



LEXSTAT 42 U.S.C. 16913

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TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 151. CHILD PROTECTION AND SAFETY
SEX OFFENDER REGISTRATION AND NOTIFICATION
SEX OFFENDER REGISTRATION AND NOTIFICATION

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42 USCS § 16913

§ 16913. Registry requirements for sex offenders

(a) In general. A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration. The sex offender shall initially register--

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current. A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b). The Attorney General shall have the authority to specify the applicability of the requirements of this title to sex offenders convicted before the enactment of this Act [enacted July 27, 2006] or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

(e) State penalty for failure to comply. Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this title.

HISTORY:

(July 27, 2006, P.L. 109-248, Title I, Subtitle A, § 113, 120 Stat. 593.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title I of Act July 27, 2006, P.L. 109-248, which appears generally as 42 USCS §§ 16901 et seq. For full classification of such Title, consult USCS Tables volumes.

NOTES:

Research Guide:

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.

Application of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004), to Sex Offender Registration Statutes. 51 ALR6th 139.

Interpretive Notes and Decisions:

1. Generally 2. Constitutionality 3.--Ex post facto clause 4.--Commerce clause 5.--Non-delegation doctrine 6.--Tenth amendment 7. Relationship to other laws 8.--18 USCS § 2250 9.--State laws 10. Applicability 11.--Retroactive application 12. Construction 13. Notice of registration requirement 14. Procedural issues 15.--Indictment 16. Miscellaneous

1. Generally

Sex Offender Registration and Notification Act's stated purpose and incentives for states to implement its registration requirements cut against the Government's position that 42 USCS § 16913 had a dual purpose, and in any event, Congress could not enact a statute that was intended to merely encourage state action and also establish affirmative obligations under federal law. *United States v Nasci* (2009, ND NY) 632 F Supp 2d 194.

2. Constitutionality

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.

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

42 USCS § 16913

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).

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.

Because registration provision of Sex Offender Registration and Notification Act, 42 USCS § 16913, was reasonably adapted to meet congressional purpose of monitoring sex offenders who transgressed state lines, it was authorized by Necessary and Proper Clause, *U.S. Const. art. I, § 8, cl. 18*. *United States v Vardaro* (2008, DC Mont) 575 F Supp 2d 1179.

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).

Sex Offender Registration and Notification Act, 42 USCS § 16913, could not be sustained under Commerce Clause because § 16913 did not regulate activity that was economic in nature and sex offender's duty to update his registration after changing his address, employment, or student status while remaining within state had too tenuous connection to substantial effect upon interstate commerce; Necessary and Proper Clause, *U.S. Const. art. I, § 8, cl. 18*, did not salvage constitutionality of § 16913 because § 16913 was not reasonably adapted means to achieve constitutional objective. *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).

42 USCS § 16913, Sex Offender Registration and Notification Act's (SORNA) registration provision, is reasonably adapted to meet congressional purpose of monitoring sex offenders who travel across state lines and is authorized by Necessary and Proper Clause, *U.S. Const. art. I, § 8, cl. 18*; therefore, 42 USCS § 16913 is not unconstitutional. *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).

District court treated 42 USCS § 16913 (registration provision) and 18 USCS § 2250 (criminal enforcement provision) 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 was clear that statute did not punish sex offenders for intrastate failure to register, but that federal government gained criminal jurisdiction only when person required to register under SORNA traveled in interstate commerce; because § 16813 was reasonably adapted to meet congressional purpose of monitoring sex offenders who traveled across state lines--like defendant who traveled from Colorado to Texas--and was authorized by Necessary and Proper Clause, *U.S. Const. art. I, § 8, cl. 18*, it was not unconstitutional. *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).

42 USCS § 16913 is constitutional under Congress's authority to use necessary and proper means to further its Commerce Clause power because it is necessary part of more general regulation of interstate commerce. *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 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.

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.

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.

Civil sex offender registration statute, 42 USCS § 16913, was constitutionally enacted within Congress' authority under *U.S. Const. art. I, § 8, cl. 18*, because requiring sex offenders to register before and after they traveled in interstate travel was reasonably adapted to goal of ensuring that they register and update registrations when moving among jurisdictions. *United States v Pavulak* (2009, DC Del) 672 F Supp 2d 622.

3.--Ex post facto clause

From time period spanning from Sex Offender Registration and Notification Act's enactment in July 2006 up to date defendant finally registered as sex offender in Oklahoma as required by state and federal law on January 24, 2007, defendant continued to travel in interstate commerce daily between Oklahoma and Arkansas for work purposes; therefore, he violated Sex Offender Registration and Notification Act's registration requirements as outlined in 42 USCS § 16913(a) and (c) by failing to keep his registration current in Oklahoma after change of residence or employment, and Ex Post Facto Clause did not bar punishment. *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 42 USCS § 16913 and 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.

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.

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.

Sex Offender Registration and Notification Act's registration requirements are valid exercise of congressional commerce power, and do not violate *Ex Post Facto Clause of Constitution*. *United States v George* (2009, CA9 Wash)

579 F3d 962.

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 incarceration 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.*

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 under decision of Attorney General as provided in 42 USCS § 16913(d), 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.*

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*).

Because Sex Offender Registration and Notification Act's (SORNA), 42 USCS §§ 16901 et seq., stated purpose was non-punitive and effects of law did not negate Congressional intention to establish civil regulatory scheme, Ex Post Facto Clause did not entitle defendant to relief from indictment for violation of SORNA. *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*).

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.*

No ex post facto violation arose from retroactive application of 42 USCS § 16913(b),(c) part of Sex Offender Registration and Notification Act's (SORNA) sex offender registration requirements, to defendant, as provided for by 28 C.F.R. § 72.3, because he was already required to register as sex offender in North Dakota and government was seeking to hold him liable for his conduct in failing to register as sex offender after SORNA was enacted and 28 C.F.R. § 72.3 was promulgated. *United States v Lovejoy (2007, DC ND) 516 F Supp 2d 1032.*

42 USCS § 16913, registration regime of Sex Offender Registration and Notification Act (SORNA), has not historically been regarded as punishment, does not impose affirmative disability or restraint, does not promote traditional aims of punishments, has rational connection to nonpunitive purpose, and is not excessive with respect to nonpunitive purpose; therefore, SORNA did not violate *Ex Post Facto Clause of U.S. Constitution. 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*).

Although defendant contended that indictment violated Ex Post Facto Clause because Sex Offender Registration and Notification Act (SORNA), 42 USCS § 16913, did not apply to him until after allegedly criminal acts took place, court found that SORNA imposed general obligation on sex offenders to register on date of SORNA's enactment, July 27, 2006, and did not carve out prior sex offenders from that obligation or delegate determination of whether registration requirement applied to them to Attorney General; defendant had obligation, therefore, to register as of SORNA's enactment in 2006, and because all of defendant's actions alleged in indictment occurred after that date, his ex post facto argument failed. *United States v Ditomasso (2008, DC RI) 552 F Supp 2d 233.*

Because defendant, who was already registered and convicted sex offender, was required to register since day of enactment of Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., his indictment under SORNA did not violate Ex Post Facto Clause, *U.S. Const. art. I, § 9, cl. 3. 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.

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.

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.

Last two elements of defendant's alleged Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., violation did not occur until after SORNA was made applicable to defendant on February 28, 2007--date the Attorney General issued the interim rule making SORNA applicable to pre-SORNA sex offenders--thus, as applied to defendant, SORNA did not violate the *Ex Post Facto Clause*. *United States v Talada* (2009, SD W Va) 631 F Supp 2d 797.

Because defendant was charged with violating 18 USCS § 2250(a) for conduct that occurred after Sex Offender Registration and Notification Act (SORNA), 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.

Unpublished Opinions

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).

Unpublished: Because Sex Offender Registration and Notification Act's (SORNA), 42 USCS §§ 16901 et seq., stated purpose was non-punitive and effects of law did not negate Congressional intention to establish civil regulatory scheme, Ex Post Facto Clause did not entitle defendant to relief from indictment for violation of SORNA. *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).

4.--Commerce clause

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 there 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.

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.

42 USCS § 16913 did not violate Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because provision was reasonably adapted to attainment of legitimate end under Commerce Clause, as required by Necessary and Proper Clause, U.S. Const. art. I, § 8, cl. 18; requirement that sex offenders register under 42 USCS § 16913 was necessary to track those offenders who moved from jurisdiction to jurisdiction. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21

FLW Fed C 1596.

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) for failing to register under 42 USCS § 16913(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.*

To extent that 42 USCS § 16913 regulates solely intrastate activity, its means are reasonably adapted to attainment of legitimate end under commerce power, and are therefore proper. *United States v Guzman (2010, CA2 NY) 591 F3d 83.*

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*).

Defendant's *Commerce Clause* challenge to sex offender registration requirements set out in 42 USCS § 16913 was rejected because no federal court has found that Sex Offender Registration and Notification Act violates *Commerce Clause*. *United States v Lovejoy (2007, DC ND) 516 F Supp 2d 1032.*

Registration requirements of Sex Offender Registration and Notification Act (SORNA), which were incorporated into 18 USCS § 2250(a)(1), were unconstitutional under *Commerce Clause* because SORNA constituted criminal statute that had nothing to do with commerce or economic enterprise; statute was not essential part of larger regulation of economic activity, in which regulatory scheme could have been undercut unless intrastate activity was regulated; it was not, therefore, regulation of activities that arose out of or were connected with commercial transaction, which viewed in aggregate, substantially affected interstate commerce. *United States v Powers (2008, MD Fla) 544 F Supp 2d 1331, 21 FLW Fed D 215.*

42 USCS § 16913, Sex Offender Registration and Notification Act's (SORNA) registration provision, was permissible under *Commerce Clause*, *U.S. Const. art. I, § 8, cl. 3*, because, when considering SORNA as whole, it was clear that statute did not punish sex offenders for intrastate failure to register, as federal government gained criminal jurisdiction only when person required to register under SORNA traveled in interstate commerce. *United States v Vardaro (2008, DC Mont) 575 F Supp 2d 1179.*

Defendant's facial challenge to 42 USCS § 16913(a) failed because he did not establish that no set of circumstances existed under which § 16913(a) would be valid under *Commerce Clause*, *U.S. Const. art. I, § 8, cl. 3*; based upon rejection of defendant's *Commerce Clause* challenge to 18 USCS § 2250(a), district court concluded that 42 USCS § 16913(a) could be validly applied to him, given that defendant was alleged to have traveled in interstate commerce. *United States v Vardaro (2008, DC Mont) 575 F Supp 2d 1179.*

Defendant who traveled in interstate without updating his sex offender registration was permitted to assert *Commerce Clause* challenge to Sex Offender Registration and Notification Act, 42 USCS § 16913, because defendant alleged that § 16913 was unconstitutional in its entirety as applied to all sex offenders. *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*).

42 USCS § 16913 was unconstitutional in that Congress lacked power to enact it under *Commerce Clause*, *U.S. Const. art. I, § 8*; § 16913 transgressed entirely limits set on Congress by *Commerce Clause* because it did not involve commerce or any sort of economic activity; nothing linked registration of sex offenders with interstate commerce. *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).

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.

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.

42 USCS § 16913 does not exceed Congress' power under *Commerce Clause*. *United States v Barner* (2009, ND NY) 635 F Supp 2d 138.

42 USCS § 16913 falls within Congress' authority under Necessary and Proper Clause and Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because requiring sex offenders to register before and after they travel in interstate travel is reasonably adapted to goal of ensuring that sex offenders register and update previous registrations when moving among jurisdictions. *United States v Jamison* (2009, DC Del) 647 F Supp 2d 381.

Unpublished Opinions

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: 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).

5.--Non-delegation doctrine

Congress did not improperly delegate its legislative authority in violation of *U.S. Const. art. I, § 1* by allowing United States Attorney General to determine retroactive application of Sex Offender Registration and Notification Act (SORNA) pursuant to 42 USCS § 16913(d) because, by setting forth broad policy goal of protecting public and seeking "comprehensive" national registry in 42 USCS § 16901, Congress suggested that Attorney General require pre-2006 sexual offenders to register to extent that he determined that it contributed to protection of public and comprehensiveness of national sex offender registry; Congress also made virtually every legislative determination in enacting SORNA which, when read in *pari materia* with 42 USCS § 16913(d), informed delegation to Attorney General in sufficiently clear way; Attorney General was left only with discretion to determine whether SORNA applied to particular, capped class of offenders--i.e.; those convicted prior to July 27, 2006; thus, Congress unambiguously delineated its general policy, public agency which was to apply it, and boundaries of delegated authority. *United States v Ambert* (2009, CA11 Fla) 561 F3d 1202, 21 FLW Fed C 1596.

Even if, as argued by defendant, 42 USCS § 16913(d) delegated overly broad authority to the Attorney General to determine the retroactive applicability of the Sex Offender Registration and Notification Act (SORNA), it would be permissible under the nondelegation doctrine because SORNA's statement of purpose in 42 USCS § 16901 was an intelligible principle that guided the Attorney General's discretion. *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 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.

Under Sex Offender Registration and Notification Act, Pub. L. 109-248, §§ 1-155, 120 Stat. 587, 590-611 (2006), Attorney General has only been given power to promulgate regulations under most limited of circumstances; delegation of such authority is not so broad as to be violative of non-delegation doctrine. *United States v Hinen* (2007, WD Va) 487 F Supp 2d 747.

Fact that Congress granted U.S. Attorney General power to promulgate regulations to ensure registration of convicted sex offenders outside purview of statutory language of Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., did not violate non-delegation doctrine, *U.S. Const. art. I, § 1*, by allowing Attorney General to decide if SORNA had retroactive application; rather, statutory language was indicative of gap-filling provision to ensure that statutory purpose clearly and explicitly set forth in 42 USCS § 16901 was effectuated when sex offenders fell outside purview of 42 USCS § 16913(b). *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 constitutional facial challenge to Sex Offender Registration and Notification Act (SORNA) was rejected; 42 USCS § 16913(d), which gives U.S. Attorney General authority to promulgate rules as to applicability of SORNA, does not violate *U.S. Const. art. I, § 1*, non-delegation clause, and Attorney General acted within his valid authority in promulgating 28 C.F.R. § 72.3, which provides that registration requirements of SORNA apply to all sex offenders, including sex offenders convicted prior to SORNA's enactment who were required to register as sex offenders under state law. *United States v Lovejoy* (2007, DC ND) 516 F Supp 2d 1032.

Sex Offender Registration and Notification Act (SORNA), 42 USCS § 16913(d), which delegates to United States Attorney General authority to determine applicability of SORNA to particular categories of sex offenders, does not contravene nondelegation doctrine; Congress appropriately placed Attorney General in advisory role and provided Attorney General with intelligible principle to use in drafting required regulations. *United States v Shenandoah* (2008, MD Pa) 572 F Supp 2d 566.

Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq., does not violate non-delegation principle which allows for separation of powers in federal government. *United States v Torres* (2008, WD Tex) 573 F Supp 2d 925.

42 USCS § 16913(d) does not offend principles of non-delegation doctrine. *United States v Hann* (2008, MD Tenn) 574 F Supp 2d 827.

Unpublished Opinions

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.

6.--Tenth amendment

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.

Defendant's Tenth Amendment challenge to registration requirements of Sex Offender Registration and Notification Act (SORNA), specifically, 42 USCS §§ 16913, 16924, and 16925(d), failed because defendant was required to register as sex offender in Michigan, and then, upon moving to Montana, he was required to register as sex offender under Montana law, *Mont. Code Ann. §§ 46-23-502(9)-(10) and 46-23-504(c)*; because SORNA did not require state officials who operated Montana sex offender registry to do anything that they were not already required to do under Montana law, defendant did not have valid *Tenth Amendment claim*. *United States v Vardaro* (2008, DC Mont) 575 F Supp 2d 1179.

7. Relationship to other laws

Regulations promulgated by U.S. Attorney General pursuant to Sex Offender Registration and Notification Act (SORNA), 42 USCS § 16913(d), did not violate Administrative Procedure Act, 5 USCS § 553, as "good cause" exception to notice and comment period requirement applied; Attorney General stated that regulations were enacted without notice or comment in order to prevent delay in implementation that could have jeopardized safety of public and thwarted purposes of SORNA. *United States v Shenandoah* (2008, MD Pa) 572 F Supp 2d 566.

8.--18 USCS § 2250

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'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.

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.

42 USCS § 16913 and 18 USCS § 2250(a) must be analyzed together. When analyzed together, jurisdictional requirement of interstate travel applicable to criminal prosecution brings registration requirements set forth in 42 USCS § 16913 under umbrella of *Commerce Clause*. *United States v Hann* (2008, MD Tenn) 574 F Supp 2d 827.

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.

9.--State laws

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.

Section 113(a) (42 USCS § 16913(a)) of Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., and 18 USCS § 2250, requirements to register and maintain registration are not expressly conditioned on State's implementation of Act. *United States v Gould* (2009, CA4 Md) 568 F3d 459.

Nothing in Sex Offender Registration and Notification Act (SORNA) or its guidelines indicates that jurisdiction's failure to comply with SORNA relieves offenders of obligation to register in that jurisdiction; therefore, defendant's arguments were rejected that he was unable to register under SORNA or that SORNA did not apply to him because neither New York nor Pennsylvania had implemented law. *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 due process rights were not violated by retroactive application of 42 USCS § 16913(b),(c), Sex Offender Registration and Notification Act's (SORNA) sex offender registration requirements, to him, as provided for by 28 C.F.R. § 72.3, because defendant was already required to register as sex offender in North Dakota, he was responsible for keeping abreast of changes in law that affected him, and government was seeking to hold him liable for his conduct in failing to register as sex offender after SORNA was enacted and 28 C.F.R. § 72.3 was promulgated. *United States v Lovejoy* (2007, DC ND) 516 F Supp 2d 1032.

Defendant argued he was not required to register under Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., as Maryland had not implemented it; although obligations imposed under SORNA differed from those under Maryland law, defendant had duty to register his name and address with state authorities and Maryland's failure to implement SORNA did not preclude defendant's prosecution. *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).

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).

Because defendant was able to comply with New York state's initial registration requirements, 42 USCS § 16913(d) and 28 CFR § 72 did not apply to him. *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).

Defendant's due process rights were not violated because he was required to register as sex offender under 42 USCS § 16813(a), despite Texas' failure to implement Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq.; every state, including Texas, had system for registration of sex offenders; defendant had allegedly been able to comply with his obligations under SORNA, and did so initially register upon release for his prior conviction; fact that Texas had failed to fully implement state component of SORNA did not obviate his obligation to register as required by individual component. *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," defined as individual who was convicted of sex offense and definition of "sex offense" included criminal offense that had element involving sexual act or sexual contact with another, pursuant to 42 USCS § 16911(1), (5)(A)(i); 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, and 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.

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).

Fact that New York and Indiana had yet to update their registries and procedures to conform with Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901-16991, had no bearing on defendant's obligation to register as sex offender. *United States v Barner* (2009, ND NY) 635 F Supp 2d 138.

Defendant did not establish that Sex Offender Registration and Notification Act, 42 USCS §§ 16901-16991, compelled New York or Indiana to make changes to their registries; therefore, defendant's Tenth Amendment challenge failed. *United States v Barner* (2009, ND NY) 635 F Supp 2d 138.

Unpublished Opinions

Unpublished: Defendant argued that 42 USCS § 16913(d) suggested that because Missouri had not incorporated its requirements, Sex Offender Registration and Notification Act (SORNA) did not apply to him; however, caselaw held § 16913(d) did apply to offenders, such as defendant, who were required by state law to register before SORNA was enacted. *United States v Foster* (2009, CA8 Mo) 2009 US App LEXIS 25830.

10. Applicability

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.

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.

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.

11.--Retroactive application

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.

Sex Offender Registration and Notification Act's (SORNA) registration requirements did not apply to pre-SORNA offenders until Attorney General issued interim rule on February 28, 2007. *United States v Hatcher* (2008, CA4 Va) 560 F3d 222.

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. *United States v Hatcher* (2008, CA4 Va) 560 F3d 222.

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.

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.

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.

12. Construction

Use of word "other" to modify phrase "categories of sex offenders who are unable to comply with subsection (d)" indicates that offenders convicted prior to enactment of Sex Offender Registration and Notification Act are one of categories of offenders unable to comply with subsection (b) of 42 USCS § 16913. *United States v Hinckley* (2008, CA10 Okla) 550 F3d 926.

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.

Congress has not abrogated its legislative authority, in violation of U.S. Const. art. I, § 1, non-delegation doctrine, by giving U.S. Attorney General discretion, in 42 USCS § 16913(d), to specify whether sex offender registration requirements of Sex Offender Registration and Notification Act, which is part of Adam Walsh Child Protection and Safety Act of 2006 (Walsh Act), Pub. L. No. 109-248 (2006), should apply retroactively to sex offenders who were convicted before date that Walsh Act was enacted; in granting that discretionary authority, Congress has merely placed Attorney General in advisory role to courts, which are authorized to make determination as to Walsh Act's retroactive effect. *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).

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).

Registration and notification requirements of the Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., were not so punitive in effect or intent to negate Congress' intent to make the Act civil; therefore, SORNA was a civil regime that was not subject to an ex post facto analysis. *United States v Talada* (2009, SD W Va) 631 F Supp 2d 797.

Sex offenders are required to register under the Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq., prior to the implementation of the comprehensive regulatory system in their state. *United States v Talada* (2009, SD W Va) 631 F Supp 2d 797.

13. Notice of registration requirement

Defendant was required to register as sex offender in Texas; additionally, defendant was required to register in Oklahoma once he relocated to Oklahoma, both under Oklahoma law, as well as pursuant to Jacob Wetterling Act of 1994; thus, defendant was on notice of registration requirement, and due process did not entitle him to additional notice that failure to register would violate third law, Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq. *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).

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.

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, pursuant to 42 USCS § 16912(a), Sex Offender Registration and Notification Act (SORNA) requires registration and updates with registries of other jurisdictions, one can know about duty to register which SORNA imposes while being unaware of SORNA itself. *United States v Torres* (2008, WD Tex) 599 F Supp 2d 767.

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: 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: Defendant was required to register as sex offender in Texas; additionally, defendant was required to register in Oklahoma once he relocated to Oklahoma, both under Oklahoma law, as well as pursuant to Jacob Wetterling Act of 1994; thus, defendant was on notice of registration requirement, and due process did not entitle him to additional notice that failure to register would violate third law, Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq. *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).

14. Procedural issues

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) 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 lacked standing challenge constitutionality of 42 USCS § 16913(d) because specific language of this provision did not apply to defendant, who was already registered as sex offender under state law at time Sex Offender Registration and Notification Act, 42 USCS §§ 16901 et seq., was enacted. *United States v Torres* (2008, WD Tex) 573 F Supp 2d 925.

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.

15.--Indictment

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.

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, 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.

16. Miscellaneous

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.

As special condition of supervised release, district court properly ordered defendant, convicted sex offender who was being sentenced for being felon who possessed firearm, to register as sex offender pursuant to Sex Offender Registration and Notification Act, 42 USCS § 16913(a), and Florida Sexual Predators Act, *Fla. Stat. § 943.0435*, as well as to submit to reasonable searches. *United States v Moran* (2009, CA11 Fla) 573 F3d 1132, 21 FLW Fed C 1993.

Because defendant was already registered sex offender when Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., was enacted, SORNA only required defendant to keep his registration current on and after July 26, 2006; allegations in indictment pertained to defendant's failure to do so, pursuant to 42 USCS § 16913(a), (c); initial registration requirements discussed in 42 USCS § 16913(b), (d), did not pertain to defendant. *United States v Gagnon* (2008, DC Me) 574 F Supp 2d 172.

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.

Requiring the immediate registration of sex offenders served the important purposes identified by the Attorney General, so the Attorney General demonstrated good cause for foregoing the 30-day waiting period and even if defendant was unaware of the law, his ignorance would not excuse him of his requirement to register under Sex Offender Registration and Notification Act (SORNA), 42 USCS §§ 16901 et seq., because at the very minimum he knew, or was presumed to know, he was required to register as a sex offender under West Virginia State law; therefore, defendant's due process rights were not violated by the Attorney General's failure to promulgate notification rules. *United States v Talada* (2009, SD W Va) 631 F Supp 2d 797.

Unpublished Opinions

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)* arose following attorney general's ruling. *United States v Cardenas (2009, CA11 Fla) 2009 US App LEXIS 8389*.