offenders; these circumstances do not permit court to conclude that defendant's due process rights, based on lack of notice, were violated when he is charged with failing to register under 18 USCS § 2250(a). *United States v Shenandoah (2010, CA3 Pa) 595 F3d 151.*

Defendant's above-range sentence of 48 months incarceration with 30-year term of supervised release for failing to register as sex offender in violation of 18 USCS § 2250 was reasonable where his lengthy criminal history, his offenses, and his repeated failure to register made him danger to society who posed high risk of recidivism; he was sentenced him in accordance with Tier III sex-offender provision of USSG § 2A3.5(a)(1) as he met criteria of Tier III sex-offender laid out in 42 USCS § 16911(4). *United States v Lowry (2010, CA8 Ark) 595 F3d 863.*

Because court interpreted Sex Offender Registration and Notification Act, as requiring sex offender to appear in person to update his registration information within three days of vacating his fixed residential address with no intention of returning, it concluded that defendant violated 18 USCS § 2250(a). *United States v Van Buren (2010, CA2 NY) 599 F3d 170.*

Charges that defendants had violated 18 USCS § 2250 by failing to update their sex-offender registrations had to be dismissed because defendants were under no obligation to register, pursuant to 42 USCS § 16913, part of Sex Offender Registration and Notification Act (SORNA), at time of their indictments in November and December of 2006; § 16913(d) requires U.S. Attorney General to animate SORNA's provisions to previously convicted offenders, and Attorney General did not issue rule stating that SORNA applied retrospectively until after defendants were indicted.

*United States v Kapp* (2007, MD Pa) 487 F Supp 2d 536 (criticized in *United States v Beasley* (2007, ND Ga) 2007 US Dist LEXIS 85793).

Plain reading of general venue statute suggests that failing to register under Sex Offender Registration and Notification Act, Pub. L. 109-248, §§ 1-155, 120 Stat. 587, 590-611 (2006), is continuing offense since it involves element of interstate or foreign travel; accordingly, it would be proper to prosecute violation of 18 USCS § 2250 in any district through which defendant has moved. *United States v Hinen* (2007, WD Va) 487 F Supp 2d 747 (criticized in *United States v Barnes* (2007, SD NY) 2007 US Dist LEXIS 53245) and (criticized in *United States v Muzio* (2007, ED Mo) 2007 US Dist LEXIS 54330) and (criticized in *United States v Cole* (2007, SD Ill) 2007 US Dist LEXIS 68522) and (criticized in *United States v Deese* (2007, WD Okla) 2007 US Dist LEXIS 70677) and (criticized in *United States v Gill* (2007, DC Utah) 520 F Supp 2d 1341) and (criticized in *United States v Howell* (2007, ND Iowa) 2007 US Dist LEXIS 83224) and (criticized in *United States v Mantia* (2007, WD La) 2007 US Dist LEXIS 96018) and (criticized in *United States v Gould* (2007, DC Md) 526 F Supp 2d 538) and (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Registry system was intended as nationwide public safety system, 42 USCS § 16901, and previous offenders may be convicted for failing to register under Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., does not increase punishment for their prior offenses--indeed, only upon offender's failure to register under SORNA, new offense, do enhanced penalties apply, 18 USCS § 2250(a); accordingly, SORNA does not violate *Ex Post Facto Clause*. *United States v Gould* (2007, DC Md) 526 F Supp 2d 538 (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Defendant's indictment for violating Sex Offender Registration and Notification Act (SORNA), filed on November 24, 2006, was dismissed because SORNA did not apply to him. Congress assigned retroactivity question of SORNA to Attorney General, and Attorney General did not promulgate any regulations regarding retroactivity until February 2007. *United States v Smith* (2007, SD W Va) 528 F Supp 2d 615 (criticized in *United States v Marcantonio* (2007, WD Ark) 2007 US Dist LEXIS 55645) and (criticized in *United States v Beasley* (2007, ND Ga) 2007 US Dist LEXIS 85793).

State's failure to implement Sex Offender Registration and Notification Act (SORNA) had no bearing on defendant's free-standing duty under 42 USCS § 16913(a) and 18 USCS § 2250 to register, and keep registration current in each jurisdiction where he resided *United States v Crum* (2008, WD Wash) 2008 US Dist LEXIS 83563 (criticized in *United States v Myers* (2008, SD Fla) 591 F Supp 2d 1312, 21 FLW Fed D 473).

Defendant, as convicted sex offender, was well aware of his duty to update his registration in New York for 10 years; thus, when he moved to Kentucky and failed to register or update his registration, his prior knowledge of duty to register under state law qualified as effective notice under Sex Offender Registration and Notification Act (SORNA); his notice of his registration requirements under New York law was sufficient to support charge that he knowingly violated SORNA, specifically 18 USCS § 2250(a). *United States v Samuels* (2008, ED Ky) 543 F Supp 2d 669 (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Sex Offender Registration and Notification Act (SORNA) clearly defines what conduct is proscribed by 18 USCS § 2250(a), and Attorney General's interim rule, 28 CFR § 72 (2007), determining its retroactivity to certain offenders convicted before SORNA's enactment, is not unlawful delegation of Congressional authority. *United States v Samuels* (2008, ED Ky) 543 F Supp 2d 669 (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Under plain wording of 18 USCS § 2250, in order for violation to occur, both travel and failing to register have to occur after effective date of statute. *United States v Gillette* (2008, DC VI) 553 F Supp 2d 524.

In case in which defendant was arrested for violating 18 USCS § 2250(a), Sex Offender Registration and Notification Act, but there was no evidence that he moved through present federal district after leaving Mexico but before ultimately residing in Florida, venue was not proper in present federal district. *United States v Natividad-Garcia* (2008, WD Tex) 560 F Supp 2d 561.

Indictment charging defendant with violating 18 USCS § 2250 by failing to register and update his registration as sex offender under Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq., was sufficient under *Fed. R. Crim. P. 7*, as each element of crime was sufficiently pled and defendant was apprised of essential facts necessary to enable him to prepare his defense against offense charged. *United States v Torres* (2008, WD Tex) 573 F Supp 2d 925.

18 USCS § 2250(a) applied to any person who was required to register under Sex Offender Registration and

Notification Act (SORNA) and SORNA applied to person who was "sex offender," which is defined as individual who was convicted of sex offense; by virtue of his conviction of second degree sexual assault, defendant fit within statutory definition of sex offender, and straightforward reading of language of *42 USCS § 16913(a)* suggested that, since he was required to register in Rhode Island and Maine, jurisdictions where he was residing, he was also required by SORNA to do so; therefore, by failing to so register, indictment properly alleged that defendant violated SORNA; thus, court rejected defendant's allegation that indictment was defective since it failed to allege that either state of Maine or state of Rhode Island implemented *SORNA*. *United States v Stevens (2008, DC Me) 578 F Supp 2d 172*.

*42 USCS § 16913* and *18 USCS § 2250* should be treated as interrelated components of larger whole of Sex Offender Registration and Notification Act (SORNA) sufficient to overcome any deficiencies when viewing *42 USCS § 16913* in isolation; when considering SORNA as whole, it is abundantly clear that SORNA does not punish sex offenders for intrastate failure to register; person who has never traveled outside his birth state can never be federal felon under SORNA; federal government gains criminal jurisdiction only when person required to register under SORNA travels in interstate commerce. *United States v Pena (2008, WD Tex) 582 F Supp 2d 851* (criticized in *United States v Myers (2008, SD Fla) 21 FLW Fed D 473*).

As set forth in *18 USCS § 2250(a)*, term "knowingly" means knowledge that one must register as sex offender and knowledge that one did not register as such, but not knowledge that one must register under *Sex Offender Registration and Notification Act*. *United States v Torres (2008, WD Tex) 599 F Supp 2d 767*.

Defendant "knowingly" failed to register or update his registration under Sex Offender Registration and Notification Act (SORNA) because he signed form acknowledging that he knew that he must register and update his registration and then failed to do so; actus reus consisted of failing to register and update, and defendant did so knowing that he was required to register and update; knowledge of SORNA's requirements was not act, and nothing else on face of statute--such as use of term "willingly"--indicated that Congress intended to depart from requirements of general intent crime. *United States v Torres (2008, WD Tex) 599 F Supp 2d 767*.

To degree that Sex Offender Registration and Notification Act (SORNA) merely confers federal jurisdiction on otherwise illegal conduct, SORNA does not require that defendant know that conduct is illegal under *SORNA*. *United States v Torres (2008, WD Tex) 599 F Supp 2d 767*.

Defendant, who was convicted of sex offense under Uniform Code of Military Justice, was sex offender who was required to register under *42 USCS § 16511(5)* in all jurisdictions where he lived or was employee, and was required to keep his registration current under *42 USCS § 16913(b)-(d)*; because defendant signed form acknowledging that he knew that he must register and update his registration and did not do so, he knowingly failed to register or update his registration; thus, defendant was guilty of violating SORNA's criminal provision, *18 USCS § 2250*, beyond reasonable doubt. *United States v Torres (2008, WD Tex) 599 F Supp 2d 767*.

Defendant's argument that Sex Offender Registration and Notification Act (SORNA) did not apply in particular state until that state had passed implementing legislation was rejected; court also rejected defendant's argument that he could not be prosecuted for violating *18 USCS § 2250(a)* because he was not obligated to register until informed of obligation by *Attorney General*. *United States v Hernandez (2009, ED Mich) 615 F Supp 2d 601*.

Sex Offender Registration and Notification Act does not violate non-delegation doctrine. *United States v Barner (2009, ND NY) 635 F Supp 2d 138*.

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of *18 USCS § 2250(a)*, he unsuccessfully moved to dismiss indictment by arguing that government was required to provide him with actual notice of SORNA's registration requirement before prosecuting him for knowingly failing to register; defendant's due process rights had not been violated because he had signed sex offender notifications in both Mississippi and Iowa, and his signatures on those registration notifications were sufficient evidence that he was made aware of his legal duty to register. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720*.

### Unpublished Opinions

Unpublished: Defendant was not subject to Sex Offender Registration and Notification Act's (SORNA) criminal sanctions during period alleged in indictment because (1) SORNA did not apply to defendant unless United States Attorney General promulgated valid regulation that subjected defendant to SORNA's registration requirements during period covered by his indictment; (2) defendant's indictment charged failure to register from October 26, 2006, through

March 20, 2007; and (3) in prior action, court held that Attorney General's regulation was not effective against defendant because his indictment covered period ending on March 28, 2007, less than thirty days after promulgation of regulation, and month before close of comment period. *United States v Doshak* (2009, CA6 Ohio) 2009 FED App 835N.

Unpublished: Defendant's 15-month sentence for violating *18 USCS § 2250(a)* was reasonable; had *U.S. Sentencing Guidelines Manual § 2A3.5* retroactivity issue been decided in defendant's favor and § 2A3.5 not been applied, district court would have had to look to *18 USCS § 3553(a)* factors, but district court's 15-month sentence, well below 10-year statutory maximum, was not unreasonable. *United States v Shira* (2008, CA11 Fla) 2008 US App LEXIS 14920.

Unpublished: Defendant committed violation of *18 USCS § 2250* because he was convicted of sex offense prior to Sex Offender Registration and Notification Act (SORNA), traveled interstate in gap period between SORNA's enactment on July 27, 2006, and United States Attorney General's retroactivity determination on February 28, 2007, and failed to register as of his arrest on May 9, 2007, which was more than three business days after his obligation to register in accordance with *42 USCS 16913(c)*, which arose following attorney general's ruling. *United States v Cardenas* (2009, CA11 Fla) 2009 US App LEXIS 8389.

Unpublished: Because a presentence report (PSR) stated an investigation was ongoing as to defendant's prior arrest for "corporeal injury to child" where defendant denied bruising his infant son's rear end, but he apologized and asked for forgiveness during questioning, the statements in the PSR were sufficiently reliable for the district court to have imposed, as condition of supervised release upon his conviction for failure to register as a sex offender, the requirement that defendant obtain his probation officer's permission for unsupervised contact with minors. *United States v Christian* (2009, CA5 Tex) 2009 US App LEXIS 19915.

Unpublished: Wyoming's failure to implement Sex Offender Registration and Notification Act's requirements may have resulted in reduction of federal justice assistance funding, but it was not excuse for defendant's failure to register. *United States v Kueker* (2009, CA10) 2009 US App LEXIS 24100.

Unpublished: In case in which defendant pled guilty to failing to register as sex offender under Sex Offender Registration and Notification Act, he argued unsuccessfully that district court plainly erred in failing to advise him of consequences of his guilty plea by incorrectly stating minimum and maximum terms of supervised release; that claim was subject to plain error review, and defendant own conduct in failing to object at sentencing to presentence investigation report, which correctly set forth minimum and maximum terms of supervised release, indicated that his substantial rights were not affected. *United States v Votta* (2010, CA11 Fla) 2010 US App LEXIS 3238.

Unpublished: In case in which defendant pled guilty to failing to register as sex offender under Sex Offender Registration and Notification Act, he argued unsuccessfully that 10-year term of supervised release imposed was unreasonable because it was greater than necessary; he failed to consider that district court sentenced him to only 6 months' imprisonment, well below U.S. Sentencing Guidelines range of 15 to 21 months, and he failed to show that his within-range sentence of 10 years' supervised release, to follow period of six months' imprisonment, was outside range of reasonable sentences under facts of case. *United States v Votta* (2010, CA11 Fla) 2010 US App LEXIS 3238.

## 2. Constitutionality

Application to defendant of *18 USCS § 2250(a)*, which penalized defendant for failing to register as required under Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901-16991*, did not violate Ex Post Facto Clause; although defendant became sex offender before SORNA was enacted, being sex offender merely identified to whom *18 USCS § 2250(a)* applied and was not triggering event; statute was not retrospective, as it did not punish defendant for previously being convicted of sex crime. *United States v May* (2008, CA8 Iowa) 535 F3d 912.

Application to defendant of *18 USCS § 2250(a)*, which penalized defendant for failing to register as required under Sex Offender Registration and Notification Act, *42 USCS §§ 16901-16991*, did not violate defendant's due process rights, as there was no basis for applying exception to general rule that "ignorance of law is no excuse"; defendant admitted knowing of obligation to register as sex offender under state law. *United States v May* (2008, CA8 Iowa) 535 F3d 912.

Application to defendant of *18 USCS § 2250(a)*, which penalized defendant for failing to register as required under Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901-16991*, did not violate Commerce Clause, as SORNA arose from Congress's authority to regulate persons or things in interstate commerce and use of channels of interstate commerce; *18 USCS § 2250(a)(2)(B)* includes express and clear jurisdictional element for

individuals not convicted pursuant to federal jurisdiction. *United States v May (2008, CA8 Iowa) 535 F3d 912.*

Defendant's prosecution under Sex Offender Registration and Notification Act (SORNA), 18 USCS § 2250, did not violate Ex Post Facto Clause by retroactively increasing punishment for past offenses; SORNA was both civil in its stated intent and nonpunitive in its purpose and therefore it did not violate Ex Post Facto Clause; in enacting SORNA, U.S. Congress expressly, pursuant to 42 USCS § 16901, declared its intent to create comprehensive national system, for registration of sex offenders in order to protect public from sex offender and offenders against children, and in response to vicious attacks by violent predators; neither that placement of SORNA's failure to register provisions appeared in federal criminal code nor that enforcement of SORNA was vested in U.S. Attorney General was enough to overcome that clearly stated Congressional intent. *United States v Lawrance (2008, CA10 Okla) 548 F3d 1329.*

Defendant's argument that Sex Offender Registration Notification Act (SORNA) and its failure to register provisions, 18 USCS § 2250, violated Commerce Clause because they exceeded authority granted to U.S. Congress to regulate interstate commerce, failed; specifically, he claimed that his conduct was purely intrastate because it concerned only his failure to register, which had no effect on interstate commerce; however, sex offenders were, pursuant to 42 USCS § 16913(a), required to register, and to keep registration current, in each jurisdiction where offender resided, where offender was employee, and where offender was student, and whether such activity had substantial effect on interstate commerce was irrelevant because U.S. Congress had authority to regulate this type of activity; Congress could regulate interstate commerce to extent of forbidding and punishing use of such commerce as agency to promote immorality, dishonesty, or spread of any evil or harm to people of other states from state of origin, and SORNA clearly intended to regulate evasion of sex offender registration requirements by sex offenders who had crossed jurisdictional lines. *United States v Lawrance (2008, CA10 Okla) 548 F3d 1329.*

Though defendant argued that application of Sex Offender Registration Notification Act (SORNA), 18 USCS § 2250, to his conduct constituted due process violation, specifically because he contended that SORNA did not apply to him until promulgation of U.S. Attorney General's Interim Rule and that he was afforded no statutory notification of SORNA's registration requirements, defendant knew of his obligation to register under state law and Jacob Wetterling Act, 42 USCS § 14071, and that he was required to keep his registration current; moreover, 42 USCS § 16913(d) merely clarified SORNA's applicability to offenders in defendant's position-with or without rule, SORNA was applicable to such offenders from its enactment date onward; furthermore, notice of defendant's obligations under state law was sufficient to satisfy Due Process Clause's requirements; because defendant was arrested post-SORNA, and even post-Interim Rule, it was presumed that he was familiar with law. *United States v Lawrance (2008, CA10 Okla) 548 F3d 1329.*

Sex Offender Registration and Notification Act, 18 USCS § 2250(a)(2)(B), did not, as it was applied to defendant's case, violate Ex Post Facto Clause, by penalizing his pre-enactment interstate travel; because defendant's interstate travel took place both before and after enactment date, issue was irrelevant; moreover, 42 USCS § 16913(d) applied only to those offenders who were unable to initially register, and not to all offenders who were convicted prior to enactment date; because defendant was convicted of sexual offense prior to enactment date and was informed of his duty to register as sex offender and did so, § 16913(d) did not apply to him. *United States v Lawrance (2008, CA10 Okla) 548 F3d 1329.*

Neither Sex Offender Registration and Notification Act's registration requirements nor criminal penalties attached to noncompliance in 18 USCS § 2250 violate Ex Post Facto Clause. *United States v Hinckley (2008, CA10 Okla) 550 F3d 926.*

Defendant's indictment for failure to register under 18 USCS § 2250 due to acts committed prior to Sex Offender Registration and Notification Act's effective date did not violate Ex Post Facto Clause because failure to register was continuing offense. *United States v Hinckley (2008, CA10 Okla) 550 F3d 926.*

Application of 18 USCS § 2250 violated Ex Post Facto Clause, U.S. Const. art. I, § 9, as to one defendant who was convicted of sex offense before passage of Act and who was not given reasonable time to register after Act became applicable to defendant pursuant to 28 CFR § 72.3; defendant was charged with failing to register within about five weeks after § 72.3 was issued; however, there was no ex post facto violation as to second defendant who had still failed to register nearly five months after § 72.3 was issued. *United States v Dixon (2008, CA7 Ind) 551 F3d 578.*

Application of 18 USCS § 2250 to defendant did not violate due process based on lack of notice to defendant of Act's enactment, as circumstances existed that might have moved defendant to inquire as to necessity of registration; defendant registered as sex offender in South Carolina and would have known that registration in Indiana was necessary

when defendant moved there. *United States v Dixon* (2008, CA7 Ind) 551 F3d 578.

Because defendants' indictments were based on conduct that pre-dated Attorney General's interim rule specifying that Sex Offender Registration and Notification Act's (SORNA) registration requirements applied to pre-SORNA offenders, defendants' convictions were reversed, and sentences imposed in connection with those convictions were vacated; defendants' indictments were based on conduct occurring prior to Attorney General's issuance of interim rule, at time when SORNA's registration requirements did not yet apply to them, and defendants could not be prosecuted for conduct that was not criminal at time it was committed. *United States v Hatcher* (2008, CA4 Va) 560 F3d 222.

Defendant was properly convicted of failing to register as sex offender under 18 USCS § 2250 because his obligation to register arose on date of retroactivity determination by Attorney General under 42 USCS § 16913, defendant had three days to fulfill his duty, and he failed to do so after traveling in interstate commerce; fact that defendant's travel occurred prior to retroactivity determination did not preclude prosecution and did not violate *Ex Post Facto Clause*. *United States v Dumont* (2009, CA11 Fla) 21 FLW Fed C 1401.

Defendants were properly convicted under 18 USCS § 2250 for failing to comply with sex offender registration requirements under 42 USCS § 16913; 18 USCS § 2250 is constitutional under Commerce Clause, and 42 USCS § 16913 is constitutionally authorized under Commerce Clause and Necessary and Proper Clause, *U.S. Const. art. I, § 8, cl. 18*; covering registration of wholly intrastate sex offenders is merely incidental to Congress's tracking of sex offenders in interstate commerce. *United States v Howell* (2009, CA8 Iowa) 552 F3d 709.

Iowa district court was proper venue to prosecute defendant under 18 USCS § 2250 for failing to register as sex offender after traveling in interstate commerce where defendant was charged with failing to notify Iowa of change in residency to Texas and failing to register in Texas; prosecution in Iowa did not violate *U.S. Const. art. III, § 2*, or Sixth Amendment; defendant's violation commenced in Iowa, so prosecution in Iowa was authorized under 18 USCS § 3237, and failure to inform Iowa of move was material part of violation. *United States v Howell* (2009, CA8 Iowa) 552 F3d 709.

Court of appeals rejected defendant's argument that Sex Offender Registration and Notification Act (SORNA) violated *Ex Post Facto Clause*, *U.S. Const. art. I, § 9, cl. 3*, on grounds that statute allegedly imposed on him retroactive duty to register as sex offender and enhanced punishment for his 1974 California conviction for crimes against children, because superseding indictment charged not only that defendant failed to register as sex offender after effective date of United States Attorney General's retroactivity determination (that SORNA's registration requirements applied to all offenders, like defendant, who were convicted before July 27, 2006), but also that defendant performed every action necessary for prosecution--i.e., failing to register as required and traveling in interstate travel--after effective date of Attorney General's retroactivity determination. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21 FLW Fed C 1596.

Sex Offender Registration and Notification Act (SORNA) did not violate defendant's procedural due process rights by causing his name to be placed on sex offender registry without first providing him with hearing to assess risk of recidivism and current dangerousness; fact that defendant sought to prove that he was neither dangerous nor likely to be repeat offender was of no moment under SORNA, because reporting requirements turned on his conviction alone--fact that defendant had procedurally safeguarded opportunity to contest; accordingly, his procedural due process challenge to statute was rejected on appeal. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21 FLW Fed C 1596.

Sex Offender Registration and Notification Act (SORNA) did not compromise defendant's substantive due process rights by causing his name to be placed on sex offender registry without first providing him with opportunity to challenge his prior conviction; putative right of defendant, as sexual offender, to refuse to register under (SORNA) and to prevent publication was contested right at issue, and restrictions contained in SORNA were rationally related to Congress' legitimate goal in protecting public from recidivist sex offenders; moreover, state's publication of truthful information that was already available to public did not infringe fundamental constitutional rights of liberty and privacy; therefore, defendant's inability to challenge his conviction before publication did not violate substantive due process. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21 FLW Fed C 1596.

Congress did not exceed its authority under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, when it passed 18 USCS § 2250(a) because when sex offender traveled from one state to another, he was instrumentality of interstate commerce; by regulating such persons in SORNA, Congress acted under its Commerce Clause power to regulate instrumentality. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21 FLW Fed C 1596.

Defendant was not entitled to dismissal of indictment under 18 USCS § 2250 for failing to register as sex offender

## 18 USCS § 2250

as required under Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, based on claim that SORNA violated Commerce Clause, because § 2250 and 42 USCS § 16913 were valid exercises of congressional authority under *Commerce Clause*. *United States v Hacker* (2009, CA8 Neb) 565 F3d 522.

Defendant lacked standing to bring Tenth Amendment challenge to Sex Offender Registration and Notification Act, 42 USCS §§ 16901-16991, and its criminal enforcement provision, 18 USCS § 2250(a), because private party could not assert such claim absent involvement of state or its instrumentalities. *United States v Hacker* (2009, CA8 Neb) 565 F3d 522.

Because defendant, who pleaded guilty under 18 USCS § 2250(a) to failing to register as sex offender, was not unable to comply with initial registration requirements under 42 USCS § 16913(b) of Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, defendant lacked standing to claim that delegation of authority to U.S. Attorney General to determine SORNA's retroactive effect was impermissible under *U.S. Const. art. I, § 1*; defendant also lacked standing to claim that Attorney General's interim order regarding application of SORNA violated notice and comment requirements under 5 USCS § 553(d) of *Administrative Procedure Act*. *United States v Hacker* (2009, CA8 Neb) 565 F3d 522.

Defendant was not entitled to dismissal of indictment under 18 USCS § 2250 for failing to register as sex offender as required under Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, based on claim that SORNA violated Commerce Clause, because § 2250 and 42 USCS § 16913 were valid exercises of congressional authority under *Commerce Clause*. *United States v Hacker* (2009, CA8 Neb) 565 F3d 522.

18 USCS § 2250(a) does not violate Commerce Clause; Congress has authority to regulate persons in interstate commerce, especially persons who move from State of conviction to another State and there fail to register, as they use instrumentalities of interstate commerce; Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., and 18 USCS § 2250, clearly intends to regulate interstate activity, i.e., evasion of sex offender registration requirements by sex offenders who have crossed jurisdictional lines. *United States v Gould* (2009, CA4 Md) 568 F3d 459.

Defendant was punished for failing to register during period after Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., and 18 USCS § 2250, was enacted, beginning at least as early as February 28, 2007, when Attorney General issued his Interim Regulations clarifying that SORNA applied to pre-SORNA sex offenders; because defendant was punished for his conduct after enactment of SORNA provision criminalizing conduct, his punishment did not violate *Ex Post Facto Clause*. *United States v Gould* (2009, CA4 Md) 568 F3d 459.

Requiring defendant to register as a sex offender before and after interstate travel--which clearly facilitated monitoring with a minimal practical impact was reasonably adapted to ensure that sex offenders registered and updated previous registrations when moving, thus, defendant's conviction under 18 USCS § 2250(a) did not violate the *Commerce Clause*. *United States v Whaley* (2009, CA5 Tex) 577 F3d 254.

In a case in which defendant challenged the constitutionality of the federal Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, and its corresponding criminal offense statute, 18 USCS § 2250, he unsuccessfully argued that SORNA violated the Commerce Clause because it did not establish a nexus to interstate commerce; SORNA derived its authority from each prong of the Lopez test--and most specifically, the ability to regulate persons or things in interstate commerce and the use of the channels of interstate commerce; therefore, SORNA provided a sufficient nexus to interstate commerce. *United States v Zuniga* (2009, CA8 Neb) 579 F3d 845.

In a case in which defendant challenged the constitutionality of the federal Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, and its corresponding criminal offense statute, 18 USCS § 2250, he argued that SORNA violated the non-delegation doctrine because Congress improperly delegated authority to legislate the scope of SORNA to the Attorney General; because defendant was able to register pursuant to SORNA but failed to do so, 42 USCS § 16913(d) did not apply to him and he lacked standing to bring a challenge to that section. *United States v Zuniga* (2009, CA8 Neb) 579 F3d 845.

In a case in which defendant challenged the constitutionality of the federal Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, and its corresponding criminal offense statute, 18 USCS § 2250, he lacked standing to argue that SORNA violated the Tenth Amendment; private party did not have standing to assert that the federal government was encroaching on state sovereignty in violation of the Tenth Amendment absent the involvement of a state or its instrumentalities, and defendant was challenging SORNA in his individual capacity; he did

not assert the involvement of a state or its instrumentalities. *United States v Zuniga* (2009, CA8 Neb) 579 F3d 845.

In a case in which defendant challenged the constitutionality of the federal Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, and its corresponding criminal offense statute, 18 USCS § 2250, he unsuccessfully argued that SORNA was inapplicable to him because his travel in interstate commerce occurred before the Attorney General issued an interim ruling designating the applicability of SORNA to offenders convicted before SORNA's date of the enactment; defendant, who traveled in interstate commerce after SORNA's enactment but before the Attorney General issued its interim rule, was in the same position as was the defendant in the May decision; therefore, like the defendant in the May decision, defendant in the present case was already obligated to register under SORNA, and the interim rule did not affect that obligation. *United States v Zuniga* (2009, CA8 Neb) 579 F3d 845.

In a case in which defendant challenged the constitutionality of the federal Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, and its corresponding criminal offense statute, 18 USCS § 2250, he unsuccessfully argued that SORNA violated the Ex Post Facto Clause because SORNA increased the punishment for failure to register and punished him for conduct that occurred before SORNA was applicable to him; since SORNA did not punish an individual for previously being convicted of a sex offense, but it instead merely punished an individual for traveling in interstate commerce and failing to register, it did not violate the Ex Post Facto Clause. *United States v Zuniga* (2009, CA8 Neb) 579 F3d 845.

Because defendant traveled in interstate commerce and knowingly failed to update his sex offender registry after Sex Offender Registration and Notification Act's requirements in 42 USCS § 16913(c) were made applicable to all sex offenders, his actions were not legal when he committed them; thus, his conviction and incarceration under 18 USCS § 2250(a) did not violate Ex Post Facto Clause, U.S. Const. art. I, § 9, cl. 3. *United States v Young* (2009, CA5 Tex) 585 F3d 199.

Second Circuit concludes, as have all of its sister circuits that have considered issue, that fact that defendant had no actual notice of Sex Offender Registration and Notification Act (SORNA), 18 USCS § 2250(a), is not sufficient to render his prosecution pursuant to that statute violation of his due process rights; to extent that judicial precedent carves out limited exception to rule that ignorance of law is not valid defense to its violation, defendant's failure to comply with SORNA's registration requirements is beyond that exception. *United States v Hester* (2009, CA2 NY) 589 F3d 86.

Second Circuit agrees with its sister circuits and holds that compliance with Sex Offender Registration and Notification Act (SORNA), 18 USCS § 2250(a), is not impossible where states at issue have registration program; SORNA only obligates sex offender to register, and keep registration current, in each jurisdiction where offender resides, where offender is employee, and where offender is student, 42 USCS § 16913(a). *United States v Hester* (2009, CA2 NY) 589 F3d 86.

18 USCS § 2250(a) is proper congressional exercise of commerce power, as 18 USCS § 2250(a) only criminalizes knowing failure to register when offender is either required to register by reason of federal law conviction or travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country. *United States v Guzman* (2010, CA2 NY) 591 F3d 83.

Because appellees had not shown that any of states involved in their interstate travel had taken any steps to implement Sex Offender Registration and Notification Act (SORNA), their Tenth Amendment argument that SORNA commandeered state officials into administering federal law necessarily failed. *United States v Guzman* (2010, CA2 NY) 591 F3d 83.

Because defendants were convicted of traveling interstate and failing to register, and in both of their cases travel and failure to register occurred after Sex Offender Registration and Notification Act's (SORNA) enactment and effective date of regulations indicating that SORNA applied to all sex offenders, there was no ex post facto problem with their convictions. *United States v Guzman* (2010, CA2 NY) 591 F3d 83.

Sex Offender Registration and Notification Act (SORNA) contains sufficient nexus to interstate commerce. SORNA is proper regulation of commerce under Lopez categories because it not only regulates persons or things in interstate commerce, but also regulates use of channels of interstate commerce and instrumentalities of interstate commerce. *United States v Shenandoah* (2010, CA3 Pa) 595 F3d 151.

Defendant's conviction for failure to register under Sex Offender Registration and Notification Act (SORNA), 18 USCS § 2250, did not violate Due Process Clause because defendant was required to register under SORNA regardless of whether SORNA's administrative requirements had been implemented by Colorado, where he was convicted of

predicate sex offense, or Texas, where he was arrested and tried, and defendant was not convicted of failing to do impossible because (1) there was sufficient evidence that defendant knowingly failed to register as sex offender because he had requisite notice of that duty under Colorado law; (2) nothing in SORNA's statutory scheme indicated that individual's registration obligations were contingent upon state's implementation of SORNA's administrative requirements; (3) defendant acknowledged on three occasions his duty to register as sex offender upon moving to new jurisdiction; and (4) both Colorado and Texas had sex offender registry. *United States v Heth* (2010, CA5 Tex) 596 F3d 255.

Defendant's motion, seeking to dismiss indictment that charged him with violating 18 USCS § 2250(a) and sex offender registration requirements of Adam Walsh Child Protection and Safety Act of 2006 (Walsh Act), Pub. L. No. 109-248 (2006), was denied: (1) Walsh Act was constitutional on its face; (2) registration requirements, which were set out in 42 USCS § 16913, Sex Offender Registration and Notification Act (SORNA), which was part of Walsh Act, applied retroactively to defendant, even though he was convicted of second degree sexual abuse offense under *N.Y. Penal Law § 130.60* before July 27, 2006, which was date Walsh Act was enacted; and (3) defendant's prosecution under 18 USCS § 2250(a) for violating Walsh Act did not raise *U.S. Const. art. I, § 9, cl. 3*, Ex Post Facto Clause concerns because defendant was notified, at time of his conviction, that he would have to register in any new domicile if he moved from New York, and it did not matter that notice was provided to him in compliance with state law rather than pursuant to SORNA. *United States v Madera* (2007, MD Fla) 474 F Supp 2d 1257 (criticized in *United States v Smith* (2007, ED Mich) 481 F Supp 2d 846) and (criticized in *United States v Muzio* (2007, ED Mo) 2007 US Dist LEXIS 54330) and (criticized in *United States v Cole* (2007, SD Ill) 2007 US Dist LEXIS 68522) and (criticized in *United States v Beasley* (2007, ND Ga) 2007 US Dist LEXIS 85793) and (criticized in *United States v Gill* (2007, DC Utah) 520 F Supp 2d 1341) and (criticized in *United States v Gould* (2007, DC Md) 526 F Supp 2d 538) and (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Because Congress has established jurisdictional predicate of interstate or foreign travel, government need only establish de minimis effect on interstate commerce; federal offense of failing to register as sex offender (FFR) has at least de minimis effect on interstate travel, because it involves travel of certain person across state lines; accordingly, FFR is proper exercise of congressional authority under *Commerce Clause*. *United States v Hinen* (2007, WD Va) 487 F Supp 2d 747 (criticized in *United States v Barnes* (2007, SD NY) 2007 US Dist LEXIS 53245) and (criticized in *United States v Muzio* (2007, ED Mo) 2007 US Dist LEXIS 54330) and (criticized in *United States v Cole* (2007, SD Ill) 2007 US Dist LEXIS 68522) and (criticized in *United States v Deese* (2007, WD Okla) 2007 US Dist LEXIS 70677) and (criticized in *United States v Gill* (2007, DC Utah) 520 F Supp 2d 1341) and (criticized in *United States v Howell* (2007, ND Iowa) 2007 US Dist LEXIS 83224) and (criticized in *United States v Mantia* (2007, WD La) 2007 US Dist LEXIS 96018) and (criticized in *United States v Gould* (2007, DC Md) 526 F Supp 2d 538) and (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Where defendant, who was convicted of criminal sexual conduct prior to enactment of Sex Offender Registration and Notification Act (SORNA), traveled in interstate commerce before SORNA was made applicable to him by 28 C.F.R. § 72.3 and failed to register as sex offender as required by 42 USCS § 16913(c), defendant could not be found guilty of violating 18 USCS § 2250(a) because finding defendant guilty would have required retroactive application of SORNA and would have resulted in enhanced punishment in violation of Ex Post Facto Clause, *U.S. Const. art. I, § 9, cl. 3*. *United States v Stinson* (2007, SD W Va) 507 F Supp 2d 560 (criticized in *United States v Beasley* (2007, ND Ga) 2007 US Dist LEXIS 85793) and (criticized in *United States v Gould* (2007, DC Md) 526 F Supp 2d 538).

Defendant's ex post facto challenge to registration requirements of Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., lacked merit because statute was civil in nature; individual provisions of SORNA, except for 18 USCS § 2250, were devoted to procedural issues; although SORNA required sex offenders to provide detailed personal information and appear in person so that jurisdiction could take current photograph and verify their information, 42 USCS §§ 16914, 16916, there was insufficient evidence to transform SORNA from civil scheme into criminal penalty. *United States v Mason* (2007, MD Fla) 510 F Supp 2d 923 (criticized in *United States v Muzio* (2007, ED Mo) 2007 US Dist LEXIS 54330) and (criticized in *United States v Cole* (2007, SD Ill) 2007 US Dist LEXIS 68522) and (criticized in *United States v Gill* (2007, DC Utah) 520 F Supp 2d 1341) and (criticized in *United States v Mantia* (2007, WD La) 2007 US Dist LEXIS 96018) and (criticized in *United States v Howell* (2008, ND Iowa) 2008 US Dist LEXIS 7810).

Defendant's motion to dismiss indictment, which charged him with violating 18 USCS § 2250(a) by failing to register and/or update his registration as sex offender as required by 42 USCS § 16913(b),(c), part of Sex Offender Registration and Notification Act (SORNA), was denied because defendant failed to show that SORNA was

unconstitutional on its face or as retroactively applied to his case: (1) although he was convicted prior to SORNA's enactment, defendant was already obligated to register as sex offender pursuant to *N.D. Cent. Code § 12.1-32-15*; (2) Congress did not violate *U.S. Const. art. I, § 1*, when it gave U.S. Attorney General authority to promulgate regulations applying SORNA, and pursuant to *28 C.F.R. § 72.3*, SORNA's registration requirements retroactively applied to defendant's case; (3) defendant's due process and ex post facto rights were not violated by retroactive application of SORNA registration requirements to his case because he was responsible for keeping abreast of law pertaining to his registration obligations and government was seeking to hold him liable for his conduct in failing to register after SORNA was enacted and *28 C.F.R. § 72.3* was promulgated; and (4) no court had held that SORNA was unconstitutional because it violated *Commerce Clause*. *United States v Lovejoy (2007, DC ND) 516 F Supp 2d 1032*.

Congress may regulate persons or things in interstate commerce, even though threat may come only from intrastate activities; federal jurisdiction under *18 USCS § 2250(a)(2)(B)* is only acquired when offender who must register under Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901 et seq.*, travels in interstate or foreign commerce and SORNA, therefore, does not violate *Commerce Clause*. *United States v Gould (2007, DC Md) 526 F Supp 2d 538* (criticized in *United States v Howell (2008, ND Iowa) 2008 US Dist LEXIS 7810*).

Defendant was not entitled to dismissal of his indictment under *18 USCS § 2250* and *42 USCS § 16913* for failing to register as sex offender when he crossed state lines because both statutes were constitutional; *18 USCS § 2250* was proper exercise of congressional power under Commerce Clause because Congress has broad federal power to regulate persons who cross state boundaries and, while *42 USCS § 16913* exceeded Congress's power under Commerce Clause, that statute was valid under Necessary and Proper Clause, *U.S. Const. art. I, § 8, cl. 18*, because it was appropriate and reasonably adapted means by Congress to attain legitimate end of *18 USCS § 2250*. *United States v Thomas (2008, ND Iowa) 534 F Supp 2d 912*.

*18 USCS § 2250(a)* violates Congress' power under Commerce Clause and is, therefore, unconstitutional; commendable goal of protecting public from sex offenders is not enough to transform state concern (sex offender registration) into federal crime; criminal statute has nothing to do with commerce or economic enterprise; further, jurisdictional element, supposed link between failure to register as sex offender and interstate commerce, was insufficient to support finding of substantial affect on interstate commerce. *United States v Powers (2008, MD Fla) 544 F Supp 2d 1331, 21 FLW Fed D 215*.

*18 USCS § 2250* was valid exercise of congressional power under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3* because (1) statute's jurisdictional element, requirement that defendant travel in interstate or foreign commerce, brought statute under instrumentalities of interstate commerce prong of Commerce Clause; (2) Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901 et seq.*, by its terms, did not focus on merely intrastate matters; (3) not only did *18 USCS § 2250* have jurisdictional element, but jurisdictional element required proof of interstate activity; and (4) SORNA required that defendant register within three days of traveling in interstate commerce, and thus, regulated activity and jurisdictional element were quite closely connected. *United States v Ditomasso (2008, DC RI) 552 F Supp 2d 233*.

Court rejected defendant's argument that Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901 et seq.*, violated Tenth Amendment by forcing states to register sex offenders before they voluntarily complied with SORNA because state component of SORNA was voluntary, and although criminal component of SORNA fell under Commerce Clause and was not voluntary, *18 USCS § 2250* did not require any additional effort on part of Rhode Island, but merely added federal penalty to failure to abide by state registration laws; thus, SORNA conformed to requirements of *Tenth Amendment*. *United States v Ditomasso (2008, DC RI) 552 F Supp 2d 233*.

Charging defendant under *18 USCS § 2250* with violating Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901 et seq.*, did not violate Due Process Clause guarantee of fundamental fairness because although Rhode Island had not yet implemented SORNA, both structure and purpose of law showed that Congress intended for sex offenders to register in their states regardless of whether state fully implemented SORNA. *United States v Ditomasso (2008, DC RI) 552 F Supp 2d 233*.

Although requiring defendant to comply with Sex Offender Registration Notification Act (SORNA) did not implicate Ex Post Facto Clause, punishing him pursuant to punishment scheme of *18 USCS § 2250* based on conduct which predated Title I of Adam Walsh Child Protection and Safety Act of 2006 violated Ex Post Facto Clause where (1) when defendant moved to Virgin Islands, assuming it was his first offense for failure to register, his failure to register was punishable as misdemeanor under *42 USCS § 14072(i)*, with maximum sentence of one year in prison; (2) that same failure to register was now punishable by up to ten years in prison; and (3) increasing punishment from maximum

imprisonment of one year to up to ten years, clearly increased punishment for crime. *United States v Gillette (2008, DC VI) 553 F Supp 2d 524.*

Defendant's failure to register under Sex Offender Registration Notification Act (SORNA) could not qualify as continuous crime because he, sex offender, completed all of elements of crime when he traveled interstate to Virgin Islands and did not register; because crime was completed before SORNA's enactment, Ex Post Facto Clause barred his prosecution. *United States v Gillette (2008, DC VI) 553 F Supp 2d 524.*

Conditions for pretrial release that were mandated by Adam Walsh Amendments to Bail Reform Act of 1984, and appeared in undesignated paragraph at end of *18 USCS § 3142(c)(1)(B)*, violated Due Process Clause of Fifth Amendment and Excessive Bail Clause of Eighth Amendment, as they were applied to defendant who was charged with violating Sex Offender Registration and Notification Act, *18 USCS § 2250(a)*; mandatory conditions prevented court from evaluating and setting relevant conditions of pretrial release, which implicated significant liberty interests, and they were excessive as they applied to defendant's case. *United States v Torres (2008, WD Tex) 566 F Supp 2d 591.*

District court overruled defendant's motion to dismiss indictment charging him with violating *18 USCS § 2250(a)* by failing to register as sex offender, as required by § 113 of Sex Offender Registration and Notification Act, *42 USCS § 16913*; Congress did not exceed its authority under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, when it enacted § 2250(a), and fact that federal authorities had not provided notice required by *42 USCS § 16917* was not defense to prosecution under § 2250(a) because state authorities had informed defendant of his obligation to register as sex offender under state law. *United States v Trent (2008, SD Ohio) 568 F Supp 2d 857.*

Application of Sex Offender Registration and Notification Act (SORNA), *18 USCS § 2250(a)* and *42 USCS § 14072(i)(1)*, to defendants did not violate Ex Post Facto Clause, *U.S. Const. art. I, § 9*, because defendants were alleged to have traveled in interstate commerce and failed to register after SORNA's effective date and after regulations clarified SORNA's applicability to previously convicted sex offenders. *United States v Shenandoah (2008, MD Pa) 572 F Supp 2d 566.*

Because federal prosecution under *18 USCS § 2250* does not reach purely intrastate movement of sex offenders who fail to comply with registration requirements, Sex Offender Registration and Notification Act does not contravene Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*. *United States v Shenandoah (2008, MD Pa) 572 F Supp 2d 566.*

Application of Sex Offender Registration and Notification Act (SORNA), *18 USCS § 2250(a)* and *42 USCS § 14072(i)(1)*, to defendants did not violate due process; fact that states in which defendants allegedly failed to register had not fully complied with registry requirements under *42 USCS § 16912* did not prevent defendants from complying with SORNA, and defendants' knowledge of state law registration requirements provided sufficient notice of duty to register under SORNA; further, it did not violate defendants' constitutional right to travel; SORNA does not unreasonably burden right to travel; SORNA's requirements burden sex offender's right to travel only to limited extent necessary to serve government's compelling interest in protecting its citizens from sex crimes. *United States v Shenandoah (2008, MD Pa) 572 F Supp 2d 566.*

In defendant's case, *18 USCS § 2250(a)(2)(A)* did not implicate Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, because defendant's prior crimes occurred while he was serving in U.S. Air Force on military base and his prior conviction was for violation of Unif. Code Mil. Justice art. 120 and 124; accordingly, Congress' power to regulate his actions did not stem from its Commerce Clause authority, but from its superseding power to assign consequences for violations of federal law. *United States v Torres (2008, WD Tex) 573 F Supp 2d 925.*

Defendant's indictment under *18 USCS § 2250* was valid under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, because there was direct connection between interstate commerce and his failure to register or update registration as sex offender; Government alleged that defendant crossed state lines to work in New Mexico while continuing to live in Texas, and he failed to register these changes; therefore, defendant's act of moving in interstate commerce was not some attenuated circumstance but actually formed part of alleged crime. *United States v Torres (2008, WD Tex) 573 F Supp 2d 925.*

Indictment pertained to defendant's failure to keep his registration current under *42 USCS § 16913(a), (c)* and did not seek to punish him for his behavior prior to enactment of Sex Offender Registration and Notification Act (SORNA), *42 USCS §§ 16901 et seq.*; thus, *18 USCS § 2250's* proscription against violating SORNA was not ex post facto violation. *United States v Gagnon (2008, DC Me) 574 F Supp 2d 172.*

*18 USCS § 2250(a)* falls within Congress' power to regulate persons or things in interstate commerce. *United States*

*v Hann (2008, MD Tenn) 574 F Supp 2d 827.*

Notice of sex offender's state duty to register under state law does carry over to his duty to register under Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq; therefore, Due Process Clause is not violated by lack of notice or fair warning. *United States v Hann (2008, MD Tenn) 574 F Supp 2d 827.*

Because Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., was enacted before sex offender traveled from New York to Tennessee, Ex Post Facto Clause was not violated; furthermore, SORNA did not violate Ex Post Facto Clause because it was not penal in nature. *United States v Hann (2008, MD Tenn) 574 F Supp 2d 827.*

District court held that 18 USCS § 2250 was not unconstitutional since it regulated persons in interstate commerce, reasoning that because federal prosecution under § 2250 did not reach purely intrastate movement of sex offenders who failed to comply with registration requirements, Sex Offender Registration and Notification Act (SORNA), did not contravene Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*; this holding was bolstered by congressional intent underlying SORNA, i.e., to protect public safety by creating mechanism for tracking sex offenders as they moved from state to state, as threat posed by sex offenders traveling in interstate commerce was precisely type of peril that Congress was permitted to address utilizing *Commerce Clause*. *United States v Vardaro (2008, DC Mont) 575 F Supp 2d 1179.*

District court rejected defendant's claim that because he had no notice of Sex Offender Reporting and Notification Act's (SORNA) reporting requirements, he could not be prosecuted for violating 18 USCS § 2250(a), since lack of notice violated due process; defendant was in no position to claim that he was unaware of any wrongdoing, since he was aware of his continuing obligation to register, as he had registered in Michigan prior to traveling to Montana; while defendant might not have had notice of his registration requirements under SORNA, he knew of his obligation to keep his registration current and therefore he was precluded from claiming that he was unaware of any wrongdoing. *United States v Vardaro (2008, DC Mont) 575 F Supp 2d 1179.*

Because 42 USCS § 16913 is not valid exercise of Congressional authority under either Commerce Clause or Congress' spending power, federal duty to register as sex offender under § 16913 is unconstitutional; it then follows that conviction under 18 USCS § 2250(a) is invalid because criminal penalty statute demands Government prove defendant was required to register under § 16913. *United States v Hall (2008, ND NY) 577 F Supp 2d 610*, request den, on reconsideration (2008, ND NY) 2008 US Dist LEXIS 98343 and (criticized in *United States v Lamere (2008, ND NY) 2008 US Dist LEXIS 101116*).

Sex Offender Registration and Notification Act's (SORNA) fatal flaw is that Congress exceeded its power under Commerce Clause when it created federal duty for all sex offenders to update their registration pursuant to 42 USCS § 16913; specifically, Congress may not require sex offenders convicted of state sex offenses and who do not travel in interstate commerce to update their sex offender registration after changing their name, address, employment, or student status; duty to register as sex offender pursuant to § 16913 is predicate for conviction under § 2250(a), and therefore, constitutional defect of § 16913 taints § 2250(a). *United States v Hall (2008, ND NY) 577 F Supp 2d 610*, request den, on reconsideration (2008, ND NY) 2008 US Dist LEXIS 98343 and (criticized in *United States v Lamere (2008, ND NY) 2008 US Dist LEXIS 101116*).

Court rejected defendant's argument that Sex Offender Registration and Notification Act (SORNA) was unconstitutional because it exceeded powers delegated to Congress under Commerce Clause of United States Constitution, *U.S. Const. art. I, § 8, cl. 3* where Congress set out jurisdictional predicate and that element satisfied requirements of Commerce Clause. SORNA did not reach sex offender who failed to register and remained within one state, but applied to sex offender under state law only if that person failed to register and travelled in interstate or foreign commerce, or entered or left, or resided in, Indian country, 18 USCS § 2250(a)(2)(B). *United States v Stevens (2008, DC Me) 578 F Supp 2d 172.*

Because duty to register as sex offender pursuant to 42 USCS § 16913 is predicate for conviction under 18 USCS § 2250(a), constitutional defect of § 16913 under Commerce Clause renders § 2250(a) unenforceable. *United States v Guzman (2008, ND NY) 582 F Supp 2d 305* (criticized in *United States v Howell (2009, CA8 Iowa) 2009 US App LEXIS 541*).

Sex Offender Registration and Notification Act (SORNA) is constitutional under second prong of Lopez test because it regulates persons traveling in interstate commerce. SORNA's criminal provision at 18 USCS § 2250 contains appropriate jurisdictional element which expressly limits SORNA prosecutions to those individuals who have traveled in interstate commerce; such express limitation evidences that Congress was acutely aware of breadth of its power under

Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, when it enacted SORNA. *United States v Pena* (2008, WD Tex) 582 F Supp 2d 851 (criticized in *United States v Myers* (2008, SD Fla) 21 FLW Fed D 473).

Because federal prosecution under 18 USCS § 2250 did not reach purely intrastate movement of sex offenders who failed to comply with registration requirements of Sex Offender Registration and Notification Act (SORNA), district court concluded that statute was valid exercise of congressional power under Commerce Clause, U.S. Const. art. I, § 3, cl. 8; this holding was bolstered by congressional intent underlying SORNA, i.e., to protect public safety by creating mechanism for tracking sex offenders as they moved from state to state; therefore, 18 USCS § 2250 was not unconstitutional under Commerce Clause. *United States v Pena* (2008, WD Tex) 582 F Supp 2d 851 (criticized in *United States v Myers* (2008, SD Fla) 21 FLW Fed D 473).

Defendant's indictment charging him with failure to register as sex offender under 18 USCS § 2250 was sufficient under *Fed. R. Crim. P. 7* in that each essential element was alleged and his Due Process Clause rights were not violated in that he was given proper notice under 42 USCS §§ 16913 and 16917 and requirements of Sex Offender Registration and Notification Act turned on his previous military sex offense convictions, for which he was afforded procedural safeguards to contest. *United States v Santana* (2008, WD Tex) 584 F Supp 2d 941.

18 USCS § 2250 exceeds grant of power made to Congress under Commerce Clause, U.S. Const. art. I, § 8 because it is in no way regulation of persons in interstate commerce but exertion of general police power through illusory and impermissible jurisdictional nexus. *United States v Myers* (2008, SD Fla) 591 F Supp 2d 1312, 21 FLW Fed D 473 (criticized in *United States v Howell* (2009, CA8 Iowa) 552 F3d 709) and (criticized in *United States v Romeo* (2009, ND NY) 2009 US Dist LEXIS 3522) and (criticized in *United States v Hardeman* (2009, ND Cal) 2009 US Dist LEXIS 7561).

Indictment of defendant for failing to register as sex offender, pursuant to requirements of 18 USCS § 2250(a) was upheld, as statute, interpreted in conjunction with 42 USCS § 16913, did not violate Commerce Clause, and despite predicate offenses being expunged. *United States v Hardeman* (2009, ND Cal) 598 F Supp 2d 1040.

When sex offender travels from one state to another, he is instrumentality of interstate commerce, and by regulating these persons in Sex Offender Registration and Notification Act, Congress has acted under its Commerce Clause power to regulate instrumentality. *United States v Hernandez* (2009, ED Mich) 615 F Supp 2d 601.

Defendant's motion to dismiss indictment charging him with failure to register as sex offender, violation of 18 USCS § 2250(a), on ground that Sexual Offender Registration Notification Act (SORNA) violated Ex Post Facto Clause of United States Constitution was denied because SORNA worked prospectively, did not retroactively increase defendant's punishment, and was civil and non-punitive regulatory scheme; thus, SORNA did not violate Ex Post Facto Clause. *United States v Voice* (2009, DC SD) 621 F Supp 2d 741.

Court denied defendant's motion to dismiss indictment charging him with failure to register as sex offender, violation of 18 USCS § 2250(a), on ground that Sexual Offender Registration Notification Act (SORNA) violated Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because Congress set out two jurisdictional prerequisites, one of which had to be satisfied, in order for SORNA to apply, and those prerequisites, commission of federal sex offense or traveling to different state, foreign country, or Indian country, had significant enough connection with interstate commerce to bring SORNA within purview of Commerce Clause; thus, SORNA did not violate Commerce Clause. *United States v Voice* (2009, DC SD) 621 F Supp 2d 741.

Defendant's motion to dismiss indictment charging him with failure to register as sex offender, violation of 18 USCS § 2250(a), on ground that Sexual Offender Registration Notification Act (SORNA) violated Due Process Clause of United States Constitution was denied because (1) failure of South Dakota to implement or update its registration in accordance with SORNA did not relieve defendant of his duty to register with state, and fact that Crow Creek Sioux Tribe had no sex offender registry program did not relieve defendant of duty to register with state; (2) defendant knew of registration requirements that South Dakota imposed on sex offenders so he was deemed to have sufficient notice regarding registration requirements of SORNA; and (3) notification and verification provisions contained in SORNA under 42 USCS § 16913(c), were not ambiguous. *United States v Voice* (2009, DC SD) 621 F Supp 2d 741.

Defendant's motion to dismiss indictment charging him with failure to register as sex offender, violation of 18 USCS § 2250(a), on ground that Sexual Offender Registration Notification Act (SORNA) violated non-delegation doctrine was denied because defendant was able to register before SORNA's enactment, and thus, he lacked standing to raise question of delegation of authority to Attorney General. *United States v Voice* (2009, DC SD) 621 F Supp 2d 741.

Indictment charging defendant with one count of traveling in interstate commerce and thereafter knowingly failing to register and update his sex offender registration in violation of 18 USCS § 2250(a) was dismissed because 42 USCS § 16913 unconstitutionally established a federal obligation for sex offenders to update their registration regardless of whether they remain in-state or were convicted of a purely local sex offense, and as a result, any conviction under 18 USCS § 2250(a) was likewise unconstitutional because a defendant's obligation to register pursuant to § 16913 was a predicate for conviction. *United States v Nasci (2009, ND NY) 632 F Supp 2d 194.*

Argument that the regulation of sex offenders' intrastate activity was necessary to effectively monitor sex offenders' travel across state lines did not persuasively demonstrate that the statute was a proper exercise of Congress's power under the Commerce Clause, as that argument was belied by Congress's decision to limit the criminal enforcement statute to sex offenders who failed to register after traveling in interstate commerce; if, as the Government contended, Congress had both the need and the constitutional capability to impose a federal obligation for sex offenders to update their registry regardless of whether they remained in-state or were convicted of a purely local sex offense, it would have logically followed that Congress would have extended 18 USCS § 2250(a) to cover all sex offenders. *United States v Nasci (2009, ND NY) 632 F Supp 2d 194.*

Defendant was not entitled to dismissal of his charge for failure to register as sex offender under 18 USCS § 2250 because he was registered under *Cal. Penal Code § 290* upon release from prison but failed to register when he travelled to Nevada and 42 USCS §§ 16913(a) and 16917 did not violate his Fifth Amendment Due Process Clause rights regardless whether Nevada had implemented compliant registration system; also, SORNA did not violate Commerce Clause, Ex Post Facto Clause, Tenth Amendment, or Privileges and Immunities Clause right to travel. *United States v Benevento (2009, DC Nev) 633 F Supp 2d 1170.*

18 USCS § 2250 is constitutional under *Commerce Clause*. *United States v Barner (2009, ND NY) 635 F Supp 2d 138.*

Because defendant was charged with violating 18 USCS § 2250(a) for conduct that occurred after Sex Offender Registration and Notification Act, 42 USCS §§ 16901-16991, was enacted, there was no ex post facto violation. *United States v Barner (2009, ND NY) 635 F Supp 2d 138.*

18 USCS § 2250(a) does not exceed Congress' authority under Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because § 2250(a) only applies to those sex offenders failing to register or update register after traveling in interstate travel and interstate travel element is express jurisdictional trigger that falls within Congress' power to regulate and protect channels and instrumentalities of interstate commerce. *United States v Jamison (2009, DC Del) 647 F Supp 2d 381.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a), he unsuccessfully moved to dismiss indictment by arguing that SORNA and its criminal enforcement provision exceeded Congress' constitutional power because sex-offender registration requirements were purely local in nature and there was insufficient relationship to interstate commerce; Section 2250(a) and SORNA's registration requirements came within first two categories identified by U.S. Supreme Court in which Congress was authorized to engage under its commerce power. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a), he unsuccessfully moved to dismiss indictment by arguing that his prosecution for violation of 18 USCS § 2250 violated Ex Post Facto Clause of Constitution; he was not being punished because he violated 18 USCS § 2250 prior to its enactment; he was sex offender who was required to register under SORNA, who traveled in interstate commerce, and knowingly failed to register or update registration in state in which he resided as required by SORNA. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a), he unsuccessfully moved to dismiss indictment by arguing that SORNA violated Tenth Amendment by requiring state officials to administer federal law; regulatory scheme enacted by Congress in SORNA did not command state officers or their political subdivisions to do anything. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a),

he unsuccessfully moved to dismiss indictment by arguing that Congress impermissibly delegated to Attorney General decision as to whether SORNA should be applied retroactively; clearly, Congress laid down intelligible principal to Attorney General in 42 USCS § 16901 when it stated in Declaration of Purpose that in order to protect public from sex offenders and offenders against children, and in response to vicious attacks by violent predators against victims listed below, Congress in this Act establishes comprehensive national system for registration of those offenders. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720*.

Criminal sex offender registration statute, 18 USCS § 2250(a), was constitutionally enacted within Congress' authority under *U.S. Const. art. I, § 8, cl. 3*, because statute only applied to those sex offenders failing to register or update registration after traveling in interstate travel. *United States v Pavulak (2009, DC Del) 672 F Supp 2d 622*.

### Unpublished Opinions

Unpublished: Defendant's due process argument was without merit because (1) he was aware of his duty to update his registration in New York; (2) he had received notice that, if he moved to another state, he might be required to register as sex offender there; (3) Kentucky law mandated he register as sex offender in Kentucky, which he failed to do; notwithstanding his failure to register, his prior knowledge of his duty to register under state law qualified as effective notice under Sex Offender Registration and Notification Act. *United States v Samuels (2009, CA6 Ky) 2009 FED App 253N*.

Unpublished: Defendant's conviction under 18 USCS § 2250 did not violate Ex Post Facto Clause because statute punishes individual for traveling in interstate commerce and failing to register; statute does not punish individual for previously being convicted of sex crime. *United States v Samuels (2009, CA6 Ky) 2009 FED App 253N*.

Unpublished: In case in which defendant argued that Sex Offender Registration and Notification Act's registration and penalty provisions, 42 USCS § 16913 and 18 USCS § 2250, respectively, exceed Congress's authority under Commerce Clause, that challenge was foreclosed by Fifth Circuit's Whaley decision; requiring sex offenders to register both before and after they traveled in interstate commerce--which clearly facilitated monitoring those movements and which had minimal practical impact on intrastate sex offenders--was reasonably adapted to goal of ensuring that sex offenders register and update previous registrations when moving among jurisdictions. *United States v Letourneau (2009, CA5 Tex) 2009 US App LEXIS 17349*.

Unpublished: In case in which defendant had been convicted of failing to register as convicted sex offender in accordance with Sex Offender Registration and Notification Act (SORNA), he argued unsuccessfully that his conviction violated Due Process Clause because he never received notice of his duty to register under SORNA; while pre-registration form that defendant signed upon his release from prison was silent as to his duty to re-register in new state to which he moved, it explicitly stated that he was to inform Tennessee authorities in event any of his registration information, e.g., his address, changed; had he notified Tennessee authorities of his change in address after moving to Texas, requirement that he acknowledged receiving notice of, he would have been in compliance with SORNA. *United States v Letourneau (2009, CA5 Tex) 2009 US App LEXIS 17349*.

Unpublished: In case in which defendant had been convicted of failing to register as convicted sex offender in accordance with Sex Offender Registration and Notification Act (SORNA), he argued unsuccessfully that SORNA violated non-delegation doctrine by improperly delegating legislative powers to Executive Branch by directing Attorney General to decide whether and how sex offender with conviction pre-dating SORNA would be subject to its requirements; that argument was foreclosed by United States Fifth Circuit precedent, which held that delegation to Attorney General to determine retroactive applicability of SORNA was well within limits of permissible delegation. *United States v Letourneau (2009, CA5 Tex) 2009 US App LEXIS 17349*.

Unpublished: Sex Offender Registration and Notification Act does not punish underlying sex offense but, rather, offender's subsequent registration violation following interstate travel and, therefore, does not run afoul of constitutional prohibition on after-the-fact increases in punishment. *United States v Gibson (2009, CA10 Wyo) 2009 US App LEXIS 22042*.

Unpublished: 18 USCS § 2250(a)(2)(B) is proper exercise of federal legislative power under Commerce Clause; by requiring that sex offender travel in interstate commerce before finding registration violation, Sex Offender Registration and Notification Act remains well within constitutional boundaries of *Commerce Clause*. *United States v Gibson (2009, CA10 Wyo) 2009 US App LEXIS 22042*.

Unpublished: Sex-offender lacked standing to assert argument that Sex Offender Registration and Notification Act

(SORNA) impermissibly burdened state, in violation of Tenth Amendment, by requiring it to register sex offenders before it had voluntarily implemented SORNA by incorporating all of SORNA's registration requirements into its own registration scheme; such argument concerned rights of state, not individuals. *United States v Gibson* (2009, CA10 Wyo) 2009 US App LEXIS 22042.

Unpublished: Fact that defendant's sex offense predated Sex Offender Registration and Notification Act (SORNA) did not preclude his prosecution for registration violation, particularly as violation occurred in connection with interstate travel following SORNA's passage. *United States v Kueker* (2009, CA10) 2009 US App LEXIS 24100.

Unpublished: There was no Ex Post Facto Clause violation, as Sex Offender Registration and Notification Act did not punish underlying sex offense but, rather, defendant's subsequent registration violation following interstate travel. *United States v Kueker* (2009, CA10) 2009 US App LEXIS 24100.

Unpublished: Defendant lacked standing to assert his Tenth Amendment challenge to Sex Offender Registration and Notification Act, as such claim concerned rights of state, not individuals. *United States v Kueker* (2009, CA10) 2009 US App LEXIS 24100.

Unpublished: By requiring that sex offender travel in interstate commerce before finding registration violation, Sex Offender Registration and Notification Act remained well within constitutional boundaries of *Commerce Clause*. *United States v Kueker* (2009, CA10) 2009 US App LEXIS 24100.

Unpublished: Defendant's appeal from his conviction under 18 USCS § 2250 for failing to register as sex offender as required by Sex Offender Registration and Notification Act (SORNA) was frivolous because SORNA did not violate Commerce Clause, Ex Post Facto Clause, Spending Clause, Eighth Amendment, Tenth Amendment, or federalism principles. *United States v Davis* (2009, CA10 Okla) 2009 US App LEXIS 24195.

Unpublished: As for defendant's argument that registering as sex offender would have exposed him to prosecution for reentry of previously removed alien under 8 USCS § 1326, court found no Fifth Amendment violation because defendant could not show that anything he would have been required to provide under Georgia's sex offender statute would have confronted him with substantial hazard of self-incrimination (there were no nationality, visa, or other immigration details required to be submitted); cases defendant cited in support of his Fifth Amendment argument were distinguishable because those cases imposed disclosure requirement largely designed to discover involvement in criminal activities, and Sex Offender Registration Notification Act was not designed to uncover criminal behavior, but was instead intended to protect public from sex offenders by tracking their interstate movement). *United States v Simon-Marcos* (2010, CA11 Ga) 2010 US App LEXIS 2319.

Unpublished: Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., had at least de minimis effect on interstate travel, because it involved travel of certain person across state lines; accordingly federal failure to register statute, 18 USCS § 2250(a) was proper exercise of congressional authority under Commerce Clause and Congress did not exceed scope of its authority under Commerce Clause in enacting SORNA and requirement that certain sex offenders register or update their registration. *United States v Buxton* (2007, WD Okla) 2007 US Dist LEXIS 76142 (criticized in *United States v Deese* (2007, WD Okla) 2007 US Dist LEXIS 70677) and (criticized in *United States v Gould* (2007, DC Md) 526 F Supp 2d 538).

Unpublished: As Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., did not criminalize defendant's pre-SORNA conduct, but rather his or her post-SORNA failure to register, 18 USCS § 2250 did not constitute retroactive punishment prohibited by *Ex Post Facto Clause*. *United States v Buxton* (2007, WD Okla) 2007 US Dist LEXIS 76142 (criticized in *United States v Deese* (2007, WD Okla) 2007 US Dist LEXIS 70677) and (criticized in *United States v Gould* (2007, DC Md) 526 F Supp 2d 538).

### 3. Indictment

Defendant's indictment under Adam Walsh Sex Offender Registration and Notification Act of 2006 (SORNA) had to be dismissed because SORNA did not have retroactive effect at time of indictment; interim regulation issued by Attorney General prior to indictment was not properly promulgated under 5 USCS § 553, and comprehensive guidelines making SORNA retroactive were not effective until after defendant was indicted. *United States v Utesch* (2010, CA6 Tenn) 596 F3d 302, 2010 FED App 59P.

In case in which indictment charged defendant with one count under 18 USCS § 2250 of violating Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-f16929, and defendant moved to dismiss for failure to state offense, indictment was sufficient; because defendant was charged with traveling in interstate commerce and

failing to register as he was required to do under SORNA, it was unnecessary for government to allege alternative means for conviction. *United States v Dean (2009, MD Ala) 606 F Supp 2d 1335.*

In case in which indictment charged defendant with one count under 18 USCS § 2250 of violating Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16929, and defendant moved to dismiss for failure to state offense, defendant unsuccessfully argued that indictment failed to allege specific subsection of statute failed; language of indictment clearly tracked language of § 2250(a) and specifically, (a)(1), (a)(2)(B), and (a)(3); he had sufficient notice of charges against him. *United States v Dean (2009, MD Ala) 606 F Supp 2d 1335.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a), he unsuccessfully moved to dismiss indictment by arguing that Mississippi's current failure to implement SORNA precluded his prosecution; as resident of Mississippi and Iowa, defendant was required to register as sex offender prior to SORNA. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a), he unsuccessfully moved to dismiss indictment by arguing that regulations issued by U.S. Attorney General violated Administrative Procedure Act; Congress specified that purpose of SORNA was to protect public and to create comprehensive national system for registering sex offenders, and it would have been contrary to public interest to require notice and comment period for Interim Rule issued by U.S. Attorney General. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720.*

In case in which defendant had been indicted on one count of failure to register or update his registration as sex offender as required by Sex Offender Registration and Notification Act (SORNA), in violation of 18 USCS § 2250(a), and defendant moved to dismiss indictment, he was correct that SORNA itself required jurisdictions to explain registration obligations to sex offenders and ensure they sign form acknowledging those obligations; however, while SORNA required officials to notify sex offenders, receipt of notice was not element of offense. *United States v Johnson (2009, SD Miss) 652 F Supp 2d 720.*

## 5. Miscellaneous

In case in which defendant appealed his 24-month sentence for violating 18 USCS § 2250(a), he unsuccessfully argued that district court engaged in impermissible double-counting by using prior felony conviction to calculate his base offense level and criminal history category under U.S. Sentencing Guidelines; harm of his prior conviction for sexual assault on nine-year-old girl was not fully accounted for by either USSG § 2A3.5(a)(1) or USSG § 4A1.1 alone, so no double-counting occurred. *United States v Myers (2010, CA8 Neb) 598 F3d 474.*

In case in which defendant appealed his 24-month sentence for violating 18 USCS § 2250(a), he unsuccessfully argued that district court engaged in impermissible double-counting by using prior felony conviction to calculate his base offense level and criminal history category under U.S. Sentencing Guidelines; even if double-counting occurred in case, it was permissible because U.S. Sentencing Commission intended result, and offense level and criminal history sections addressed different concerns; in determining defendant's sentence for failing to register as sex offender, USSG § 2A3.5(a)(1), was applied to increase his base offense level on account of nature of predicate felony of sexually assaulting nine-year-old, and that felony was also accounted for by application of USSG § 4A1.1 in his criminal history points. *United States v Myers (2010, CA8 Neb) 598 F3d 474.*

In case in which defendant appealed his 24 month sentence for violating 18 USCS § 2250(a), he unsuccessfully argued that USSG § 4A1.1 excluded his prior sentence from criminal history calculation because it was for conduct that was part of his offense of failing to register. His sexual assault of child in 1996 in Colorado was not part of same course of conduct or common scheme or plan as his act of failure to register as sex offender in 2008 in Nebraska. *United States v Myers (2010, CA8 Neb) 598 F3d 474.*