Sex Offender Registration and Notification in the United States

Case Law Summary
July 2024

U.S. Department of Justice | Office of Justice Programs

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TABLE OF CONTENTS

CASE INDEX

FEDERAL

U.S. Supreme Court

First Circuit Court of Appeals

Second Circuit Court of Appeals

White v. LaClair,
No. 19-CV-1283, 2021 WL 200857 (E.D.N.Y. Jan. 18, 2021) ..... habeas corpus, "in custody"
Woe v. Spitzer,
571 F. Supp. 2d 382 (E.D.N.Y. 2008) ..... punitive/regulatory, ex post facto, Fourteenth Amendment, substantive due process

Third Circuit Court of Appeals

A.A. v. New Jersey,
341 F.3d 206 (3d Cir. 2003) ..... First Amendment, right to privacy
Artway v. Att'y Gen. of N.J.,
81 F.3d 1235 (3d Cir. 1996) ..... Fifth Amendment, double jeopardy
B.K. v. Grewal,
No. 19-05587, 2020 WL 5627231 (D.N.J. Sept. 21, 2020) ..... juveniles, Fourteenth Amendment, procedural due process, substantive due process, equal protection
Bakran v. U.S. Dep't of Homeland Sec.,
894 F.3d 557 (3d Cir. 2018) ..... immigration, deportation
Castaneira v. Potteiger,
621 F. App'x 116 (3d Cir. 2015) ..... residency restrictions, Fourteenth Amendment, equal protection
Coleman v. Arpaio,
No. 09-6308, 2010 WL 1707031 (D.N.J. Apr. 27, 2010) ..... habeas corpus, "in custody"
Doe v. Pa. Bd. of Prob. & Parole,
513 F.3d 95 (3d Cir. 2008) ..... Fourteenth Amendment, equal protection
Dongarra v. Smith,
27 F.4th 174 (3d Cir. 2022) ..... Eighth Amendment
Farmer v. Harman,
No. 18-CV-02216, 2021 WL 2222720 (M.D. Pa. June 2, 2021).... Eighth Amendment, Fourteenth Amendment, procedural due process, equal protection
Grijalva Martinez v. Att'y Gen. of United States,
978 F.3d 860 (3d Cir. 2020) ..... "sex offense," categorical approach, immigration, deportation, moral turpitude
Moreno v. Att'y Gen. of United States,
887 F.3d 160 (3d Cir. 2018) ..... immigration, deportation, moral turpitude
Piasecki v. Ct. of Common Pleas, Buck Cnty., Pa.,
917 F.3d 161 (3d Cir. 2019) ..... habeas corpus, "in custody"
Preik v. Dist. Att'y of Alleghenny Cnty.,
No. 10-1612, 2011 U.S. Dist. LEXIS 100417 (W.D. Pa. Aug. 12, 2011) ..... habeas corpus, "in custody"
Thomas v. Blocker,
No. 21-1943, 2022 WL 2870151 (3d Cir. July 21, 2022) ..... duty to register, independent duty, Tenth Amendment, federalism, Fourteenth Amendment, procedural due process
Totimeh v. Att'y Gen. of United States,
666 F.3d 109 (3d Cir. 2012) ..... immigration, deportation, moral turpitude
United States v. Freeman,
316 F.3d 386 (3d Cir. 2003) ..... conditions, supervised release, internet
United States v. Icker,
13 F.4th 321 (3d Cir. 2021) ..... duty to register, "sex offense," 18 U.S.C. § 242
United States v. Pendleton,
636 F.3d 78 (3d Cir. 2011) ..... duty to register, independent duty, Commerce Clause
No. 08-59-GMS, 2009 WL 2984201 (D. Del. Sept. 18, 2009)..... failure to register, homeless offenders
United States v. Reynolds,
710 F.3d 498 (3d Cir. 2013) ..... Administrative Procedure Act
United States v. Shenandoah,
595 F.3d 151 (3d Cir. 2010) ..... right to travel, punitive/regulatory, ex post facto

Fourth Circuit Court of Appeals

Al-Wahhab v. Commonwealth,
No. 18-CV-00197, 2018 WL 3614212 (W.D. Va. July 27, 2018) ..... Americans with Disabilities Act
Desper v. Clarke,
1 F.4th 236 (4th Cir. 2021)..... Fourteenth Amendment, procedural due process
Doe #1 v. Cooper,
842 F.3d 833 (4th Cir. 2016)..... residency restrictions, Fourteenth Amendment, substantive due process
Doe v. Keel,
No. 20-2755, 2023 WL 6450622 (D.S.C. Sept. 29, 2023) ..... public registry, substantive due process, equal protection, Fifth Amendment, double jeopardy
Doe v. Settle,
24 F.4th 932 (4th Cir. 2022)..... punitive/regulatory, Eighth Amendment, Fourteenth Amendment, substantive due process
No. 20-cv-190, 2020 WL 5352002 (E.D. Va. Aug. 17, 2020), *aff'd*, 24 F.4th 932 (4th Cir. 2022) ..... employment restrictions
Edmonds v. Pruett,
No. 13cv1167, 2014 WL 4182664 (E.D. Va. Aug. 20, 2014)..... Sixth Amendment, ineffective assistance of counsel
Grabarczyk v. Stein,
No. 21-CV-94, 2021 WL 5810501 (E.D.N.C. Dec. 7, 2021)..... "sex offense," "substantially similar," Fourteenth Amendment, procedural due process
Grant-Davis v. Felker,
No. 19-cv-3468, 2021 WL 4055162 (D.S.C. July 15, 2021)..... Americans with Disabilities Act
Grant-Davis v. Hendrix,
No. 22-cv-1872, 2023 WL 4758751 (D.S.C. July 26, 2023)..... federal housing
Kennedy v. Allera,
612 F.3d 261 (4th Cir. 2010)..... duty to register, independent duty, Tenth Amendment, federalism
Meredith v. Stein,
355 F. Supp. 3d 355 (E.D.N.C. 2018)..... "sex offense," "substantially similar," Fourteenth Amendment, procedural due process
Mohamed v. Holder,
769 F.3d 885 (4th Cir. 2014)..... immigration, deportation, moral turpitude
Orfield v. Virginia,
No. 12CV541, 2012 WL 3561920 (E.D. Va. Aug. 16, 2012)..... bill of attainder
Prynne v. Settle,
848 F. App'x 93 (4th Cir. 2021)..... right to travel
Struniak v. Lynch,
159 F. Supp. 3d 643 (E.D. Va. 2016)..... immigration, deportation
United States v. Beck,
957 F.3d 440 (4th Cir. 2020)..... Sixth Amendment, jury trial, 18 U.S.C. § 2260A
United States v. Berry,
814 F.3d 192 (4th Cir. 2016)..... tiering, categorical approach, circumstance-specific approach
United States v. Bridges,
901 F. Supp. 2d 677 (W.D. Va. 2012), *aff'd,* 741 F.3d 464 (4th Cir. 2014) .."conviction," withheld adjudication
United States v. Collins,
773 F.3d 25 (4th Cir. 2014)..... "sex offense," failure to register
United States v. Ellis,
984 F.3d 1092 (4th Cir. 2021)..... conditions, supervised release, internet, pornography
United States v. Faulls,
821 F.3d 502 (4th Cir. 2016)..... duty to register, "sex offense"

United States v. Gould,
568 F.3d 459 (4th Cir. 2009), *cert. denied,* 559 U.S. 974 (2010)..... duty to register, ex post facto, Administrative Procedure Act
United States v. Hamilton,
986 F.3d 413 (4th Cir. 2021).....conditions, supervised release, internet
United States v. Kokinda,
93 F.4th 635 (4th Cir. 2024)..... failure to register
United States v. Mixell,
806 F. App'x 180 (4th Cir. 2020)..... residual clause, "sex offense," circumstance-specific approach
United States v. Pertuset,
160 F. Supp. 3d 926 (S.D.W. Va. 2016)..... failure to register, updating information
United States v. Phillips,
No. 19-4271, 2022 WL 822170 (4th Cir. Mar. 18, 2022) (per curiam).....failure to register, mens rea
United States v. Price,
777 F.3d 700 (4th Cir. 2015)..... "sex offense," failure to register, circumstance-specific approach, residual clause
United States v. Snyder,
611 F. App'x 770 (4th Cir. 2015).....failure to register, venue
No. 13-CR-48, 2014 WL 1408066 (N.D.W. Va. Apr. 11, 2014), *affirmed in part, vacated in part, and remanded*, 611 F. App'x 770 (4th Cir. 2015).....failure to register, venue
United States v. Spivey,
956 F.3d 212 (4th Cir. 2020)..... failure to register, interstate travel, venue
United States v. Under Seal,
709 F.3d 257 (4th Cir. 2013)..... juveniles, Eighth Amendment, cruel and unusual punishment, Juvenile Delinquency Act, punitive/regulatory
United States v. Vanderhorst,
688 F. App'x 185 (4th Cir. 2017).....sex offense," residual clause, 18 U.S.C. § 1592
United States v. Vandivere,
88 F.4th 481 (4th Cir. 2023), *petition for cert. filed*, No. 23-7418 (U.S. May 8, 2024)..... civil commitment, due process
Wilson v. Flaherty,
689 F.3d 332 (4th Cir. 2012).....habeas corpus, "in custody"

Fifth Circuit Court of Appeals

Doe v. Jindal,
851 F. Supp. 2d 995 (E.D. La. 2012) .....Fourteenth Amendment, equal protection
Doe v. Jindal,
No. 15-1283, 2015 WL 7300506 (E.D. La. Nov. 18, 2015).....Fourteenth Amendment, right to travel
Does 1-7 v. Abbott,
945 F.3d 307 (5th Cir. 2019).....punitive/regulatory, Fifth Amendment, Eighth Amendment, double jeopardy, ex post facto
Duarte v. City of Lewisville,
858 F.3d 348 (5th Cir. 2017)..... residency restrictions, Fourteenth Amendment, procedural due process
Groys v. City of Richardson,
No. 20-cv-03202, 2021 WL 3852186 (N.D. Tex. Aug. 9, 2021) ..... residency restrictions, punitive/regulatory, ex post facto, Eighth Amendment, Fourteenth Amendment, substantive due process
Henley v. Hous. Auth. of New Orleans,
No. 12-2687, 2013 WL 1856061 (E.D. La. May 1, 2013) .....federal housing
Johnson v. Davis,
697 F. App'x 274 (5th Cir. 2017).....habeas corpus, "in custody"
King v. McCraw,
559 F. App'x 278 (5th Cir. 2014).. retroactivity, ex post facto, Fourteenth Amendment, substantive due process

United States v. Schofield,
802 F.3d 722 (5th Cir. 2015) ..... "sex offense," residual clause, categorical approach, circumstance-specific approach
United States v. Shepherd,
880 F.3d 734 (5th Cir. 2018) ..... Sixth Amendment, ineffective assistance of counsel
United States v. Smith,
852 F. App'x 780 (5th Cir. 2021) ..... conditions, supervised release, duty to register
United States v. Stewart,
843 F. App'x 600 (5th Cir. 2021) ..... failure to register, venue
United States v. Thompson,
811 F.3d 717 (5th Cir. 2016) ..... failure to register, interstate travel
United States v. Young,
585 F.3d 199 (5th Cir. 2009) ..... punitive/regulatory, ex post facto

Sixth Circuit Court of Appeals

Ali v. Carlton,
No. 04-398, 2005 WL 1118066 (E.D. Tenn. April 25, 2005) ..... habeas corpus, "in custody"
Bushra v. Holder,
529 F. App'x 659 (6th Cir. 2013) ..... immigration, deportation, moral turpitude
Carr v. United States,
660 F. App'x 329 (6th Cir. 2016) ..... duty to register, updating information
Corridore v. Washington,
71 F.4th 491(6th Cir. 2023) ..... habeas corpus, "in custody"
Cutshall v. Sundquist,
193 F.3d 466 (6th Cir. 1999) ..... First Amendment, right to privacy, Fifth Amendment, double jeopardy
Dennard v. Haviland,
No. 17CV1773, 2019 WL 8326452 (N.D. Ohio Feb. 15, 2019) ..... habeas corpus, "in custody"
Denoma v. Ohio Dep't of Rehab. & Corr.,
No. 20-cv-00227, 2021 WL 1185481 (N.D. Ohio Mar. 30, 2021) ..... habeas corpus, "in custody"
Doe #1 v. Lee,
102 F.4th 330 (6th Cir. 2024), *aff'g in part, rev'g in part Does #1-9 v. Lee*, 659 F. Supp. 3d 865 (M.D. Tenn. 2023) ..... retroactivity, punitive/regulatory, ex post facto
Doe v. Bredesen,
507 F.3d 998 (6th Cir. 2007), *cert. denied*, 555 U.S. 921 (2008) ..... retroactivity, ex post facto
Doe v. Rausch,
461 F. Supp. 3d 747 (E.D. Tenn. 2020) ..... retroactivity, punitive/regulatory, ex post facto
Doe v. Snyder,
606 F. Supp. 3d 608 (E.D. Mich. 2021) ..... retroactivity, ex post facto
Does #1-5 v. Snyder,
834 F.3d 696 (6th Cir. 2016) ..... retroactivity, punitive/regulatory, ex post facto
Does #1-9 v. Lee,
574 F. Supp. 3d 558 (M.D. Tenn. 2021) ..... punitive/regulatory, ex post facto
659 F. Supp. 3d 865 (M.D. Tenn. 2023), *aff'd in part, rev'd in part, and remanded by Doe #1 v. Lee*, 102 F.4th 330 (6th Cir. 2024) ..... punitive/regulatory, ex post facto
Hautzenroeder v. Dewine,
887 F.3d 737 (6th Cir. 2018) ..... habeas corpus, "in custody"
Leslie v. Randle,
296 F.3d 518 (6th Cir. 2002) ..... habeas corpus, "in custody"
Mireles v. Bell,
No. 06-13706, 2008 WL 126581 (E.D. Mich. Jan. 11, 2008) ..... Sixth Amendment, ineffective assistance of counsel

Seventh Circuit Court of Appeals

United States v. Leach,
639 F.3d 769 (7th Cir. 2011)..... duty to register, independent duty, punitive/regulatory, ex post facto
United States v. Meadows,
772 F. App'x 368 (7th Cir. 2019).....duty to register, independent duty
United States v. Rogers,
804 F.3d 1233 (7th Cir. 2015).....“sex offense,” categorical approach
United States v. Sanders,
622 F.3d 779 (7th Cir. 2010)..... failure to register, interstate travel
United States v. Taylor,
644 F.3d 573 (7th Cir. 2011)..... military, “sex offense,” modified categorical approach
United States v. Thayer,
40 F.4th 797 (7th Cir. 2022), *reh'g denied*, No. 21-2385, 2022 WL 16557851 (Oct. 31, 2022) .....“sex offense,” residual clause, circumstance-specific approach, Romeo & Juliet
United States v. Vasquez,
611 F.3d 325 (7th Cir. 2010)..... failure to register, mens rea, notice, duty to register
United States v. Walker,
931 F.3d 576 (7th Cir. 2019).....“sex offense,” categorical approach, tiering, circumstance-specific approach, failure to register
Valenti v. Lawson,
889 F.3d 427 (7th Cir. 2018)..... residency restrictions, state constitution
Vazquez v. Foxx,
895 F.3d 515 (7th Cir. 2018).....Fifth Amendment, takings
Virsnieks v. Smith,
521 F.3d 707 (7th Cir. 2008)..... habeas corpus, “in custody”
Wiggins v. United States,
No. 18-cv-03492, 2019 WL 5079557 (S.D. Ind. Oct. 10, 2019).....duty to register, petition to terminate/modify, clean record

Eighth Circuit Court of Appeals

A.W. by and through Doe v. Nebraska,
865 F.3d 1014 (8th Cir. 2017).....juveniles, adjudicated delinquent, duty to register
Bakor v. Barr,
958 F.3d 732 (8th Cir. 2020)..... immigration, deportation, moral turpitude
Burr v. Snider,
234 F.3d 1052 (8th Cir. 2000).....punitive/regulatory, ex post facto
Daywitt v. Harpstead,
No. 20-CV-1743, 2021 WL 2210521 (D. Minn. June 1, 2021)..... civil commitment, internet, First Amendment
De La Hunt v. Villmer,
No. 16-CV-2171, 2021 WL 4523095 (E.D. Mo. Sept. 30, 2021) ..... habeas corpus, “in custody”
Doe 1 v. City of Apple Valley,
487 F. Supp. 3d 761 (D. Minn. 2020) ..... residency restrictions, retroactivity, punitive/regulatory, ex post facto
Doe 1-36 v. Nebraska,
734 F. Supp. 2d 882 (D. Neb. 2010) ..... retroactivity, punitive/regulatory, ex post facto, First Amendment, internet
Doe I v. Miller,
405 F.3d 700 (8th Cir. 2005)..... residency restrictions, retroactivity, punitive/regulatory, ex post facto
Doe I v. Peterson,
43 F.4th 838 (8th Cir. 2022)..... Fourteenth Amendment, substantive due process, equal protection
528 F. Supp. 3d 1068 (D. Neb. 2021), *aff'd*, 43 F.4th 838 (8th Cir. 2022)..... juveniles, adjudicated delinquent, Eighth Amendment, cruel and unusual punishment, ex post facto

Ninth Circuit Court of Appeals

United States v. Salazar,
Nos. 10-cr-60121, 20-cv-01438, 2021 WL 2366086 (D. Or. June 9, 2021)..... circumstance-specific approach, residual clause, tiering, categorical approach
United States v. Stoterau,
524 F.3d 988 (9th Cir. 2008).... conditions, supervised release, polygraph, Fifth Amendment, self-incrimination
United States v. Studeny,
No. CR11-0180-JCC, 2019 WL 859271 (W.D. Wash. Feb. 22, 2019)..... duty to register, petition to terminate/modify
United States v. Valverde,
628 F.3d 1159 (9th Cir. 2010).....Administrative Procedure Act
United States v. Walizer,
600 F. App'x 546 (9th Cir. 2015) (mem.).....18 U.S.C. § 2260A
Warenback v. Ford,
No. 21-16964, 2023 WL 7121405 (9th Cir. Oct. 30, 2023)..... ex post facto
Williamson v. Gregoire,
151 F.3d 1180 (9th Cir. 1990)..... habeas corpus, "in custody"
Wright v. State,
47 F.4th 954 (9th Cir. 2022)..... habeas corpus, "in custody"
Zichko v. Idaho,
247 F.3d 1015 (9th Cir. 2001).....habeas corpus, "in custody," failure to register

Tenth Circuit Court of Appeals

Brown v. Montoya,
662 F.3d 1152 (10th Cir. 2011).....Fourteenth Amendment, procedural due process
Calhoun v. Att'y Gen. of Colo.,
745 F.3d 1070 (10th Cir. 2014)..... habeas corpus, "in custody"
Carney v. Okla. Dep't of Pub. Safety,
875 F.3d 1347 (10th Cir. 2017).....Eighth Amendment, Fourteenth Amendment, equal protection
Clark v. Oklahoma,
789 F. App'x 680 (10th Cir. 2019)..... habeas corpus, "in custody"
Dickey v. Allbaugh,
664 F. App'x 690 (10th Cir. 2016)..... habeas corpus, "in custody"
Doe v. City of Albuquerque,
667 F.3d 1111 (10th Cir. 2012).....residency restrictions, First Amendment
Doe v. Shurtleff,
628 F.3d 1217 (10th Cir. 2010)..... First Amendment, Fourth Amendment, internet identifiers
Efagene v. Holder,
642 F.3d 918 (10th Cir. 2011)..... immigration, deportation, moral turpitude
Frazier v. People,
No. 08-02427, 2010 WL 2844080 (D. Colo. July 16, 2010)..... habeas corpus, "in custody"
Gwinn v. Awmiller,
354 F.3d 1211 (10th Cir. 2004).....procedural due process, classification
Herrera v. Williams,
99 F. App'x 188 (10th Cir. 2004).....punitive/regulatory, ex post facto
Melnick v. Camper,
487 F. Supp. 3d 1039 (D. Colo. 2020) ..... ex post facto, First Amendment, Fourth Amendment, search, Fifth Amendment, self-incrimination, Eighth Amendment, Fourteenth Amendment, substantive due process, conditions, supervised release, duty to register
Melnick v. Raemisch,
No. 19-cv-00154, 2021 WL 4133919 (D. Colo. Sept. 10, 2021), *appeal dismissed*, No. 21-1330, 2021 WL 7627513 (10th Cir. Oct. 5, 2021) ..... conditions, supervised release, internet, First Amendment

Eleventh Circuit Court of Appeals

District of Columbia Circuit Court of Appeals

MILITARY

Air Force Court of Criminal Appeals

Court of Appeals for the Armed Forces

Military Service Courts of Criminal Appeals

OTHER

Board of Immigration Appeals

Federal Communications Commission

STATE AND TERRITORY

Alabama

Alaska

Arizona

Arkansas

California

Colorado

Connecticut

Delaware

District of Columbia

Florida

Georgia

Hawaii

State v. Bani,
36 P.3d 1255 (Haw. 2001)..... due process, state constitution
State v. Chun,
76 P.3d 935 (Haw. 2003)..... residual clause

Idaho

Doe v. State,
352 P.3d 500 (Idaho 2015)..... "sex offense," "substantially similar"
Lingnaw v. Lumpkin,
474 P.3d 274 (Idaho 2020)..... residency restrictions
Skehan v. Idaho State Police,
541 P.3d 679 (Idaho 2024)..... "sex offense," "substantially similar"
State v. Flowers,
249 P.3d 367 (Idaho 2011)..... Sixth Amendment, ineffective assistance of counsel
State v. Glodowski,
463 P.3d 405 (Idaho 2020)..... "sex offense," "substantially similar"
State v. Gragg,
137 P.3d 461 (Idaho Ct. App. 2005)..... punitive/regulatory, ex post facto
State v. Joslin,
175 P.3d 764 (Idaho 2007)..... Eighth Amendment, state constitution
State v. Kinney,
417 P.3d 989 (Idaho Ct. App. 2018)..... Eighth Amendment
State v. Lee,
286 P.3d 537 (Idaho 2012)..... failure to register, updating information
State v. Yeoman,
236 P.3d 1265 (Idaho 2010)..... Fourteenth Amendment, right to travel, retroactivity, ex post facto

Illinois

In re J.W.,
787 N.E.2d 747 (Ill. 2003)..... juveniles, Eighth Amendment
In re Jonathan T.,
193 N.E.3d 1240 (Ill. 2022)..... juveniles, due process, Sixth Amendment, ineffective assistance of counsel
In re M.A.,
43 N.E.3d 86 (Ill. 2015)..... nonsexual offense registry
People ex. rel. Birkett v. Konetski,
909 N.E.2d 783 (Ill. 2009)..... juveniles, Eighth Amendment
People v. Adams,
581 N.E.2d 637 (Ill. 1991)..... punitive/regulatory
People v. Armstrong,
50 N.E.3d 745 (Ill. App. Ct. 2016)..... Sixth Amendment, ineffective assistance of counsel
People v. Cardona,
986 N.E.2d 66 (Ill. 2013)..... "conviction," duty to register, incompetent
People v. Chiovari,
No. 5-22-0383, 2023 WL 2301579 (Ill. App. Ct. Mar. 1, 2023)..... conditions, supervised release, internet
People v. Cowart,
28 N.E.3d 862 (Ill. App. Ct. 2015)..... Sixth Amendment, ineffective assistance of counsel
People v. Dodds,
7 N.E.3d 83 (Ill. App. Ct. 2014)..... Sixth Amendment, ineffective assistance of counsel
People v. Glazier,
205 N.E.3d 79 (Ill. App. Ct. 2022)..... "sex offense," sexual motivation

People v. Hall,
Nos. 4-19-0001, 4-19-0002 cons., 2021 WL 1251373 (Ill. App. Ct. Apr. 2, 2021) ..... ex post facto
People v. Legoo,
178 N.E.3d 1110 (Ill. 2020) ..... residency restrictions, park/playground bans
People v. Leroy,
828 N.E.2d 769 (Ill. App. Ct. 2005) ..... residency restrictions, Fourteenth Amendment, substantive due process, procedural due process, equal protection
People v. Pepitone,
106 N.E.3d 984 (Ill. 2018) ..... residency restrictions, park/playground bans, substantive due process, Fourteenth Amendment, state constitution
People v. Sweigart,
183 N.E.3d 231 (Ill. App. Ct. 2021) ..... failure to register, homeless offenders
People v. Wlecke,
6 N.E.3d 745 (Ill. App. Ct. 2014) ..... failure to register, homeless offenders
Sonntag v. Stewart,
53 N.E.3d 46 (Ill. App. Ct. 2015) ..... employment restrictions

Indiana

Andrews v. State,
978 N.E.2d 494 (Ind. Ct. App. 2012) ..... duty to register, independent duty, interstate travel, failure to register, ex post facto, state constitution
Branch v. State,
917 N.E.2d 1283 (Ind. Ct. App. 2009) ..... failure to register, homeless offenders
Crowley v. State,
188 N.E.3d 54 (Ind. Ct. App. 2022) ..... retroactivity, duty to register, ex post facto
Dolak v. Ind. Dep't of Corr.,
186 N.E.3d 614 (Ind. Ct. App. 2022) (unpublished table decision) ..... punitive/regulatory, ex post facto, state constitution
Flanders v. State,
955 N.E.2d 732 (Ind. Ct. App. 2011) ..... retroactivity, ex post facto
Harris v. State,
985 N.E.2d 767 (Ind. Ct. App. 2013) ..... First Amendment, internet
Jensen v. State,
905 N.E.2d 384 (Ind. 2009) ..... retroactivity, ex post facto
Mehringer v. State,
152 N.E.3d 667 (Ind. Ct. App. 2020) ..... due process, Fourteenth Amendment, SVP
Milliner v. State,
890 N.E.2d 789 (Ind. Ct. App. 2008) ..... failure to register, homeless offenders
N.L. v. State,
989 N.E.2d 773 (Ind. 2013) ..... juveniles
Nichols v. State,
947 N.E.2d 1011 (Ind. Ct. App. 2011) ..... recidivism
Spencer v. State,
153 N.E.3d 289 (Ind. Ct. App. 2020) ..... "sex offense," "substantially similar," SVP
State v. Hough,
978 N.E.2d 505 (Ind. Ct. App. 2012) ..... duty to register, retroactivity, ex post facto, state constitution
State v. Zerbe,
50 N.E.3d 368 (Ind. 2016) ..... retroactivity. ex post facto
Tyson v. State,
51 N.E.3d 88 (Ind. 2016) ..... ex post facto
Vandenberg v. Ind. Dep't of Correc.,
153 N.E.3d 1122 (Ind. Ct. App. 2020) ..... recidivism

Iowa

Kansas

State v. Brown,
399 P.3d 872 (Kan. 2017) ..... nonsexual offense registry
State v. Coman,
273 P.3d 701 (Kan. 2012) ..... residual clause
State v. Cook,
187 P.3d 1283 (Kan. 2008) ..... failure to register, continuing offense, ex post facto
State v. Davidson,
495 P.3d 9 (Kan. 2021) (per curiam)..... duty to register, ex post facto
State v. Frederick,
251 P.3d 48 (Kan. 2011) ..... "sex offense," "substantially similar," juveniles, adjudicated delinquent
State v. Genson,
513 P.3d 1192 (Kan. 2022), *cert. denied,* 143 S. Ct. 1092 (2023) .. failure to register, strict liability, due process
State v. Moler,
519 P.3d 794 (Kan. 2022) ..... failure to register
State v. Mossman,
281 P.3d 153 (Kan. 2012) ..... Eighth Amendment
State v. N.R.,
495 P.3d 16 (Kan. 2021) (per curiam), *cert. denied*, 142 S. Ct. 1678 (2022)..... juveniles, duty to register, Eighth Amendment, ex post facto, procedural due process, state constitution
State v. Petersen-Beard,
377 P.3d 1127 (Kan. 2016) ..... ex post facto, Eighth Amendment
State v. Reed,
399 P.3d 865 (Kan. 2017) ..... punitive/regulatory, duty to register, tolling, retroactivity, ex post facto

Kentucky

Buck v. Commonwealth,
308 S.W.3d 661 (Ky. 2010) ..... retroactivity, ex post facto, punitive/regulatory
Commonwealth v. Baker,
295 S.W.3d 437 (Ky. 2009) ..... residency restrictions, ex post facto
Commonwealth v. Daughtery,
617 S.W.3d 813 (Ky. 2021) ..... duty to register, recidivism
Commonwealth v. Thompson,
548 S.W.3d 881 (Ky. 2018) ..... "sex offense," kidnapping, Sixth Amendment, ineffective assistance of counsel
Moffitt v. Commonwealth,
360 S.W.3d 247 (Ky. Ct. App. 2012)..... "sex offense," kidnapping, Fourteenth Amendment, procedural due process, substantive due process
Murphy v. Commonwealth,
500 S.W.3d 827 (Ky. 2016) ..... juveniles, adjudicated delinquent
Sprouse v. Commonwealth,
662 S.W.3d 304 (Ky. Ct. App. 2023)..... duty to register, updating information
Tobar v. Commonwealth,
284 S.W.3d 133 (Ky. 2009) ..... failure to register, homeless offenders

Louisiana

Davidson v. State,
320 So. 3d 1021 (La. 2021), *aff'g* 308 So. 3d 325 (La. Ct. App. 2020) .... "conviction," duty to register, set aside
Nolan v. Fifteenth Jud. Dist. Att'y Off.,
62 So. 3d 805 (La. Ct. App. 2011) ..... full faith and credit
State v. Anthony,
309 So. 3d 912 (La. Ct. App. 2020) ..... notice, duty to register
State v. Berry,
314 So. 3d 1110 (La. Ct. App. 2021) ..... failure to register, internet

Maine

Maryland

Massachusetts

Michigan

Minnesota

Mississippi

Missouri

Montana

Nebraska

Nevada

New Hampshire

New Jersey

G.H. v. Twp. of Galloway,
951 A.2d 221 (N.J. Super. Ct. App. Div. 2008) ..... residency restrictions, preempted
H.R. v. N.J. State Parole Bd.,
231 A.3d 617 (N.J. 2020) ..... Fourth Amendment, GPS
In re C.K.,
182 A.3d 917 (N.J. 2018) ..... juveniles, substantive due process, equal protection
In re Civil Commitment of W.W.,
246 A.3d 219 (N.J. 2021) ..... civil commitment
In re Civil Commitment of W.X.C.,
8 A.3d 174 (N.J. 2010) ..... civil commitment, punitive/regulatory, SVP, ex post facto, state constitution
In re J.A.,
No. A-0672-21, 2023 WL 4004703 (N.J. Super. Ct. App. Div. June 15, 2023) (per curiam) ..... juveniles, substantive due process, state constitution, state constitution
In re J.D.-F.,
256 A.3d 958 (N.J. 2021) ..... duty to register, petition to terminate/modify
In re P.C.,
No. A-3863-19, 2021 WL 4851285 (N.J. Super. Ct. App. Div. Oct. 19, 2021) ..... duty to register, petition to terminate/modify
In re P.D.,
236 A.3d 885 (N.J. 2020) ..... civil commitment, SVP
State v. Brown,
243 A.3d 1233 (N.J. 2021) ..... ex post facto, failure to register

New Mexico

Montoya v. Driggers,
320 P.3d 987 (N.M. 2014) ..... "conviction," duty to register, vacated, double jeopardy
State v. Atcitty,
215 P.3d 90 (N.M. Ct. App. 2009) ..... Indian Country
State v. Hall,
294 P.3d 1235 (N.M. 2013) ..... "sex offense," circumstance-specific approach, "substantially similar"
State v. Orr,
304 P.3d 449 (N.M. Ct. App. 2013) ..... "sex offense," "substantially similar"
State v. Trammell,
387 P.3d 220 (N.M. 2016) ..... Sixth Amendment, ineffective assistance of counsel
State v. Winn,
435 P.3d 1247 (N.M. Ct. App. 2018) ..... "sex offense," "substantially similar"

New York

Alvarez v. Annucci,
187 N.E.3d 1032 (N.Y. 2022) ..... residency restrictions
In re Bd. of Examiners of Sex Offenders of N.Y. v. D'Agostino,
130 A.D.3d 1449 (N.Y. App. Div. 2015) ..... "sex offense," foreign conviction
In re Doe v. O'Donnell,
86 A.D.3d 238 (N.Y. App. Div. 2011) ..... duty to register, public registry, updating information, full faith and credit
In re Kasckarow v. Bd. of Exam'rs of Sex Offenders of N.Y.,
32 N.E.3d 927 (N.Y. 2015) ..... "conviction," withheld adjudication
People ex rel. E.S. v. Superintendent, Livingston Corr. Facility,
219 N.E.3d 353 (N.Y. 2023) ..... juveniles, residency restrictions
People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility,
163 N.E.3d 1041 (N.Y. 2020) ..... Fourteenth Amendment, substantive due process, residency restrictions

North Carolina

State v. Grady,
831 S.E.2d 542 (N.C. 2019) ..... GPS, Fourth Amendment, search
State v. Hilton,
862 S.E.2d 806 (N.C. 2021) ..... GPS, Fourth Amendment, search, state constitution
State v. Lindquist,
847 S.E.2d 78 (N.C. Ct. App. 2020) ..... GPS, Fourth Amendment, search
State v. Reed,
863 S.E.2d 820 (N.C. Ct. App. 2021) (unpublished table decision) .... duty to register, GPS, Fourth Amendment, search
State v. Sparks,
657 S.E. 2d 655 (N.C. 2008) ..... Fifth Amendment, double jeopardy
State v. Strudwick,
864 S.E.2d 231 (N.C. 2021) ..... Fourth Amendment, GPS, search
Walters v. Cooper,
739 S.E.2d 185 (N.C. Ct. App. 2013) ..... "conviction," guilty plea/plea agreement

North Dakota

In re C.B.,
906 N.W.2d 93 (N.D. 2018) ..... full faith and credit

Ohio

Hall v. State,
2021-Ohio-3363, No. C-200308, 2021 WL 4343461 (Ohio Ct. App. Sept. 24, 2021) ..... duty to register, "substantially similar"
In re C.P.,
967 N.E.2d 729 (Ohio 2012) ..... Eighth Amendment, state constitution, juveniles, Fourteenth Amendment, procedural due process
In re C.Q.,
2020-Ohio-5531, No. 2020 CA 00012, 2020 WL 7078332 (Ohio Ct. App. Dec. 2, 2020) ..... juveniles, procedural due process
In re D.A.,
2022-Ohio-1359, No. 4-21-15, 2022 WL 1211190 (Ohio Ct. App. Apr. 25, 2022) ..... juveniles, adjudicated delinquent, duty to register
In re D.R.,
225 N.E.3d 894 (Ohio 2022), *cert. denied*, No. 22-864 (U.S. June 12, 2023) .. juveniles, procedural due process
In re E.S.,
179 N.E.3d 724 (Ohio Ct. App. 2021) ..... juveniles, duty to register, classification
In re R.B.,
165 N.E.3d 288 (Ohio 2020) ..... juveniles, classification
In re T.R.,
2020-Ohio-4445, Nos. C-190165, C-190166, C-190167, C-190168, C-190169, C-190170, C-190171, C-190172, 2020 WL 5544415 (Ohio Ct. App. Sept. 16, 2020) ..... juveniles, punitive/regulatory, classification, procedural due process
State v. Blankenship,
48 N.E.3d 516 (Ohio 2013) ..... juveniles, Eighth Amendment, state constitution
State v. Bowers,
167 N.E.3d 947 (Ohio 2020) ..... Sixth Amendment, jury trial, *Apprendi/Alleyne*
State v. Buttery,
164 N.E.3d 294 (Ohio 2020) ..... juveniles, procedural due process, jury trial, state constitution
State v. Conley,
2016-Ohio-5310, No. 27869, 2016 WL 4211252 (Ohio Ct. App. Aug. 10, 2016) ..... punitive/regulatory, Eighth Amendment, cruel and unusual punishment

State v. Dornoff,
2020-Ohio-3909, No. WD-16-072, 2020 WL 4384223 (Ohio Ct. App. July 31, 2020).....notice, duty to register, guilty plea/plea agreement, ineffective assistance of counsel
State v. Galloway,
50 N.E.3d 1001 (Ohio Ct. App. 2015) ..... nonsexual offense registry
State v. Jones,
2020-Ohio-6904 No. CA2020-02-003, 2020 WL 7690665 (Ohio Ct. App. Dec. 28, 2020)..... failure to register
State v. Merritt,
2021-Ohio-3681, No. 2021 CA 0042, 2021 WL 4786945 (Ohio Ct. App. Oct. 13, 2021) .....“sex offense,” indecent exposure
State v. Schilling,
224 N.E.3d 1126 (Ohio 2023).....duty to register, tolling
State v. Searles,
2020-Ohio-5608, Nos. C-190389, C-190395, C-190414, C-190415, 2020 WL 7238525 (Ohio Ct. App. Dec. 9, 2020).....“sex offense,” indecent exposure
State v. Spencer,
No. 112058, 2023 WL 6153636 (Ohio Ct. App. Sept. 21, 2023).....juveniles, Eighth Amendment, cruel and unusual punishment
State v. Stansell,
173 N.E.3d 1273 (Ohio Ct. App. 2021), *appeal dismissed*, 195 N.E.3d 129 (Ohio 2022).....SVP, retroactivity, ex post facto
State v. Wallace,
2020-Ohio-3959, No. C-190043, 2020 WL 4514702 (Ohio Ct. App. Aug. 5, 2020).....punitive/regulatory, classification
State v. Williams,
952 N.E.2d 1108 (Ohio 2011).....risk assessment, retroactivity, ex post facto, state constitution, punitive/regulatory
Toledo Bar Ass'n v. Long,
179 N.E.3d 1262 (Ohio 2021) (per curiam) .....employment restrictions

Oklahoma

Bivens v. State,
431 P.3d 985 (Okla. Crim. App. 2018) ..... nonsexual offense registry
Deo v. Parish,
541 P.3d 833 (Okla. Crim. App. 2023) ..... Indian Country
Hendricks v. Jones ex rel. State,
349 P.3d 531 (Okla. 2013) .....Fourteenth Amendment, equal protection
McClain v. State,
501 P.3d 1009 (Okla. Crim. App. 2021) ..... Indian Country
Starkey v. Okla. Dep't of Corrs.,
305 P.3d 1004 (Okla. 2013) .....retroactivity, ex post facto, state constitution
State ex rel. Matloff v. Wallace,
497 P.3d 686 (Okla. Crim. App. 2021) ..... Indian Country
State v. Lawhorn,
499 P.3d 777 (Okla. Crim. App. 2021) ..... Indian Country

Oregon

In re A.L.M.,
469 P.3d 244 (Or. Ct. App. 2020) .....juveniles, duty to register
State v. A.R.H.,
530 P.3d 897 (Or. 2023).....juveniles, duty to register

Pennsylvania

Puerto Rico

Rhode Island

South Carolina

South Dakota

In re Z.B.,
757 N.W.2d 595 (S.D. 2008).....juveniles, Fourteenth Amendment, equal protection
People ex rel. J.L.,
800 N.W.2d 720 (S.D. 2011).....juveniles, adjudicated delinquent
State v. Stark,
802 N.W.2d 165 (S.D. 2011)..... residency restrictions

Tennessee

Miller v. Gywn,
No. E2017-00784-COA-R3-CV, 2018 WL 2332050 (Tenn. Ct. App. May 23, 2018) .....“sex offense,” “substantially similar”
State v. Collier,
No. W2019-01985-CCA-R3-CD, 2021 WL 142172 (Tenn. Crim. App. Jan. 14, 2021)..... residency restrictions, park/playground bans, substantive due process, Fourteenth Amendment
State v. Russell,
No. W2019-01874-CCA-R3-CD, 2020 WL 5033435 (Tenn. Crim. App. Aug. 25, 2020) .. residency restrictions
State v. Townsend,
No. W2015-02415-CCA-R3-CD, 2017 WL 1380002 (Tenn. Crim. App. Apr. 13, 2017).....“conviction,” nolocontendere

Texas

Barrientos v. State,
No. 05-12-00648-CR, 2013 WL 3227658 (Tex. App. June 24, 2013)..... failure to register, notice
Breeden v. State,
No. 05-06-00862-CR, 2008 WL 787934 (Tex. App. Mar. 26, 2008)..... failure to register, homeless offenders
Clark v. State,
No. 05-17-01384-CR, 2018 WL 5816879 (Tex. App. Nov. 7, 2018) .....failure to register, mens rea
Ex parte Dauer,
No. WR-88,114-01, 2018 WL 1406696 (Tex. Crim. App. Mar. 21, 2018) (per curiam)..... Sixth Amendment, ineffective assistance of counsel
Ex parte Evans,
338 S.W.3d 545 (Tex. Crim. App. 2011) ..... Fourteenth Amendment, substantive due process
Ex parte Harbin,
297 S.W.3d 283 (Tex. Crim. App. 2009) ..... “sex offense,” “substantially similar”
Ex parte Massey,
No. WR-93,646-01, 2022 WL 1160822 (Tex. Crim. App. Apr. 20, 2022) (per curiam) ..... duty to register, notice, ineffective assistance of counsel, guilty plea/plea agreement
Ex parte Odom,
570 S.W.3d 900 (Tex. Crim. App. 2018) ..... First Amendment, internet
Ex parte Overstreet,
No. WR-91,029-02, 2024 WL 1894594 (Tex. Crim. App. May 1, 2024) (per curiam) .....“sex offense,” “substantially similar”
Ex parte Weatherly,
No. WR-61,215-10, 2023 WL 2000064 (Tex. Crim. App. Feb. 15, 2023) (per curiam)....duty to register, notice, guilty plea/plea agreement
Fritts v. State,
No. 11-18-00359-CR, 2020 WL 7038553 (Tex. App. Nov. 30, 2020) . failure to register, “substantially similar”
Herron v. State,
625 S.W.3d 144 (Tex. Crim. App. 2021) ..... failure to register
Honea v. State,
No. 11-19-00319-CR, 2021 WL 3919437 (Tex. App. Sept. 2, 2021) .....failure to register, mens rea

Utah

Vermont

Virginia

McCabe v. Commonwealth,
650 S.E.2d 508 (Va. 2007) ..... state constitution, substantive due process
Smith v. Commonwealth,
743 S.E.2d 146 (Va. 2013) ..... state constitution, takings, procedural due process
Stoddart v. Commonwealth,
107 Va. Cir. 108 (Va. Cir. Ct. 2021) (unpublished decision) ..... right to firearms
Watson-Buisson v. Commonwealth,
No. 200955, 2021 WL 4628456 (Va. Oct. 7, 2021), *cert. denied*, 142 S. Ct. 1161 (2022) ..... "sex offense," "substantially similar," Fourteenth Amendment, equal protection

Washington

Doe v. State,
199 Wash. App. 1007 (2017) ..... international travel, right to privacy, due process, ex post facto
In re Hines,
No. 37647-8-III, 2021 WL 687946 (Wash. Ct. App. Feb. 23, 2021) ..... failure to register, continuing offense, double jeopardy
In re Stevens,
519 P.3d 208 (Wash. 2022) ..... employment restrictions
State v. Batson,
478 P.3d 75 (Wash. 2020) (en banc) ..... state constitution, nondelegation
State v. Boyd,
408 P.3d 362 (Wash. Ct. App. 2017) ..... homeless offenders, ex post facto
State v. Caton,
260 P.3d 946 (Wash. Ct. App. 2011) ..... separation of powers
State v. Cayenne,
No. 49696-8-11, 2018 WL 3154379 (Wash. Ct. App. June 26, 2018) ..... Indian Country
State v. Crofton,
144 Wash. App. 1047 (2008) ..... homeless offenders, ex post facto, equal protection
State v. Domingo-Cornelio,
527 P.3d 1188 (Wash. Ct. App. 2023) ..... juveniles, Eighth Amendment
State v. Durrett,
208 P.3d 1174 (Wash. Ct. App. 2009) ..... failure to register, double jeopardy
State v. Enquist,
256 P.3d 1277 (Wash. Ct. App. 2011) ..... homeless offenders, state constitution, ex post facto
State v. Green,
230 P.3d 654 (Wash. Ct. App. 2010) ..... double jeopardy, failure to register
State v. Mower,
No. 79735-2-I, 2020 WL 1917484 (Wash. Ct. App. Apr. 20, 2020) ..... "sex offense," failure to register
State v. Peterson,
186 P.3d 1179 (Wash. Ct. App. 2008), *aff'd*, 230 P.3d 588 (Wash. 2010) (en banc) ..... failure to register, venue
230 P.3d 588 (Wash. 2010) (en banc) ..... failure to register
State v. Shale,
345 P.3d 776 (Wash. 2015) ..... failure to register, Indian Country
State v. Smith,
No. 54067-3-II, 2021 WL 5085425 (Wash. Ct. App. Nov. 2, 2021) ..... ex post facto, homeless offenders, juveniles, state constitution, procedural due process
State v. Smith,
344 P.3d 1244 (Wash. Ct. App. 2015) ..... Fifth Amendment, right to travel
State v. Snider,
508 P.3d 1014 (Wash. 2022) (en banc) ..... failure to register, guilty plea/plea agreement
State v. Valencia,
416 P.3d 1275 (Wash. Ct. App. 2018) ..... failure to register, double jeopardy

West Virginia

Wisconsin

Wyoming

INTRODUCTION

The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) tracks state and federal case law about sex offender registration and notification. This summary is current through July 2024 and addresses the Sex Offender Registration and Notification Act (SORNA),[1] including SORNA's requirements, and provides information about case law impacting state and federal sex offender registration and notification laws across the country. It is provided as an overview and identifies areas of law that impact sex offender registration and notification and that have been subject to litigation.

Section I of this overview summarizes the requirements under SORNA, including who is required to register, what registration requires, where registration is required, and when registration is required. Section I also covers public registry website requirements and community notification, registration in Indian Country, and federal incarceration. This section also covers reduction of registration periods and failure to register.

Section II of this overview summarizes locally enacted sex offender requirements, including residency restrictions, employment restrictions, and risk assessment practices.

Section III summarizes legal challenges, including challenges under the U.S. and state constitutions, and under federal and state law.

[1] SORNA was enacted as part of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, 120 Stat. 587 (codified as amended at 34 U.S.C. §§ 20901-20991) (hereinafter Adam Walsh Act). Since 2006, several bills have added to SORNA's provisions, including the Keeping the Internet Devoid of Predators Act of 2008 (hereinafter KIDS Act), Pub. L. 110-400, 122 Stat. 4224; the Military Sex Offender Reporting Act of 2015, Pub. L. 114-22, 129 Stat. 258 (hereinafter MSORA); and International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders, Pub. L. 114-119, 130 Stat. 15 (2016) (hereinafter IML). Additionally, the Department of Justice has issued three sets of guidelines and two rules to assist with the interpretation and implementation of SORNA. For more information on SORNA and other related legislation, see SMART's SORNA, Current Law page.

I. SORNA Requirements

A. Generally

SORNA requires a conviction-based structure for sex offenders' registration and notification requirements. In other words, when an individual is convicted and sentenced for a sex offense,[2] SORNA requires that the individual be subject to certain registration and notification requirements.[3] SORNA establishes three classes, or tiers, based on the severity of the offender's sex offense.[4]

Under SORNA, a sex offender is an individual who is convicted of a sex offense.[5] A jurisdiction must include qualifying sex offenders in its registration scheme.[6]

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[2] 34 U.S.C. § 20911(5). A "sex offense" is defined as a criminal offense that has an element involving a sexual act or sexual contact with another; a criminal offense that is a specified offense against a minor; a federal offense under 18 U.S.C. § 1591, or Chapters 109A, 110, or 117 of title 18; a military offense specified by the Secretary of Defense; or an attempt or conspiracy to commit any of the aforementioned offenses. *Id.* Notably, an offense involving consensual sexual conduct is not a sex offense if the victim was an adult or "if the victim was at least 13 years old and the offender was not more than 4 years older than the victim." *Id.* § 20911(5)(C). The latter conduct is often referred to as a "Romeo and Juliet" exception.

[3] Because SORNA's requirements are predicated on a conviction, offenders will not be required to comply with SORNA if their conviction is reversed, vacated, or set aside. National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, at 38,050 (July 2, 2008) (hereinafter Final Guidelines); *see also Roe v. Replogle*, 408 S.W.3d 759, 762 (Mo. 2013) (en banc) (holding that offender, who pleaded guilty to sodomy and received a suspended imposition of sentence under state law, was required to register as a sex offender because his guilty plea constituted a "conviction" under SORNA). *But see infra* note 17 and accompanying text (outlining circumstances in which some jurisdictions will still require registration, even when an offender has been pardoned or an offender's conviction has been vacated). For additional discussion concerning what constitutes a "conviction" under SORNA, see *infra* I.B.1.

[4] For additional discussion concerning tiering, see *infra* I.C.1.

[5] 34 U.S.C. § 20911(1); *see also supra* note 2 and accompanying text.

[6] Final Guidelines, *supra* note 3, at 38,050-38,052.

B. Who Is Required to Register

1. "Conviction" & Offenses That Must Be Included in the Registry

a) "Conviction"

SORNA's registration and notification requirements apply to individuals convicted of sex offenses[7] under federal, military,[8] state, territorial, local, tribal, or foreign law.[9] For the purposes of SORNA,

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[7] *See, e.g., United States v. Fuentes*, 856 F. App'x 533, 533-34 (5th Cir. 2021) (per curiam) (holding that requiring offender convicted of sexual abuse of a ward in violation of 18 U.S.C. § 2243(b), who pleaded guilty to performing oral sex on a federal inmate while employed as a supervisory cook in the prison where the victim was detained, to register as a sex offender was mandatory pursuant to 18 U.S.C. § 3583(d) because an offense under § 2243(b) constitutes a "sex offense" under SORNA and that the court did not err in failing to apply the SORNA Romeo and Juliet exception where the offender solemnly declared in court that she was in custodial authority of the prisoner); *Harder v. United States*, Nos. 21-cv-188-jdp; 14-cr-67-jdp, 2021 WL 3418958, at *6 (W.D. Wis. Aug. 5, 2021) (holding that offender's Louisiana conviction for indecent behavior with a juvenile is a "sex offense" under SORNA); *People v. Rodriguez Orengo*, No. CC-2022-0468, 2024 WL 1904889 (P.R. Apr. 19, 2024) (holding that an offender convicted of indecent exposure where the offender urinated on an adult victim's garage, and where the offender did not engage in conduct constituting sexual abuse, is not required to register as a sex offender in Puerto Rico). *But see United States v. Icker*, 13 F.4th 321, 327-28 (3d Cir. 2021) (holding that offender convicted of deprivation of rights under color of law under 28 U.S.C. § 242 could not be required to register as a sex offender under SORNA and noting that a discretionary imposition of SORNA on non-sex offenders is erroneous and the district court does not have authority to require an offender to register under SORNA if he has not been convicted of a "sex offense"); *United States v. Price*, 777 F.3d 700 (4th Cir. 2015) (holding that, for sentencing purposes, sex offender's federal failure to register conviction was not a "sex offense" under SORNA); *United States v. Collins*, 773 F.3d 25, 26 (4th Cir. 2014) (holding that failure to register as a sex offender under SORNA is not a "sex offense" in sentencing case); *United States v. Goodwin*, 717 F.3d 511, 519-20 (7th Cir. 2013) (holding that, in determining appropriate sentencing, an offender's failure to register under 18 U.S.C. § 2250 is not a "sex offense" under SORNA).

Notably, additional federal criminal offenses not specifically enumerated by SORNA may still qualify as "sex offenses" requiring registration. *See United States v. Vanderhorst*, 688 F. App'x 185, 186 (4th Cir. 2017) (holding that conviction for use of a facility in interstate commerce to carry on an unlawful activity, under 18 U.S.C. § 1592, required registration as a sex offender under SORNA even though it is not listed); *United States v. Faulls*, 821 F.3d 502, 515-16 (4th Cir. 2016) (holding that offender was convicted of a sex offense and was required to register as a sex offender under SORNA where he was convicted of interstate domestic violence under 18 U.S.C. § 2261 and the underlying crime of violence was aggravated sexual abuse); *United States v. Baptiste*, 34 F. Supp. 3d 662, 669 (W.D. Tex. 2014) (holding that the list of offenses enumerated by SORNA "is not the exclusive set of federal criminal offenses requiring sex offender registration," and 34 U.S.C. § 20911(5)(A)(i) and (ii) "may include federal criminal violations in [its] definitions of sex offense"); *United States v. Marrowbone*, No. 14-CR-30071, 2014 WL 6694781, at *4 (D.S.D. Nov. 26, 2014) (holding that assault with intent to commit rape under 18 U.S.C. § 113 is a sex offense for purposes of SORNA); *United States v. Dailey*, 941 F.3d 1183, 1193 (9th Cir. 2019) (holding that offender's violation of the Travel Act under 18 U.S.C. § 1592 qualified as "conduct that by its nature is a sex offense against a minor" and required registration as a sex offender under SORNA); *United States v. Lloyd*, 809 F. App'x 750, 754 (11th Cir. 2020) (citing *Dodge* and holding that offender's conviction for cyberstalking under 18 U.S.C. § 2261A(2)(B) was a "specified offense against a minor" under SORNA and offender was required to register as a sex offender); *United States v. Dodge*, 597 F.3d 1347, 1356 (11th Cir. 2010) (en banc) (holding that a federal criminal offense not enumerated in SORNA may still qualify as a sex offense for purposes of sex offender registration and finding that offender's conviction for knowingly attempting to transfer obscene material to a minor in violation of 18 U.S.C. § 1470 was a "specified offense against a minor" under SORNA and, as a result, the offender committed a sex offense and was subject to SORNA's registration requirements).

[8] For additional discussion concerning military registration, see *infra* I.B.5; *see also United States v. Jones*, 383 F. App'x 885, 889 (11th Cir. 2010) (outlining military offenses under the Uniform Code of Military Justice that require registration under SORNA).

a "conviction" may arise from a finding of guilt, but it also covers other findings such as withheld adjudications[10] and certain convictions of juveniles.[11]

Most jurisdictions follow a conviction-based structure;[12] however, some jurisdictions use a risk assessment process to determine aspects of sex offenders' registration and notification

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[9] 34 U.S.C. § 20911. A foreign conviction is also a sex offense under SORNA if it was obtained with sufficient safeguards for fundamental fairness and due process. *Id.* § 20911(5)(B); *see* Final Guidelines, *supra* note 3, at 38,050 (recognizing that sex offense convictions under the laws of Canada, the United Kingdom, Australia, and New Zealand require registration "on the same footing as domestic convictions" and stating that "[s]ex offense convictions under the laws of any foreign country are deemed to have been obtained with sufficient safeguards for fundamental fairness and due process if the U.S. State Department . . . has concluded that an independent judiciary generally [or vigorously] enforced the right to a fair trial in that country during the year in which the conviction occurred"). *See, e.g.*, *McCarty v. Roos*, 998 F. Supp. 2d 950 (D. Nev. 2014) (holding that requiring offender convicted of a sex offense in Japan to register as a tier I sex offender under SORNA does not violate procedural due process where the Japanese government "was deemed to have generally respected the human rights of its citizens at the time of [offender's] conviction," it "generally provided an independent judiciary, a presumption of innocence, the right to cross-examination and the right not to be compelled to testify against oneself," and offender did not dispute he was convicted of a sex crime in Japan); *In re Bd. of Exam'rs of Sex Offenders of N.Y. v. D'Agostino*, 130 A.D.3d 1449, 1450 (N.Y. App. Div. 2015) (holding that the offender's Cambodian conviction "met the statutory requirements of a registerable offense" and "had all of the essential elements of a sex offense" and therefore he was required to register as a sex offender in New York).

[10] "[A]n adult sex offender is 'convicted' for SORNA purposes if the sex offender remains subject to penal consequences based on the conviction." Final Guidelines, *supra* note 3, at 38,050; *see also United States v. Roberson*, 752 F.3d 517, 524-25 (1st Cir. 2014) (holding that offender convicted of indecent assault and battery of a child under 14 in Massachusetts who later had his conviction vacated was required to register as a sex offender under SORNA and could be prosecuted for failing to register where the charges were brought for conduct that occurred before his conviction was vacated); *United States v. Bridges*, 901 F. Supp. 2d 677, 681 (W.D. Va. 2012) (holding that the offender's nolo contendere plea and withheld adjudication in Florida for attempted sexual battery upon a child under 16 years old is a conviction for purposes of SORNA and the offender had a duty to register as a sex offender), *aff'd,* 741 F.3d 464 (4th Cir. 2014); *United States v. Borum*, 567 F. Supp. 3d 751, 753 (N.D. Miss. 2021) (holding that offender's Michigan conviction should be admissible in a federal failure to register prosecution where offender's nolo contendere plea resulted in him registering as a sex offender in Michigan from January 2006 until approximately 2016, when he absconded and moved to Mississippi); *United States v. Grant*, No. 17-CR-236, 2018 WL 4516008, at *10 (N.D. Ga. July 4, 2018) (holding that offender's "First Offender guilty plea" to child molestation, where adjudication of guilt was withheld, is a "conviction" under SORNA); *Price v. State*, 43 So. 3d 854, 857 (Fla. Dist. Ct. App. 2010) (holding that, even though sex offender pleaded nolo contendere and adjudication was withheld, he had been convicted of a sex offense for purposes of registering as a sex offender under Florida law); *In re Kasckarow v. Bd. of Exam'rs of Sex Offenders of N.Y.*, 32 N.E.3d 927, 929 (N.Y. 2015) (holding that the offender's nolo contendere plea and withheld adjudication in Florida was a conviction for purposes of New York's Sex Offender Registration Act and triggered a registration requirement when the offender moved to New York).

[11] SORNA requires registration for juveniles convicted as adults as well as a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sex offenses. For additional discussion concerning juvenile registration, see *infra* I.B.6. *But see State v. Frederick*, 251 P.3d 48, 51-52 (Kan. 2011) (holding that offender was not required to register as a sex offender in Kansas where he had a prior juvenile adjudication for criminal sexual conduct in Minnesota because a juvenile adjudication is not a "conviction" under Kansas law).

[12] *Woodruff v. State*, 347 So. 3d 281, 289 (Ala. Crim. App. 2020) (holding that municipal court conviction for indecent exposure constitutes a "conviction" for purposes of the Alabama Sex Offender Registration and Community Notification Act); *People v. Cardona*, 986 N.E.2d 66, 75 (Ill. 2013) (noting that "there are several ways a person can acquire th[e] label [of sex offender], only one of which is criminal conviction of a triggering offense" and "[o]ther ways include being found not guilty of a triggering offense by reason of insanity, being adjudicated a juvenile delinquent as result of committing a triggering offense, and . . . being the subject of a finding not resulting in acquittal at a discharge hearing"); *but see Maves v. State*, 479 P.3d 399, 405 (Alaska 2021) (holding that, once sex offender's Colorado conviction was set aside, it no longer constituted a "conviction" for purposes of requiring registration in Alaska); *Walters v. Cooper*, 739 S.E.2d 185, 187 (N.C. Ct. App. 2013) (holding that a prayer for judgment continued does not

requirements, including the duration of registration and frequency with which they must appear.[13] In some jurisdictions, registration will also be required when an individual has been civilly committed,[14] found incompetent to stand trial,[15] or is on furlough.[16] Additionally, offenders may still be required to register even if they have been pardoned for the underlying offense;[17] their

operate as a final conviction for purposes of sex offender registration under North Carolina law and the offender was not required to register despite pleading guilty to a "sexually violent offense"); *State v. Townsend*, No. W2015-02415-CCA-R3-CD, 2017 WL 1380002, at *3, *5 (Tenn. Crim. App. Apr. 13, 2017) (holding that offender had not been convicted of a sex offense requiring registration as a sex offender where he entered into plea of nolo contendere to sexual battery and was then placed on judicial diversion).

[13] For more information on the use of risk assessments, *see infra* II.C.

[14] *Mayo v. People*, 181 P.3d 1207, 1213 (Colo. App. 2008) (holding that civil commitment procedure in Illinois constituted "conviction" for purposes of registering as a sex offender in Colorado).

[15] *State v. Scott*, 636 S.W.3d 768, 771 (Ark. 2022) (holding that offender acquitted of kidnapping and first-degree false imprisonment by reason of mental disease or defect was required to register as a sex offender); *Cardona*, 986 N.E.2d at 73-75 (upholding trial court's certification of an incompetent defendant as a sex offender requiring registration where the defendant was acquitted of indecent solicitation of a child but was found "*not* not guilty" of unlawful restraint where the unlawful restraint was "sexually motivated").

[16] *State v. Gauthier*, 238 A.3d 675, 676 (Vt. 2020) (holding that, for the purposes of Vermont's Sex Offender Registration Act, "a person who physically resides in the community on furlough is not incarcerated" and therefore is required to comply with the sex offender reporting requirements).

[17] *In re Edwards v. State Law Enf. Div.*, 720 S.E.2d 462, 467 (S.C. 2011) (recognizing that S.C. Code § 23-3-430, as amended in 2005, prohibits an offender, who has received a pardon for an offense in which he is required to register, from being removed from the sex offender registry, and holding that amendments to statute did not apply retroactively and therefore, offender pardoned of two "peeping Tom" convictions in 2004 was not required to register as a sex offender); *Tex. Dep't of Pub. Safety v. Bernoudy*, No. 13-13-00396-CV, 2014 WL 3542096, at *2 (Tex. App. July 17, 2014) (citing TEX. CODE CRIM. PROC. § 62.002) (recognizing that, under § 62.002, an offender's duty to register as a sex offender is not affected by a pardon unless the pardon is based on "subsequent proof of innocence"); *but see Heath v. State*, 983 A.2d 77, 81 (Del. 2009) (holding that offender who was granted an unconditional pardon for second-degree unlawful sexual contact no longer had a duty to register as a sex offender because "an unconditional pardon cannot be granted unless the Board [of Pardons] and Governor find no propensity for recidivism," it "extinguishes the underlying premise for sex offenders' registration obligations," and it "restores all civil rights"); *State v. Davis*, 814 S.E.2d 701, 707 (Ga. 2018) (holding that offender who was pardoned of conviction for aggravated sodomy no longer had a duty to register as a sex offender under Georgia law).

conviction for a sex offense has been vacated, expunged, set aside,[18] or was dismissed under a special statutory procedure;[19] or they have relocated to a new jurisdiction.[20]

[18] *Davidson v. State*, 320 So. 3d 1021, 1027-28 (La. 2021) (holding that offender must register as a sex offender and provide notification if he moves back to Louisiana even though his 2005 video voyeurism conviction was set aside and the prosecution was dismissed), *aff'g* 308 So. 3d 325, 331 (La. Ct. App. 2020); *Ferguson v. Miss. Dep't of Pub. Safety*, 278 So. 3d 1155, 1158 (Miss. 2019) (holding that offender was still required to register as a sex offender in Mississippi even though her misdemeanor conviction for disseminating sexually oriented material to a minor was expunged); *Montoya v. Driggers*, 320 P.3d 987, 991 (N.M. 2014) (holding that the offender's conviction of second-degree criminal sexual penetration remained a valid basis for sex offender registration despite being vacated on double jeopardy grounds); *Young v. Keel*, 848 S.E.2d 67, 68-69 (S.C. Ct. App. 2020) (holding that offender must still register as a sex offender in South Carolina despite having his conviction for lewd act with a minor expunged); *but see McCulley v. People*, 463 P.3d 254, 261 (Colo. 2020) (finding that an offender who has successfully completed a deferred judgment no longer has a conviction for purposes of Colorado's Sex Offender Registration Act, which bars an offender who has more than one conviction for unlawful sexual behavior from petitioning a court to discontinue the requirement to register as a sex offender, and is eligible to petition the court to discontinue registration), *rev'g* 488 P.3d 360 (Colo. App. 2018).

[19] *People v. Hamdon*, 225 Cal. App. 4th 1065, 1073 (2014) (holding that offender was still required to register as a sex offender even though underlying conviction for misdemeanor sexual battery and misdemeanor infliction of harm on a child was set aside under a special statutory procedure); *Witten v. State ex rel. Miss. Dep't of Pub. Safety & Crim. Info. Ctr.*, 145 So. 3d 625, 629 (Miss. 2014) (holding that, where California conviction for oral copulation and rape of a person unconscious of the nature of the act was dismissed under a special statutory procedure after the offender's successful completion of probation, offender was still required to register as a sex offender in Mississippi).

[20] *In re Doe v. O'Donnell*, 86 A.D.3d 238, 243 (N.Y. App. Div. 2011) (holding that convicted sex offender must still register in New York even after he relocated from New York to Virginia).

b) "Sex Offense"

Sex offender registration is typically triggered by an offender's conviction for a sex offense[21] or nonparental kidnapping of a minor,[22] but some jurisdictions also include other offenders in their registration and notification systems or have separate registries for nonsexual offenses.[23]

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[21] *Lenard v. State*, 652 S.W.3d 569, 574 (Ark. 2022) (holding that offender convicted of fourth-degree sexual assault is required to register as a sex offender); *People v. Wilson*, 193 A.D.3d 597, 598 (N.Y. App. Div. 2021) (mem.) (holding that offender convicted of unlawful surveillance under New York law is required to register as a sex offender); *State v. Fuller*, 855 S.E.2d 260, 266 (N.C. 2021) (holding that offender convicted of peeping is required to register as a sex offender where court found that he was a "danger to the community"); *State v. Merritt*, 2021-Ohio-3681, No. 2021 CA 0042, 2021 WL 4786945, at *2 (Ohio Ct. App. Oct. 13, 2021) (holding that court erred in requiring offender to register as a sex offender where offender was convicted of public indecency in violation of Ohio Rev. Code § 2907.09(A)(2) and offense was not a "sexually oriented offense"); *State v. Searles*, 2020-Ohio-5608, Nos. C-190389, C-190395, C-190414, C-190415, 2020 WL 7238525, at *3 (Ohio Ct. App. Dec. 9, 2020) (holding that offender convicted of public indecency and voyeurism was required to register as a tier I sex offender based on his voyeurism conviction, but that his public indecency conviction did not trigger registration requirements); *People v. Toro Vélez*, 212 P.R. Dec. 919, 920 (P.R. 2023) (holding that offender convicted of lewd acts, where there is no element or specification that the victim is a minor, is required to register as a sex offender for life because Law 266-2004 does not exempt such offenders from registering); *State v. Mower*, No. 79735-2-I, 2020 WL 1917484 (Wash. Ct. App. Apr. 20, 2020) (holding that amendments made to Washington statute in 2015 to include failure to register convictions as a "sex offense" applied and the court correctly counted offender's prior failure to register convictions when it sentenced him as a third-time offender); *State v. Conn*, 879 S.E.2d 74, 79-81 (W. Va. 2022) (holding that offender convicted of attempt to commit an assault during the commission of a felony, where the underlying felony is sexual assault in the third degree, is required to register as a sex offender in West Virginia), *cert. denied,* 143 S. Ct. 1087 (2023); *but see State v. Knapp*, 503 P.3d 298 (Mont. 2022) (unpublished table decision) (holding that failure to register as a sexual offender under Montana law does not qualify as a "sexual offense"); *State v. Heitkemper*, No. DA 21-0467, 2022 Mont. LEXIS 731, at *1 (Aug. 9, 2022) (holding that offender's conviction of sexual assault under Mont. Code § 45-5-502(2)(c) does not require registration as a sex offender where § 45-5-502(2)(c) is not an enumerated "sexual offense" under § 46-23-502(9)(a)); *State v. Alston*, No. A-20-068, 2020 WL 3526761, at *4 (Neb. Ct. App. June 30, 2020) (recognizing that sex trafficking is not a registerable offense under Nebraska's SORA because it "is not one of the listed convictions triggering the registration requirements under SORA"); *State v. Wilcox*, 383 P.3d 549, 550-51 (Wash. Ct. App. 2016) (holding that 2015 amendment to Washington law did not apply retroactively and therefore offender's conviction for failure to register as a sex offender did not qualify as a "sex offense"). Similar to SORNA, some jurisdictions' definition of a "sex offense" excludes consensual sexual acts. *See Hurtado v. State*, 332 So. 3d 15, 17 (Fla. Dist. Ct. App. 2021) (reversing postconviction court's order denying sex offender's motion to remove the requirement that he register as a sexual offender under Florida's Romeo and Juliet statute where sex offender met all of the statutory requirements and the court did not explain its reasoning for denying the motion); *Miller v. State*, 17 So. 3d 778, 781-82 (Fla. Dist. Ct. App. 2009) (denying offender's request to be removed from Florida's sex offender registry and holding that, notwithstanding Florida's Romeo and Juliet statute (for which the offender met all of the state statutory requirements), because the offender was convicted of an offense that did not involve a consensual act, he did not meet the federal requirements and therefore, it would conflict with federal law to remove him from the sex offender registry).

[22] Kidnapping offenses have been included since the first federal legislation regarding sex offender registration—the Wetterling Act—was passed. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 2038 (1994) (hereinafter Wetterling Act). Jurisdictions' inclusion of kidnapping in their sex offender registration schemes have been upheld by the courts. *See, e.g., Thomas v. Taylor*, No. 18-cv-238, 2022 WL 851725, at *3 (N.D. Miss. Mar. 22, 2022) (holding that offender convicted of kidnapping his own child is required to register as a sex offender in Mississippi even though SORNA only requires registration if an offender is convicted of non-parental kidnapping because SORNA "establishes a national baseline for sex offender registration and notification programs . . . [and] generally constitutes a set of *minimum* national standards and sets a floor, not a ceiling, for jurisdiction's programs" and "Mississippi '[l]egislature's expansion of the sex-offender registration laws [is] permissible and not violative of [sex offender's] constitutional rights'"); *Robinson v. Knutson*, No. 23-CV-517, 2023 WL 6148550, *6-8 (E.D. Wis. Sept. 20, 2023) (holding that requiring offenders convicted of

While most jurisdictions outline specific offenses requiring registration, some jurisdictions also include "catch-all" provisions, which typically require individuals convicted of an offense that is "by its nature a sex offense," to register.[24] There are also a handful of jurisdictions where

nonparental false imprisonment to register as sex offenders for life in Wisconsin does not violate substantive or procedural due process under the Fourteenth Amendment), *appeal filed*, No. 23-2979 (7th Cir. Oct. 16, 2023); *Rainer v. State*, 690 S.E.2d 827, 829-30 (Ga. 2010) (holding that requiring an offender convicted of nonparental false imprisonment to register as a sex offender in Georgia does not violate due process or constitute cruel and unusual punishment); *Commonwealth v. Thompson*, 548 S.W.3d 881, 892 (Ky. 2018) (recognizing conviction of attempted kidnapping of a minor requires registration as a sex offender in Kentucky); *Moffitt v. Commonwealth*, 360 S.W.3d 247, 256-57 (Ky. Ct. App. 2012) (citing the legislative history of the Wetterling Act to support registration for kidnapping and holding that requiring an offender convicted of kidnapping to register as a sex offender in Kentucky is constitutional); *Doe (No. 339940) v. Sex Offender Registry Bd.*, 170 N.E.3d 1143, 1153 (Mass. 2021) (holding that "requiring sex offender registration for persons convicted of child kidnapping is reasonable because 'kidnapping can be a precursor to sex offenses against children'" and "the law's registration requirements for persons convicted of kidnapping a child . . . bear a reasonable, real, and substantial relation to the legislative objective of protecting vulnerable members of our communities, such as children, against recidivism by sex offenders"); *Thomas v. Miss. Dep't of Corr.*, 248 So. 3d 786, 790-91 (Miss. 2018) (holding that Mississippi's inclusion of the offense of parental kidnapping as a sex offense requiring registration was permissible noting that SORNA is considered "the floor or minimum of what a state must require"); *People v. Knox*, 903 N.E.2d 1149, 1154-55 (N.Y. 2009) (holding that offender convicted of nonparental kidnapping and unlawful imprisonment was required to register as a sex offender in New York, even though neither offense included a sexual component); *People v. Lin*, 206 N.Y.S.3d 504, 510 (N.Y. Sup. Ct. 2024) (distinguishing *Knox* and *Brown* and holding that requiring offender convicted of first-degree kidnapping and first-degree unlawful imprisonment of a minor to register as a sex offender was not unconstitutional); *State v. Smith*, 780 N.W.2d 90, 106 (Wis. 2010) (holding that requiring offenders convicted of nonparental false imprisonment to register as sex offenders in Wisconsin is constitutional). *But see State v. Shepherd*, 630 S.W.3d 896, 902-03 (Mo. Ct. App. 2021) (holding that an offender who has been convicted of kidnapping in the second degree, where the offense was not sexually motivated, is not required to register as a sex offender under Missouri law); *People v. Brown*, 232 N.E.3d 1223, 1224 (N.Y. 2023) (distinguishing *Knox* and holding that applying New York's Sex Offender Registration Act to offender convicted of unlawful imprisonment in the first degree where there was no sexual motivation or sexual component "violates his due process rights by impinging on his liberty interest to be free of the improper designation and registration as a 'sex offender'").

[23] CONN. GEN. STAT. § 54-280 (outlining Connecticut's registry of offenders convicted of offenses committed with a deadly weapon); MONT. CODE § 46-23-502(13) (defining "violent offense" for Montana's violent offender registry); UTAH CODE § 77-42-102 (outlining Utah's white collar crime registry); *see also In re M.A.*, 43 N.E.3d 86 (Ill. 2015) (discussing Illinois' Murderer and Violent Offender Against Youth Registry); *State v. Brown*, 399 P.3d 872 (Kan. 2017) (discussing Kansas' drug offender registry); *State v. Galloway*, 50 N.E.3d 1001, 1005 (Ohio Ct. App. 2015) (discussing Ohio's arson registry); *Bivens v. State*, 431 P.3d 985 (Okla. Crim. App. 2018) (addressing Oklahoma's methamphetamine registry).

[24] SORNA includes a similar residual clause, which requires offenders convicted of "any conduct that by its nature is a sex offense against a minor" to register. 34 U.S.C. § 209011(7)(I); *see United States v. Mixell*, 806 F. App'x 180, 183-84 (4th Cir. 2020) (noting "the SORNA residual clause does not impose any requirement that a defendant interact with a minor" and holding that Oregon offense of encouraging child sexual abuse in the second degree constitutes a sex offense under SORNA's residual clause); *United States v. Schofield*, 802 F.3d 722, 731 (5th Cir. 2015) (holding that a violation of 18 U.S.C. § 1470 qualifies as a "sex offense" under SORNA's residual clause); *United States v. Baptiste*, 34 F. Supp. 3d 662, 682 (W.D. Tex. 2014) (holding that offender, who pleaded guilty to making false statements under 18 U.S.C. § 1001(a)(2), was not required to register as a sex offender, even though he admitted to engaging in sexual contact with a minor, because § 1001 is "not a specified offense against a minor, nor is it a sex offense under SORNA"); *United States v. Jensen*, 278 F. App'x 548, 552 (6th Cir. 2008) (holding that conviction of conspiracy to commit sexual abuse requires registration as a sex offender under Kentucky law); *United States v. Dailey*, 941 F.3d 1183, 1195 (9th Cir. 2019) (holding that offender, convicted of transporting a minor across state lines for the purpose of having the minor engage in prostitution under 18 U.S.C. § 1952(a)(3)(A), was required to register under SORNA's residual clause); *United States v. Byun*, 539 F.3d 982, 993-94 (9th Cir. 2008) (holding that conviction for importation of an alien for purposes of prostitution was a specified offense against a minor and required registration as a sex offender under

registration is required if an individual commits an offense as a result of sexual compulsion or for purposes of sexual gratification.[25]

Occasionally, what constitutes a sex offense under SORNA or a sex offense requiring registration in one jurisdiction may not qualify as a sex offense in another jurisdiction. This issue usually arises when a convicted sex offender moves from one jurisdiction to another. In determining whether an offense constitutes a "sex offense," courts typically use one of three approaches, two of which look at the elements of the offense of conviction, including the categorical approach[26] and the modified

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SORNA's residual clause); *United States v. Dodge*, 597 F.3d 1347, 1355 (11th Cir. 2010) (en banc) (noting the SORNA residual clause does not impose any requirement that a defendant interact with a minor and holding that a conviction under 18 U.S.C. § 1470 is registerable under SORNA, even though it is not specifically listed); *State v. Chun*, 76 P.3d 935, 942 (Haw. 2003) (holding that indecent exposure "does not constitute an offense that entails 'criminal sexual conduct'" and offender convicted of indecent exposure was not required to register as a sex offender under Hawaii law); *State v. Coman*, 273 P.3d 701, 709 (Kan. 2012) (holding that a person who commits misdemeanor criminal sodomy is not required to register as a sex offender under Kansas law); *In re K.B.*, 285 P.3d 389, 393 (Kan. Ct. App. 2012) (holding state must prove that an offender engaged in sexual contact "beyond a reasonable doubt" to qualify under its catch-all registration provision); *State v. Duran*, 967 A.2d 184, 197 (Md. 2009) (holding that, because "indecent exposure is not a crime that by its nature is a sexual offense," offender convicted of indecent exposure was not required to register as a sex offender under Maryland law); *People v. Haynes*, 760 N.W.2d 283, 286-87 (Mich. Ct. App. 2008) (holding that conviction of bestiality does not require registration as a sex offender under Michigan law); *State v. Norman*, 824 N.W.2d 739, 742-43 (Neb. 2013) (holding that offender, who was convicted of third-degree assault, was required to register as a sex offender under Nebraska's catch-all registration provision where there was clear and convincing evidence that the offender engaged in sexual contact); *Commonwealth v. Sampolski*, 89 A.3d 1287, 1290 (Pa. Super. Ct. 2014) (holding Pennsylvania offense of corruption of minors for a sexual offense did not constitute a "sex offense" under SORNA's residual clause).

[25] *People v. Contreras*, 70 Cal. App. 5th 247, 254 (2021) (holding that, under California law, trial court has discretion to require sex offender registration if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification); *People v. Glazier*, 205 N.E.3d 79, 81, n.2 (Ill. App. Ct. 2022) (recognizing that offender convicted of murder, where there was no evidence that the murder was sexually motivated, could not be required to register as a sex offender under Illinois law); *State v. Miller*, 4 N.W.3d 29 (Iowa 2024) (holding that offender convicted of harassment of the first degree in Iowa, after he posted a video of himself having intercourse with his girlfriend on a pornography website without her consent, did not commit the offense for the purpose of sexual gratification and was not required to register as a sex offender in Iowa); *State v. Chapman,* 944 N.W.2d 864, 874 (Iowa 2020) (unpublished table decision) (holding that evidence was insufficient to prove sexual motivation requiring defendant's registration as a sex offender where court relied on defendant's *Alford* plea to child endangerment and a victim impact statement from the victim's mother to find the defendant's conduct was sexually motivated); *State v. Busch*, 955 N.W.2d 240, 240 (Iowa Ct. App. 2020) (holding that there was sufficient evidence to support a determination that offender's actions were sexually motivated and that, notwithstanding *Chapman*, the minutes of testimony could be considered for purposes of sex offender registration); *People v. Shelton-Randolph*, No. 360679, 2023 WL 2054964, at *3 (Mich. Ct. App. Feb. 16, 2023) (per curiam) (holding that offender convicted of second-degree murder is required to register as a tier I sex offender under Michigan law where the weight of the evidence demonstrates that a sexual offense occurred); *State v. Wilson*, 947 N.W.2d 704, 708 (Neb. 2020) (noting that Nebraska law concerning sex offender registration requirements "may also apply to individuals that plead guilty to or are convicted of other offenses" that are not inherently sexual); *State v. Ratumaimuri*, 911 N.W.2d 270, 892 (Neb. 2018) (noting Nebraska's Sex Offender Registration Act's requirements "may also apply to individuals that plead guilty to or are convicted of offenses that are not inherently sexual" where the court has found that there is evidence of sexual penetration or sexual contact); *but see People v. Buyund*, 205 A.D.3d 729, 731 (N.Y. App. Div. 2022) (holding that requiring offender convicted of burglary in the first degree as a sexually motivated felony to register as a sex offender was unlawful).

[26] Under the categorical approach, the court must consider only the elements of the crime, "while ignoring the particular facts of the case." *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016) (reiterating that in applying the categorical approach, a court must consider only the elements of the offense and stating that a state crime cannot qualify

as a predicate offense if its elements are broader than those of the listed federal offense); *see, e.g.*, *Grijalva Martinez v. Att'y Gen. of United States*, 978 F.3d 860, 865 (3d Cir. 2020) (applying categorical approach and holding that New Jersey offense of criminal sexual contact is a categorical match to the federal generic offense of sexual abuse of a minor); *United States v. Montgomery*, 966 F.3d 335, 338-39 (5th Cir. 2020) (comparing state offenses to conduct required under 18 U.S.C. § 2242); *Schofield*, 802 F.3d at 731 (holding that attempted transfer of obscene material to a minor falls within the residual clause of SORNA, irrespective of whether the categorical or noncategorical approach is applied); *Baptiste*, 34 F. Supp. 3d at 682 (holding that court should apply categorical approach to determine whether the offense of making false statements under 18 U.S.C. § 1001(a)(2) constitutes a "sex offense" under SORNA's residual clause); *United States v. Walker*, 931 F.3d 576, 579 (7th Cir. 2019) (indicating that under categorical approach, "the actual facts underlying the defendant's conviction don't matter" and instead, "the court compares the elements of the predicate offense—i.e., the facts *necessary* for conviction—to the elements of the relevant federal offense" and "[i]f the elements of the predicate offense are the same (or narrower) than the federal offense, there is a categorical match"); *United States v. Rogers*, 804 F.3d 1233, 1234 (7th Cir. 2015) ("We conclude that the threshold definition of 'sex offense' found in § 16911(5)(A)(i) requires a categorical approach—an inquiry limited to the elements of the offense—but the exception in subsection (5)(C) calls for an examination of the specific facts of the offense conduct."); *Harder v. United States*, Nos. 21-cv-188-jdp; 14-cr-67-jdp, 2021 WL 3418958, at *6 (W.D. Wis. Aug. 5, 2021) (holding that Louisiana offense of indecent behavior with a juvenile is a "sex offense" under SORNA because there is "a categorical match between the SORNA definition of sex offense and the Louisiana statute"); *Syed v. Barr*, 969 F.3d 1012, 1019 (9th Cir. 2020) (applying categorical approach and holding that Cal. Penal Code § 288.3(a), attempting to contact a child with intent to commit an offense, predicated on the crime of lewd and lascivious acts upon a child, is "a categorical crime involving moral turpitude" under federal law); *United States v. Vineyard*, 945 F.3d 1164, 1170 (11th Cir. 2019) (applying categorical approach to determine whether defendant's Tennessee sexual battery conviction was qualifying sex offense under sexual contact provision of SORNA); *United States v. Torchia*, No. 20-CR-00464, 2021 WL 2169484, at *8 (N.D. Ga. May 7, 2021) (applying categorical approach and holding that juvenile offender adjudicated delinquent of sexual contact with another person under Minn. Stat. § 609.343(1)(a) was not a sex offender for purposes of SORNA and had no duty to register where Minnesota offense is not comparable to aggravated sexual abuse under 18 U.S.C. § 2241(c)), *approved and adopted by* 2021 WL 2166863 (N.D. Ga. May 27, 2021); *Duran*, 967 A.2d at 197 (looking at the elements of the offense to determine whether offender convicted of indecent exposure was required to register as a sex offender under Maryland's catchall registration provision); *Doe (No. 151564) v. Sex Offender Registry Bd.*, 925 N.E.2d 533, 538 (Mass. 2010) (holding that a "like violation" under Massachusetts law is "a conviction in another jurisdiction of an offense of which the elements are the same or nearly the same as an offense requiring registration in Massachusetts" and holding that court may not consider facts underlying the conviction); *State v. Martin*, 941 N.W.2d 119, 123 (Minn. 2020) (holding that an "out-of-state conviction would be a violation of a Minnesota offense requiring registration if proving the elements of the out-of-state offense would necessarily prove a violation of that Minnesota law. But if the elements of the out-of-state offense could be proven without proving a violation of Minnesota law, then the out-of-state conviction would not be a violation of a Minnesota offense requiring registration"); *State v. Dumont*, No. A20-0094, 2021 WL 317973, at *1-2 (Minn. Ct. App. Feb. 1, 2021) (holding that offender's out-of-state conviction for corruption of a minor does not require registration as a sex offender in Minnesota where "the elements of the out-of-state offense" and "the elements of the Minnesota offense" do not match); *People v. Morgan*, 213 A.D.3d 1244, 1245 (N.Y. App. Div. 2023) (holding that, under the essential elements test, the Pennsylvania offense of indecent assault and the New York offense of sexual abuse in the second degree cover the same conduct and, because sexual abuse in the second degree is not an enumerated sexually violent offense, offender should not have been designated a sexually violent offender); *Sampolski*, 89 A.3d at 1290 (applying categorical approach and holding that Pennsylvania offense of corruption of minors for a sexual offense does not constitute a "sex offense" under SORNA's residual clause).

categorical approach[27] and another that looks at the underlying facts, known as the circumstance-specific approach or noncategorical approach.[28] This analysis can be quite complicated and has led to significant litigation.

[27] Under the modified categorical approach, a court "looks to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of." *Mathis*, 136 S. Ct. at 2249; *Descamps v. United States*, 570 U.S. 254, 261 (2013) (holding the modified categorical approach is only applicable to statutes that are divisible and when applied, allows courts to consult a limited class of documents); *see, e.g., United States v. Marrowbone*, No. 14-CR-30071, 2014 WL 6694781, at *3 (D.S.D. Nov. 26, 2014) (applying modified categorical approach to determine whether offense qualified as a "sex offense" and noting that the court "may consider a limited scope of facts beyond the statute to determine what elements must have been proven to secure conviction").

[28] *See Mixell*, 806 F. App'x at 183-84 (applying circumstance-specific approach in determining that Oregon offense of encouraging child sexual abuse in the second degree constitutes a "sex offense" under SORNA's residual clause); *United States v. Vanderhorst*, 688 F. App'x 185, 187 (4th Cir. 2017) (relying on *Price* in applying circumstance-specific approach and holding that sex offender convicted for use of a facility in interstate commerce to carry on an unlawful activity, under 18 U.S.C. § 1592, required registration as a sex offender); *United States v. Price*, 777 F.3d 700, 708 (4th Cir. 2015) (holding that the circumstance-specific approach is the appropriate standard to use in determining whether an offense qualifies as a sex offense under SORNA's residual clause and offender's conviction for the common law offense of assault and battery of a high and aggravated nature in South Carolina where the offender forced his 11-year-old daughter to perform oral sex on him is a sex offense under SORNA); *Schofield*, 802 F.3d at 731 (holding that a violation of 18 U.S.C. § 1470 qualifies as a "sex offense" under SORNA's residual clause irrespective of whether the categorical approach or noncategorical approach is applied); *United States v. Thayer*, 40 F.4th 797 (7th Cir.) (holding that the circumstance-specific approach should be applied when determining whether an offense is a "sex offense" under SORNA's residual clause and when determining whether an offender's conduct fell under the Romeo and Juliet exception under SORNA), *reh'g denied*, No. 21-2385, 2022 WL 16557851 (Oct. 31, 2022); *United States v. Burgee*, 988 F.3d 1054, 1060 (8th Cir. 2021) (holding that the court properly used the circumstance-specific approach to determine that offender's prior state-court conviction in South Dakota for sexual exploitation of a minor constituted "conduct that by its nature is a sex offense against a minor" under SORNA and that offender failed to register as a sex offender under SORNA), *aff'g* No. 18-CR-30164, 2019 WL 1332858 (D.S.D. Mar. 25, 2019); *Dailey*, 941 F.3d at 1195 (finding that text and structure of SORNA's residual clause makes clear that it requires noncategorical approach to determine whether conviction was for sex offense against minor); *Byun*, 539 F.3d at 993-94 (noting that the circumstance-specific approach should be applied when determining the age of a victim and that "the underlying facts of a defendant's offense are pertinent in determining whether she has committed a 'specified offense against a minor' and is thus a sex offender" and holding that importation of an alien for purposes of prostitution in violation of 8 U.S.C. § 1328 is a "sex offense" under SORNA); *United States v. Salazar*, Nos. 10-cr-60121, 20-cv-01438, 2021 WL 2366086, at *5 (D. Or. June 9, 2021) (holding that, in applying the noncategorical approach, offender's 1989 Florida conviction for handling and fondling a child under 16 constitutes a sex offense under SORNA's residual clause, and therefore, offender was required to register as a sex offender); *Dodge*, 597 F.3d at 1356 (holding that "courts may employ a noncategorical approach to examine the underlying facts of a defendant's offense, to determine whether a defendant has committed a 'specified offense against a minor' and is thus a 'sex offender' subject to SORNA's registration requirement" under the residual clause); *State v. Hall*, 294 P.3d 1235, 1242 (N.M. 2013) (applying circumstance-specific approach in determining whether offender convicted of California offense of annoying or molesting a child was required to register in New Mexico and holding that when "determin[ing] whether a foreign sex offense is equivalent to a New Mexico sex offense for purposes of SORNA, and where the two offenses when compared do not share the exact same elements, a court must look beyond the elements of the offense and consider whether the defendant's actual conduct, had it occurred in New Mexico, would have constituted a registerable offense").

c) "Substantially Similar"

Most jurisdictions will require registration if the individual was convicted of an out-of-state offense that is "comparable," "similar," or "substantially similar" to one or more of the receiving jurisdiction's registerable offenses.[29]

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[29] *State v. Glodowski*, 463 P.3d 405, 411-12 (Idaho 2020) (affirming conviction for failing to update registration information in Idaho where prior conviction under a Wisconsin statute was "substantially equivalent" to Idaho statute); *Doe v. State*, 352 P.3d 500, 504-05 (Idaho 2015) (finding that conviction under Washington statute for "communication with [a] minor for immoral purposes" was "substantially equivalent" to Idaho statute); *Spencer v. State*, 153 N.E.3d 289, 298 (Ind. Ct. App. 2020) (holding that offender did not meet the statutory definition of a "sexually violent predator" (SVP) as it existed in 2016 when he moved to Indiana because, although his Florida conviction for fondling a young girl is substantially equivalent to level 4 felony child molesting under Indiana law, he committed the crime before July 1, 2014, and therefore does not meet the statutory definition of an SVP); *City of Shawnee v. Adem*, 494 P.3d 134, 138 (Kan. 2021) (affirming court of appeals' decision, holding that sexual battery under the Shawnee Municipal Code is an offense that is comparable to sexual battery under Kan. Stat. § 21-5505(a), which requires registration under the Kansas Offender Registration Act, and requiring offender to register as a sex offender); *Doe (No. 34186) v. Sex Offender Registry Bd.*, 23 N.E.3d 938, 945 (Mass. 2015) (finding that conviction of former U.S. Air Force captain for violation of Article 134, where offender knowingly transported and received child pornography and transported for purposes of sale or distribution obscene, lewd, lascivious, or filthy pictures, constituted a "like conviction" under Massachusetts law requiring registration as a sex offender); *Doe (No. 151564)*, 925 N.E.2d at 539-40 (holding that Maine conviction for unlawful sexual contact was a "like conviction" when compared to the Massachusetts crime of indecent assault and battery on a child under 14 and required registration as a sex offender in Massachusetts); *Skaggs v. Neb. State Patrol*, 804 N.W.2d 611, 615-16 (Neb. 2011) (holding that offender who was convicted of a sex offense in California and was required to register in both California and Florida, was also required to register as a sex offender in Nebraska); *Doe v. Dep't of Safety*, No. 2020-0243, 2021 WL 861787, at *2-3 (N.H. Feb. 25, 2021) (holding that offender's New York conviction for forcible touching was reasonably equivalent to a New Hampshire conviction for sexual assault and he was required to register as a sex offender in New Hampshire); *State v. Orr*, 304 P.3d 449, 449 (N.M. Ct. App. 2013) (holding that an out-of-state offense is equivalent to a sex offense in New Mexico if the offender's actual conduct supporting his or her out-of-state conviction would have constituted one of the sex offenses enumerated by New Mexico law); *In re McIlwain*, 873 S.E.2d 58, 60 (N.C. Ct. App. 2022) (holding that the Texas statute criminalizing possession or promotion of lewd visual material depicting a child is substantially similar to the North Carolina statute criminalizing second-degree sexual exploitation of a minor and offender is required to register as a sex offender in North Carolina); *Hall v. State*, 2021-Ohio-3363, No. C-200308, 2021 WL 4343461, at *3 (Ohio Ct. App. Sept. 24, 2021) (holding that the Kentucky offense of sodomy in the second degree is substantially equivalent to the Ohio offense of gross sexual imposition); *Skehan v. Idaho State Police*, 541 P.3d 679 (Idaho 2024) (holding that the Idaho Bureau of Criminal Identification did not act arbitrarily or capriciously by considering court documents and police reports underlying offender's Oregon conviction in determining that the elements of the Oregon offense of sexual abuse in the third degree is substantially similar to the elements of the Idaho offense of lewd conduct with a minor and that offender convicted of Oregon offense is required to register as a sex offender in Idaho); *Lozada v. S.C. L. Enf't Div.*, 719 S.E.2d 258, 261 (S.C. 2011) (holding that Pennsylvania conviction for unlawful restraint was sufficiently similar to conviction in South Carolina for kidnapping requiring registration as a sex offender in South Carolina); *Miller v. Gywn*, No. E2017-00784-COA-R3-CV, 2018 WL 2332050, at *5 (Tenn. Ct. App. May 23, 2018) (holding that offender convicted of sexually molesting his 11-year-old niece in Maryland, where conviction was based on *Alford* plea, was required to register as a sex offender in Tennessee); *In re K.H.*, 609 S.W.3d 247, 253 (Tex. App. 2020) (affirming trial court's judgment ordering offender to be civilly committed under Texas law where offender's Oregon convictions for sexual abuse required proof that he touched the genitals of a child with the intent to arouse or gratify the sexual desire of any person and, the elements of the offense "display a high degree of likeness to the elements of the Texas offense of indecency with a child by contact," such that "the offenses are substantially similar for purposes of Chapter 841"); *Fritts v. State*, No. 11-18-00359-CR, 2020 WL 7038553, at *5-6 (Tex. App. Nov. 30, 2020) (holding that offender was properly convicted of failing to register as a sex offender under Texas law where the offender was convicted of a sex offense in Ohio that was substantially similar to a Texas offense); *Watson-Buisson v. Commonwealth*, No. 200955, 2021 WL 4628456, at *3 (Va. Oct. 7, 2021) (holding that Louisiana offense of computer-aided solicitation

2. Independent Duty to Register

Sex offenders have an independent duty to register under SORNA,[30] and several courts have held as such.[31] In other words, federal SORNA obligations are independent of sex offender duties under state, local, territorial, or tribal law.

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of a minor is comparable to Virginia offense of taking indecent liberties with a child), *cert. denied*, 142 S. Ct. 1161 (2022). *But see Montgomery*, 966 F.3d at 338 (holding that offender's New Jersey conviction for second-degree sexual assault is not comparable to or more severe than federal aggravated sexual abuse or sexual abuse and does not support a finding that he is a tier III sex offender under SORNA); *Alaska Dep't of Pub. Safety v. Doe*, 425 P.3d 115, 122-23 (Alaska 2018) (holding that Washington statute prohibiting communicating with a minor for immoral purposes and California statute prohibiting annoying or molesting a child under 18 were not similar to Alaska offense of second-degree attempted sexual abuse of a minor and therefore offender was not required to register as a sex offender in Alaska); *Doe (No. 346132) v. Sex Offender Registry Bd.*, 11 N.E.3d 153, 158 (Mass. App. Ct. 2014) (holding that federal conviction for kidnapping of a minor was not a "like conviction" comparable to aggravated rape in Massachusetts and therefore offender was not required to register as a sex offender in Massachusetts); *Hall*, 294 P.3d at 1242 (holding that offense of annoying or molesting a child in California is not equivalent to a New Mexico offense and offender convicted of the same had no duty to register as a sex offender in New Mexico); *State v. Winn*, 435 P.3d 1247, 1252 (N.M. Ct. App. 2018) (holding that Colorado offense of third-degree sexual assault is not equivalent to a New Mexico offense and offender did not have a duty to register as a sex offender in New Mexico); *People v. Malloy*, 228 A.D.3d 1284, 1285 (N.Y. App. Div. 2024) (recognizing that offense of aggravated sexual battery in Kansas does not contain all of the essential elements of a registerable New York sex offense or sexually violent offense); *People v. Diaz*, 50 N.Y.S.3d 388, 390 (N.Y. App. Div. 2017) (holding that Virginia conviction for first-degree murder of a minor, without any sexual conduct or motivation, did not require registration as a sex offender in New York); *Ex parte Overstreet*, No. WR-91,029-02, 2024 WL 1894594 (Tex. Crim. App. May 1, 2024) (per curiam) (holding that offender convicted of a Colorado sex offense that was not substantially similar to a registerable Texas offense did not have a duty to register as a sex offender in Texas); *Ex parte Harbin*, 297 S.W.3d 283, 287 (Tex. Crim. App. 2009) (holding that California conviction for annoying or molesting a child is not substantially similar to a Texas offense requiring registration and therefore, offender had no duty to register as a sex offender in Texas); *Tex. Dep't of Pub. Safety v. Seamens,* No. 03-20-00432-CV, 2021 WL 3743824, at *3 (Tex. App. Aug. 25, 2021) (holding that the offender's Kansas conviction is not substantially similar to the Texas offense of indecency with a child by contact requiring registration as a sex offender "because the two statutes' elements do not 'display a high degree of likeness' and instead 'involve . . . similarity in merely 'a general sense'"); *Tex. Dep't of Pub. Safety v. Anonymous Adult Tex. Resident*, 382 S.W.3d 531, 539 (Tex. App. 2012) (holding that the elements of offender's Massachusetts conviction for indecent assault and battery on a person over 14 years old were not substantially similar to the Texas offense of sexual assault and therefore offender was not required to register as a sex offender in Texas).

[30] *See* Registration Requirements Under the Sex Offender Registration and Notification Act, 86 Fed. Reg. 69,856, at 69,859 (Dec. 8, 2021) (codified at 28 C.F.R. § 72.1-72.8), www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26420.pdf (hereinafter SORNA Rule).

[31] *United States v. Juvenile Male*, 564 U.S. 932, 937-38 (2011) ("*Juvenile Male II*") (noting that "the duty to register under SORNA is not a *consequence*—collateral or otherwise—of the District Court's special conditions of supervision" and "[t]he statutory duty to register [under SORNA] is . . . an obligation that exists 'independent' of those conditions"); *United States v. Del Valle-Cruz*, 785 F.3d 48, 55 (1st Cir. 2015) (holding that the "triggering event for the duty to register [under SORNA] is a sex offense conviction, not a state sentence requiring registration"); *Thomas v. Blocker*, No. 21-1943, 2022 WL 2870151, at *4 (3d Cir. July 21, 2022) (holding that sex offenders' duty to register under SORNA is independent of Pennsylvania law); *United States v. Pendleton*, 636 F.3d 78, 86 (3d Cir. 2011) (holding that a sex offender's duty to register under SORNA is not dependent upon his duty to register under state law and sex offender was required to register under SORNA even though he had no duty to register under Delaware law); *Kennedy v. Allera*, 612 F.3d 261, 267-68 (4th Cir. 2010) (concluding that SORNA imposes obligations on a sex offender that are independent of state law and holding that sex offender had an independent duty to register under SORNA and he was not relieved of that duty just because he initially was unable to register in Maryland because Maryland law did not require registration); *Willman v. Att'y Gen. of United States*, 972 F.3d 819, 823 (6th Cir. 2020) (holding a sex offender's obligations under SORNA are independent of any duties under state law and "SORNA bind[s] all individuals

In practice, unless a jurisdiction's laws require an offender to register, a jurisdiction generally will not register the offender. As a result, it is possible that an offender will be required to register under SORNA, but, because the jurisdiction's laws do not require registration for the offense of conviction, the jurisdiction where the offender lives, works, or attends school will refuse to register the offender.[32]

'convicted' of sex offenses, not just those with corresponding state obligations"); *United States v. Paul*, 718 F. App'x 360, 363-64 (6th Cir. 2017) (holding that "SORNA imposes [registration] duties on *all* sex offenders, irrespective of what they may be obliged to do under state law), *cert. denied*, 140 S. Ct. 342 (2019); *United States v. Meadows*, 772 F. App'x 368, 369 (7th Cir. 2019) (recognizing that federal law may require registration even if Indiana law does not); *Ross v. Carter*, No. 20-cv-00876, 2022 WL 1459375, at *2-3 (S.D. Ind. May 9, 2022) (holding that Indiana's application of federal SORNA to sex offender, who was convicted of a sex offense in Indiana, does not violate the Fourteenth Amendment or the Ex Post Facto Clause, and offender is required to register under SORNA even though he was convicted in state court rather than federal court and "[t]he fact that he was required to register for only ten years under Indiana law does not relieve him of a more onerous federal requirement"); *United States v. Billiot*, 785 F.3d 1266, 1269 (8th Cir. 2015) ("SORNA imposes an independent *federal* obligation for sex offenders to register that does not depend on, or incorporate, a state-law registration requirement."); *United States v. Juvenile Male*, 670 F.3d 999, 1007 (9th Cir. 2012) ("*Juvenile Male III*") (holding that SORNA's "requirement that the defendants register as sex offenders is independent from any requirement under state law"); *United States v. Leach*, 639 F.3d 769, 771 (7th Cir. 2011) (holding that "SORNA imposes a federal obligation on all sex offenders to register in each jurisdiction where he resides, works, and goes to school"), *abrogated on other grounds by Nichols v. United States*, 578 U.S. 104 (2016); *Andrews v. State*, 978 N.E.2d 494, 502 (Ind. Ct. App. 2012) (recognizing that SORNA may require an offender to register as a sex offender even if Indiana law does not and that he "may have a federal duty to register under [SORNA] if he engages in interstate travel, and could be subject to prosecution . . . under 18 U.S.C. § 2250, if he fails to do so"); *Dep't of Pub. Safety & Corr. Servs. v. Doe*, 94 A.3d 791, 807 (Md. 2014) (holding that a sex offender has an independent duty to register under SORNA while also recognizing that the state is not required to register the offender if registration of the offender would be contrary to state law); *see also Doe v. Toelke*, 389 S.W.3d 165, 166-67 (Mo. 2012), *superseded by statute as stated in Smith v. St. Louis Cnty. Police*, No. ED 109734, 2022 WL 2032238 (Mo. Ct. App. June 7, 2022) (holding that offender, who was required to register as a sex offender under federal SORNA based on a conviction entered prior to the effective date of Missouri's sex offender registration laws, still has a duty to register under Missouri law and because the offender "has been required to register pursuant to SORNA, . . . [he] presently is required to register pursuant to SORA"); *Doe v. Lee*, 296 S.W.3d 498, 500 (Mo. Ct. App. 2009) (holding offender has an independent duty to register as a sex offender in Missouri under SORNA and the "obligation operates irrespective of any allegedly retrospective state law").

[32] *Dep't of Pub. Safety & Corr. Servs. v. Doe*, 94 A.3d at 808-10 (*quoting Kennedy*, 612 F.3d at 269) (holding that "Marylanders . . . enjoy 'greater protection under the prohibition on ex post facto laws' of the Maryland Declaration of Rights" and where sex offenders "would only be required to register in Maryland," but the retroactive application of the Maryland registry is unconstitutional, they cannot be required to register in Maryland and noting that "so long as [the sex offenders] are in Maryland, they cannot be required to register as sex offenders in Maryland, notwithstanding the registration requirements imposed directly on individuals by SORNA"); *id.* at 809 ("In other words, there will be 'situations where SORNA imposes a registration requirement directly on an offender, but the jurisdiction where that offender lives, works or attends school refuses to register him because the jurisdiction's laws do not require registration for the offense of conviction.'"); *see also* SORNA Rule, *supra* note 30, at 69,859 (noting that "SORNA's requirements exist independently of state law" but recognizing that "a sex offender is not held liable for failing to provide a type of information if he is unaware of a requirement to provide that information . . . and failure to provide any type of information may be excused if a jurisdiction will not accept that information for inclusion in its registry"). However, offenders are not "exempt from SORNA's registration requirements merely because the jurisdiction in which [they are] required to register has not yet implemented SORNA." *United States v. Brown*, 586 F.3d 1342, 1349 (11th Cir. 2009) (rejecting sex offender's argument that SORNA did not apply to him because Alabama had not yet implemented it); *see also United States v. Thompson*, 431 F. App'x 2, 3 (1st Cir. 2011) (holding that, under SORNA, "the registration requirements for sex offenders are neither conditioned on nor harnessed to state implementation of SORNA's state-directed mandates" and offender's conviction for failing to register as a sex offender in violation of 18 U.S.C. § 2250 did not violate due process even though neither Maine nor New Mexico had yet enacted statutes or promulgated

3. Retroactivity

SORNA applies to all sex offenders regardless of the date of conviction.[33] Jurisdictions are also required to appropriately classify and register certain offenders, including those who previously may not have been required to register, but who would be required to register under the jurisdiction's new SORNA-implementing sex offender registration and notification laws.[34]

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regulations implementing SORNA at the time of offender's interstate travel and failure to register); *United States v. Hester*, 589 F.3d 86, 92 (2d Cir. 2009) (holding that sex offender had a duty to register under SORNA even though New York and Florida had not yet implemented it); *Blocker*, 2022 WL 2870151, at *4-5 (holding that "a sex offender's obligation to register is separate from a state's obligation to comply with federal SORNA" and "a state's 'failure to implement [SORNA] does not give sex offenders a reason to disregard their federal obligation to update their state registrations'"); *United States v. Gould*, 568 F.3d 459, 463-66 (4th Cir. 2009) (holding that sex offender had a duty to register under SORNA even though Maryland had not yet implemented it), *cert. denied,* 559 U.S. 974 (2010); *United States v. Adolph*, 552 F. App'x 653, 655 (9th Cir. 2014) (holding that offender could be prosecuted for failing to register in violation of 18 U.S.C. § 2250 and it was not impossible for sex offender to register in Washington where Washington had not implemented SORNA); *United States v. Benevento*, 633 F. Supp. 2d 1170, 1179 (D. Nev. 2009) (holding that it was not impossible for sex offender to register in Nevada where Nevada had failed to substantially implement a SORNA-compliant system prior to offender's arrest and offender could be prosecuted for failing to register under SORNA).

[33] 34 U.S.C. § 20913(d); Final Guidelines, *supra* note 3, at 38,046 and 38,063; 28 C.F.R. § 72.3; *see* Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1,630, at 1,639 (Jan. 11, 2011), www.govinfo.gov/content/pkg/FR-2011-01-11/pdf/2011-505.pdf (hereinafter Supplemental Guidelines) ("SORNA's requirements apply to all sex offenders, regardless of when they were convicted."); Applicability of the Sex Offender Registration and Notification Act, 72 Fed. Reg. 8,894 (interim rule Feb. 28, 2007) (codified at 28 C.F.R. § 72.3), www.govinfo.gov/content/pkg/FR-2007-02-28/pdf/E7-3063.pdf; Applicability of the Sex Offender Registration and Notification Act, 75 Fed. Reg. 81,849 (Dec. 29, 2010) (codified at 28 C.F.R. § 72.3), www.govinfo.gov/content/pkg/FR-2010-12-29/pdf/2010-32719.pdf (noting that "applying SORNA's requirements to sex offenders with pre-SORNA convictions, including sex offenders required to register on the basis of juvenile delinquency adjudications, appropriately effectuates Congress's purposes in enacting SORNA"); SORNA Rule, *supra* note 30, at 69,856 (noting that 28 C.F.R. § 72.3 "is necessary to implement Congress's intent that SORNA apply to all sex offenders, regardless of when they were convicted"); *see also United States v. W.B.H.*, 664 F.3d 848, 852 (11th Cir. 2011) (noting that SORNA's registration requirements apply to sex offenders convicted before its passage); *United States v. Dumont*, 555 F.3d 1288, 1290 (11th Cir.) (alterations omitted) (quoting 28 C.F.R. § 72.3) ("The requirements of SORNA apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of [SORNA]."), *cert. denied*, 130 S. Ct. 66 (2009), *abrogated on other grounds by Carr v. United States*, 560 U.S. 438 (2010). *Contra Reynolds v. United States*, 565 U.S. 432, 445 (2012) (holding that without affirmative action by the Attorney General, pre-act offenders would not be obligated to register under SORNA and requiring the Attorney General to apply SORNA to all pre-act offenders as soon as feasible; concluding that SORNA's requirement would not apply retroactively to offenders whose offenses occurred prior to enactment until so directed by the Attorney General).

[34] Final Guidelines, *supra* note 3, at 38,046 and 38,063. SORNA requires jurisdictions register offenders whose "predicate convictions predate the enactment of SORNA or the implementation of SORNA in the jurisdiction's program" when the offenders are (1) incarcerated or under supervision, either for the predicate sex offense or for some other crime; (2) they are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or (3) they reenter the jurisdiction's justice system because of conviction for some other crime (irrespective of whether it is a sex offense). *Id.* at 38,046; *see also* Supplemental Guidelines, *supra* note 33, at 1,639; *Stow v. Montgomery*, 601 S.W.3d 146, 151 (Ark. Ct. App. 2020) (holding that sex offender who was convicted of a sex offense in Colorado was required to register as a sex offender in Arkansas, even though his Colorado conviction occurred prior to the effective date of the Arkansas Sex Offender Registration Act); *Hickerson v. United States*, 287 A.3d 237, 239-40 (D.C. 2023) (holding that offender who was convicted of sodomy prior to enactment of the District of Columbia's Sex Offender Registration Act (SORA) but who came under supervision in 2016 for committing a non-sex offense was required to register as a sex offender in the District of Columbia).

4. Homeless & Transient Offenders

SORNA requires that jurisdictions register homeless and transient sex offenders. For the purposes of SORNA, an offender resides in a jurisdiction when the offender has a home in the jurisdiction or habitually lives in the jurisdiction.[35] However, jurisdictions are free to determine who resides in their jurisdiction, thereby requiring registration. Some jurisdictions also require that homeless and transient sex offenders verify their registration information more regularly than sex offenders who have a fixed residence[36] and courts have upheld the constitutionality of the same.[37] Additional issues also often arise in failure-to-register prosecutions involving homeless or transient sex offenders.[38]

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[35] Final Guidelines, *supra* note 3, at 38,061. "Habitually lives" includes places where the sex offender lives with some regularity, i.e., in any place in which the offender lives for at least 30 days. *Id.* at 38,062.

[36] *See, e.g.*, ARK. CODE ANN. § 12-12-909(a)(5) (requiring homeless offenders appear in person every 30 days to update their registration); CAL. PENAL CODE § 290.011(a) (requiring transient offenders update registration at least every 30 days); MASS. GEN. LAWS ch. 6, § 178F (requiring homeless offenders verify their registration information every 30 days).

[37] *See Lamberty v. State*, 108 A.3d 1225 (Del. 2015) (unpublished table decision) (holding that statute requiring homeless sex offenders to register every 30 days was constitutional and did not violate the Equal Protection Clause); *Rodriguez v. State*, 108 A.3d 438, 446-47 (Md. Ct. Spec. App. 2015) (holding that additional registration requirement retroactively imposed on homeless offender, requiring him to register weekly, did not violate Maryland's constitutional prohibition against ex post facto laws and is necessary to properly monitor homeless sex offenders); *State v. Smith*, No. 54067-3-II, 2021 WL 5085425, at *4 (Wash. Ct. App. Nov. 2, 2021) (holding that Washington's sex offender registration statutes do not violate the Ex Post Facto Clauses of the Washington and U.S. Constitutions and noting that "the weekly reporting requirement arising from [the offender's] homelessness has had a tremendously negative impact on [his] life and capacity to rehabilitate" but was not an ex post facto violation); *State v. Boyd*, 408 P.3d 362, 369 (Wash. Ct. App. 2017) (holding that sex offender registration requirement that transient sex offenders check in weekly was not punitive and therefore did not violate the Ex Post Facto Clause of the Washington and U.S. Constitutions); *State v. Enquist*, 256 P.3d 1277, 1281 (Wash. Ct. App. 2011) (holding that requirement for transient sex offenders to check-in weekly did not violate Ex Post Facto Clause of the Washington and U.S. constitutions); *State v. Crofton*, 144 Wash. App. 1047 (2008) (holding that Washington statute requiring homeless offenders to report weekly, in person, does not violate the Ex Post Facto and Equal Protection clauses of the Washington and U.S. constitutions). *But see Santos v. State*, 668 S.E.2d 676, 679 (Ga. 2008) (holding that statutory requirement of registering a change of residence was unconstitutionally vague as applied to homeless or transient sex offenders who possess no street or route address for their residence where it failed to give homeless sex offenders without a residence address with fair notice of how they can comply with the statute's requirement as required by the Due Process Clause of the U.S. Constitution).

[38] *United States v. Pendleton*, No. 08-59-GMS, 2009 WL 2984201, at *4-5 (D. Del. Sept. 18, 2009) (holding that sex offender who repeatedly uses a "mail drop" address as his legal address and makes repeated representations that the address is his permanent address "resides" at that location for the purposes of a federal prosecution for failure to register as a sex offender); *United States v. Kokinda*, 93 F.4th 635, 640, 646 (4th Cir. 2024) (affirming conviction for failing to register as a sex offender in violation of 18 U.S.C. § 2250 and holding that "[t]he district court's use of the SMART Guidelines to instruct the jury on the meaning of 'resides' and 'habitually lives' was a correct statement of the law" and the "court did not err when it used the SMART Guidelines to clarify those terms for the jury"); *Johnson v. City of Chicago*, No. 12-cv-08594, 2016 WL 5720388, at *1 (N.D. Ill. Sept. 30, 2016) (denying City of Chicago's motion for summary judgment and allowing homeless sex offender's procedural due process claim to proceed where there was genuine issue of material fact concerning the city's alleged policy of refusing to register sex offenders who lacked a fixed address); *Beley v. City of Chicago*, No. 12 C 9714, 2015 WL 8153377, at *1, *6 (N.D. Ill. Dec. 27, 2015), *Def.'s summary judgment granted*, No. 12-cv-9714, 2017 WL 770964 (N.D. Ill. Feb. 28, 2017) (highlighting litigation brought by homeless sex offenders against the City of Chicago concerning the city's alleged policy of refusing to register sex offenders who lacked a fixed address); *Saiger v. City of Chicago*, 37 F. Supp. 3d 979, 985 (N.D. Ill. 2014) (allowing homeless sex offender's procedural due process claim to proceed against City of Chicago where offender successfully alleged that city engaged in policy of refusing to register sex offenders who lacked a fixed address); *Derfus v. City of*

Chicago, No. 13 C 7298, 2015 WL 1592558, at *4 (N.D. Ill. Apr. 6, 2015) (granting City of Chicago's motion for summary judgment and holding that the homeless sex offenders were never prevented from registering with the city and they failed to establish that the city had a policy of refusing to register homeless sex offenders); *United States v. Lyte*, No. 21-10316, 2023 WL 3477842, at *1-2 (9th Cir. May 16, 2023) (holding that there was sufficient evidence to support offender's conviction for failure to register as a sex offender in violation of 18 U.S.C. § 2250 where offender failed to register in Arizona and it was proved that he "habitually lived in the states where he was sent to work: he very rarely returned to his listed residence [in Michigan], he lived and worked in the various job sites for up to months at a time, and [he] conceded he essentially lived on the road"); *United States v. Elk Shoulder*, 847 F. App'x 517, 518 (9th Cir. 2021) (holding that offender, who was homeless both before and after incarceration, has a duty to update his registration information upon release from prison where the prison became offender's "residence" for purposes of SORNA and, although he was not required to update his registration while in prison, he was required to do so upon release); *People v. Deluca*, 228 Cal. App. 4th 1263, 1265-67 (2014) (affirming conviction of failure to register under California law and holding that the emergency winter shelter where homeless sex offender was staying constituted a "residence" even though the shelter had limited hours, it was taken down each night and each morning, no mail could be received, and cots were assigned on a first-come, first-served basis); *People v. Allman*, 321 P.3d 557, 565 (Colo. App. 2012) (affirming conviction for failure to register under Colorado law and holding that sex offender's car, which he used as a residence when working away from home during the week, was a "residence" for purposes of Colorado sex offender registration statute); *State v. Edwards*, 87 A.3d 1144, 1148-49 (Conn. App. Ct. 2014) (holding that court's implicit conclusion that homelessness always equals a change of address was in error and noting that sex offender who had been evicted, but continued to live in his truck at the same location, did not have a change of residence address and therefore, could not be prosecuted for failure to update the same); *Lester v. State*, 889 S.E.2d 159 (Ga. Ct. App. 2023) (holding that there was sufficient evidence to support offender's conviction of failure to register as a sex offender where he failed to provide law enforcement with his new sleeping location within 72 hours of becoming homeless); *People v. Sweigart*, 183 N.E.3d 231, 244-45 (Ill. App. Ct. 2021) (reversing failure to register conviction and holding that state failed to prove offender was homeless and had a duty to register as a sex offender); *People v. Wlecke*, 6 N.E.3d 745, 754-55 (Ill. App. Ct. 2014) (holding that homeless sex offender who lacked identification and was turned away from registering could not be convicted for failure to register); *Branch v. State*, 917 N.E.2d 1283, 1286 (Ind. Ct. App. 2009) (holding that homeless sex offender was successfully prosecuted for failure to register under Indiana law when he failed to inform law enforcement that he had left his primary residence, a homeless shelter); *Milliner v. State*, 890 N.E.2d 789, 792 (Ind. Ct. App. 2008) (affirming conviction for failure to register and holding that sex offender, who had been kicked out of his home by his wife and was staying with friends, was not "homeless" and was required to update his registration every time he moved); *Tobar v. Commonwealth*, 284 S.W.3d 133, 135-36 (Ky. 2009) (holding that homeless sex offender was required to report a change of residence when he was asked to leave homeless shelter and Kentucky's failure to register statute was not unconstitutionally vague); *Commonwealth v. McClamy*, 178 N.E.3d 901 (Mass. App. Ct. 2021) (unpublished table decision) (affirming sex offender's conviction for failing to register under Massachusetts law where law enforcement located offender at an apartment a day after he verified his registration information and registered his current address as "homeless" and offender repeatedly told the officer he lived at the apartment, he had clothes and other personal property at the address, he did laundry at the apartment, and answered the front door to visitors); *Commonwealth v. Bolling*, 893 N.E.2d 371, 377 (Mass. App. Ct. 2008) (holding evidence was insufficient to support conviction for failure to register where homeless offender spent three nonconsecutive nights with a friend); *State v. Samples*, 198 P.3d 803, 807 (Mont. 2008) (affirming homeless sex offender's conviction for failure to register under state law and holding that, when offender left homeless shelter, he changed his residence and was required to report the same to law enforcement); *McRae v. State*, 131 Nev. 1320 (2015) (unpublished table decision) (affirming conviction for failure to register under Nevada law and holding that homeless sex offender was required to notify law enforcement of his change of address after he was evicted); *People v. Allen*, 182 N.Y.S.3d 112, 117-18 (N.Y. App. Div. 2023) (holding that New York statute requiring level 3 sex offenders to verify their address within 90 days is void for vagueness when "applied to homeless sex offenders who, like defendant here, possess no address for their residence" and deprives the offender of due process under the New York and U.S. Constitutions because the statute "contains no objective standard or guidelines that would put homeless sex offenders without an address on notice of what conduct is required of them," but recognizing that "[i]t does not exempt homeless sex offenders who are able to provide an address such as a shelter at which they are staying"); *State v. Deshaw*, 478 P.3d 591, 594-95 (Or. Ct. App. 2020) (holding that the trial court applied an incorrect legal standard when it found sex offender guilty of failure to report as a sex offender because it relied on a determination that offender spent significant time at the pond and not on a determination that he had "moved out" from his residence behind Walmart and noting that the trial court did not convict

5. Registration for Military Convictions

SORNA requires individuals who are convicted of certain military offenses to register as sex offenders in each jurisdiction where the offender lives, works, or is a student.[39] More specifically, anyone convicted of a Uniform Code of Military Justice (UCMJ) offense listed in Department of Defense Instruction 1325.07 must register as a sex offender.[40] Jurisdictions must determine which military convictions will be recognized as registerable offenses and how they will be categorized; however, doing so can be complicated, particularly when a jurisdiction compares military offenses that might have a sexual component (e.g., "Conduct Unbecoming an Officer") to jurisdiction-level sex offenses.[41]

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the offender based on his failure to report within 10 days of moving out of his current residence from behind Walmart, but, instead, it convicted him based on his failure to register the pond as a second residence); *Commonwealth v. Wilgus*, 40 A.3d 1201, 1207-08 (Pa. Super. Ct. 2009) (holding that sex offender had a duty to report a change of residence when he was unable to rent a room at the address where he reported he would be living upon release from prison and that there is no exception to registration requirements for homeless offenders); *Nikolaev v. State*, 474 S.W.3d 711, 713-14 (Tex. App. 2014) (holding that sex offender, who worked as a truck driver and had frequent and prolonged absences from his registered residence, could not be convicted of failure to register under Texas law because he never stopped using his home as his primary residence); *Breeden v. State*, No. 05-06-00862-CR, 2008 WL 787934, at *1-2 (Tex. App. Mar. 26, 2008) (holding that sex offender, who moved out of a motel room into a vehicle parked in the motel parking lot, was required to report a change of address and his failure to do so was a sufficient basis for a prosecution of failure to register under Texas law); *State v. Savage*, 951 N.W.2d 838, 851-53 (Wis. 2020) (holding that homeless sex offender's inability to provide address at which he would be residing was not a defense to Wisconsin offense of failure to register); *State v. Dinkins*, 810 N.W.2d 787, 799 (Wis. 2012) (holding that homeless sex offender cannot be convicted of failure to register where he fails to report the address where he will be residing when he is unable to provide that information because he has nowhere to live and cannot secure housing).

[39] 34 U.S.C. § 20911(5)(A)(iv); *see United States v. Kebodeaux*, 570 U.S. 387, 399 (2013) (holding that offender convicted of the military offense of carnal knowledge was subject to SORNA's registration requirements); *United States v. Mingo*, 964 F.3d 134, 139 (2d Cir. 2020) (holding that delegation to Secretary of Defense of which particular military offenses should qualify as "sex offenses" under SORNA did not violate the nondelegation doctrine); *United States v. Coppock*, 765 F.3d 921, 924 (8th Cir. 2014) (*citing Kebodeaux*, 570 U.S. at 394) (noting "*Kebodeaux* establishes, therefore, that Congress has some degree of authority to apply SORNA to federal sex offenders based on violations of the UCMJ, and to punish violations of SORNA with criminal penalties under § 2250(a)")); *Guerrero v. Blakely*, No. 12-CV-1072, 2014 WL 4686482, at *14-15 (N.D. Ala. Sept. 12, 2014) (recognizing that the Alabama Sex Offender Registration and Notification Act "takes pains to provide almost no limitations on what qualifies as a sex conviction and expressly incorporates military convictions" and exceeds federal SORNA requirements). See *infra* I.D for additional information regarding where sex offenders are required to register.

[40] *See* U.S. DEP'T OF DEF., UNITED STATES DEPARTMENT OF DEFENSE INSTRUCTION 1325.07, at 79 (2013), www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132507p.pdf (incorporating amendments made Aug. 19, 2020). Although the U.S. Coast Guard is part of the Department of Homeland Security, their proceedings are also governed by this instruction. *Id*. at 2; *see also Kebodeaux*, 570 U.S. at 393-94, 399 (holding that offenders who are convicted by military tribunals of a registerable sex offense must register with any jurisdiction where they live, work, or go to school); *Respondek v. State*, No. 1685, 2021 WL 4496195, at *13-14 (Md. Ct. Spec. App. Oct. 1, 2021) (holding that former lieutenant in the Navy, who was convicted of possession of child pornography under the UCMJ, is required to register as a sex offender under Maryland law and federal SORNA).

[41] *United States v. Brown*, 774 F. App'x 837, 841 (5th Cir. 2019) (applying categorical approach and holding that sexual assault under Article 120 of the UCMJ is comparable to the federal offense of sexual abuse under 18 U.S.C. § 2242 and therefore constitutes a "sex offense" under SORNA); *United States v. Taylor*, 644 F.3d 573, 575-77 (7th Cir. 2011) (applying modified categorical approach and holding that offender convicted of forcible sodomy in violation of Article 125 of the UCMJ under 10 U.S.C. § 925, where the statute prohibits sodomy in all forms, is required to register as a tier III offender under SORNA and noting that "a judge may examine a limited set of additional materials—such as the charging instrument in this case—to determine the portion of 10 U.S.C. § 925 to which the defendant pleaded

SORNA also requires registration of sex offenders who are released from military corrections facilities or, upon conviction, if they are not subject to confinement.[42] A separate federal registration program does not exist for sex offenders who are released from military custody.[43] However, the Department of Defense (DoD) is involved with sex offender registration and notification.

The U.S. Congress and DoD have both taken steps to address the issue of convicted sex offenders in the military.[44] Notably, an individual who is required to register as a sex offender is prohibited from enlisting or becoming an officer in the Armed Forces.[45] Both the Army and the Navy require that anyone convicted of a sex offense be processed for administrative separation,[46] and the Army

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guilty"); *United States v. Coulson*, 86 F.4th 1189, 1193, 1195-96 (8th Cir. 2023) (holding that offender convicted of forcible pandering in violation of UCMJ Article 120c(b) is required to register as a tier I sex offender under SORNA and that the categorical approach applies to SORNA's tier analysis); *Billingsley v. State*, 115 So. 3d 192, 198 (Ala. Crim. App. 2012) (holding that "convictions in 'federal court' . . . include convictions in military courts" and a person convicted of a qualifying offense in a U.S. military court is required to register as a sex offender in Alabama); *Doe (No. 34186) v. Sex Offender Registry Bd.*, 23 N.E.3d 938, 943-45 (Mass. 2015) (requiring an offender convicted under article 134 of the UCMJ for an offense relating to child pornography to register because the offense of conviction was determined to be a "like violation" to a state offense); *A.L. v. Pa. State Police*, 274 A.3d 1228, 1240 (Pa. 2022) (recognizing use of the modified categorical approach was appropriate because the military offense is divisible and holding that sexual assault under the UCMJ is not comparable to sexual assault under Pennsylvania law); *Tex. Dep't of Pub. Safety v. Brown*, No. 07-20-00169-CV, 2021 WL 4192165, at *4 (Tex. App. Sept. 15, 2021) (holding that a conviction for indecent acts with children under Article 134 of the UCMJ is not "substantially similar" to the Texas offense of indecency with a child and therefore, the defendant did not have a duty to register as a sex offender under Texas law).

[42] 34 U.S.C. § 20931. In 2015, the Military Sex Offender Reporting Act of 2015 was passed as part of the Justice for Victims of Trafficking Act, requiring that DoD provide information to NSOR and NSOPW on any sex offender who is released from a military corrections facility or is adjudged by courts-martial. MSORA, *supra* note 1.

[43] Final Guidelines, *supra* note 3, at 38,064 ("There is no separate federal registration program for sex offenders required to register under SORNA who are released from federal or military custody. Rather, such sex offenders are integrated into the sex offender registration programs of the states and other (non-federal) jurisdictions following their release.").

[44] In 2014, the Inspector General of the DoD issued a report regarding DoD's compliance with SORNA. INSPECTOR GEN., U.S. DEP'T OF DEFENSE, REPORT NO. DODIG-2014-103: EVALUATION OF DOD COMPLIANCE WITH THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (2014), https://media.defense.gov/2014/Aug/29/2001713392/-1/-1/1/DODIG-2014-103.pdf; *see also* MSORA, *supra* note 1.

[45] National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 523, 126 Stat. 1723 (codified at 10 U.S.C. § 504 note) ("An individual may not be provided a waiver for commissioning or enlistment in the Armed Forces if the individual has been convicted under Federal or State law of a felony offense of [rape, sexual abuse, sexual assault, incest, or any other sexual offense]."); Enlistment, Appointment, and Induction Criteria, 32 C.F.R. § 66.6(b)(8)(iii) (2021).

[46] U.S. DEP'T OF ARMY, REG. 135-178, ARMY NATIONAL GUARD AND RESERVE: ENLISTED ADMINISTRATIVE SEPARATIONS sec. 11-4 (June 21, 2024), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN37322-AR_135-178-000-WEB-1.pdf (hereinafter ARMY REG. 135-178); U.S. DEP'T OF ARMY, REG. 635-200, PERSONNEL SEPARATIONS: ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS secs. 14-5, 14-12 (June 28, 2021), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN40058-AR_635-200-001-WEB-3.pdf (hereinafter ARMY REG. 635-200); U.S. DEP'T OF NAVY, CHIEF, NAVAL OPERATIONS INSTR. 1752.1C, NAVY SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM 2-26, 4-14 (Aug. 13, 2015), www.secnav.navy.mil/doni/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1752.1C.pdf; *see also* U.S. DEP'T OF NAVY, COMMANDER, NAVY INSTALLATIONS COMMAND INSTR. 1752.1, POLICY FOR SEX OFFENDER TRACKING, ASSIGNMENT, AND INSTALLATION ACCESS RESTRICTIONS 3 (Feb. 7, 2011), *available at*

prohibits overseas assignments for any soldier convicted of a sex offense.[47] The Navy also minimizes access by sex offenders to Navy installations and facilities and gives installation commanding officers authority to bar sex offenders from installations.[48]

Additionally, in 2016, DoD issued an instruction establishing policies for the "identification, notification, monitoring and tracking of DoD-affiliated personnel" who are registered sex offenders.[49] Several branches have also adopted policies and procedures to independently track and monitor sex offenders who are active duty members, civilian employees, contractors, or dependents of active duty members located on U.S. military installations at home and abroad.[50] For example, the Army requires all sex offenders who reside or are employed on an Army installation, including those outside of the continental United States, to register with the installation provost marshal.[51]

However, if a military base is located in a "federal enclave,"[52] it is possible that an offender who resides, works, or attends school on that military base may not be required to register with the state or territory where the military base is located.[53] Therefore, in some locations there may be sex offenders present on military bases who are not required to register with the state because they live, work, and attend school solely on land considered to be a federal enclave.

6. Juvenile Registration

SORNA requires registration for a specific subset of juvenile sex offenders who have been adjudicated delinquent of serious sex offenses[54] and for juveniles who are prosecuted as adults.[55] Specifically, SORNA requires that jurisdictions register juveniles who were at least 14 years old at

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https://ffr.cnic.navy.mil/Portals/76/Navy%20Housing/Headquarters/Policy/CNICINST%201752.1%20Sex%20Offender%20Policy.pdf?ver=HzhmZS916JBNfGK0ty0a8Q%3d%3d (hereinafter INSTR. 1752.1).

47 ARMY REG. 135-178, *supra* note 46; ARMY REG. 635-200, *supra* note 46.

48 INSTR. 1752.1 at 2-3, *supra* note 46.

49 U.S. DEP'T OF DEF., UNITED STATES DEPARTMENT OF DEFENSE INSTRUCTION 5525.20: REGISTERED SEX OFFENDER (RSO) MANAGEMENT IN DOD (2023), www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/552520p.pdf.

50 U.S. DEP'T OF ARMY, REG. 190-45, MILITARY POLICE: LAW ENFORCEMENT REPORTING para. 2-7 (Sept. 27, 2016), https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN6734_r190_45_Web_FINAL.pdf (outlining the responsibilities of convicted sex offenders who reside or are employed on an Army installation, Provost Marshals, and Directors of Emergency Services).

51 32 C.F.R. § 635.6 (2016) (addressing the registration of sex offenders on Army installations); *see also* U.S. DEP'T OF ARMY, REG. 27-10, LEGAL SERVICES: MILITARY JUSTICE §§ 24-1 to 24-4 (Mar. 20, 2024), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN38919-AR_27-10-000-WEB-1.pdf (addressing registration of military sexual offenders). Military law enforcement is also directed to establish memoranda of understanding with state and local sex offender registration officials to establish or improve the flow of information regarding sex offenders. 32 C.F.R. § 635.20 (2015).

52 A "federal enclave" includes territory or land that a state has ceded to the United States and includes military bases, national parks, federally administered highways, and federal Indian reservations. *Enclave*, BLACK'S LAW DICTIONARY (11th ed. 2019). The U.S. Government has exclusive authority and jurisdiction over federal enclaves. *Id.*; *see* U.S. CONST. ART. I, § 8, cl. 17; *see also* 40 U.S.C. § 3112 (addressing federal jurisdiction over federal enclaves).

53 If a military member commits a sexual offense on a military base, under the "federal enclave doctrine," the military member potentially may not be subject to the jurisdiction of the state in which the enclave is located. *Respondek v. State*, No. 1685, 2021 WL 4496195, at *13 n.12 (Md. Ct. Spec. App. Oct. 1, 2021) (discussing federal enclave doctrine). A similar issue arises regarding offenders located within national parks or other federally held lands that are considered a "federal enclave."

54 When a juvenile has been convicted of a sex offense in juvenile court, it is typically referred to as an "adjudication of delinquency" or the juvenile is said to have been "adjudicated delinquent."

55 34 U.S.C. § 20911(8).

the time of the offense and who have been adjudicated delinquent for committing, attempting, or conspiring to commit a sexual act with another by force or threat of serious violence or by rendering the victim unconscious or involuntarily drugging the victim.[56]

The implementation of this provision varies across jurisdictions,[57] with states differing in how they handle registration of juvenile sex offenders and whether registration is mandatory. Some states only require registration of juveniles adjudicated delinquent of certain sex offenses,[58] some only

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[56] *Id.*; Final Guidelines, *supra* note 3, at 38,050. A "sexual act" means any degree of genital or anal penetration, and any oral-genital or oral-anal contact. 18 U.S.C. § 2246.

[57] In 2016, the Department of Justice published the Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, which provided additional guidance regarding the substantial implementation of the juvenile registration requirement by eligible jurisdictions, in the Federal Register. Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 50,552, at 50,552 (Aug. 1, 2016), www.govinfo.gov/content/pkg/FR-2016-08-01/pdf/2016-18106.pdf (hereinafter Supplemental Juvenile Guidelines). The Supplemental Juvenile Guidelines provided the SMART Office with the ability to consider additional factors in determining whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions, including the following:

(i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses;
(ii) Policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and
(iii) Other policies and practices to identify, track, monitor or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes.

Id.

[58] *United States v. Shannon*, 511 F. App'x 487, 490-91 (6th Cir. 2013) (holding that an individual who was adjudicated delinquent in Ohio for gross sexual imposition, a SORNA-registerable offense, could be required to register as a sex offender as a mandatory condition of probation for a subsequent, unrelated federal conviction of possession of a firearm by a felon); *A.W. by and through Doe v. Nebraska*, 865 F.3d 1014, 1020 (8th Cir. 2017) (determining whether an individual is required to register as a sex offender in another jurisdiction depends on whether the registration requirement in that other jurisdiction is based on the individual's being a "sex offender" as that term is defined by Nebraska law and holding that Nebraska's sex offender registration laws did not apply to juvenile who was adjudicated delinquent in Minnesota for first-degree criminal sexual conduct because the juvenile did not fall within the definition of "sex offender" because in Nebraska, "sex offender" means someone convicted of a sex crime and does not include juveniles adjudicated delinquent); *Doe v. Peterson*, No. 18CV422, 2018 WL 5255179, at *6 (D. Neb. Oct. 22, 2018) (holding that requiring juvenile, who was adjudicated delinquent of second-degree sexual abuse in Iowa and who was required to register as a sex offender in Iowa, to register in Nebraska did not violate offender's right to travel or deny him of equal protection even though juveniles adjudicated delinquent in Nebraska are not required to register as sex offenders in Nebraska); *In re T.O.*, 84 Cal. App. 5th 252, 265 (2022) (holding that the juvenile court lacked authority to impose sex offender registration requirements upon juvenile adjudicated delinquent for committing rape of a child under 14 where juvenile's disposition did not include commitment to California's Department of Juvenile Justice since statute only mandates sex offender registration for juveniles adjudicated delinquent of a qualifying sex offense where they have been discharged or paroled from the department); *Clark v. State*, 957 A.2d 1, 4 (Del. 2008) (holding that lifetime registration requirement for juvenile adjudicated delinquent for committing attempted rape in the second degree and unlawful sexual contact in the second degree was proper and did not conflict with the statutory requirement requiring that the best interests of the child be considered); *Murphy v. Commonwealth*, 500 S.W.3d 827, 832 (Ky. 2016), *superseded by statute*, KY. REV. STAT. ANN. § 17.510(6)(b), *as recognized in State v. Clemens*, 915 N.W.2d 550 (Neb. 2018) (holding that juvenile adjudicated delinquent for committing third-degree criminal sexual conduct against a 13-year-old in Michigan was required to register in Kentucky and could be convicted of failure to register, even though juveniles adjudicated delinquent in Kentucky are not required to register as sex offenders in Kentucky); *In re J.C.L.*, No. A21-1018, 2022 WL 1210405, at *5 (Minn. Ct. App. Apr. 25, 2022) (holding the court did not err in requiring juvenile, who was adjudicated delinquent of dissemination of pornographic work involving a minor, to comply with Minnesota's predatory-offender-registration statute, which requires a person to register as a sex offender if convicted or adjudicated delinquent of an enumerated offense, because juvenile was adjudicated delinquent of an offense enumerated for predatory registration, and therefore was "statutorily required to register as a predatory offender"); *State v. Clemens*,

require registration of juveniles who have reached a certain age, and others only require registration if the juvenile is found to be at risk of reoffending.[59] Some jurisdictions even go beyond SORNA's requirements.[60] Generally speaking, however, most jurisdictions require registration if a juvenile is convicted of a sex offense in adult court.

Many of the same legal considerations that arise when dealing with adult sex offenders are often applicable to juvenile sex offenders, such as Sixth Amendment,[61] Eighth Amendment,[62] ex post

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915 N.W.2d 550, 559 (Neb. 2018) (*citing* Ky. Rev. Stat. Ann. § 17.510(6)(b)) (holding that Nebraska sex offender registration statute "require[s] registration in Nebraska where an individual is required to register in another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, regardless of whether the registration in the other jurisdiction is based on a juvenile adjudication" and noting that Kentucky statute at issue in *Murphy v. Commonwealth* excludes registration based on juvenile adjudications in other states); *In re D.A.*, 2022-Ohio-1359, No. 4-21-15, 2022 WL 1211190, at *9 (Ohio Ct. App. Apr. 25, 2022) (holding court did not err in requiring juvenile, who was adjudicated delinquent of gross sexual imposition, to register as a sex offender); *but see In re Crockett*, 159 Cal. App. 4th 751, 759-63 (2008) (holding that juvenile adjudicated delinquent of sex offense in Texas who was required to register as a sex offender in Texas as a condition of probation was not required to register in California after moving there to be with his mother and could not be convicted of failure to register under California law).

For a summary of juvenile registration schemes across the United States, see Juvenile Sex Offender Registration Under SORNA.

[59] *N.L. v. State*, 989 N.E.2d 773, 781 (Ind. 2013) (holding that juvenile adjudicated delinquent of committing sex offense that, had it been committed by an adult, would constitute felony sexual battery, could only be required to register as a sex offender after an evidentiary hearing, where the court must find by "clear and convincing" evidence that the juvenile offender is likely to reoffend); *State v. A.R.H.*, 530 P.3d 897, 911 (Or. 2023) (affirming juvenile court's order requiring juvenile adjudicated delinquent of sexual assault of an animal to register as a sex offender and holding that there was substantial evidence to support that the juvenile offender failed to prove by clear and convincing evidence that he was rehabilitated and did not pose a threat to the safety of the public); *In re A.L.M.*, 469 P.3d 244, 253 (Or. Ct. App. 2020) (holding that court did not err in requiring juvenile adjudicated delinquent of attempted first-degree sodomy to register as a sex offender where court found that offender did not demonstrate by clear and convincing evidence that he was unlikely to reoffend).

[60] *See*, *e.g.*, *State v. I.C.S.*, 145 So. 3d 350, 351 (La. 2014) (holding that adult offenders who entered pleas of guilty to the charge of indecent behavior with a juvenile are required to register as sex offenders in Louisiana, even though they committed the sex offenses prior to the age of 14 and they would not have been required to register had they entered guilty pleas as juveniles in juvenile court); *People ex rel. J.L.*, 800 N.W.2d 720, 721-22 (S.D. 2011) (affirming conviction and holding that requiring 14-year-old boy who was adjudicated delinquent for engaging in consensual sexual intercourse with his 12-year-old girlfriend to register as a sex offender for life did not yield an absurd result, even though the offense would have constituted statutory rape had he been convicted as an adult).

[61] *In re Jonathan T.*, 193 N.E.3d 1240, 1247 (Ill. 2022) (recognizing that minors in delinquency proceedings have a constitutional right to effective assistance of counsel; juveniles who are found delinquent may be subject to serious, life-altering consequences, including the duty to register as sex offenders if adjudicated guilty of a criminal sexual offense; and juveniles do not have the right to file postconviction petitions and are therefore unable to seek collateral review of their claims of ineffective assistance of counsel and holding that the *Krankel* procedure, which a circuit court must follow when a defendant makes a *pro se*, post-trial claim of ineffective assistance of counsel, applies in juvenile delinquency proceedings and that the circuit court should have conducted a preliminary *Krankel* inquiry); *In re Richard A.*, 946 A.2d 204, 213-14 (R.I. 2008) (holding that Rhode Island sex offender registration statute that requires certain juveniles adjudicated delinquent to register as sex offenders does not violate the Sixth Amendment).

[62] *United States v. Under Seal*, 709 F.3d 257, 265 (4th Cir. 2013) (holding that SORNA's registration requirements as applied to juvenile adjudicated delinquent for committing aggravated sexual abuse did not violate the Eighth Amendment's prohibition on cruel and unusual punishment); *Doe I v. Peterson*, 528 F. Supp. 3d 1068, 1082-83 (D. Neb. 2021) (holding that the Nebraska Sex Offender Registration Act, which requires out-of-state juvenile offenders who were adjudicated delinquent of a sex offense in another jurisdiction and who are required to register as sex offenders in that jurisdiction to register in Nebraska, does not violate the Eighth Amendment's prohibition against cruel

and unusual punishment), *aff'd*, 43 F.4th 838 (8th Cir. 2022); *United States v. Pretty on Top*, 857 F. App'x 914, 914-15 (9th Cir. 2021) (mem.) (affirming conviction for failure to register and holding that application of SORNA to a juvenile sex offender does not violate the Eighth Amendment), *cert. denied*, 142 S. Ct. 829 (2022); *Mack v. Dixon*, No. 21cv963, 2023 WL 2386310 (N.D. Fla. Mar. 6, 2023) (holding that requiring a juvenile to register as a sex offender does not violate the Eighth Amendment); *In re J.C.*, 13 Cal. App. 5th 1201, 1217 (2017) (holding that public disclosure aspect of juvenile sex offender registration is not punitive and therefore, requiring juvenile offenders to register as sex offenders does not constitute cruel and unusual punishment); *In re T.B.*, 489 P.3d 752, 768-69 (Colo. 2021) (holding that mandatory lifetime sex offender registration for offenders with multiple juvenile adjudications constitutes punishment and is cruel and unusual and, as a result, the Colorado Sex Offender Registration Act violates the Eighth Amendment in imposing mandatory lifetime sex offender registration for offenders with multiple juvenile adjudications); *People ex. rel. Birkett v. Konetski*, 909 N.E.2d 783, 799 (Ill. 2009) (holding that imposition of Illinois' sex offender registration requirements on juveniles does not amount to punishment and therefore does not violate the state constitution or the Eighth Amendment to the U.S. Constitution); *In re J.W.*, 787 N.E.2d 747, 757 (Ill. 2003) (holding that requiring juvenile adjudicated delinquent to register as a sex offender for life does not constitute punishment and therefore does not violate the Eighth Amendment); *State v. Hess*, 983 N.W.2d 279, 284-85 (Iowa 2022) (holding that *In re T.H.* only applies to juvenile sex offenders whose cases are prosecuted and resolved in juvenile court, and requiring juvenile sex offenders prosecuted in district court to register does not constitute punishment); *In re T.H.*, 913 N.W.2d 578, 596-97 (Iowa 2018) (holding that requiring mandatory sex offender registration for juvenile adjudicated delinquent of a sex offense committed by force, threat of serious violence, by rendering the victim unconscious, or by involuntarily drugging the victim was punitive, but did not violate prohibition of cruel and unusual punishment under either state or federal constitutions); *State v. Graham*, 897 N.W.2d 476, 477-78 (Iowa 2017) (holding that requiring juvenile sex offender to register for life does not constitute cruel and unusual punishment in violation of either the state or federal constitutions); *In re A.N.*, 974 N.W.2d 536 (Iowa Ct. App. 2022) (holding that requiring juvenile offender, who was adjudicated delinquent of acts that would constitute second-degree burglary and third-degree criminal mischief if he were an adult and where the court found the offense was sexually motivated, to register as a sex offender does not constitute cruel and unusual punishment in violation of the Iowa Constitution); *State v. N.R.*, 495 P.3d 16, 25 (Kan. 2021) (per curiam) (holding, in as-applied challenge, that requiring a juvenile sex offender to register for life under Kansas law does not violate state and federal prohibitions against cruel and unusual punishment), *cert. denied,* 142 S. Ct. 1678 (2022); *Earnest E. v. Commonwealth*, 156 N.E.3d 778, 784-85 (Mass. 2020) (holding that trial court did not abuse its discretion in denying juvenile sex offender's motion to be removed from the sex offender registry while refraining from deciding whether requiring juvenile sex offenders to register as sex offenders violates the Eighth Amendment); *People v. Malone*, No. 331903, 2023 WL 6164912, at *6 (Mich. Ct. App. Sept. 21, 2023) (per curiam) (holding that requiring juvenile offenders to register for life, even when convicted as adults, does not constitute cruel or unusual punishment under the Michigan Constitution); *People v. T.D.*, 823 N.W.2d 101, 110 (Mich. Ct. App. 2011) (holding that requiring juvenile adjudicated delinquent of second-degree criminal sexual conduct to register under Michigan law was not cruel or unusual punishment under Michigan's Constitution), *vacated as moot sub nom. In re TD*, 821 N.W.2d 569 (Mich. 2012); *People v. Dipiazza*, 778 N.W.2d 264, 274 (Mich. Ct. App. 2009), *called into doubt by statute as stated in In re Daniel*, No. 334057, 2017 WL 4015764 (Mich. Ct. App. 2017) (holding that requiring juvenile offender, who was convicted of having consensual sex with his 14-year-old girlfriend when he was 18 and he had successfully completed a juvenile diversion program, to register as a sex offender constituted cruel and unusual punishment under the Michigan Constitution); *State v. Blankenship*, 48 N.E.3d 516, 525 (Ohio 2013) (holding that requiring 21-year-old offender, who was convicted of unlawful sexual contact with a minor, where the victim was 15, to register as a tier II offender does not constitute cruel and unusual punishment in violation of the Ohio Constitution or the Eighth Amendment to the U.S. Constitution while also stating that "the enhanced sex-offender reporting and notification requirements . . . are punitive in nature, and violate the Eighth Amendment when applied to certain juveniles"); *In re C.P.*, 967 N.E.2d 729, 746 (Ohio 2012) (holding that Ohio statute requiring juvenile sex offenders register for life violates the Eighth Amendment and Ohio Constitution's prohibition against cruel and unusual punishment); *State v. Spencer*, No. 112058, 2023 WL 6153636 (Ohio Ct. App. Sept. 21, 2023) (holding that classification of juvenile offender convicted in adult court as a tier III sex offender does not constitute cruel and unusual punishment); *Commonwealth v. Zeno*, 232 A.3d 869, 872 (Pa. Super. Ct. 2020) (holding that requiring an offender, who has been convicted in criminal court for acts committed while a juvenile, to register under Pennsylvania's SORNA constitutes cruel and unusual punishment); *In re Justin B.*, 747 S.E.2d 774, 776 (S.C. 2013) (holding that lifetime GPS monitoring of a juvenile adjudicated delinquent of a sex offense does not violate the Eighth Amendment); *State v. Domingo-Cornelio*, 527 P.3d 1188, 1191 (Wash. Ct. App. 2023) (holding that mandatory sex offender registration for

juveniles is not punishment and therefore, the Eighth Amendment does not apply); *In re C.G.*, 976 N.W.2d 318, 333-34 (Wis. 2022) (holding that transgender juvenile offender's placement on the sex offender registry is not "punishment" under the Eighth Amendment and, "[e]ven if it were, sex offender registration is neither cruel nor unusual").

facto,[63] procedural[64] and substantive due process[65] and equal protection challenges,[66] and failure-to-register issues.[67] There are also legal issues unique to juvenile offenders, including jurisdictional

[63] *Doe I v. Peterson*, 528 F. Supp. 3d at 1081-82 (holding that the Nebraska Sex Offender Registration Act, which requires out-of-state juvenile offenders who were adjudicated delinquent of a sex offense in another jurisdiction and who are required to register as sex offenders in that jurisdiction to register in Nebraska, does not violate the Ex Post Facto Clause); *Pretty on Top*, 857 F. App'x at 914-15 (holding that application of SORNA to a juvenile sex offender does not violate the Ex Post Facto Clause); *United States v. Juvenile Male*, 581 F.3d 977, 979 (9th Cir. 2009) ("*Juvenile Male I*") (holding that retroactive application of SORNA's juvenile registration provisions are unconstitutional and violate the Ex Post Facto Clause), *amended and superseded by* 590 F.3d 924 (2010); *In re T.H.*, 913 N.W.2d at 596-97 (holding that Iowa's sex offender registration statute for juvenile offenders is punitive); *N.R.*, 495 P.3d at 26-27 (holding that Kansas' lifetime registration requirements as applied to N.R., a juvenile sex offender, do not constitute punishment and therefore do not violate the Ex Post Facto Clause of the U.S. Constitution); *In re Nick H.*, 123 A.3d 229, 241 (Md. Ct. Spec. App. 2015) (holding that retroactive application of Maryland's sex offender registration requirement to juvenile offender who had been adjudicated delinquent for sex offenses is not punishment and therefore did not violate the Ex Post Facto Clause of the Maryland Constitution); *State v. Eighth Jud. Dist. Ct.*, 306 P.3d 369, 388 (Nev. 2013) (concluding that registration and community notification under Arizona law are not punishment and holding that retroactive application of A.B. 579 to juvenile sex offenders, which required registration and community notification, did not violate the Ex Post Facto Clauses of the U.S. and Nevada Constitutions); *In re H.R.*, 227 A.3d 316, 335 (Pa. 2020) (holding that retroactive application of statute governing involuntary treatment of sex offender, who was adjudicated delinquent for committing sex offenses as a juvenile, as a sexually violent delinquent child, does not violate state or federal Ex Post Facto Clauses); *but see Juvenile Male II*, 564 U.S. 932, 932 (2011) (vacating Ninth Circuit's judgment that retroactive application of SORNA's juvenile registration provisions are unconstitutional and violate the Ex Post Facto Clause and holding "that the Court of Appeals had no authority to enter th[e] judgment because it had no live controversy before it").

[64] *B.K. v. Grewal*, No. 19-05587, 2020 WL 5627231, at *4-7 (D.N.J. Sept. 21, 2020) (holding that the registration scheme under New Jersey's Megan's Law does not violate procedural due process by failing to allow juvenile sex offenders to prove their likelihood of recidivism since Megan's Law relies on the offense of conviction and not on the dangerousness of an offender); *N.R.*, 495 P.3d at 26-27 (holding that Kansas Offender Registration Act requiring juvenile sex offender to register for life does not violate procedural due process under Kansas Constitution); *In re D.R.*, 225 N.E.3d 894 (Ohio 2022) (holding that Ohio Rev. Stat. § 2152.84(A)(2)(b), which requires the juvenile court continue classifying an offender, who was 16 or 17 at the time of offense, as a tier I sex offender at the completion-of-disposition hearing irrespective of whether treatment was effective or whether any risk of reoffense is present, violates due process), *cert. denied*, No. 22-864 (U.S. June 12, 2023); *State v. Buttery*, 164 N.E.3d 294, 304 (Ohio 2020) (holding that a conviction for failure to register as a sex offender that arose from a juvenile adjudication does not violate the offender's constitutional rights to a jury or to due process under the Ohio or U.S. Constitution); *In re C.P.*, 967 N.E.2d at 750 (holding that Ohio statute requiring offenders adjudicated delinquent of sex offenses to register for life violates procedural due process); *In re C.Q.*, 2020-Ohio-5531, No. 2020 CA 00012, 2020 WL 7078332, at *6 (Ohio Ct. App. Dec. 2, 2020) (holding that the juvenile court's classification of a juvenile as a tier I offender, who was adjudicated delinquent of a sex offense, at the time of disposition, did not violate the juvenile's due process rights, where the registration law clearly grants the juvenile court this authority); *In re T.R.*, 2020-Ohio-4445, Nos. C-190165, C-190166, C-190167, C-190168, C-190169, C-190170, C-190171, C-190172, 2020 WL 5544415, at *2-3 (Ohio Ct. App. Sept. 16, 2020) (holding that, because registration of juvenile sex offenders is punitive, juvenile adjudicated delinquent for a sex offense was entitled to be present at the time the court classified the juvenile as a sex offender); *In re H.R.*, 227 A.3d at 335 (holding that statute governing involuntary treatment of sex offender, who was adjudicated delinquent for committing sex offenses as a juvenile, as a sexually violent delinquent child is nonpunitive, its retroactive application does not violate state or federal Ex Post Facto Clauses, and it does not violate due process under *Apprendi* or *Alleyne*); *Commonwealth v. Haines*, 222 A.3d 756, 759 (Pa. 2019) (holding that requiring lifetime registration for juvenile offender, who was 14 at the time she committed indecent assault of a person less than 13 years of age and was convicted as an adult, violates due process by utilizing an irrebuttable presumption that all juvenile offenders pose a high risk of committing additional sexual offenses); *In re J.B.*, 107 A.3d 1, 14 (Pa. 2014) (holding that Pennsylvania's SORNA provision requiring lifetime registration for juvenile sex offenders violates due process right to reputation by utilizing an irrebuttable presumption that all juvenile offenders pose a high risk of committing additional sexual offenses); *Zeno*, 232 A.3d at 872 (following *Haines* and relying on *In re J.B.* and holding that requiring an offender, who has been

convicted in criminal court for acts committed while a juvenile, to register under Pennsylvania's SORNA violates due process under the state and federal constitutions); *State v. Smith*, No. 54067-3-II, 2021 WL 5085425, at *4 (Wash. Ct. App. Nov. 2, 2021) (holding that imposition of sex offender registration requirement on juvenile sex offender did not violate sex offender's right to due process); *Vaughn v. State*, 391 P.3d 1086 (Wyo. 2017) (holding that Wyoming Sex Offender Registration Act, which requires juveniles adjudicated delinquent to register as sex offenders for life, does not violate procedural due process under the state or federal constitutions).

[65] *B.K.,* 2020 WL 5627231, at *4-7 (holding that the registration scheme under New Jersey's Megan's Law does not infringe on juvenile offenders' substantive due process rights where it does not impose an obstacle to their movement within or outside New Jersey, any impact on their right to travel is incidental, and the registration scheme is rationally related to a legitimate interest of public safety); *Doe I v. Peterson*, 43 F.4th 838, 840 (8th Cir. 2022) (holding that the Nebraska Sex Offender Registration Act, which requires out-of-state juvenile offenders who were adjudicated delinquent of a sex offense in another jurisdiction and who are required to register as sex offenders in that jurisdiction to register in Nebraska, does not violate the offenders' constitutional rights to substantive due process or travel); *In re J.A.*, No. A-0672-21, 2023 WL 4004703, at *4 (N.J. Super. Ct. App. Div. June 15, 2023) (per curiam) (distinguishing *In re C.K.* and holding that requiring juveniles adjudicated delinquent to register as sex offenders does not violate due process under the New Jersey Constitution); *Vaughn,* 391 P.3d at 1086 (holding that Wyoming Sex Offender Registration Act, which requires juveniles adjudicated delinquent to register as sex offenders for life, does not violate substantive due process under the state or federal constitutions); *but see In re C.K.*, 182 A.3d 917, 936 (N.J. 2018) (holding that requiring juveniles adjudicated delinquent of certain sex offenses to register as sex offenders for life violates substantive due process rights under the New Jersey Constitution);

[66] *B.K.*, 2020 WL 5627231, at *8 (holding that registration scheme under New Jersey's Megan's Law does not violate equal protection rights since it does not implicate a fundamental constitutional right and it is rational to require registration for juveniles adjudicated delinquent for a sex offense as opposed to juveniles who have not committed sex offenses); *Doe I v. Peterson*, 43 F.4th at 840 (holding that the Nebraska Sex Offender Registration Act, which requires out-of-state juvenile offenders who were adjudicated delinquent of a sex offense in another jurisdiction and who are required to register as sex offenders in that jurisdiction to register in Nebraska, does not violate the offenders' constitutional rights to equal protection); *United States v. Lafferty*, 608 F. Supp. 2d 1131, 1144 (D.S.D. 2009) (holding that SORNA's requirement that juveniles adjudicated delinquent register as sex offenders does not violate the Equal Protection Clause); *In re J.A.*, 2023 WL 4004703, at *4 (holding that requiring juveniles adjudicated delinquent to register as sex offenders does not violate equal protection under the New Jersey Constitution); *In re Z.B.*, 757 N.W.2d 595, 600 (S.D. 2008) (holding that subjecting sex offenders adjudicated delinquent to harsher registration requirements than adult sex offenders is unconstitutional and violates the Equal Protection Clause of the Fourteenth Amendment).

[67] *State v. Clemens*, 915 N.W.2d 550, 614 (Neb. 2018) (holding that Nebraska law requires registration in Nebraska where an individual is required to register in another jurisdiction, regardless of whether the registration in the other jurisdiction is based on a juvenile adjudication and holding there was sufficient factual basis for defendant's guilty plea to attempted failure to register as a sex offender in Nebraska because his Colorado registration, based on a juvenile adjudication, required registration upon moving to Nebraska).

issues[68] and challenges based on the Federal Juvenile Delinquency Act (FJDA).[69] For instance, under the FJDA, which sets forth the procedures governing federal juvenile adjudications, it is required that all records regarding juvenile proceedings remain confidential. However, several courts have held that requiring juveniles who are adjudicated delinquent in federal court to register as sex offenders does not violate FJDA's confidentiality provisions.[70]

C. What Registration Requires

1. Tiering & Recidivism

SORNA delineates three tiers of sex offenders based on the nature and seriousness of the offender's sex offense, the victim's age, and the offender's prior sex offense conviction(s),[71] with certain duration and reporting frequency requirements attributed to each tier.[72] When a convicted offender moves to a new jurisdiction, the new (i.e., receiving) jurisdiction must not only determine whether

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[68] *In re Diego B.*, No. 1 CA-JV 20-0391, 2021 WL 1695947, at *1 (Ariz. Ct. App. Apr. 29, 2021) (vacating the juvenile court's order requiring offender to register as a sex offender where order became final the day after offender turned 18 because juvenile court's jurisdiction over a delinquent juvenile ends when the juvenile turns 18); *In re Bryan D.*, No. 1 CA-JV 20-0212, 2021 WL 282272, at *1 (Ariz. Ct. App. Jan. 28, 2021) (vacating juvenile court's order requiring offender register as a sex offender and holding that the juvenile court did not have jurisdiction to enter the order because it was filed after the offender's 18th birthday); *In re R.B.,*165 N.E.3d 288, 298 (Ohio 2020) (holding that the juvenile court, which classified the juvenile as a tier I sex offender at the time that it placed him on probation, maintained jurisdiction to review the juvenile's sex offender classification, even after the juvenile turned 21 and that the plain language of the statute gave the juvenile court jurisdiction to conduct a "completion-of-disposition hearing," at which the court could modify or terminate the juvenile's sex-offender classification, even after the juvenile turned 21); *In re E.S.*, 179 N.E.3d 724, 727 (Ohio Ct. App. 2021) (holding that the trial court lacked jurisdiction to classify offender as tier III sex offender (juvenile offender registrant) because it did not make that determination prior to his release from a secure facility in violation of Ohio law); *Commonwealth v. Armolt*, 294 A.3d 364, 374 (Pa. 2023) (holding that Pennsylvania adult criminal courts have jurisdiction over the prosecution of an individual who is over the age of 21 for crimes committed as a juvenile); *In re B.R.*, No. 02-22-00363-CV, 2023 WL 3749886, at *4 (Tex. Ct. App. June 1, 2023) (holding that the juvenile court has jurisdiction to require a juvenile adjudicated delinquent at the age of 16 to register as a sex offender even though the court did not order sex offender registration until after the offender turned 18 because the statute "states that a juvenile court has jurisdiction to render a sex-offender registration order after a juvenile turns eighteen"); *BC-K v. State*, 512 P.3d 634, 638-39 (Wyo. 2022) (holding that the juvenile court did not lose subject matter jurisdiction when it failed to hold an adjudicatory hearing within 90 days of the state filing its petition because Wyoming law does not "include a statement of the appropriate remedy for failing to follow the statutory deadline" and it does not "contain an unequivocal expression that the juvenile court loses jurisdiction if the ninety-day deadline is not met").

[69] 18 U.S.C. §§ 5031-5043.

[70] *United States v. Under Seal*, 709 F.3d 257, 262-63 (4th Cir. 2013) (holding that SORNA's reporting and registration requirements for certain juvenile sex offenders do not contravene the confidentiality provisions of the Federal Juvenile Delinquency Act and district court properly determined SORNA's registration requirements applied to the appellant); *Juvenile Male III*, 670 F.3d 999, 1002 (9th Cir. 2012) (holding that SORNA's reporting and registration requirements for certain juvenile sex offenders do not contravene the confidentiality provisions of the Federal Juvenile Delinquency Act and noting that "Congress, in enacting SORNA, intentionally carved out a class of juveniles from the FJDA's confidentiality provisions"); *see also In re Richard A.*, 946 A.2d 204, 212 (R.I. 2008) (holding that Rhode Island's Sex Offender Registration and Community Notification Act does not violate the confidentiality of juvenile proceedings).

[71] 34 U.S.C. §§ 20911(2)-(3).

[72] *Id.; see infra* I.E.2.

the offender's sex offense is registerable, but it must also determine how the offense will be tiered or classified.[73]

[73] In making tiering determinations, courts use the same three approaches that are used to determine whether an offense is a "sex offense." *See, e.g.*, *United States v. Morales*, 801 F.3d 1, 9-10 (1st Cir. 2015) (holding that Rhode Island offense of first-degree child molestation, which criminalizes sexual penetration with a person 14 years or under, was not comparable or more severe than any SORNA tier III offense, and that it was "significantly broader than a tier III offense, since the state law penalizes sexual conduct alone—without anything more—against victims over the congressionally-designated age of 12"); *United States v. Berry*, 814 F.3d 192, 196 (4th Cir. 2016) (holding that courts are required to apply categorical approach to sex offender tier classifications designated by reference to specific federal criminal statute, but must employ circumstance-specific comparison for limited purpose of determining victim's age); *id.* at 196-98 (applying "the categorical approach to the generic crimes listed in SORNA's tier III definition" but reading SORNA's reference to a victim "who has not attained the age of 13" to be "an instruction to courts to consider the specific circumstance of a victim's age"); *United States v. Navarro*, 54 F.4th 268, 279 (5th Cir. 2022) (applying categorical approach and holding that Colorado offense of attempted sexual assault of a child, which prohibits sexual contact with a child younger than 15, so long as the offender is at least four years older than the victim, "sweeps more broadly" than 18 U.S.C. § 2243(a) and 18 U.S.C. § 2241(c) and is not a tier II offense under SORNA); *United States v. Montgomery*, 966 F.3d 335, 338-39 (5th Cir. 2020) (noting that "[o]ur court and others determine an offender's SORNA tier by comparing the offense for which they were convicted with SORNA's tier definitions using the categorical approach" and holding that the offender's New Jersey conviction for sexual assault in the second degree was not comparable to federal SORNA definitions of sexual abuse and aggravated sexual abuse associated with tier III status); *id.* at 338 (*citing Descamps*, 570 U.S. at 261) ("If the offense 'sweeps more broadly' than the SORNA tier definition, then the offense cannot qualify as a predicate offense for that SORNA tier regardless of the manner in which the defendant actually committed the crime."); *United States v. Escalante*, 933 F.3d 395, 402 (5th Cir. 2019) (holding that Utah offense swept more broadly than comparable federal offense and could not serve as proper predicate for SORNA tier II sex offender designation and that SORNA required circumstance-specific inquiry into victim's age when classifying sex offender tier levels to determine whether victim was minor or whether victim was younger than 13); *id.* at 398 ("We employ the categorical approach when classifying the SORNA tier of a defendant's state law sex offense."); *United States v. McGough*, 844 F. App'x 859, 860-61 (6th Cir. 2021) (holding that, under the categorical approach, the Ohio offense of corruption of a minor "is broader than the most closely associated federal offense, abusive sexual contact" because "it criminalizes conduct that may not be unlawful under federal law" and therefore, sex offender should have been classified as a tier I offender); *United States v. Barcus*, 892 F.3d 228, 231-32 (6th Cir. 2018) (holding that Tennessee offense of attempted aggravated sexual battery against victim younger than 13 was not a tier III offense under SORNA because it was broader than the comparable federal offense since it does not require the offender act with specific intent, whereas the federal offense does); *United States v. Walker*, 931 F.3d 576, 580 (7th Cir. 2019) (recognizing that Sixth Circuit applies hybrid approach in determining an offender's tier under SORNA and holding that Colorado offense of sexual contact with a child under 15 by anyone who is at least four years older than the child did not qualify as a tier II or tier III offense under SORNA); *United States v. Burchell*, No. 21-cr-40025, 2021 WL 3726899, at *6 (D.S.D. Aug. 23, 2021) (applying the categorical approach and holding that the Texas statute for sexual assault in the second degree is not narrower than 18 U.S.C. §§ 2241 and 2242 and the statutes are not comparable, therefore offender's Texas conviction resulted in him being a tier I offender and, as a result, he is not a tier III offender required to register under SORNA and he did not violate 18 U.S.C. § 2250); *United States v. Laney*, No. CR20-3053-LTS, 2021 WL 1821188, at *7 (N.D. Iowa May 6, 2021) (holding that the Minnesota statute is not comparable to or more severe than abusive sexual contact under 18 U.S.C. § 2244 and "is categorically broader than the federal statute" because it extends to individuals under 16 (for sexual penetration) and under 13 (for sexual contact) and the federal statute requires, as an element, that the person be under 12 years old, and, therefore, offender was properly classified as a tier I sex offender under SORNA, his duty to register for 15 years began on June 6, 2005, and his registration requirement expired before the time period alleged in the indictment); *United States v. Daniel*, No. 20-CR-00112, 2021 WL 3037404, at *8 (D. Idaho July 19, 2021) (applying the categorical approach and holding that offender's California conviction for assault with intent to commit rape does not qualify as a tier III offense under SORNA); *United States v. Salazar*, Nos. 10-cr-60121, 20-cv-01438, 2021 WL 2366086, at *5-6 (D. Or. June 9, 2021) (applying the categorical approach and holding that offender, who was convicted of handling and fondling a child under 16 in Florida, is a tier I sex offender under SORNA); *United States v. Ballantyne*, No. CR 19-42-BLG-SPW, 2019 WL 3891252, at *2, *5 (D.

Under SORNA, an offender who has been convicted of more than one sex offense is subject to heightened registration requirements.[74] Many jurisdictions have enacted similar legislation.[75]

Mont. Aug. 19, 2019) (applying categorical approach and holding that offender's conviction for second-degree sexual assault in Colorado was not comparable or more severe than abusive sexual contact against a minor under the age of 13 or abusive sexual contact where Colorado statute sweeps more broadly than the federal statute and, as a result, "cannot serve as a predicate crime for either a tier two or a tier three designation" under SORNA); *United States v. Cabrera-Gutierrez*, 756 F.3d 1125, 1133-34 (9th Cir. 2014) (applying the categorical approach and holding that Oregon sexual abuse statute penalizing penetration with a lack of consent was broader than 18 U.S.C. § 2242 and was not a tier III offense under SORNA); *United States v. White*, 782 F.3d 1118, 1133, 1135-37 (10th Cir. 2015) (finding that Congress intended for courts to apply the categorical approach to sex offender tier classifications designated by reference to specific federal criminal statute, but to employ circumstance-specific comparison for limited purpose of determining victim's age in determining defendant's proper classification under SORNA and holding that because the North Carolina offense of taking indecent liberties with a child did not require physical contact, the offender was not a tier II or tier III offender under SORNA); *J.B. v. Vescovo*, 632 S.W.3d 861, 866 (Mo. Ct. App. 2021) (holding that trial court did not err in classifying offender as a tier III sex offender where he pleaded guilty to a non-registerable misdemeanor offense in 1997 because, by pleading guilty, offender was adjudicated as required under Missouri's Sex Offender Registry Act (SORA), and SORA specifically enumerates the offense of endangering the welfare of a child in the first degree where the offense is sexual in nature as a tier III offense); *Nev. Dep't of Pub. Safety v. Criner*, 524 P.3d 935 (Nev. 2023) (unpublished table decision) (holding that Nevada offense of sexually motivated coercion is not a tier II offense because it is not one of the offenses listed under Nev. Rev. Stat. § 179D.0357 and is not a crime against a child, and it is not comparable to or more severe than the federal crime of coercion and enticement because the Nevada offense sweeps more broadly than the federal crime).

[74] 34 U.S.C. §§ 20911(3)(C), (4)(C).

[75] *Ward v. Alaska Dep't of Pub. Safety*, 288 P.3d 94, 97-98 (Alaska 2012) (holding that individual convicted of two or more sex offenses, irrespective of whether the conviction occurred in a single proceeding, is subject to increased reporting requirements under Alaska law and sex offender must register for life); *Cunningham v. State*, 536 P.3d 739, 755 (Alaska Ct. App. 2023) (holding that offender convicted of first-degree indecent exposure in Alaska was not required to register as a sex offender for life because his prior convictions in Oregon for public indecency do not constitute sex offenses); *United States v. Hawkins*, 261 A.3d 914, 919 (D.C. 2021) (holding that the recidivism provisions under D.C. Code §§ 22-4002(b)(3) and (4), which require sex offenders who have been subject to two or more dispositions involving a felony registration offense or a registration offense against a minor to register for life, "apply to individuals upon their second qualifying disposition; or, in other words, that the language 'two or more' is inclusive of the instant disposition"); *Nichols v. State*, 947 N.E.2d 1011, 1015 (Ind. Ct. App. 2011) (holding that offender was convicted of two unrelated offenses and therefore was required to register as a sex offender for life under Ind. Code § 11-8-8-19(e)); *Commonwealth v. Daughtery*, 617 S.W.3d 813, 816 (Ky. 2021) (noting that the Kentucky Sex Offender Registration Act requires lifetime registration where offenders have two or more convictions for crimes against a minor and the defendant is required to register as a sex offender for life because he was convicted of three crimes involving a minor or depictions of a minor and the fact that these were his first offenses was irrelevant); *but see Vandenberg v. Ind. Dep't of Correc.*, 153 N.E.3d 1122, 1125-26 (Ind. Ct. App. 2020) (holding that sex offender's offenses were not unrelated under Ind. Code § 11-8-8-19(e) where his offenses involved the same victim and the same video unlike in *Nichols* and therefore was required to register as a sex offender for 10 years); *Commonwealth v. Wimer*, 99 N.E.3d 778, 782 (Mass. 2018) (holding that offender convicted of two counts of open and gross lewdness in a single proceeding was insufficient to require offender to register as a sex offender where statute required registration for a "second and subsequent adjudication or conviction"); *Commonwealth v. Thompson*, 266 A.3d 601 (Pa. Super. Ct. 2021) (unpublished table decision) (holding that offender's 2001 Colorado convictions for multiple sex offenses were part of the same criminal prosecution and therefore do not count as "two or more convictions" for purposes of triggering lifetime registration under Pennsylvania law); *State v. Rector*, 990 N.W.2d 213, 225 (Wis. 2023) (holding that the court did not err in requiring offender to register as a sex offender for 15 years because "convictions based on charges filed in a single case and occurring during the same hearing have not occurred on '2 or more separate occasions'" and offender's "five convictions for possession of child pornography were filed in a single case and occurred during the same hearing" and therefore, "did not occur on separate occasions").

2. Appearance Requirements

SORNA requires that offenders make in-person appearances and register for a duration of time based on the tier of the offense of conviction.[76] However, some jurisdictions provide alternative methods for offenders to register and not all base an offender's duration of registration or in-person appearances on the tier of the offense of conviction.[77]

3. Required Registration Information

Jurisdictions are required to collect certain types of sex offender registration information under SORNA, including, for example, the offender's name, date of birth, Social Security number, address, fingerprints and palm prints, and a DNA sample.[78]

4. Updating Information

SORNA specifies that sex offenders must keep their registration information current,[79] and most jurisdictions also require that sex offenders update their registration information when their

[76] 34 U.S.C. § 20911.
[77] *See infra* II.C.
[78] 34 U.S.C. §§ 20914, 20916; *see also infra* I.C.5.
[79] 34 U.S.C. §§ 20913(a), (c); *see also* Final Guidelines, *supra* note 3, at 38,065-38,067. Under SORNA, sex offenders are required to keep their registration information current in each jurisdiction where they live, work, or attend school. 34 U.S.C. § 20913(a); Final Guidelines, *supra* note 3, at 38,065. SORNA requires registered sex offenders appear in person within three days after each change of name, residence, employment, or student status in their jurisdiction of residence. 34 U.S.C. § 20913(c); Final Guidelines, *supra* note 3, at 38,065. When an offender works in a jurisdiction, but does not live or attend school there, SORNA requires the offender immediately appear in person to update employment-related information. Final Guidelines, *supra* note 3, at 38,065. When an offender attends school in a jurisdiction, but does not live or work there, SORNA requires the offender immediately appear in person to update school-related information. *Id.* SORNA also requires offenders immediately update the registering agency in their jurisdiction of residence about any changes to their email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging. *Id.* at 38,066. *But see Nichols v. United States*, 578 U.S. 104, 108-110 (2016) (reversing conviction of sex offender under 18 U.S.C. § 2250 where offender failed to notify Kansas he was moving to the Philippines and holding that SORNA did not require sex offender to update registration in state where he no longer resides); *Carr v. United States*, 660 F. App'x 329, 332 (6th Cir. 2016) (holding that SORNA did not require sex offender to update his registration in Tennessee once he moved to Mexico); *United States v. Haslage*, 853 F.3d 331, 332 (7th Cir. 2017) (holding that sex offender had no duty under SORNA to update registration information in Wisconsin where offender had been living, after leaving Wisconsin and moving to Washington).

information changes.[80] Failure to do so may lead to a prosecution for failure to register under state and federal law.[81]

5. Immediate Transfer of Information

SORNA requires immediate information sharing among jurisdictions[82] and with various public and private entities and individuals. When a sex offender initially registers or updates his or her information with a jurisdiction, that jurisdiction is required to immediately share the offender's information with, and notify, any other jurisdiction where the sex offender resides, works, or goes to school, and each jurisdiction from or to which a change of residence, employment, or student status occurs.[83] This includes notification to any relevant sex offender registration jurisdictions under SORNA.

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[80] *Hall v. State*, 646 S.W.3d 204, 210-11 (Ark. Ct. App. 2022) (affirming the circuit court's finding that sex offender violated Arkansas law by failing to report a social-media application and holding that all sex offenders, not just lifetime offenders or sexually dangerous offenders, have a duty to register and update their social-media information); *State v. Wiles*, 873 N.W.2d 301 (Iowa Ct. App. 2015) (unpublished table decision) (holding offenders who are part of a state department of corrections residential work release program may have a duty to maintain their registration information while there); *Sprouse v. Commonwealth*, 662 S.W.3d 304, 307-08 (Ky. Ct. App. 2023) (holding that there is a clear duty on sex offender to cooperate in verifying his or her residence information and to interpret Kentucky's failure-to- register statute as only providing law enforcement with a duty to verify residence information and allowing sex offenders to avoid responding to law enforcement's attempts to verify the information would "render[] the entire registration system ineffectual"); *but see United States v. Lewallyn*, 737 F. App'x 471, 473 (11th Cir. 2018) (holding that, under Georgia law, offender was not required to update registration information in Georgia after he moved to North Carolina); *State v. Drupals*, 49 A.3d 962, 971 (Conn. 2012) (reversing offender's conviction for failure to register under Connecticut law and holding that sex offender had no duty to update his registration information when he temporarily stayed overnight with his mother because "residence means the act or fact of living in a given place for some time, and the term does not apply to temporary stays"); *Commonwealth v. Harding*, 158 N.E.3d 1, 6 (Mass. 2020) (holding that offender, who was a self-employed home improvement contractor, was not required to report his temporary work site as his work address for purposes of sex offender registration under Massachusetts law).

[81] *State v. White*, 58 A.3d 643, 645 (N.H. 2012) (holding that sex offender's failure to report the creation of a MySpace account, where a MySpace account constitutes an "online identifier," supported a conviction for failure to update a registration under New Hampshire law); *but see United States v. Pertuset*, 160 F. Supp. 3d 926, 940-41 (S.D.W. Va. 2016) (holding that offender who moved from West Virginia to Belize was not required to update his information in West Virginia and could not be convicted of failure to register); *United States v. Lunsford*, 725 F.3d 859, 861-62 (8th Cir. 2013) (reversing conviction of failure to register where offender failed to update his registration information in Missouri when he moved to the Philippines and holding that an offender has no obligation to update his registration in the state from which he has moved); *State v. Lee*, 286 P.3d 537, 541 (Idaho 2012) (holding that Idaho law does not require sex offender, who moves to another country, to update his registration information and therefore, a failure to do so could not be prosecuted under state law); *People v. Ellis*, 162 A.D.3d 161, 166 (N.Y. App. Div. 2018) (holding a Facebook account did not constitute an "internet identifier" and that sex offender's failure to disclose the same did not support a conviction for failure to update a registration under New York law). For additional discussion concerning failure to register, see *infra* I.J.

[82] 34 U.S.C. §§ 20920, 20923; Final Guidelines, *supra* note 3, at 38,047. To help facilitate this directive, the Department of Justice developed the SORNA Exchange Portal, a secure internet-based portal that provides sex offender registration personnel with the ability to share information related to the management and tracking of registered sex offenders. For additional information, see SMART's SORNA Exchange Portal fact sheet.

[83] Final Guidelines, *supra* note 3, at 38,058-38,061.

In order to comply with SORNA's information-sharing requirements, jurisdictions are required to enter information on all of their registered sex offenders into the appropriate databases,[84] including the jurisdiction's public sex offender registry,[85] and several federal law enforcement databases such as the National Sex Offender Registry (NSOR),[86] the Next Generation Index (NGI),[87] and the Combined DNA Index System (CODIS).[88]

6. International Travel

Sex offenders who intend to travel outside of the United States for any period of time must inform their residence jurisdiction 21 days in advance, and jurisdictions are then required to notify the U.S. Marshals Service and update the sex offender's registration information in the national databases regarding such travel.[89] Implementation of this requirement varies by jurisdiction,[90] and offenders' attempts to challenge this requirement on constitutional grounds have typically failed.[91]

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[84] Registering agencies and other law enforcement entities submit the information necessary to populate these databases. For example, a local police department might submit an offender's fingerprints to the FBI at the time of arrest.

[85] For more information regarding public sex offender registries, see *infra* I.F.

[86] NSOR is a national database of registered sex offenders, available only to law enforcement and authorized criminal justice agencies. It is a single file of the National Crime Information Center (NCIC) database, which is maintained by the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) division. NSOR was established by the Pam Lychner Act in 1996. Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093.

[87] NGI is the FBI's electronic repository of biometric and criminal history information, including fingerprints and palm prints, that is searchable by law enforcement nationwide. SORNA requires that all jurisdictions submit fingerprints and palm prints to NGI for all registered sex offenders.

[88] CODIS is the national DNA database administered by the FBI. SORNA requires that DNA samples be taken from sex offenders during the registration process and entered into CODIS. 34 U.S.C. § 20914(b)(6). Sometimes, as part of their arrest, sentencing, incarceration, or at some other point during the processing of their case, offenders may have already had their fingerprints, palm prints, or DNA taken and submitted. In those circumstances, if a fingerprint, palm print, or DNA record already exists, jurisdictions are not required to submit duplicate entries. Final Guidelines, *supra* note 3, at 38,057.

[89] 34 U.S.C. § 20914(a); *see also* IML, *supra* note 1; Supplemental Guidelines, *supra note* 33, at 1,637; SORNA Rule, *supra* note 30.

[90] Some jurisdictions have codified this requirement, whereas others have implemented this requirement by policy. *See, e.g.*, ALA. CODE § 15-20A-15(c) (requiring sex offenders report in person to the sheriff in each county of residence and complete travel notification document at least 21 days prior to travel); AM. SAMOA CODE ANN. § 46.2908(r) (requiring sex offenders provide notice 21 days in advance of any travel outside of American Samoa); LA. REV. STAT. ANN. § 15:542(n)(ii) (requiring sex offenders provide notice of international travel at least 21 days prior to the date of departure); S.D. CODIFIED LAWS § 22-24B-37 (requiring sex offenders provide notice of intent to travel internationally at least 21 days in advance); TENN. CODE ANN. § 40-39-204 (requiring sex offenders provide notice to law enforcement at least 21 days in advance of international travel).

[91] *See, e.g.*, *Doe v. State*, 199 Wash. App. 1007 (2017) (holding that Washington's requirement that sex offenders provide 21-day advance notice of international travel does not violate the right to privacy, substantive and procedural due process, or ex post facto laws); *see also infra* III.A and corresponding footnotes outlining various constitutional challenges that sex offenders have raised.

D. Where Registration Is Required

SORNA requires that a sex offender register with law enforcement in the jurisdiction of conviction[92] and in any jurisdiction in which the offender resides, is an employee, or is a student.[93] Most jurisdictions similarly require that sex offenders register in each jurisdiction in which the offender resides, is an employee, or is a student.[94]

E. When Registration Is Required

1. Registration (Initial)

Under SORNA, a sex offender is required to register prior to release from custody if sentenced to a period of incarceration, or, if the sex offender is not sentenced to a term of imprisonment, the offender is required to register at the time of sentencing.[95] Most jurisdictions have similar requirements in place.

2. Duration & Tolling

Under SORNA, tier I offenders are required to register for 15 years, tier II offenders are required to register for 25 years, and tier III offenders are required to register for life.[96] Some jurisdictions follow a similar tiering structure or a dichotomous tiering structure, whereas others require lifetime registration for all sex offenders.[97] Jurisdictions are not required to apply registration requirements to sex offenders during periods in which they are in custody or civilly committed.[98] They also are

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92 34 U.S.C. § 20913(a).

93 *Id.*; *see also* Final Guidelines, *supra* note 3, at 38,061. Under SORNA, an offender is a "student" if he or she is enrolled in or attends an educational institution. 34 U.S.C. § 20911(11); Final Guidelines, *supra* note 3, at 38,062. However, "[s]chool enrollment or attendance in this context should be understood as referring to attendance at a school in a physical sense" and "[i]t does not mean that a jurisdiction has to require a sex offender in some distant jurisdiction to register in the jurisdiction based on his taking a correspondence course through the mail with the school in the jurisdiction, or based on his taking courses at the school remotely through the Internet, unless the participation in the educational program also involves some physical attendance at the school in the jurisdiction." Final Guidelines, *supra* note 3, at 38,062.

94 *State v. Wilson*, 947 N.W.2d 704, 707-08 (Neb. 2020) (noting that Nebraska law "requires individuals that plead guilty to or are convicted of certain enumerated offenses to register . . . where they reside, work, and attend school"); *In re Doe v. O'Donnell*, 86 A.D.3d 238, 241-42 (N.Y. App. Div. 2011) (holding that sex offender's establishment of a residence in another state does not relieve him of his registration requirements in New York even though he no longer has meaningful ties to the jurisdiction).

95 34 U.S.C. § 20913(b); *see also* Final Guidelines, *supra* note 3, at 38,062.

96 34 U.S.C. § 20915; *see also* Final Guidelines, *supra* note 3, at 38,068.

97 *See, e.g.*, COLO. REV. STAT. § 16-22-108 (requiring lifetime registration); DEL. CODE ANN. tit. 11, § 4121(e)(1) (following SORNA's tiering structure); FLA. STAT. § 943.0435(11) (requiring lifetime registration for all sex offenders); MO. REV. STAT. § 589.400(4) (following SORNA's tiering structure).

98 34 U.S.C. § 20915(a). However, offenders who are part of a state department of corrections residential work release program may have a duty to maintain their registration information while participating in the program. *State v. Wiles*, 873 N.W.2d 301 (Iowa Ct. App. 2015) (unpublished table decision) (holding that a work released sex offender housed at a residential correctional facility is required to register as a sex offender).

not required to "toll" the registration period during subsequent periods of confinement.[99] However, some jurisdictions do.[100]

F. Public Registry Website Requirements & Community Notification

SORNA requires that every jurisdiction maintain a public sex offender registry website and the website must contain specific information on each sex offender in the registry.[101] Each jurisdiction must also participate fully in the Dru Sjodin National Sex Offender Public Website (NSOPW),[102] including taking the necessary steps to enable all field search capabilities required by NSOPW.

NSOPW was created by the U.S. Department of Justice in 2005 and is administered by the SMART Office.[103] NSOPW operates much like a search engine and uses web services to search each jurisdiction's public registry website. It is the only government system to link state, territory, and tribal public sex offender registry websites from a national search site. NSOPW is not a national database of all registered sex offenders and only information that is publicly listed on a jurisdiction's public sex offender registry website will display in NSOPW's search results. Each jurisdiction owns and is responsible for the accuracy of the information displayed on NSOPW and the Department of Justice ensures only that jurisdictions' registry websites can be queried through, and results displayed on, NSOPW.

SORNA requires that jurisdictions include information about all sex offenders in their public sex offender registry website.[104] However, some information may be excluded from a jurisdiction's public sex offender registry website, including information about a tier I sex offender convicted of an offense other than a "specified offense against a minor," the name of a sex offender's employer, and the name of the school where a sex offender is a student.[105] Additionally, SORNA does not

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99 Final Guidelines, *supra* note 3, at 38,068.

100 *See* KAN. STAT. ANN. §§ 22-4906(a)(2), (b)(2), (f)(1); *see also State v. Schilling*, 224 N.E.3d 1126, 1138-39 (Ohio 2023) (noting that Ohio law does not contain a provision "that tolls the period during which a person convicted of a sexually oriented offense in Ohio must register and report when the person resides in another state and registers and reports in the other state" and holding that offender's duty to register as a sex offender in Ohio was not tolled when the offender was convicted in Ohio but resided and registered as a sex offender in Kentucky for ten years).

101 34 U.S.C. § 20920.

102 The Dru Sjodin National Sex Offender Public Website (NSOPW) is available at nsopw.gov.

103 In 2005, the National Sex Offender Public Registry was established by the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650; *see also* Press Release, Dep't of Just., Off. of Just. Programs, Department of Justice Activates National Sex Offender Public Registry Website (July 20, 2005), www.ojp.gov/sites/g/files/xyckuh241/files/archives/pressreleases/2005/BJA05028.htm. In 2006, the site was renamed the Dru Sjodin National Sex Offender Public Website by the Adam Walsh Act. *See* Adam Walsh Act, *supra* note 1.

104 SORNA requires that each public sex offender registry website include the offender's name, including any aliases; the address of each residence at which the offender resides or will reside; the address of any place where the offender is, or will be, an employee; the address of any place where the offender is, or will be, a student; the license plate number and a description of any vehicle owned or operated by the offender; a physical description and current photograph of the offender; and the sex offense for which the offender is registered and any other sex offense for which the offender has been convicted. 34 U.S.C. § 20914; Final Guidelines, *supra* note 3, at 38,059.

105 34 U.S.C. § 20920(c); Final Guidelines, *supra* note 3, at 38,059.

require jurisdictions disclose information about juveniles adjudicated delinquent on their public registry websites.[106]

Notably, some jurisdictions require only certain types of offenders to be publicly posted on the jurisdiction's public registry website.[107] As a result, if an offender is not displayed on the jurisdiction's public registry website, the offender will not appear on NSOPW.

G. Indian Country

Under SORNA, select federally recognized tribes may opt-in as SORNA registration jurisdictions and register sex offenders who live, work, or attend school on tribal lands.[108]

All adult sex offenders convicted of a registerable sex offense who live, work, or go to school on tribal lands must register with a tribal jurisdiction if the tribe has opted-in to SORNA's provisions and is operating as a registration and notification jurisdiction, regardless of whether the offender is a native, non-native, or tribal member.[109] Offenders who live, work, or go to school exclusively on tribal lands may also be required to register with the state in which the tribal lands are located.

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[106] In 2011, the Department of Justice issued Supplemental Guidelines for Sex Offender Registration and Notification, which created additional discretionary exemptions concerning public registry website disclosures and provided jurisdictions with authority to determine whether they will post information about juveniles adjudicated delinquent of sex offenses on their public registry website. Supplemental Guidelines, *supra* note 33.

[107] *See, e.g.*, ALA. CODE § 15-20A-8 (requiring posting of information related to juvenile sex offenders who are adjudicated delinquent); ARIZ. REV. STAT. § 13-3827 (requiring establishment and maintenance of a public registry website that must include offenders whose risk assessment has been determined to be a level 2 or level 3 and offenders convicted of certain sex offenses); ARK. CODE ANN. § 12-12-913(j)(1) (requiring information about certain level 2 sex offenders and level 3 and level 4 sex offenders be included on the public registry website); NEV. REV. STAT. § 179B.250 (requiring establishment of a community notification website to provide the public with access to sex offender information and prohibiting the posting of information about tier I offenders unless they have been convicted of a sexual offense against a child or a crime against a child); N.J. STAT. ANN. § 2C:7-13(b) (requiring posting of information about sex offenders with a high risk of reoffense and sex offenders whose risk of reoffense is low or moderate where their conduct was found to be characterized by a pattern of repetitive, compulsive behavior); S.C. CODE ANN. § 23-3-490(E) (requiring posting of information about juveniles adjudicated delinquent for committing a tier III offense); *see also Doe v. Keel*, No. 20-2755, 2023 WL 6450622, at *7-8, *14 (D.S.C. Sept. 29, 2023) (holding that the publishing of non-resident sex offender's information on South Carolina's public sex offender registry website does not violate substantive due process or equal protection and, because "[South Carolina's Sex Offender Registry] Act is most certainly a civil, not criminal, penalty," it does not violate the Fifth Amendment's Double Jeopardy Clause); *In re J.C.*, 13 Cal. App. 5th 1201, 1214 (2017) (holding that public disclosure aspect of juvenile sex offender registration is not punitive); *Doe v. Keel*, 892 S.E.2d 282, 283-84 (S.C. 2023) (holding that South Carolina's Sex Offender Registry Act permits the publication of non-resident sex offenders on South Carolina's public sex offender registry website).

[108] 34 U.S.C. § 20929(a)(1). However, tribes subject to the law enforcement jurisdiction of a state under 18 U.S.C. § 1162 (generally known as "PL-280 tribes") are not eligible to opt-in as SORNA registration jurisdictions and typically have their registration functions handled by the state where their land is located. *Id.* § 20929(a)(2)(A); *see also* 18 U.S.C. § 1162. Public Law 83-280 removed the federal government's ability to prosecute, on certain reservations, Indian Country crimes based on the Indian Country General Crimes Act (18 U.S.C. § 1152) and the Major Crimes Act (18 U.S.C. § 1153), and, with a few exceptions, authorized six states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—to prosecute most crimes that occur in Indian Country. Act of 1953, Pub. L. No. 83-280, 67 Stat. 588 (codified at 18 U.S.C. § 1162).

[109] *United States v. Begay*, 622 F.3d 1187, 1195-97 (9th Cir. 2010) (holding that "a sex offender must register with, and keep his registration current with, every jurisdiction in which he resides, works, or goes to school" and therefore sex offenders living in Navajo Nation were required to keep their registration current with both Arizona and the tribe under

As of July 2024, approximately 157 federally recognized tribes are operating as SORNA registration jurisdictions and have established, or are in the process of establishing, a sex offender registration and notification program. Of those, 137 have substantially implemented SORNA.[110] Some tribes have even passed more rigorous registration requirements than the states within which they are located.[111]

There are a host of unique legal issues specific to Indian Country that may arise, including jurisdictional issues,[112] challenges under the Double Jeopardy Clause of the Fifth Amendment,[113] Sixth Amendment challenges raised by persons who were convicted by tribal courts,[114] and the

SORNA), *abrogated on other grounds*, *United States v. DeJarnette*, 741 F.3d 971 (9th Cir. 2013); *State v. John*, 308 P.3d 1208, 1212 (Ariz. Ct. App. 2013) (holding that tribal member convicted of a federal sex offense who resides on tribal land in Arizona could not be prosecuted under state law for failure to register unless that tribe's registration responsibilities had been delegated to the state via SORNA's delegation procedure); *State v. Atcitty*, 215 P.3d 90, 98 (N.M. Ct. App. 2009) (holding that New Mexico lacked authority to require offenders, who were enrolled members of Navajo Nation, resided on tribal lands, and had been convicted of federal sex offenses, to register as sex offenders); *State v. Cayenne*, No. 49696-8-11, 2018 WL 3154379, at *3-4 (Wash. Ct. App. June 26, 2018) (addressing issue of whether an offender who exclusively lives, works, and attends school on tribal land can be compelled to register with the state within which that tribal land is located and holding that offender could not be convicted of failure to register in state court when the trial court excluded evidence that he had registered with the Chehalis Tribe).

[110] A list of tribes that have substantially implemented SORNA is available at SMART's SORNA Implementation Status page. Many of the tribes that have substantially implemented SORNA have used the Tribal Model Code, which was developed by Indian Law experts in conjunction with the SMART Office and fully covers all of SORNA's requirements.

[111] This often occurs when a tribe is located within a state that has not substantially implemented SORNA. One example includes the Confederated Tribes of the Umatilla Indian Reservation (Umatilla), located within Oregon. Umatilla was one of the first tribes to substantially implement SORNA and, unlike Oregon, meets all of SORNA's requirements.

[112] *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486, 2489 (2022) (holding that the General Crimes Act does not preempt state jurisdiction over crimes committed by non-Indians against Indians in Indian Country and the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian Country); *United States v. Smith*, No. 22-2142, 2024 WL 2012040 (10th Cir. May 7, 2024) (holding that property owned by a non-Indian that is within the Pueblo of Santa Clara's exterior boundaries is Indian Country where the property is within the exterior boundaries of a grant from a prior sovereign and Congress confirmed the exterior boundaries of the Pueblo of Santa Clara and non-Indian could be convicted in federal court of involuntary manslaughter for an act he committed on property located within the exterior boundaries of the Pueblo); *United States v. Smith*, No. 21-CR-00553, 2023 WL 8358116, at *1-3 (N.D. Okla. Nov. 30, 2023) (holding that federal courts have jurisdiction to prosecute offenses committed by non-Indians against Indians in Indian Country and "a non-Indian may be charged with aiding and abetting [an Indian defendant in Indian Country for] a crime charged under 18 U.S.C. § 1153").

[113] *Denezpi v. United States*, 142 S. Ct. 1838 (2022) (noting that offender's "single act transgressed two laws: the Ute Mountain Ute Code's assault and battery ordinance and the United States Code's proscription of aggravated sexual abuse in Indian Country," "[t]he two laws—defined by separate sovereigns—proscribe separate offenses, so [the offender's] second prosecution did not place him in jeopardy again 'for the same offence,'" and holding that "[b]ecause the Tribe and the Federal Government are distinct sovereigns, those "'offence[s]' are not 'the same,'" and the Double Jeopardy "Clause prohibits separate prosecutions for the same offense; it does not bar successive prosecutions by the same sovereign"); *United States v. Kills Warrior*, Nos. CR. 19-50163-JLV, CR. 22-50066-JLV, 2023 WL 4541115, at *4-5 (D.S.D. July 14, 2023) (holding that prosecution of sex offender for the same sex offense by the Oglala Sioux Tribe and the federal government does not violate the Double Jeopardy Clause even though both prosecutions were predicated on a single act).

[114] *United States v. Bryant*, 579 U.S. 140, 157 (2016) (holding that use of an offender's underlying uncounseled tribal court convictions, which were obtained in proceedings that comply with the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304, may be used as predicate convictions in a subsequent federal prosecution and doing so did not violate the Sixth Amendment or due process).

exclusion of certain individuals from tribal lands,[115] as well as issues concerning the registration of tribal sex offenders and/or the enforcement of sex offender registration requirements against native persons who committed their offense on tribal lands[116] or when an offender resides on tribal land but was convicted of a state or federal offense.[117]

H. Federal Incarceration

A separate federal registration program does not exist for sex offenders who are released from federal custody.[118] However, certain federal government agencies, including the Bureau of Prisons (BOP), the Bureau of Indian Affairs (BIA),[119] and the Department of Homeland Security (DHS), are involved with sex offender registration and notification and at least one agency (BOP) is required to notify local law enforcement when sex offenders are released from federal correctional facilities.[120] Additionally, these sex offenders are required to comply with SORNA's registration requirements as mandatory conditions of their federal supervision.[121]

Whenever a federal prisoner who is required to register under SORNA is released, BOP is required to provide, prior to release, the offender's release and registration information to state, tribal, and

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115 *See, e.g.*, *United States v. Nichols,* No. 13-30158, 2014 WL 4294529, at *4 (D.S.D. Aug. 20, 2014) (recognizing that "tribes retain the inherent power to exclude outsiders from tribal territory").

116 *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2478 (2020) (holding that Oklahoma lacked jurisdiction because Creek Nation is "Indian country" and therefore, crimes covered by the Major Crimes Act that are committed by an Indian on the land in question must be tried in federal or tribal court); *State v. Lawhorn*, 499 P.3d 777, 778-79 (Okla. Crim. App. 2021) (holding that Oklahoma lacked jurisdiction to prosecute offender, who was an Indian, with one count of lewd or indecent acts with child under 16, where the offense occurred in Indian Country); *State ex rel. Matloff v. Wallace*, 497 P.3d 686, 693-94 (Okla. Crim. App. 2021) (reaffirming recognition of the Cherokee, Choctaw, and Chickasaw Reservations and holding that "*McGirt* and . . . post-*McGirt* decisions recognizing these reservations shall not apply retroactively to void a conviction that was final when *McGirt* was decided"); *McClain v. State*, 501 P.3d 1009, 1012 (Okla. Crim. App. 2021) (reversing judgment and sentence and holding that Oklahoma did not have jurisdiction to prosecute the offender where he is of 5/32 degree of Indian blood of the Choctaw/Creek Tribes and a recognized tribal member of the Choctaw Nation, the crimes were committed within the Chickasaw Reservation, and Congress never explicitly erased those boundaries and disestablished the Chickasaw Nation), *overruled by Deo v. Parish*, 541 P.3d 833, 838 & n.7 (Okla. Crim. App. 2023) (holding that Oklahoma district courts' subject matter jurisdiction over Indian Country is not federally preempted).

117 *United States v. Red Tomahawk*, No. 17-cr-106, 2018 WL 3077789, at *5 (D.N.D. June 20, 2018) (holding that offender, who was convicted of abusive sexual contact in federal court and had an independent duty to register under SORNA for 15 years as well as a duty to register with the Standing Rock Sioux Tribe for 25 years, could not be prosecuted for a federal failure to register when his 15-year registration requirement had elapsed); *United States v. Still*, No. 21-CR-53-GKF, 2021 WL 1914217, at *5 (N.D. Okla. May 12, 2021) (holding that offender, who is a member of the Cherokee Nation, who committed his crime in Indian Country, and who was convicted of rape in Oklahoma, had a duty to register and update his registration under SORNA when he resided in Indian Country, notwithstanding the fact that the court vacated his conviction for lack of jurisdiction); *State v. Shale*, 345 P.3d 776, 780, 782 (Wash. 2015) (holding that state had jurisdiction to prosecute sex offender, who is an enrolled member of the Yakama Nation living on the Quinault Indian Nation's reservation and who failed to register with the county sheriff's office, for failing to register under Washington law).

118 Final Guidelines, *supra* note 3, at 38,064 ("There is no separate federal registration program for sex offenders required to register under SORNA who are released from federal or military custody. Rather, such sex offenders are integrated into the sex offender registration programs of the states and other (nonfederal) jurisdictions following their release.").

119 *See supra* I.G regarding registration in Indian Country.

120 *See infra* note 122 and corresponding text.

121 Final Guidelines, *supra* note 3, at 38,064; *see* 18 U.S.C. §§ 3563(a)(8), 3583(d), 4209(a); *see also infra* III.C.5.

local law enforcement and registration officials.[122] BOP is also required to notify prisoners of their registration responsibilities.[123] BOP does not register sex offenders prior to their release from incarceration.

BIA, which provides law enforcement, judicial, and detention services to some federally recognized tribes, is not required to notify local law enforcement when a sex offender is released from a BIA-operated detention center. However, BIA's policies do allow for such notification.[124] BIA does not register sex offenders prior to their release from incarceration.

DHS's Immigration and Customs Enforcement (ICE) is responsible for detaining and deporting undocumented individuals who are present within the United States.[125] In 2015, DHS issued a rule that allows DHS to transfer information about any offender who is released from DHS custody or removed from the United States to any sex offender registration agency.[126] DHS also does not register offenders prior to their release from ICE custody.

[122] 18 U.S.C. § 4042(c). In 2014, BOP issued guidelines regarding its notification requirements upon release of sex offenders. U.S. DEP'T OF JUST., FED. BUREAU OF PRISONS, PROGRAM STATEMENT 5110.17, NOTIFICATION REQUIREMENTS UPON RELEASE OF SEX OFFENDERS, VIOLENT OFFENDERS, AND DRUG TRAFFICKERS (May 16, 2014), www.bop.gov/policy/progstat/5110_017.pdf.

[123] BOP uses a form to notify prisoners of their registration responsibilities. *See* Sex Offender Registration and Treatment Notification Form, BP-A0648, www.bop.gov/policy/forms/BP_A0648.pdf.

[124] Although not governed by 18 U.S.C. § 4042(c), BIA's law enforcement handbook requires its Office of Justice Services to assist tribes who are operating SORNA registration and notification systems. *See* BIA, OFF. OF JUST. SERVS., LAW ENFORCEMENT HANDBOOK, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT, SPECIAL ORDER 21-01 (4th ed. 2017 & Supp. 2021). The BIA's corrections handbook also directs detention facility staff to "ensure that all inmates required to be registered under the Sex Offender Registration and Notification Act are identified and, when applicable, provide all necessary information to the local government Registry Entity." *See* BIA, OFF. OF JUST. SERVS., CORRECTIONS HANDBOOK, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT, C2-34 (2010). For additional discussion concerning sex offenders and Indian Country, see *supra* I.G.

[125] For additional discussion concerning the deportation of sex offenders, see *infra* III.C.11.

[126] Notice of Amendment of Privacy Act System of Records, 80 Fed. Reg. 24,269 § HH (April 30, 2015), www.govinfo.gov/content/pkg/FR-2015-04-30/pdf/2015-09615.pdf. For additional discussion concerning issues pertaining to sex offenders and immigration and deportation, see *infra* III.C.11.

I. Reduction of Registration Periods

Under limited circumstances, SORNA allows for the reduction of the registration period for certain sex offenders.[127] Similar provisions exist under state law.[128] Additionally, in at least one state, the

[127] 34 U.S.C. § 20915(b); *see Gillotti v. United States*, No. 21-cv-404, 2023 WL 1767462 (W.D.N.Y. Feb. 2, 2023) (dismissing offender's lawsuit seeking a declaration that he is no longer required to register as a sex offender under SORNA for lack of subject-matter jurisdiction and holding that SORNA does not provide for a private right of action and the court has never had jurisdiction over offender's criminal case where he was convicted and sentenced in military court, rather than in federal court); *United States v. McGrath*, No. 04-0061, 2017 WL 6349046, at *2 (M.D. La. Dec. 12, 2017) (denying sex offender's motion to reduce registration period under SORNA's clean record exception and holding that the court has no authority to "oversee the state's interpretation of its own registration laws, even where those laws are given content by reference to the elements of a federal crime"); *United States v. Nazerzadeh*, 73 F.4th 341, 348 (5th Cir. 2023) (holding that, because offender was convicted of distribution of child pornography, he is a tier II sex offender who is required to register for 25 years, and he is not entitled to any reduction of the required registration period under SORNA); *United States v. Dubin*, No. 12-cr-20828-1, 2023 WL 3261578, at *2 (E.D. Mich. May 4, 2023) (holding that tier I sex offender, who registered as a sex offender for ten years, has not been convicted of another felony or sex offense during that time, and who has successfully completed his term of supervised release and a sex offender treatment program, should be relieved of his duty to register under SORNA's clean record exception); *Wiggins v. United States*, No. 18-cv-03492, 2019 WL 5079557, at *5 (S.D. Ind. Oct. 10, 2019) (granting the government's motion to dismiss and holding that the court lacked jurisdiction to reduce registration period under SORNA's clean record exception for offender convicted of child pornography offenses under the UCMJ because SORNA does not provide a private cause of action); *Gore v. United States*, No. 21-CV-00535, 2021 WL 4430040, at *1-2 (W.D. Mo. Sept. 27, 2021) (holding that a federal court has jurisdiction to consider sex offender's action noting that he "seeks 'a Declaratory Judgment from this Court recognizing that he no longer has a duty to register as a sex offender under federal law'—or a declaration of his rights under federal law . . . [and s]uch relief would not amount to the Court instructing Missouri on how to conform to its own law as Defendant suggests. If the sought relief was granted, a Missouri court would have the freedom to interpret the declaratory judgment according to its own state law principles"); *Gore v. United States*, No. 21-cv-00478, 2021 WL 2915073, at *1 (E.D. Mo. July 12, 2021) (transferring case to the Western District of Missouri noting that the basis of sex offender's complaint, registering as a sex offender where he resides, does not arise in the Eastern District of Missouri; he has been a resident of Jackson County; and he is registered as a sex offender in Jackson County, Missouri, where the Western District is located); *United States v. Davenport*, No. CR 06-06-M, 2022 WL 4547652 (D. Mont. Sept. 29, 2022) (granting offender's motion to terminate registration requirements under SORNA's clean record exception and terminating sex offender's federal registration obligation under SORNA); *United States v. Studeny*, No. CR11-0180-JCC, 2019 WL 859271, at *1-2 (W.D. Wash. Feb. 22, 2019) (denying sex offender's request to reduce his registration period under SORNA's clean record exception and holding that the court lacks jurisdiction where offender is no longer on supervised release and SORNA does not provide jurisdiction to federal courts to reduce registration requirements); *United States v. Zwiebel*, No. 06CR720, 2023 WL 2480052, at *2 (D. Utah Mar. 13, 2023) (granting sex offender's petition to reduce his registration requirement, recognizing that "[a]s the sentencing court in this matter, the court maintains jurisdiction to decide this petition," and holding that because sex offender "satisfies the definition of maintaining a clean record for ten years because [he] has not been convicted of any offense, he has successfully completed his term of supervised release, and he successfully completed a state-certified sex offender treatment program," his duty to register under SORNA must be terminated); *United States v. Stovall*, No. 06-cr-00286, 2021 WL 5086067, at *1-2 (D. Colo. Nov. 2, 2021) (holding that district court had jurisdiction to address sex offender's duty to register under SORNA because offender's SORNA registration requirement was a consequence of his conviction in the case, federal district courts frequently address the collateral consequences of a criminal conviction in closed criminal cases, and noting that, because sex offender met the "clean record" exception under SORNA by maintaining a clean record for 10 years, his duty to register under SORNA must be terminated immediately); *MacColl v. Mo. State Highway Patrol*, 665 S.W.3d 290, 301 (Mo. 2023) (en banc) (holding that SORNA's clean record reduction does not take effect automatically).

[128] *People v. Warren*, No. 22CA1997, 2024 WL 2755393, at *3 (Colo. App. May 30, 2024) (holding that an intellectually disabled sex offender who is required to register for life is eligible to petition to discontinue sex offender registration under Colo. Rev. Stat. § 16-22-113(2.5)(a)); *In re J.D.-F.*, 256 A.3d 958, 965-66 (N.J. 2021) (holding that the relevant date for determining whether N.J. Stat. § 2C:7-2(g), which prohibits sex offenders from applying to

duration of registration required under SORNA is considered when a determination is being made about whether an offender's registration period can be reduced.[129]

terminate their registration under § 2C:7-2(f), if they have been convicted of certain sex offenses or of more than one sex offense, is effective as to a particular offender is the date on which the offender committed the sex offenses that would otherwise bar termination of registration under subsection (f)); *In re P.C.*, No. A-3863-19, 2021 WL 4851285, at *4 (N.J. Super. Ct. App. Div. Oct. 19, 2021) (holding that sex offender's subsequent 2002 conviction for failing to register rendered him ineligible to be relieved of his sex offender registration requirements under New Jersey law where the offender's 15-year period commenced in September 1999, when his registration requirement was imposed, and his opportunity to be relieved of that requirement terminated in January 2002, when he was convicted of failing to register); *State v. Fritsche*, 895 S.E.2d 347, 349-50 (N.C. 2023) (holding that North Carolina statute allowing registered sex offenders to petition for early termination requires ten years of registration in North Carolina to be eligible for early termination); *In re Hall*, 768 S.E.2d 39, 46 (N.C. Ct. App. 2014) (identifying incorporation of SORNA's tiering structure and requirements for offenders to petition for termination of sex offender registration into North Carolina law); *In re McClain*, 741 S.E.2d 893, 895 (N.C. Ct. App. 2013) (acknowledging that North Carolina's sex offender registration and notification laws directly incorporate SORNA's clean record provisions); *Wood v. Wallin*, No. 21-CV-1702, 2022 Vt. Super. LEXIS 131, at *4 (Sept. 30, 2022) (holding that offender, who was convicted and sentenced concurrently for felony sexual assault and murder, had a duty to register and his ten-year reporting requirement, which is not triggered until an offender is released from prison, discharged from probation, or discharged from parole, whichever is later, has not yet begun where he is still on parole for his murder conviction), *rev'd and remanded by* No. 22-AP-274, 2024 Vt. LEXIS 21, at *15 (Apr. 19, 2024) (holding that there was an unresolved factual question as to whether offender's parole was connected to his sex offense and that Vermont law was ambiguous as to whether the ten-year reporting period was triggered for an offender released from prison on a sex offense but on parole for a conviction totally unconnected to the sex offense); *Alvarado v. State*, 541 P.3d 1097, 1101 (Wyo. 2024) (holding that offender was not required to complete probation before the clock started on the ten-year period before he could petition for termination of his duty to register as a sex offender in Wyoming); *but see State v. Willey*, No. 0802013700, 2024 WL 2746122 (Del. Super. Ct. May 28, 2024) (recognizing that children depicted in pornography are not only victims of the initial exploitation and dissemination but also of the subsequent possession of those files and holding that a tier II sex offender convicted of possession of child pornography was ineligible to petition for redesignation as a tier I sex offender under Delaware law because the children depicted in the files he possessed were victims); *Smith v. St. Louis Cnty. Police*, 659 S.W.3d 895, 904 (Mo. 2023) (en banc) (affirming denial of sex offenders' petition for removal from the Missouri sex offender registry and holding that offenders, who were convicted of sex offenses in Missouri, required to register in Missouri as tier I and tier II sex offenders, and required to register under federal SORNA, were not entitled to removal because Missouri law mandates registration for a person's lifetime if they have been required to register under federal law).

[129] *See* TEX. CODE CRIM. PROC. §§ 62.402, 62.405.

J. Failure to Register

1. Generally

Federal law makes it a crime for sex offenders to fail to register or update their registration as required by SORNA.[130] Most states have similar laws, providing a criminal penalty for failure to register as a sex offender.[131]

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[130] 18 U.S.C. § 2250. An offender violates § 2250(a) if the offender is required to register under SORNA (i.e., the offender has been convicted of a sex offense requiring registration), travels in interstate or foreign commerce, and knowingly fails to register or update his or her information as required by SORNA. *See Nichols v. United States*, 578 U.S. 104, 109-111 (2016) (reversing conviction of sex offender under 18 U.S.C. § 2250 where offender failed to notify Kansas he was moving to the Philippines because SORNA did not require sex offender to update registration in state where he no longer resides); *Carr v. United States*, 560 U.S. 438, 447 (2010) (addressing retroactive applicability of SORNA and finding that liability predicated on 18 U.S.C. § 2250 cannot be based on a sex offender's interstate travel that occurred prior to SORNA's effective date); *United States v. Picard*, 995 F.3d 1, 4-5 (1st Cir. 2021) (addressing the elements required to prove a violation of 18 U.S.C. § 2250); *United States v. Navarro*, 54 F.4th 268, 280 (5th Cir. 2022) (holding that a failure to register conviction under 18 U.S.C. § 2250(a) is based on violation of SORNA's registration requirements, which are independent of state law, and because offender was a tier I offender under SORNA, his duty to register terminated in 2016, he did not have a federal duty to register in 2019, and he could not be convicted of a § 2250(a) offense); *United States v. Parkerson*, 984 F.3d 1124, 1132 (5th Cir. 2021) (holding that sentence of 120 months of imprisonment for conviction of failure to register under 18 U.S.C. § 2250 was substantively reasonable and sex offender's history of sexual violence was sufficient to justify a statutory maximum sentence), *cert. denied*, 142 S. Ct. 753 (2022); *United States v. Banks*, No. 22-1095, 2023 U.S. App. LEXIS 5045 (6th Cir. Mar. 1, 2023) (affirming conviction for failing to register and holding that, for purposes of sentencing, sex offender did not show by a preponderance of the evidence that he attempted to register but was prevented from registering by uncontrollable circumstances where he relied on the sheriff's website stating that registration verification was postponed because of the pandemic); *Harder v. United States*, Nos. 21-cv-188-jdp; 14-cr-67-jdp, 2021 WL 3418958, at *1, *6 (W.D. Wis. Aug. 5, 2021) (holding that the Louisiana conviction for indecent behavior with a juvenile is a sex offense under SORNA because there is "a categorical match between the SORNA definition of sex offense and the Louisiana statute," and, as a result, offender "was previously convicted of a sex offense, and he was thus properly convicted of failing to register as a sex offender"); *United States v. Walker*, 931 F.3d 576, 582 (7th Cir. 2019) (vacating conviction for failure to register under SORNA where defendant was a tier I offender and was not required to register during relevant period—which was more than 15 years after his conviction for Colorado sex offense); *United States v. Lusby*, 972 F.3d 1032, 1041-43 (9th Cir. 2020) (addressing the elements required to prove a violation of 18 U.S.C. § 2250); *United States v. Lyte*, No. CR-20-01859, 2021 WL 940986, at *2-3 (D. Ariz. Mar. 12, 2021) (noting that a conviction under § 2250 does not require the government to prove that the offender has also violated a state sex-offender-registration law).

Notably, at least one case has held that a violation of § 2250 must be predicated on an offender's failure to comply with a statutory requirement under SORNA and that the requirements set forth by the Guidelines do not create an additional basis for criminal liability. *See, e.g.*, *United States v. Belaire*, 480 F. App'x 284, 286-88 (5th Cir. 2012) (differentiating between SORNA's requirement to report residency changes within three business days and the requirement to provide temporary lodging information that is contained in the Guidelines, noting that the latter does not create criminal liability under § 2250; and holding that offender could not be prosecuted for failing to update temporary lodging information where neither Texas nor New York required that such information be provided).

[131] Under SORNA, jurisdictions are required to provide a criminal penalty that includes a maximum penalty of greater than one year for the failure of a sex offender to comply with the SORNA requirements. 34 U.S.C. § 20913(f); *see also* Final Guidelines, *supra* note 3, at 38,069 (noting that Indian tribes are not included in this requirement because tribal court jurisdiction does not extend to imposing terms of imprisonment exceeding a year). For additional discussion concerning prosecutions for failure to register based on offenders' failure to update information, see *supra* I.C.4. *See, e.g.*, *United States v. Shinn*, No. 22-1731, 2022 WL 2518014, at *1 (8th Cir. July 7, 2022) (per curiam) (holding that offender failed to register under Iowa law where there was sufficient evidence that sex offender knew or should have known of the requirement to notify the sheriff of a change in his license plate number within five days and offender

Under SORNA, the U.S. Marshals Service is responsible for assisting jurisdictions in locating and apprehending sex offenders who violate their sex offender registration requirements.[132]

2. Strict Liability / Mens Rea

Jurisdictions treat failure to register cases differently in that some hold it as a strict liability offense, whereas others require proof of criminal intent (or mens rea).[133] Strict liability offenses do not require proof of criminal intent.

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failed to do so); *Anderson v. State*, 351 So. 3d 556, 558 (Ala. Crim. App. 2021) (holding that the trial court erred in revoking sex offender's probation for violating Alabama Sex Offender Registration and Community Notification Act by failing to register a change of address where the only evidence indicating that offender did not live at the registered address was a law enforcement officer's nonhearsay observation that the offender was not present at his registered address); *Dorsey v. People*, 536 P.3d 314, 322 (Colo. 2023) (holding that the recidivist provision of the Colorado failure to register as a sex offender statute is a sentence enhancer, not an element of the offense, and "that allowing a judge to elevate a conviction for failure to register from a class 6 felony to a class 5 felony, based on a prior conviction for failure to register, doesn't violate a defendant's right to a jury trial under either the Sixth Amendment or . . . the Colorado Constitution"); *People v. Dorsey*, 503 P.3d 145, 148 (Colo. App. 2021) (holding that a prior state conviction for failure to register as a sex offender is a sentence enhancer and is not an element of the offense for a subsequent violation of that offense under Colorado law), *aff'd on other grounds,* 536 P.3d 314 (Colo. 2023); *State v. Mixon*, 958 N.W.2d 620 (Iowa Ct. App. 2021) (unpublished table decision) (holding that there was substantial evidence to support the conviction of failure to comply where sex offender was aware he was on the sex offender registry as a result of his 2002 conviction, the state established he was a tier III offender and had a duty to appear in person to notify of any changes to his residence within five business days of the change, offender did not appear in person until October 9, 2019, well over five business days after he was evicted on September 9, 2019, and there was ample testimony to show offender was required to comply with his registration requirements in September 2019 after his eviction); *State v. Moler*, 519 P.3d 794, 801 (Kan. 2022) (reversing sex offender's conviction for violating mandate requiring registration of any vehicle owned or operated by the offender and holding that a "rational fact-finder could not have found [the offender] 'owned or operated' or 'regularly drives'" a vehicle under the Kansas Offender Registration Act where he only used the vehicle on one occasion and there was no evidence showing who owned the vehicle or to whom it was registered); *State v. Berry*, 314 So. 3d 1110, 1118 (La. Ct. App. 2021) (affirming conviction of failure to register under Louisiana law where offender failed to provide his email address or Facebook page); *State v. Jones,* 2020-Ohio-6904, No. CA2020-02-003, 2020 WL 7690665, at *2 (Ohio Ct. App. Dec. 28, 2020) (affirming offender's conviction for failure to register under Ohio law where offender was convicted of a sex offense and signed a registration form on which he acknowledged his registration duties, including his requirement to provide at least 20 days' advance notice of any change in residence address, and offender was not at his registered address on the multiple occasions that various local law enforcement went to locate him, and both his landlord and a relative indicated that he had moved); *Silber v. State*, 371 S.W.3d 605, 613 (Tex. App. 2012) (holding that sex offender, who was seldom seen at his registered address, frequently visited his parents, and did not have electricity service during the time that he lived there, did not change his residence from his registered address and therefore could not be convicted of failure to register); *State v. Triebold*, 955 N.W.2d 415, 422-23 (Wis. Ct. App. 2021) (holding that offender, who was convicted of a sex offense in Wisconsin, subsequently moved to Minnesota, and failed to inform both Wisconsin and Minnesota of his change of residence, could be convicted of failure to register in both Wisconsin and Minnesota without violating double jeopardy).

[132] 34 U.S.C. § 20941(a). To assist with these investigations and to provide support to law enforcement "in identifying, locating and apprehending noncompliant sex offenders," the U.S. Marshals Service runs the National Sex Offender Targeting Center (NSOTC) in collaboration with the National Center for Missing & Exploited Children's Sex Offender Tracking Team. U.S. DEP'T OF JUST., U.S. MARSHALS SERVICE, FACT SHEET: SEX OFFENDER INVESTIGATIONS 2021 (Oct. 1, 2023), https://www.usmarshals.gov/sites/default/files/media/document/2024-Sex-Offender-Investigations.pdf.

[133] *Adkins v. State*, 264 S.W.3d 523, 527 (Ark. 2007) (holding that the offense of failure to register as a sex offender under Arkansas law is a strict liability offense and does not require proof of intent); *State v. T.R.D.*, 942 A.2d 1000, 1020 (Conn. 2008) (holding that the crime of failing to register as a sex offender is a strict liability offense); *State v.*

Under federal law, an offender must "knowingly" fail to register as required by SORNA in order to be convicted of an offense under 18 U.S.C. § 2250.[134]

Genson, 513 P.3d 1192, 1201 (Kan. 2022) (holding that failure to register under Kansas Offender Registration Act is a strict liability offense and "imposition of strict liability for a KORA registration violation does not offend substantive due process under the United States Constitution"), *cert. denied,* 143 S. Ct. 1092 (2023); *In re C.P.W.*, 213 P.3d 413, 455-56 (Kan. 2009) (noting that mens rea must be proven before an offender can be convicted of failure to register as a sex offender under Kansas law); *State v. Younger*, 386 S.W.3d 848, 858 (Mo. Ct. App. 2012) (affirming sex offender's conviction of failure to register under Missouri law where he knowingly changed his address and failed to notify the authorities noting that "the 'knowingly' mens rea attached to whether [the offender] 'knowingly' changed his address and 'knowingly' failed to notify the authorities" and not "to whether he knowingly broke the law"); *People v. Haddock*, 48 A.D.3d 969, 971 (N.Y. App. Div. 2008) (holding that the state must prove sex offender knowingly failed to comply with the state's registration requirements before he or she can be convicted of failure to register); *Robinson v. State*, 466 S.W.3d 166, 172 (Tex. Crim. App. 2015) (holding that Texas offense of failure to register requires a culpable mental state only regarding the circumstances of the conduct, or, the duty to register); *Honea v. State*, No. 11-19-00319-CR, 2021 WL 3919437, at *9-10 (Tex. App. Sept. 2, 2021) (holding that there was sufficient evidence to conclude that sex offender resided in Cisco, Texas, and knowingly failed to comply with his duty to register as a sex offender where he previously updated his address in January 2018; he had initialed that he understood all the registration terms and conditions that he was required to comply with; his wife had a home in Cisco; he constantly changed his story about where he lived; a neighbor observed him living at his wife's home in Cisco; and his cellphone records showed multiple days where calls were only made from Cisco); *Prouty v. State*, No. 03-19-00073-CR, 2020 WL 7294616, at *3-4 (Tex. App. Dec. 11, 2020) (holding that offender's failure to register, where he did not disclose his Facebook account despite actively maintaining the same, was voluntary); *Clark v. State*, No. 05-17-01384-CR, 2018 WL 5816879, at *2 (Tex. App. Nov. 7, 2018) (holding that state did not need to prove an additional culpable mental state regarding sex offender's failure to register beyond establishing the offender's awareness of the registration requirement); *Marshall v. Commonwealth*, 708 S.E.2d 253, 255 (Va. Ct. App. 2011) (holding that failure to register under Virginia law does not require "specific intent or purpose" and "an accused 'knowingly fails to register or reregister in violation of the statute if he has knowledge of the fact that he has a duty to register or reregister, but does not do so").

[134] 18 U.S.C. § 2250(a)(3); *see United States v. Picard*, 995 F.3d 1, 5 (1st Cir. 2021) (holding that the government only needs to show general intent to prove a failure to register violation of SORNA); *United States v. Phillips*, No. 19-4271, 2022 WL 822170, at *2 (4th Cir. Mar. 18, 2022) (per curiam) (allowing admission of sex offender's prior convictions for failing to register in New York for the limited purpose of showing his knowledge of his duty to register as a sex offender under SORNA and holding that "[a]n essential element of the SORNA offense was that [offender] knowingly failed to register or update a registration as required by SORNA," "evidence was probative of this element, [and therefore] it was 'necessary,'" and "any possible unfair prejudice, in light of the appropriate limiting instructions, did not substantially outweigh the probative value of the evidence"); *United States v. Vasquez*, 611 F.3d 325, 328 (7th Cir. 2010) (holding that knowledge of an offender's federal obligation under SORNA is not required to sustain a conviction of § 2250 and "SORNA merely requires that a defendant have knowledge that he was required by law to register as a sex offender"); *id.* ("The government need not prove that, in addition to being required to register under state law, a defendant must also know that registration is mandated by a federal statute."); *United States v. Tosca*, 848 F. App'x 371, 377-78 (11th Cir. 2021) (holding that the evidence supported a reasonable inference that sex offender knowingly violated SORNA after he moved to Florida from Massachusetts and that he lied when he said he didn't know he had an obligation to register as a sex offender in Florida).

3. Notice of Requirement to Register

All jurisdictions are required to notify sex offenders of their duty to register before they can be held criminally liable for failing to register.[135] Notice can be imperfect or constructive,[136] however, some

[135] Additional issues may also arise when proper notice of the requirement to register as a sex offender has not been given. *See, e.g.*, *United States v. Lara*, No. ACM 40247, 2023 WL 4234182, at *7 (A.F. Ct. Crim. App. June 28, 2023) (holding that sex offender's guilty plea was not knowing and voluntary where he was advised by defense counsel and the military judge that he would not be required to register as a sex offender under SORNA if he pleaded guilty to attempt to view child pornography); *Stewart v. State*, 315 So. 3d 756, 759 (Fla. Dist. Ct. App. 2021) (reversing conviction and holding that trial court erred in denying offender's motion to withdraw his guilty plea where offender's counsel failed to advise him that he would be designated a sexual predator and the plea agreement "did not elucidate the sexual offender probation or even mention registration as a sexual predator"); *State v. Anthony*, 309 So. 3d 912, 930 (La. Ct. App. 2020) (holding that failure to provide the defendant with notice of the registration requirements for sex offenders, even where the defendant has been sentenced to life, "is an error patent warranting remand for written notification" and remanding the case so that the trial court may inform the defendant of the registration requirements); *People v. Carter*, No. 349181, 2021 WL 3700103, at *3 (Mich. Ct. App. Aug. 19, 2021) (per curiam) (holding that offender's plea was not knowing or voluntary because his trial counsel failed to inform him of Michigan's Sex Offender Registration Act registration requirement and that, although the trial court is not required to advise a defendant of the collateral consequences of a plea, defense counsel must "clearly advise a defendant of the sex-offender-registration requirement of a conviction before the defendant enters a plea"); *State v. Dornoff,* 2020-Ohio-3909, No. WD-16-072, 2020 WL 4384223, at *3 (Ohio Ct. App. July 31, 2020) (holding that offender who pleads guilty to registerable offenses does not need to be advised by court of his registration requirements, in person verification requirements, community notification provisions, and residency restrictions before court accepts his plea). *But see People v. Reader*, No. 350109, 2020 WL 7413939, at *3-4 (Mich. Ct. App. Dec. 17, 2020) (holding that because registration as a sex offender is not punishment, the trial court was not required to advise the defendant that he would be required to register as a sex offender for life prior to accepting his guilty plea); *State v. Canaday*, 949 N.W.2d 348, 355-56 (Neb. 2020) (holding that there was no abuse of discretion where court overruled sex offender's motion to withdraw his plea based on the claim that he did not understand that he may be required to comply with the Nebraska Sex Offender Registration Act (SORA) because registration duties under SORA are not punitive, and therefore, the trial court may inform the defendant of the registration duties before accepting a guilty plea or plea of no contest, but is not required to do so); *State v. Starkey*, No. A-21-336, 2021 WL 4437876, at *2-3 (Neb. Ct. App. Sept. 28, 2021) (affirming sex offender's conviction for failure to register, where offender had a previous conviction from Wisconsin which required him to register as a sex offender in Nebraska, and holding sex offender could not withdraw guilty plea prior to sentencing where the district court questioned the offender to determine that his plea was offered freely, voluntarily, knowingly, and intelligently, and the offender confirmed that it was; the offender failed to timely consult with his Wisconsin diversion officer; and "[t]he court had no obligation to advise [the offender] that he should consult with his diversion officer prior to entering a plea; rather, the responsibility was his. Ignorance of a collateral effect of a plea is not necessarily a basis upon which a court must allow the withdrawal of a plea"). *See also infra* III.A.12 and accompanying notes.

[136] *United States v. Benevento*, 633 F. Supp. 2d 1170, 1197 (D. Nev. 2009) (holding that offender had constructive notice of his obligation to register as a sex offender and could be held criminally liable for failure to register); *Petway v. State*, 661 S.E.2d 667, 667-68 (Ga. Ct. App. 2008) (holding that pre-release notice of sex offender registration requirements is not a prerequisite to a sex offender's statutory obligation to register and affirming conviction of failure to register as a sex offender where offender was informed of his duty to register soon after his release); *State v. Bryant*, 614 S.E.2d 479, 488 (N.C. 2005), *superseded by statute*, N.C. STAT. § 14-208.11, *as recognized in State v. Moore*, 770 S.E.2d 131 (N.C. Ct. App. 2015) (holding that offender was provided with actual notice by South Carolina of his duty to register as a convicted sex offender which was "sufficient to put defendant on notice to inquire into the applicable law of the state to which he relocated, in this instance North Carolina" and therefore offender's conviction for failure to register as a sex offender in North Carolina was constitutional); *State v. Binnarr*, 733 S.E.2d 890, 894 (S.C. 2012) (holding that offender must have actual notice of sex offender reporting requirements before he can be convicted of failure to register and that an unreturned letter, without more, was insufficient); *Barrientos v. State*, No. 05-12-00648-CR, 2013 WL 3227658, at *5-6 (Tex. App. June 24, 2013) (affirming conviction for failure to register as a sex offender where both of the offender's judgments noted the requirement that he register, the registration requirements were read to the offender, and the offender was given copies of the registration form).

jurisdictions require actual notice.[137] A sex offender is also subject to prosecution under § 2250(a), even if he has not received notice of SORNA's registration requirements pursuant to 34 U.S.C. § 20917.[138]

4. Continuing Offense

Some jurisdictions hold that a failure to register is a "continuing offense" and, as such, an individual can be prosecuted only for a single failure to register within a given time frame.[139]

[137] *Garrison v. State*, 950 So. 2d 990, 994 (Miss. 2006) (holding that the state must prove an offender had actual knowledge of the duty to register or provide "proof of the probability of such knowledge" in order to sustain a conviction for failure to register).

[138] *Vasquez*, 611 F.3d at 328 (holding that "SORNA merely requires that a defendant have knowledge that he was required by law to register as a sex offender" and "[t]he government need not prove that, in addition to being required to register under state law, a defendant must also know that registration is mandated by a federal statute"); *United States v. Baccam*, 562 F.3d 1197, 1200 (8th Cir. 2009) (affirming sex offender's conviction of failure to register under 18 U.S.C. § 2250 and holding that sex offender had adequate notice of his registration obligations based on the information provided to him in the California registration forms, even if the notice did not explain that failure to register would be a violation of federal law as well as state law); *United States v. Griffey*, 589 F.3d 1363, 1367 (11th Cir. 2009) (holding that SORNA "does not require that [an offender] specifically know that he was violating SORNA, but only that he 'knowingly' violated a legal registration requirement upon relocating").

[139] *United States v. Ogburn*, 590 F. App'x 683, 684 (9th Cir. 2015) (holding that a failure to register or update a registration under SORNA is a continuing offense); *United States v. Elkins*, 683 F.3d 1039, 1045 (9th Cir. 2012) (recognizing that failure to register under SORNA is a continuing offense); *United States v. Clements*, 655 F.3d 1028, 1029 (9th Cir. 2011) (per curiam) ("Failure to register pursuant to SORNA, or to keep one's registration current, is a continuing offense."); *United States v. Lewis*, 768 F.3d 1086, 1094-95 (10th Cir. 2014) (holding that failure to register as a sex offender is a continuing offense that commenced when offender left his residence and continued until he was arrested); *People v. Lopez*, 140 P.3d 106, 108 (Colo. App. 2005) (noting that failure to register as a sex offender under Colorado law is a continuing offense); *State v. Cook*, 187 P.3d 1283, 1287 (Kan. 2008) (holding that failure to register as a sex offender under Kansas law is a "continuing offense"); *Longoria v. State*, 749 N.W.2d 104, 106 (Minn. Ct. App. 2008) (holding that a failure to register as a sex offender under state law is a continuing offense); *In re Hines*, No. 37647-8-III, 2021 WL 687946, at *3 (Wash. Ct. App. Feb. 23, 2021) (holding that "failure to register as a sex offender is an 'ongoing' offense that must be considered a 'course of conduct'" and, therefore, "multiple convictions for the offense of failure to register are barred"); *State v. Green*, 230 P.3d 654, 656 (Wash. Ct. App. 2010) (noting that Washington statute requiring sex offender to register "in person, every ninety days" was ambiguous regarding whether the unit of prosecution, for double jeopardy purposes, was "each 90-day period in which an offender with a fixed residence fails to register" or if an offender's failure to register is treated as "an ongoing course of conduct," and holding that the unit of prosecution would be construed as involving an ongoing course of conduct).

5. Travel

Interstate travel is generally a necessary element of an 18 U.S.C. § 2250 failure to register offense where it involves a state sex offender.[140] Some jurisdictions' failure to register offenses include a similar "travel" element.[141]

6. Venue

In a prosecution for failure to register, the proper venue is generally the jurisdiction where an individual has failed to comply with his or her registration requirements.[142] Additionally, in at least

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[140] A "state sex offender" is an offender who is required to register based on a state, local, territorial, or tribal conviction and a "federal sex offender" is an offender who is required to register based on a federal conviction. "A federal sex offender, unlike a state sex offender, does not need to travel interstate to commit a SORNA offense." *United States v. Holcombe*, 883 F.3d 12, 16 (2d Cir. 2018); *see also Carr v. United States*, 560 U.S. 438, 445-46 (2010) (noting that, for an offender to be convicted of failure to register under 18 U.S.C. § 2250, the government must prove that the offender was required to register under SORNA, that the offender traveled in interstate or foreign commerce, and that the offender knowingly failed to register or update a registration as required by SORNA); *United States v. Seward*, 967 F.3d 57, 61 (1st Cir. 2020) (holding that interstate travel is a necessary element of an 18 U.S.C. § 2250 offense where it involves a state sex offender); *United States v. Guzman*, 591 F.3d 83, 90 (2d Cir.) (noting that "a sex offender whose underlying conviction was obtained pursuant to state law and who never crosses state lines, international borders, or the boundaries of Indian country, cannot be criminally liable for failure to comply with SORNA"), *cert. denied*, 561 U.S. 1019 (2010); *United States v. Spivey*, 956 F.3d 212, 216 (4th Cir. 2020) (holding "interstate travel" is an essential conduct element for conviction under §2250(a) and relevant for purposes of determining venue); *United States v. Snyder*, No. 13-CR-48, 2014 WL 1408066, at *5 (N.D.W. Va. Apr. 11, 2014) (finding that "it is a crime for an offender required to register to move in interstate commerce and change his or her residence without registering in the new state or updating his or her registration in the state from which the offender moved"), *affirmed in part, vacated in part, and remanded*, 611 F. App'x 770 (4th Cir. 2015); *United States v. Thompson*, 811 F.3d 717, 722 (5th Cir. 2016) (*quoting United States v. Sanders*, 622 F.3d 779, 781-82 (7th Cir. 2010)) ("By contrast, '[o]ne convicted of federal sex offenses is liable for his knowing failure to register or update his registration regardless of whether he travels in interstate or foreign commerce.'"); *United States v. Cruz-Rivera*, 74 F.4th 503 (7th Cir. 2023), *aff'g United States v. Cruz-Rivera*, No. 21-cr-00160, 2021 WL 5014947, at *5-6 (S.D. Ind. Oct. 28, 2021) (holding that there was substantial evidence presented at trial to prove beyond a reasonable doubt that offender was previously convicted of rape, a qualifying sex offense under SORNA, thereby requiring registration as a sex offender; he traveled in interstate commerce to and from Indiana, and he knowingly failed to register as required by SORNA); *Sanders*, 622 F.3d at 781-82 (noting that a sex offender "convicted of federal sex offenses is liable for his knowing failure to register or update his registration regardless of whether he travels in interstate or foreign commerce"); *United States v. Howell*, 552 F.3d 709, 716 (8th Cir. 2009) (noting that Congress limited the enforcement of the registration requirement under § 2250 to only sex offenders who were either convicted of a federal sex offense or who move in interstate commerce); *United States v. Lusby*, 972 F.3d 1032, 1041 (9th Cir. 2020) (holding a conviction under 18 U.S.C. § 2250 does not require that a defendant's interstate travel not be legally compelled).

[141] *Herron v. State*, 625 S.W.3d 144, 158 (Tex. Crim. App. 2021) (noting that a person's physical presence in the location at issue is a prerequisite to having an obligation to register there and holding that conviction for failure to register under Texas law requires an individual to actually travel to the location where he or she intends to reside and that offender, who never physically arrived in a particular location, could not have violated an obligation to register there).

[142] *Seward*, 967 F.3d at 67 (holding that venue is proper in the jurisdiction where the offender's travel began or the offender's departure jurisdiction); *Holcombe*, 883 F.3d at 16 (holding that venue is proper in the offender's departure jurisdiction); *Spivey*, 956 F.3d at 217 (holding that venue is proper in the offender's departure jurisdiction); *United States v. Snyder*, 611 F. App'x 770, 772 (4th Cir. 2015) (holding that venue for failure to register prosecution was proper in the departure jurisdiction); *United States v. Stewart*, 843 F. App'x 600, 603-04 (5th Cir. 2021) (refusing to address circuit split regarding proper venue for SORNA failure to register cases and, because sex offender forfeited any legal argument that venue is improper in the Northern District of Texas, the court reviewed only for plain error and

one state, there is no need to prove where an offender was during the time that the offender failed to register.[143]

7. Impeachment

Sometimes, evidence of an offender's conviction for failure to register has been used for purposes of impeachment and to attack a witness's credibility.[144]

found that there was more than enough circumstantial evidence to support venue in the Northern District of Texas where offender lived with his aunt, he had been arrested in Dallas and reportedly told law enforcement he lived in Dallas, and before moving to Colorado, his girlfriend told a neighbor that he was moving from Texas); *United States v. Haslage*, 853 F.3d 331, 335-36 (7th Cir. 2017) (holding that venue is proper in the offender's destination jurisdiction); *United States v. Banes*, Nos. 21-1187, 21-1188, 2021 WL 5407458, at *2 (8th Cir. Nov. 19, 2021) (holding that Southern District of Iowa was proper venue for failure to register prosecution under 18 U.S.C. § 2250 where sex offender left Fort Des Moines Correctional Facility in Iowa and traveled by bus to Oklahoma and failed to register in Oklahoma);.*Howell*, 552 F.3d at 718 (holding that venue was proper in Iowa where offender registered in Iowa after he was released from jail, traveled from Iowa to Texas, and failed to notify the Iowa sex offender registry of his move and of his new residence), *abrogated by United States v. Lunsford*, 725 F.3d 859 (8th Cir. 2013); *Lewis*, 768 F.3d at 1090 (holding that departure jurisdiction was proper venue for prosecution under 18 U.S.C. § 2250); *United States v. Kopp*, 778 F.3d 986, 988 (11th Cir. 2015) (holding that, where offender traveled from Georgia to Florida, Georgia was proper venue for prosecution for failure to register as a sex offender under 18 U.S.C. § 2250 because his crime "began" in Georgia where "his interstate journey started").

[143] *State v. Peterson*, 230 P.3d 588, 593 (Wash. 2010) (en banc) (holding that failure to register as a sex offender under Washington law is not an alternative-means crime and that the elements of the crime do not include an offender's particular residential status); *State v. Peterson*, 186 P.3d 1179, 1182 (Wash. Ct. App. 2008) (holding that there is no need to prove where an offender was during the time that he failed to register in prosecution for failure to register under state law), *aff'd*, 230 P.3d 588 (Wash. 2010) (en banc).

[144] *Tristan v. State*, 393 S.W.3d 806, 812 (Tex. App. 2012) (holding that conviction for failure to register was a "crime of deception," rendering it admissible in a subsequent criminal trial to impeach the defendant's testimony); *but see Dingman v. Cart Shield USA, LLC*, No. 12-20088-CIV, 2013 WL 3353835, at *3 (S.D. Fla. July 3, 2013) (holding that the defendant failed to meet its burden of showing that the plaintiff's conviction of failure to register as a sex offender involved a dishonest act or false statement); *Correll v. State*, 81 A.3d 600, 613 (Md. Ct. Spec. App. 2013) (holding that failure to register as a sex offender is not an impeachable offense under Maryland Rules of Evidence).

II. Locally Enacted Sex Offender Requirements

A. Residency Restrictions / Public Park Bans

SORNA does not place limitations on where sex offenders may live, locations they may visit or congregate, or on activities they may do; however, jurisdictions are free to do so and many such restrictions exist.[145] Typically, these restrictions prohibit sex offenders from loitering or living within a certain distance of schools, day care centers, public parks, and/or other areas where children frequently visit. Although primarily passed and enforced at the local level, these restrictions have also been passed at the state level.[146] Many of the same challenges that are raised

[145] Final Guidelines, *supra* note 3, at 38,032 ("SORNA's requirements are informational in nature and do not restrict where sex offenders can live."); Supplemental Juvenile Guidelines, *supra* note 57, at 50,555 ("SORNA imposes no restrictions on where sex offenders may live."); *id.* at 50,557 ("SORNA contains nothing that either prohibits or requires residency restrictions."); Applicability of the Sex Offender Registration and Notification Act, 75 Fed. Reg. 81,849, at 81,851 (codified at C.F.R. § 72.3), www.govinfo.gov/content/pkg/FR-2010-12-29/pdf/2010-32719.pdf (hereinafter Final Retroactivity Rule) ("SORNA . . . does not prescribe limitations on sex offenders' places of residence, locations, or activities.").

[146] *See* ARIZ. REV. STAT. § 13-3727 (prohibiting level 3 offenders who have been convicted of a dangerous crime against children from residing within 1,000 feet of a school or child care facility); ARK. CODE ANN. § 5-14-128(a) (prohibiting level 3 and level 4 sex offenders from living within 2,000 feet of schools or day care centers); CAL. PENAL CODE § 3003(g) (prohibiting high-risk paroled sex offenders from residing within one-half mile of any school); CAL. PENAL CODE § 3003.5(b) (prohibiting sex offenders from residing within 2,000 feet of any public or private school, or park where children regularly gather); CAL. W&I CODE § 6608.5(f) (prohibiting sexually violent predators who are conditionally released from living within one-quarter of a mile of any school); DEL. CODE ANN. TIT. 11, § 1112 (prohibiting sex offenders from residing or loitering on or within 500 feet of any school); FLA. STAT. § 947.1405(7)(a)(2) (prohibiting sex offenders whose victim is under 18 years old from living within 1,000 feet of a school or where children congregate); GA. CODE ANN. § 42-1-15(b) (prohibiting any sex offender, on or after July 1, 2008, from residing within 1,000 feet of any child care facility, church, school, or areas where minors congregate if the commission of the act requiring registration occurred on or after July 1, 2008); GA. CODE ANN. § 42-1-17 (prohibiting any sex offender who committed an act between June 4, 2003, and June 30, 2006, for which they are required to register from residing within 1,000 feet of any child care facility, school, or area where minors congregate); IDAHO CODE § 18-8329 (prohibiting sex offenders from being within 500 feet of a school or day care or from residing within 500 feet of a school or day care); 720 ILL. COMP. STAT. § 5/11-9.3 (outlining additional restrictions prohibiting sex offenders from being within school zones and in other areas and prohibiting sex offenders from residing within 500 feet of a school or school property); IND. CODE § 11-13-3-4(g)(2)(B) (prohibiting sex offenders from residing within 1,000 feet of any school property for the duration of their parole); IOWA CODE § 692A.114(2) (prohibiting sexual offenders from residing within 2,000 feet of a school or child care facility); LA. REV. STAT. § 14:91.1 (prohibiting sexually violent predators from being present on school property, school buses and from residing within 1,000 feet of a school, early learning center, playground, youth center, public swimming pool, or arcade); LA. REV. STAT. § 14:91.2 (prohibiting sex offenders, who are convicted of a sex offense or aggravated offense where the victim was under 13 years old, from being within 1,000 feet of a school, school buses, public park, early learning center, or public library and from residing within 1,000 feet of a school, early learning center, or public park); LA. REV. STAT. § 15:538 (prohibiting serious paroled sex offenders from going within 1,000 feet of a school, school buses, early learning center, playground, public swimming pool, youth center, or public arcade and from residing within 1,000 feet of a school, early learning center, playground, youth center, public swimming pool, or public arcade for the duration of parole or probation); MISS. CODE ANN. § 45-33-25(4)(a) (prohibiting sex offenders from residing within 3,000 feet of property comprising any school, child care facility, residential child-caring agency, children's group home or any playground, ballpark, or other recreational facility utilized by persons under the age of 18); MO. REV. STAT. § 566.147 (prohibiting certain sex offenders from residing within 1,000 feet of a school or child care facility); MONT. CODE ANN. § 46-18-255 (requiring a judge sentencing a person convicted of a sexual offense involving a minor and designated as a level 3 offender, as a condition to probation, parole, or deferment or suspension of sentence, impose on the defendant restrictions on the defendant's residency in the proximity of a private or public elementary or high school, preschool, licensed day care

center, church, or public park); N.Y. PENAL LAW § 65.10(4-a) (prohibiting certain offenders from knowingly entering into or upon school grounds or any other facility or institution that is primarily used for the care or treatment of persons under the age of 18); OHIO REV. CODE ANN. § 2950.034 (prohibiting offenders from living within 1,000 feet of a school); OKLA. STAT. ANN. tit. 57, § 590(A) (prohibiting registered sex offenders from residing within a 2,000-feet radius of a school); OR. REV. STAT. §§ 144.642(1), 144.644(2)(a) (providing Department of Corrections with authority to determine where and how close a sex offender can live to a school or day care center); R.I. GEN. LAWS ANN. § 11-37.1-10(c)-(d) (prohibiting level I and II offenders from living within 300 feet of public or private school property and high risk (level III) offenders from living within 1,000 feet of a school); S.C. CODE ANN. § 23-3-535(B) (prohibiting offenders from living within 1,000 feet of a school, day care center, children's recreational facility, park, or public playground); S.D. REV. CODE ANN. § 22-24B-23 (prohibiting offenders from residing within community safety zones); TENN. CODE ANN. § 40-39-211 (prohibiting offenders from residing within 1,000 feet of schools, child care facilities, or the victim); TEXAS GOVT. CODE § 508.187(b) (providing state Parole Board with authority to decide where and how close a paroled sex offender can live or go near to a child safety zone); UTAH CODE ANN. § 77-27-21.7 (prohibiting certain sex offenders from being in a "protected area" unless certain exceptions are met); *see also People v. Superior Ct. of Santa Cruz Cnty.*, 303 Cal. Rptr. 3d 573 (Ct. App 2023) (unpublished decision) (holding that the "prohibition against releasing [a sexually violent predator or] an offender with a history of sexual conduct with children to a residence within a quarter mile of a school applies, even if the school commenced operation . . . only after the date of notice to the community [regarding the offender's release]" and it also applies to home schools); *In re T.B.*, 489 P.3d 752, 766 (Colo. 2021) (recognizing that "though Colorado imposes no statewide residency restrictions on sex offenders, individual municipalities may impose such restrictions"); *Walker v. State*, 860 S.E.2d 868, 872 (Ga. Ct. App. 2021) (holding that Georgia's loitering prohibition, which prohibits sex offenders from loitering at any child care facility, school, or area where minors congregate, only applies to sex offenders who are required to register for acts that were committed after July 1, 2008); *Lingnaw v. Lumpkin*, 474 P.3d 274, 282 (Idaho 2020) (holding that sex offender's property was within 500 feet of property on which a school is located and therefore, Idaho statute prohibiting sex offenders from residing within 500 feet of the property on which a school is located, applied to sex offender); *State v. McCord*, 621 S.W.3d 496, 500 (Mo. Apr. 6, 2021) (en banc) (affirming sex offender's conviction for residing within 1,000 feet of a public school and noting that Missouri statute prohibiting sex offenders from residing within 1,000 feet of a school is applicable to institutions where instruction is given); *Alvarez v. Annucci*, 187 N.E.3d 1032, 1034 (N.Y. 2022) (holding that residency restrictions under New York's Sexual Assault Reform Act apply equally to eligible sex offenders released on parole, conditionally released, or subject to a period of post-release supervision); *People ex rel. E.S. v. Superintendent, Livingston Corr. Facility*, 219 N.E.3d 353, 354 (N.Y. 2023) (holding that New York's school grounds mandatory condition, which prohibits sex offenders from knowingly entering school grounds and is imposed on convicted sex offenders who have served a sentence for an enumerated offense and where the offender's victim was under the age of 18 at the time of the offense or the offender is deemed a level 3 sex offender, is applicable to a person adjudicated as a youthful offender); *People ex rel. Negron v. Superintendent, Woodbourne Corr. Facility*, 160 N.E.3d 1266, 1269 (N.Y. 2020) (holding that N.Y. Executive Law § 259-c(14)'s school grounds restriction, which prohibits certain parolees from residing within 1,000 feet of a school, is only mandatory for level 3 sex offenders who are serving a sentence for an enumerated offense); *People ex rel. McCurdy v. Warden, Westchester Cnty. Corr. Facility*, 163 N.E.3d 1087, 1094 (N.Y. 2020) (holding that N.Y. Correction Law § 73(10) authorizes New York Department of Corrections and Community Supervision to place a sex offender in temporary housing at a residential treatment facility more than six months after his underlying term of imprisonment expires where the offender's ability to secure approved residence, that was not within 1,000 feet of a school, was pending).

with respect to other aspects of sex offender registration and notification laws have also been raised with respect to residency restrictions,[147] including alleged violations of the First Amendment,[148] Fifth Amendment,[149] Sixth Amendment,[150] Eighth Amendment,[151] due process,[152] equal

[147] "[L]aws restricting sex offenders' proximity to schools or parks have been . . . upheld under rational basis review because courts have found they do not implicate the First Amendment or involve a fundamental right." *Doe v. Prosecutor, Marion County, Ind.*, 705 F.3d 694, 702 (7th Cir. 2013) (*citing Smith v. Doe*, 538 U.S. 84 (2003)) (holding that Alaska sex offender registration laws do not violate Ex Post Facto Clause); *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 1-2 (2003) (holding that the public disclosure provision of Connecticut's sex offender registration law did not violate the Due Process Clause); *Doe I v. Miller*, 405 F.3d 700, 715-16 (8th Cir. 2005) (holding residency restriction prohibiting sex offenders who commit sex crimes against minors from residing within 2,000 feet of school or child care facility constitutional under rational basis review).

[148] *Doe v. City of Albuquerque*, 667 F.3d 1111, 1135-36 (10th Cir. 2012) (affirming district court's grant of summary judgment and holding that City of Albuquerque's ordinance banning registered sex offenders from entering public libraries was not narrowly tailored and did not leave open ample alternative channels of communication and therefore does not constitute a permissible, time, place, or manner restriction under the First Amendment); *McGuire v. Marshall*, No. 19-CV-174, 2024 WL 2401833, at *42-43 (M.D. Ala. May 23, 2024), *appeal filed*, No. 24-11731 (11th Cir. May 28, 2024) (holding that Alabama's residency restrictions are substantially overbroad on their face, are not narrowly tailored to the state's interest in preventing sexual abuse, and violate the First Amendment).

[149] *Vazquez v. Foxx*, 895 F.3d 515, 523 (7th Cir. 2018) (holding that amendment to Illinois' statute, which prohibits sex offenders from living within 500 feet of day care homes, does not violate the Fifth Amendment's Takings Clause); *Doe v. Baker*, No. 05-CV-2265, 2006 WL 905368, at *8-9 (N.D. Ga. Apr. 5, 2006) (holding that Georgia residency statute did not violate the Takings Clause); *but see Mann v. Ga. Dep't of Corr.*, 653 S.E.2d 740, 745 (Ga. 2007) (holding that Georgia statute prohibiting registered sex offenders from residing within 1,000 feet of a facility where minors regularly congregate without just and adequate compensation violates the Takings Clauses of the state and federal constitutions).

[150] *People v. Mosley*, 344 P.3d 788, 794 (Cal. 2015) (addressing challenge under *Apprendi* and holding that residency restrictions are not punishment for the purposes of Sixth Amendment analysis and therefore offender had no right to a jury trial); *People v. Presley*, 156 Cal. App. 4th 1027, 1035 (2007) (holding that the public notification and residency requirements under California's sex offender registration laws do not constitute punishment that would require jury findings under the Sixth Amendment).

[151] *Barnes v. Jeffreys*, 529 F. Supp. 3d 784, 794 (N.D. Ill. 2021) (holding that Illinois' one-per-address statute, which prohibits an individual who is on mandatory supervised release for a sex offense from living at the same address or in the same condominium/apartment unit or complex with another person the offender knows or reasonably should know is a convicted sex offender or who has been placed on supervision for a sex offense, constitutes cruel and unusual punishment in violation of the Eighth Amendment because it penalizes offenders' homeless and indigent status and their failure to obtain acceptable housing is "involuntary conduct inseparable from their indigent or homeless status").

[152] *Doe #1 v. Cooper*, 842 F.3d 833, 842-43 (4th Cir. 2016) (holding one portion of the state's residency restriction provisions, prohibiting sex offenders from being present at "any place where minors gather for regularly scheduled educational, recreational, or social programs," was unconstitutionally vague in violation of the Fourteenth Amendment's Due Process Clause); *Duarte v. City of Lewisville*, 858 F.3d 348, 352-53 (5th Cir. 2017) (holding that, even if the city's residency restriction, which prohibited sex offenders from living within 1,500 feet of locations where children commonly gather, infringed on a protected liberty interest, the offender was not entitled to a hearing to determine that he was not currently dangerous under the Fourteenth Amendment's Due Process Clause); *Millard v. Rankin*, 265 F. Supp. 3d 1211, 1232, 1235 (D. Colo. 2017) (relying in part on certain localities' residency restriction provisions in finding that Colorado's registration scheme violated the Eighth and Fourteenth Amendments), *rev'd sub nom. Millard v. Camper*, 971 F.3d 1174 (10th Cir. 2020); *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1332 (M.D. Ala. 2019) (holding that Alabama's residency restriction prohibiting sex offenders from living or working within 2,000 feet of a school or day care does not violate substantive due process); *In re Taylor*, 343 P.3d 867, 879 (Cal. 2015) (holding that blanket enforcement of California's mandatory residency restriction, which prohibits registered sex offenders from residing within 2,000 feet of any public or private school, or park where children regularly gather, as applied to registered sex offenders on parole in San Diego County, is unconstitutional on due process grounds); *People v. Pepitone*, 106 N.E.3d 984, 994-95 (Ill. 2018) (holding that Illinois statute which prohibits certain sex offenders from knowingly entering or being present in public parks does not violate due process under the U.S. Constitution and Illinois

Constitution); *People v. Leroy*, 828 N.E.2d 769, 776-77 (Ill. App. Ct. 2005) (holding Illinois statute prohibiting child sex offenders from living within 500 feet of a school was constitutional and did not violate due process); *People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility*, 163 N.E.3d 1041, 1053 (N.Y. 2020) (holding that the temporary confinement of sex offenders in correctional facilities, while on a waiting list for legally compliant housing, is rationally related to a conceivable, legitimate government purpose of keeping level 3 sex offenders more than 1,000 feet away from schools, and therefore is constitutional), *cert. denied, sub nom. Ortiz v. Breslin*, 142 S. Ct. 914 (2021) (Sotomayor, J., statement respecting denial of certiorari) (writing, "[a]lthough [offender's] petition does not satisfy this Court's criteria for granting certiorari," "to emphasize that New York's residential prohibition, as applied in New York City, raises serious constitutional concerns" and that "New York should not wait for this Court to resolve the question whether a State can jail someone beyond their parole eligibility date, or even beyond their mandatory release date, solely because they cannot comply with a restrictive residency requirement"); *State v. Collier*, No. W2019-01985-CCA-R3-CD, 2021 WL 142172, at *1 (Tenn. Crim. App. Jan. 14, 2021) (holding that Tennessee law, which prohibits sex offenders from being within 1,000 feet of any playground, recreation center, or public athletic field, when children under 18 years of age are present and when they do not have any other specific or legitimate reason for being there, did not violate the Due Process Clause of the Fourteenth Amendment because the definition of "playground," while not defined, held its common and ordinary meaning and therefore was not ambiguous or vague).

protection,[153] Bill of Attainder Clause,[154] and ex post facto laws.[155] Residency restrictions have also been challenged for being too vague,[156] for conflicting with state law,[157] and for violating state constitutional provisions,[158] among other things.[159]

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[153] *Castaneira v. Potteiger*, 621 F. App'x 116, 119 (3d Cir. 2015) (holding that sex offender parolee "was not similarly situated to Pennsylvania offenders because Georgia, not Pennsylvania, imposed the special [1,000 feet residency restriction]" and therefore there was no violation of equal protection); *Barnes*, 529 F. Supp. 3d at 799 (holding that Illinois' one-per-address statute "creates an illegal classification based on wealth which deprives Plaintiffs of their liberty as a result of their inability to pay" in violation of the Fourteenth Amendment's right to equal protection because it treats wealthy sex offenders differently from those who are poor and deprives homeless and indigent offenders of conditional liberty on mandatory supervised release, and therefore, the defendant's application of the statute "creates an illegal classification based on wealth which deprives Plaintiffs of their liberty as a result of their inability to pay"); *Leroy*, 828 N.E.2d at 778 (holding Illinois statute prohibiting child sex offenders from living within 500 feet of a school was constitutional and did not violate equal protection).

[154] *State v. Willard*, 756 N.W.2d 207, 212 (Iowa 2008) (holding that Iowa statute prohibiting sex offender from living within 2,000 feet of a school was not an illegal bill of attainder).

[155] *Groys v. City of Richardson*, No. 20-cv-03202, 2021 WL 3852186, at *5-7 (N.D. Tex. Aug. 9, 2021) (holding that City of Richardson's ordinance prohibiting sex offenders who appear on the Texas sex offender registry from living within 2,000 feet of any premises where children commonly gather is not punitive and therefore cannot violate the Ex Post Facto Clause); *Koch v. Village of Hartland*, 43 F.4th 747 (7th Cir. 2022) (holding that the Village of Hartland's ordinance is retroactive and the critical question in determining whether a law is retroactive, so as to violate the Ex Post Facto Clause, is whether the law changes the legal consequences of acts completed before its effective date, not whether the law targets only conduct occurring after the law's enactment, and remanding to consider the punitive prong); *Weems v. Little Rock Police Dep't*, 453 F.3d 1010, 1014 (8th Cir. 2006) (holding that Arkansas Sex Offender Registration Act's residency restrictions do not violate the Ex Post Facto Clause); *Doe I v. Miller*, 405 F.3d 700, 723 (8th Cir. 2005) (holding that Iowa residency restriction, which prohibits individuals who have committed a criminal sex offense against a minor from residing within 2,000 feet of a school or child care facility, is not unconstitutional on its face and does not amount to an unconstitutional ex post facto punishment); *Doe 1 v. City of Apple Valley*, 487 F. Supp. 3d 761, 774 (D. Minn. 2020) (holding that City of Apple Valley's ordinance, which prohibits certain sex offenders from residing within 1,500 feet of schools, child care centers, places of worship, and parks, including offenders who have committed a "designated sexual offense" against a child under the age of 16; offenders who are required to register as a predatory offender as a result of having committed an offense against a child under the age of 16; or offenders who have been categorized as a level III sex offender, regardless of the age of the offender's victim, does not violate the Ex Post Facto Clause); *McGuire v. Marshall*, 50 F.4th 986, 1016 (11th Cir. 2022) (holding that Alabama's residency restriction, which limits the total number of hours a sex offender can spend in any one place during a given month, is not "so punitive in purpose or effect that [it] override[s] the Alabama legislature's stated nonpunitive intent" and retroactive application does not violate the Ex Post Facto Clause); *People ex rel. Rivera v. Superintendent, Woodbourne Corr. Facility*, 221 N.E.3d 1, 13 (N.Y. 2023) (holding that retroactive application of New York's school grounds condition, which prohibits level 3 sexually violent offenders from residing within 1,000 feet of school grounds, to offender did not violate the Ex Post Facto Clause of the U.S. Constitution); *but see Does 1-35 v. State ex rel. Ford*, No. 15-cv-01638, 2020 WL 5820992, at *6 (Sept. 29, 2020) (holding that Nevada's movement and residency restrictions under Nev. Rev. Stat. § 213.1243, as applied to the plaintiffs, who committed criminal offenses before the restrictions were added, are retroactive and punitive because the restrictions increase the risk of additional punishment to plaintiffs for their crimes, only apply to tier III offenders, are a restraint on the plaintiffs' liberty, meet the goals of punishment in that they are retributive and have a deterrent effect, and are unreasonable, and, as a result violate the Ex Post Facto Clause and permanently enjoining the defendants from retroactively enforcing any condition of lifetime supervision not specifically set forth in § 214.1243 before Oct. 1, 2007, to any plaintiffs whose last relevant criminal offense, including any offense that would trigger the movement and residency restrictions, occurred prior to Oct. 1, 2007), *vacated in part by* 2021 WL 4509163, at *3 (D. Nev. Sept. 30, 2021) (holding that retroactive application of Nevada's residency and movement restrictions to offenders who committed criminal offenses prior to Oct. 1, 2007, violates the Ex Post Facto Clause); *Doe v. Miami-Dade County*, 846 F.3d 1180, 1186 (11th Cir. 2017) (holding that homeless sex offenders sufficiently alleged that Miami-Dade County's child safety ordinance, which prohibits individuals convicted of certain sex offenses where the victim is under 16 years of age from residing within 2,500 feet of any school, was so punitive to violate the Ex Post

B. Employment Restrictions

SORNA does not limit where, or in what profession, sex offenders may work.[160] However, many jurisdictions have enacted laws that prohibit sex offenders from working in certain professions or at

Facto Clauses of the federal and Florida Constitutions); *Commonwealth v. Baker*, 295 S.W.3d 437, 447 (Ky. 2009) (holding that retroactive application of Kentucky's residency restrictions, which were punitive and exceeded the nonpunitive purpose of public safety, violated the Ex Post Facto Clauses of the state and federal constitutions).

[156] *State v. Stark*, 802 N.W.2d 165, 171 (S.D. 2011) (holding that South Dakota statutes prohibiting sex offenders from loitering in a community safety zone were not unconstitutionally vague).

[157] *Doe v. City of Lynn*, 36 N.E.3d 18, 23 (Mass. 2015) (holding that municipal ordinance, imposing residency restrictions on sex offenders, was unconstitutional under state's Home Rule Amendment and preempted by state law); *People v. Diack*, 26 N.E.3d 1151, 1158 (N.Y. 2015) (holding that county was preempted by New York law from enacting residency restrictions, prohibiting registered sex offenders from residing within 1,000 feet of a school); *G.H. v. Twp. of Galloway*, 951 A.2d 221, 231 (N.J. Super. Ct. App. Div. 2008) (holding that municipal ordinances prohibiting convicted sex offenders from living within a designated distance of schools, parks, playgrounds, and day care centers, was preempted by New Jersey law); *but see Ryals v. City of Englewood*, 364 P.3d 900, 910 (Colo. 2016) (holding that local ordinance, "which effectively bars certain sex offenders from residing within the city," did not conflict with state law and therefore was not preempted by state law).

[158] *Valenti v. Lawson*, 889 F.3d 427, 430-32 (7th Cir. 2018) (holding that Indiana residency restriction, prohibiting serious sex offenders from knowingly or intentionally entering school property, was rationally related to a legitimate purpose and therefore did not violate the state constitution, even though offender argued it interfered with his right to vote because his polling place was at a high school and he was prohibited from being on school property).

[159] *United States v. King*, 431 F. App'x 630, 632-33 (10th Cir. 2011) (holding that Oklahoma's residency restrictions, prohibiting sex offenders from living within 2,000 feet of facilities whose primary purpose is working with children, did not present an obstacle to complying with federal sex offender registration requirements); *People v. Legoo*, 178 N.E.3d 1110, 1117 (Ill. 2020) (affirming conviction under 720 Ill. Comp. Stat. § 5/11-9.4-1(b) and holding that 720 Ill. Comp. Stat. § 11-9.4-1(b) completely bars certain sex offenders from being present in public parks and the exception to criminal liability in § 11-9.3(a-10) does not apply); *State v. Russell*, No. W2019-01874-CCA-R3-CD, 2020 WL 5033435, at *4 (Tenn. Crim. App. Aug. 25, 2020) (holding that there was sufficient evidence to sustain conviction for violating sex offender residency restriction prohibiting offender from "being alone" with a minor in a private area where minor was in the defendant's home).

[160] Supplemental Juvenile Guidelines, *supra* note 57, at 50,556 ("SORNA imposes no restrictions on registrants' qualification for employment or on unsupervised association with younger children.").

certain locations.[161] Additionally, there may be other ramifications on an offender's employment when he or she is convicted of a sex offense or required to register as a sex offender.[162]

C. Risk Assessment

SORNA does not address the use of risk assessment for registration or notification purposes. However, many jurisdictions use risk assessment processes for a variety of purposes, including determining whether offenders have a duty to register and/or the duration and reporting frequency

[161] *See, e.g.*, ALA. CODE § 15-20A-13(a) (prohibiting adult sex offenders from maintaining employment or volunteering at any school, child care facility, mobile vending business that provides services primarily to children, or any other business or organization that primarily provides services to children, or any amusement or water park); ALA. CODE § 15-20A-31(a) (prohibiting juvenile sex offenders from working or volunteering at any school, child care facility, or other business or organization that provides services primarily to children); ARK. CODE ANN. § 12-12-929(b) (prohibiting certain sex offenders from holding a position of public trust); FLA. STAT. §§ 435.06, 435.07(4)(b) (disqualifying individuals who are registered as sex offenders from being eligible for certain types of employment); GA. CODE ANN. § 42-1-15(c)(1) (prohibiting any sex offender, on and after July 1, 2008, from being employed or from volunteering at any child care facility, school, or church, or by or at any business or entity that is located within 1,000 feet of a child care facility, school, or church if the commission of the act requiring registration occurred on or after July 1, 2008); GA. CODE ANN. § 42-1-15(c)(2) (prohibiting any sexually dangerous predator, on or after July 1, 2008, from being employed or from volunteering at any business or entity that is located within 1,000 feet of an area where minors congregate if the commission of the act requiring registration occurred on or after July 1, 2008); GA. CODE ANN. § 42-1-16(c)(1) (prohibiting any sex offender, who committed an act between July 1, 2006, and June 30, 2008, requiring registration, from being employed by any child care facility, school, or church, or by or at any business or entity that is located within 1,000 feet of a child care facility, school, or church); GA. CODE ANN. § 42-1-16(c)(2) (prohibiting any sexually dangerous predator, who committed an act between July 1, 2006, and June 30, 2008, requiring registration, from being employed by any business or entity that is located within 1,000 feet of an area where minors congregate); IDAHO CODE § 18-8327 (prohibiting sex offenders from applying for or accepting employment at a day care center, group day care facility, or family day care home); IOWA CODE § 692A.113 (prohibiting sex offenders convicted of a sex offense against a minor from being employed or volunteering at any municipal, county, or state fair or carnival when a minor is present, arcade or amusement centers, public or nonpublic schools, child care facilities, public libraries, recreational/sports areas, swimming pools, or ice cream trucks); IOWA CODE § 692A.115 (prohibiting sex offenders from working at facilities providing care to vulnerable adults); MONT. CODE ANN. § 46-18-255 (requiring a judge sentencing a person convicted of a sexual or violent offense impose, as a condition to probation, parole, or deferment or suspension of sentence impose reasonable employment prohibitions and restrictions designed to protect the class of persons containing the likely victims of further offenses by the defendant); N.C. GEN. STAT. § 14-208.17 (prohibiting sex offenders from working or volunteering at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors); *see also Doe v. Settle,* No. 20-cv-190, 2020 WL 5352002, at *6 (E.D. Va. Aug. 17, 2020) (holding that there is no right to employment in a particular profession, and the restrictions on employment provided by Virginia's registry laws, which prohibit teaching children, operating a day care, working for a rideshare, and operating a tow truck, are reasonable), *aff'd*, 24 F.4th 932 (4th Cir. 2022).

[162] For example, if a person has been convicted of a sex offense involving children, their certified shorthand reporter's license or amateur radio license may be revoked. *Sonntag v. Stewart*, 53 N.E.3d 46, 52 (Ill. App. Ct. 2015) (revoking reporter's license as sanction for conviction of possession of child pornography); *In re Titus*, 29 FCC Rcd. 14066 (2014) (reversing administrative law judge's decision and revoking convicted sex offender's amateur radio license). Additionally, an attorney convicted of a sex offense may also be disbarred indefinitely. *Toledo Bar Ass'n v. Long*, 179 N.E.3d 1262, 1264 (Ohio 2021) (per curiam) (holding that the defendant, a licensed attorney in Ohio who was convicted of multiple sex offenses, should be indefinitely suspended from the practice of law). *But see In re Stevens*, 519 P.3d 208, 225-26 (Wash. 2022) (holding that offender convicted of voyeurism who is required to register as a sex offender is of good moral character and should be admitted to practice law in Washington).

of sex offenders' registration requirements,[163] establishing supervision intensity,[164] and determining the level and method of community notification for registered sex offenders.[165] SORNA does not

[163] *See, e.g.*, GA. CODE ANN. § 42-1-14 (requiring sexually dangerous predators, as determined by risk assessment, to report in person six months after their birthday); MASS. GEN. LAWS ch. 6, § 178K (utilizing risk assessments to determine level of notification for sex offenders), MONT. CODE ANN. § 46-23-506 (outlining sex offenders' registration duration and frequency requirements based on assigned risk level), N.Y. CORRECT. LAW § 168-h (utilizing risk assessments to determine sex offenders' registration duration and frequency); *see also Doe (No. 496501) v. Sex Offender Registry Bd.*, 126 N.E.3d 939, 954 (Mass. 2019) (noting that an offender is "generally unlikely to pose a moderate degree of dangerousness—and thus to qualify as a level two sex offender—where his or her risk of reoffense relates only to noncontact offenses that do not put a victim in fear of bodily harm by reason of a contact sex offense"); *Doe (No. 7083) v. Sex Offender Registry Bd.*, 35 N.E.3d 698, 708 (Mass. 2015) (holding that a sex offender's liberty interests were violated where he was classified as a level 3 sex offender 10 months prior to his earliest parole eligibility date and noting that "a final classification must be based on an evaluation of the offender's risk of reoffense at a time reasonably close to the actual date of discharge" in order to satisfy due process); *Doe (No. 972) v. Sex Offender Registry Bd.*, 697 N.E.2d 512, 513 (Mass. 1998) (holding that the board must hold an evidentiary hearing to prove the appropriateness of an offender's risk classification before requiring the offender to register as a sex offender), *overruled by Doe (No. 380316) v. Sex Offender Registry Bd.*, 41 N.E.3d 1058 (Mass. 2015); *State v. Williams*, 952 N.E.2d 1108, 1112 (Ohio 2011) (holding that offenders who committed their offenses prior to Jan. 1, 2008, are entitled to a court hearing to determine the offenders' risk level or classification and then, offenders' classification is used to establish the offenders' registration duration and frequency requirements); *State v. Decredico*, No. PM-2018-2467, 2021 WL 2324187, at *9 (R.I. Sup. Ct. June 1, 2021) (holding that there was competent evidence to support the board's classification of the defendant as a level II sex offender where the board relied on the STABLE-2007, a validated risk-assessment tool), *vacated and remanded by* 291 A.3d 544, 550 (R.I. 2023) (holding that there was insufficient evidence to support the board's moderate risk classification of offender convicted of possession of child pornography as a level II sex offender where the board relied on the STABLE-2007 because the STABLE-2007 has not been validated for noncontact offenders); *In re Christopher H.*, 854 S.E.2d 853, 856 (S.C. Ct. App. 2021) (holding that sentencing court erred by finding good cause existed to place juvenile on sex offender registry where there was insufficient evidence showing he was at risk of reoffending), *cert. dismissed*, 873 S.E.2d 773 (S.C. 2022). *But see Spencer v. State Police Dir.*, No. 352539, 2020 WL 6814649, at *7-8 (Mich. Ct. App. Nov. 19, 2020) (per curiam) (holding that the lack of an individualized assessment of each particular sex offender's actual dangerousness does not make Michigan's Sex Offender Registration Act unconstitutional).

Some jurisdictions also utilize risk assessments in determining the eligibility of offenders to modify or terminate their registration requirements. *See, e.g.*, GA. CODE ANN. § 42-1-19 (requiring risk assessment be completed prior to court considering a petition for release); IOWA CODE § 692A.128 (requiring risk assessment be completed before court will determine whether an offender's petition for reduction of registration period will be granted), N.Y. CORRECT. LAW § 168-o(2) (utilizing risk assessment in determining offenders' eligibility to petition for relief from registration); OR. REV. STAT. § 163A.105 (requiring risk assessment be performed on offenders when convicted of specific crimes and sentenced to a term of imprisonment and before being placed on supervision, probation, etc.); *see also Becher v. State*, 957 N.W.2d 710, 716-17 (Iowa 2021) (reversing district court's denial of offender's application for modification of his registry requirements, noting that the district court erred in considering offender's STATIC-99R evaluation out of context and penalizing him for his years of successful adjustment to sex offender registration, and holding that adult sex offenders must be classified as low risk using standard risk assessment tools in order to modify their sex offender registration requirements); *Fortune v. State*, 957 N.W.2d 696, 706-10 (Iowa 2021) (outlining the proper framework for considering modification applications indicating that, once the threshold statutory requirements have been met (i.e., successful completion of sex offender treatment, requisite time on the registry, and a low-risk evaluation), the court should consider "only those factors that bear on whether the applicant is at low risk to reoffend and there is no substantial benefit to public safety in extending the registration requirements," and that the "threat to public safety must be tied to the individual applicant and the record established in the case").

[164] *See, e.g.*, GA. CODE ANN. § 42-1-14 (requiring sexually dangerous predators, as determined by risk assessment, to wear electronic monitoring system); IOWA CODE § 692A.124 (utilizing risk assessment to determine whether sex offender will be subject to electronic tracking and monitoring); S.C. CODE ANN. § 23-3-540 (requiring electronic monitoring of certain sex offenders based upon their assigned risk level).

preclude the use of risk assessment to enhance registration requirements or for community notification, supervision, or treatment purposes.

[165] *See, e.g.*, ALA. CODE § 15-20A-26 (requiring juvenile sex offender undergo risk assessment following completion of treatment to determine offender's risk to the community and level of notification that will apply), ME. REV. STAT. tit. 34-A, § 11253 (requiring risk assessment be applied to each registrant for purposes of notification to law enforcement agencies and the public); ME. REV. STAT. tit. 34-A, § 11254 (requiring information about sex offenders, including the "status of the registrant when released as determined by the risk assessment" and an offender's risk assessment score, be provided to the Department of Public Safety when offenders are conditionally released or discharged); ME. REV. STAT. tit. 34-A, § 11256 (utilizing risk assessment for purposes of notification to the public regarding offenders' conditional release or discharge); NEB. REV. STAT. § 29-4013 (relying on risk assessment and a sex offender's risk of recidivism in determining level of community notification); N.J. STAT. ANN. § 2C:7-13(2)(b) (utilizing risk assessments in determining what information to include on the public sex offender registry); OR. REV. STAT. § 163A.215 (utilizing risk assessments to determine who to include on the sex offender registry); R.I. GEN. LAWS ANN. § 11-37.1-6(1)(c) (requiring offenders who have a duty to register to be referred to the board "for a determination as to the level of risk an offender poses to the community" to determine offender's community notification level); TEX. CRIM. PRO. § 62.005 (permitting the department to include sex offender's risk level on public registry website); TEX. CRIM. PRO. § 62.007 (requiring that the Texas Department of Criminal Justice establish a risk assessment committee to develop a screening tool for sex offenders and permitting disclosure of an offender's assigned risk level to the public); TEX. ADMIN. CODE § 380.8787 (requiring sex offender risk assessment for sex offenders in the custody of the Texas Juvenile Justice Department); 13 VT. STAT. ANN. § 5411b (requiring that the Department of Corrections evaluate sex offenders for purposes of determining whether they are "high risk" and who to include on the public registry); *see also State v. Trujillo*, 462 P.3d 550, 561 (Ariz. 2020) (recognizing that Arizona's community notification provisions only apply to sex offenders who have been identified as high risk); *State v. Henry*, 228 P.3d 900, 907 (Ariz. Ct. App. 2010) (recognizing the nonpunitive purposes for sex offender and notification laws and to serve the "nonpunitive ends" of the registration statutes, the legislature has limited "mandatory community and website notification" to "offenders deemed to pose a heightened risk to the community"); *Ariz. Dep't of Pub. Safety v. Superior Ct. in and for Maricopa Cnty.*, 949 P.2d 983, 992 (Ariz. Ct. App. 1997) (holding that Arizona's community notification provisions were not excessive because "the community-notification statute is sensitive concerning the varying degrees of risk presented by different offenders by tailoring the dissemination of information to the jeopardy posed").

III. Legal Challenges / Issues

Nearly all individuals who are required to register as sex offenders must do so because they have been convicted of a criminal offense.[166] As such, by the time an individual is actually required to register, he or she has already gone through criminal proceedings, including trial and sentencing, and has been afforded a number of associated constitutional protections.[167] Nevertheless, offenders still often raise constitutional or other legal challenges to their registration requirements.

A. Constitutional Challenges

1. Commerce Clause

Under the U.S. Constitution's Commerce Clause,[168] Congress has the power to regulate commerce among states and with foreign nations and Indian tribes. Courts have held that, in enacting SORNA, Congress acted within its powers under the Commerce Clause.[169]

2. Necessary and Proper Clause

The Necessary and Proper Clause provides Congress with the ability to make the laws required to exercise its powers established by the U.S. Constitution.[170] The U.S. Supreme Court has held that the Necessary and Proper Clause grants Congress power to enact SORNA and to apply SORNA's

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[166] For example, Minnesota requires individuals who are civilly committed as sexually dangerous persons, sexual psychopaths, or as persons with a psychopathic personality, under Minn. Stat. § 526.10, and individuals who are civilly committed as persons who are mentally ill and dangerous to the public, under Minn. Stat. § 253B.185, to register as sex offenders, regardless of whether they were convicted of a sex offense. MINN. STAT. § 243.166(1b)(c).

[167] *See, e.g.*, *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 7-8 (2003) ("When an individual is convicted of a sex offense, no further process is due before imposing sex offender conditions."); *Meza v. Livingston*, 607 F.3d 392, 401 (5th Cir. 2010) (recognizing that an offender who is convicted of a sex offense in a "prior adversarial setting, whether as the result of a bench trial, jury trial, or plea agreement, has received the minimum protections required by due process").

[168] U.S. CONST. ART. I, § 8.

[169] *United States v. Robbins*, 729 F.3d 131, 136 (2d Cir. 2013) (holding that SORNA "is a legitimate exercise of congressional Commerce Clause authority" and is constitutional as applied to sex offenders who fail to register or update information after traveling interstate); *United States v. Guzman*, 591 F.3d 83, 90 (2d Cir.), (holding that SORNA and 18 U.S.C. § 2250 are constitutional under the Commerce Clause and noting that the court "join[s] every other circuit that has examined the issue in concluding that § 2250(a) is a legitimate exercise of congressional Commerce Clause authority"), *cert. denied*, 561 U.S. 1019 (2010); *United States v. Pendleton*, 636 F.3d 78, 88 (3d Cir. 2011) (holding that SORNA is constitutional under the Commerce Clause); *United States v. Johnson*, 632 F.3d 912, 920 (5th Cir. 2011) (holding that "SORNA is valid under . . . the Commerce Clause"); *United States v. Brooks*, No. 23-1694, 2023 WL 6861861, at *1 (8th Cir. Oct. 18, 2023) (per curiam) (relying on *United States v. May* and holding that "SORNA's criminal penalties are a valid exercise of the Commerce Clause"); *United States v. Lusby*, No. 21-10333, 2022 WL 16570816, at *1 (9th Cir. Nov. 1, 2022) (holding that 18 U.S.C. § 2250(a) is "a lawful exercise of Congress's authority under the Commerce Clause"); *United States v. Cabrera-Gutierrez*, 756 F.3d 1125, 1129-30 (9th Cir. 2014) (holding that Congress had the power under the Commerce Clause to enact SORNA); *United States v. Hardeman*, 598 F. Supp. 2d 1040, 1042-43 (N.D. Cal. 2009) (holding that 18 U.S.C. § 2250 and SORNA's registration requirements do not violate the Commerce Clause); *United States v. White*, 782 F.3d 1118, 1123 (10th Cir. 2015) (holding that "SORNA is a proper exercise of Congress's Commerce Clause power"); *United States v. Ambert*, 561 F.3d 1202, 1211 (11th Cir. 2009) (holding that Congress had the commerce power to enact SORNA).

[170] U.S. CONST. ART. I, § 8.

registration requirements to federal offenders who completed their sentences before SORNA's enactment.[171]

3. Bill of Attainder Clause

The Bill of Attainder Clause of the U.S. Constitution prohibits legislative acts that apply to a specific set of individuals and that inflict punishment without a judicial trial.[172] At least one case has addressed the application of SORNA and whether it violates the Bill of Attainder Clause.[173]

4. Full Faith and Credit Clause

The Full Faith and Credit Clause of the U.S. Constitution requires states to honor the laws, records, and all court rulings from all other states.[174] The U.S. Supreme Court has noted that "the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though the statute is of controlling force in the courts of the state of its enactment."[175] It also "cannot be used by one state to interfere

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[171] *United States v. Kebodeaux*, 570 U.S. 387, 399 (2013) (holding that the Necessary and Proper Clause grants Congress adequate power to enact SORNA and apply SORNA's registration requirements to a federal offender who completed his sentence prior to SORNA's enactment); *see United States v. Brunner*, 726 F.3d 299, 303 (2d Cir. 2013) (holding that Congress had authority under the Necessary and Proper Clause to apply SORNA's registration requirements to a federal sex offender who was convicted by a general court-martial); *Cabrera-Gutierrez*, 756 F.3d at 1132 (holding that "the Necessary and Proper Clause provided Congress ample authority to enact [§ 20913] and to punish a state sex offender who . . . traveled interstate, for failing to register"); *see also* SORNA Rule, *supra* note 30, at 69,856 (recognizing that 34 U.S.C § 20913(d), which provides the Attorney General with the authority to specify the applicability of SORNA's requirements to sex offenders convicted before the enactment of SORNA, "is not a constitutionally impermissible delegation of legislative authority" and "it enables the Attorney General to effectuate the legislative intent that SORNA apply to all sex offenders, regardless of when they were convicted").

[172] U.S. CONST. ART. I, § 9.

[173] *See Orfield v. Virginia*, No. 12CV541, 2012 WL 3561920, at *2 (E.D. Va. Aug. 16, 2012) (dismissing offender's claim that SORNA is an unconstitutional bill of attainder and holding that "[s]ince registration of sex offenders is not punitive, it likewise does not run afoul of constitutional prohibitions on Bills of Attainder"); *Pearson v. Holder*, No. 09-cv-00682, 2011 WL 13185719, at *7 (N.D. Tex. Apr. 29, 2011) (holding that offender did not have a valid claim that SORNA is a bill of attainder because "[a]lthough [he] alleges that sex offenders are an identifiable group, there is no basis for the claim that SORNA denies these individuals a trial" and"[b]oth prior to the imposition of the registration requirements, as part of the individual's criminal proceeding and sentencing, and after a violation of § 2250, an individual is granted a trial"). *See also Doe XLVI v. Anderson*, 108 A.3d 378, 387-88 (Me. 2015) (holding that retroactive application of Maine's Sex Offender Registration and Notification Act of 1999's registration requirements to sex offender, without a judicial trial, was so punitive in effect to override the legislature's intent that the law was an unconstitutional bill of attainder in violation of the Maine Constitution); *Nguyen v. Evans*, No. A21-1319, 2022 WL 1210277, at *9-10 (Minn. Ct. App. Apr. 25, 2022) (holding that requiring offender charged with aiding and abetting kidnapping and false imprisonment was required to register as a sex offender even though the charges were dismissed because "the registration requirement is regulatory, and not punitive," and "application of the predatory-offender-registration statute based on a charge supported by probable cause does not result in an unconstitutional bill of attainder").

[174] U.S. CONST. ART. IV, 1.

[175] *Donlan v. State*, 249 P.3d 1231, 1232-33 (Nev. 2011) (*quoting Pac. Emp. Ins. Co. v. Indus. Accident Comm'n of Cal.*, 306 U.S. 493, 502 (1939)) (holding that the Full Faith and Credit Clause did not require Nevada to recognize California's termination of sex offender's requirement to register as a sex offender and noting that "[e]ven if California imposes less restrictive requirements upon sex offenders, '[California] has no authority to dictate to [Nevada] the manner in which it can best protect its citizenry from those convicted of sex offenses'").

impermissibly with the exclusive affairs of another"[176] and "[e]nforcement measures do not travel with the sister state judgment."[177]

Arguments based on the Full Faith and Credit Clause typically arise when an offender moves to another jurisdiction and is required to register in the new jurisdiction, even though the offender's duty to register in the originating jurisdiction has been terminated.[178]

5. Supremacy Clause

The Supremacy Clause of the U.S. Constitution requires that the U.S. Constitution and federal laws take priority over any conflicting rules of state law.[179] Under the Supremacy Clause, federal law preempts local law that interferes with or conflicts with federal law.[180] In a handful of cases, offenders have unsuccessfully alleged that application of state sex offender registration laws conflict with SORNA in violation of the Supremacy Clause.[181]

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[176] *Rosin v. Monken*, 599 F.3d 574, 577 (7th Cir. 2010) (*citing Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232 (1998)).

[177] *Baker*, 522 U.S. at 235.

[178] *United States v. Paul*, 718 F. App'x 360, 364 (6th Cir. 2017) (holding that enforcing SORNA against sex offender did not violate the Full Faith and Credit Clause because Tennessee judgment did not address offender's SORNA obligations and to be afforded full faith and credit, he would need to show that "the Tennessee judgment validly excused him from *all* registration requirements under both state and federal law"), *cert. denied*, 140 S. Ct. 342 (2019); *Rosin*, 599 F.3d at 576-77 (holding it was not a violation of the Full Faith and Credit Clause to require an offender, who was convicted in New York and promised in his plea agreement that he would never have to register as a sex offender, to register when he moved to Illinois); *Lindsey v. Comm'r of Fla. Dep't of Law Enf't*, No. 22-10420, 2022 WL 4231823, at *3 (11th Cir. Sept. 14, 2022) (per curiam) (holding that requiring sex offender to register in Florida when he is no longer required to register as a sex offender in Oklahoma does not violate the Full Faith and Credit Clause of the U.S. Constitution); *Crofoot v. Harris*, 239 Cal. App. 4th 1125, 1127 (2005) (holding that the Full Faith and Credit Clause did not require termination of offender's obligation to register as a sex offender for life in California where offender was only required to register in Washington for 10 years and had already satisfied his obligation in Washington); *Nolan v. Fifteenth Jud. Dist. Att'y Off.*, 62 So. 3d 805, 807 (La. Ct. App. 2011) (holding that Louisiana did not fail to give full faith and credit to Ohio judgment and that sex offender was required to register in Louisiana based on Ohio convictions, even though offender's duty to register in Ohio had been terminated); *Lozier v. State*, 284 So. 3d 745, 750 (Miss. 2019) (holding that the Full Faith and Credit Clause did not require Mississippi to release sex offender from his registration duties where sex offender had been released from his duty to register in Massachusetts); *Hixson v. Mo. State Highway Patrol*, 611 S.W.3d 923, 927 (Mo. Ct. App. 2020) (holding that a tier III sex offender, whose offense was adjudicated in Illinois and who has been removed from Illinois' sex offender registry, cannot rely on the Full Faith and Credit Clause to petition for removal from Missouri's registry noting that use of the full faith and credit argument is a total misapprehension of the workings of sex offender registries); *Donlan v. State*, 249 P.3d 1231, 1232 (Nev. 2011) (holding that the Full Faith and Credit Clause did not require Nevada to recognize California's termination of offender's requirement to register as a sex offender and requiring offender to register as a sex offender in Nevada); *People v. Hlatky*, 61 N.Y.S.3d 395, 397 (N.Y. App. Div. 2017) (requiring defendant to register as a sex offender in New York where offender was relieved of duty to register in Washington did not violate the Full Faith and Credit Clause); *In re Doe v. O'Donnell*, 86 A.D.3d 238, 241-42 (N.Y. App. Div. 2011) (holding that requiring sex offender to register in both New York and Virginia did not violate the Full Faith and Credit Clause); *In re C.B.*, 906 N.W.2d 93, 98 (N.D. 2018) (holding that the Full Faith and Credit Clause did not prohibit North Dakota from requiring offender to register as a sex offender despite offender not being required to register in Washington).

[179] U.S. CONST. ART. VI, ¶ 2.

[180] *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985) (noting that the Supremacy Clause "invalidates state laws that 'interfere with, or are contrary to,' federal law").

[181] *Spiteri v. Russo*, No. 12-CV-2780, 2013 WL 4806960, at *43 & n.49 (E.D.N.Y. Sept. 7, 2013) (noting that the plaintiff's Supremacy Clause claim is without merit and not cognizable because the "Supremacy Clause only makes a

6. Right to Travel

The right to interstate travel is a fundamental right guaranteed by the U.S. Constitution.[182] However, the right to interstate travel is not absolute and offenders' challenges to SORNA and state sex offender registration and notification laws on this basis typically fail.[183]

7. Separation of Powers and Nondelegation Doctrine

Under the separation of powers doctrine, governmental authority is divided into three branches—legislative, executive, and judicial—with each branch having specific duties on which the other branches cannot encroach.[184] The U.S. Constitution confers certain legislative powers on the U.S.

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law void when it is in conflict with federal law," "[n]othing in SORNA prevents states from keeping individuals on the registry even if they no longer reside in the United States," and holding that New York's Sex Offender Registration Act was not preempted by SORNA); *United States v. King*, 431 F. App'x 630, 633 (10th Cir. 2011) (noting that, even if the defendant raised a redressable Supremacy Clause claim, it would fail because Oklahoma's residency restriction statute did not conflict with SORNA).

[182] *Prynne v. Settle*, 848 F. App'x 93, 103 (4th Cir. 2021) ("The right to interstate travel is a fundamental right."); *United States v. Shenandoah*, 595 F.3d 151, 162 (3d Cir. 2010) (noting that "[t]here are several constitutional bases for the right to travel, including . . . the Privileges and Immunities Clause of Article IV, § 2 of the Constitution; . . . the Privileges and Immunities Clause of the Fourteenth Amendment; . . . and the Due Process Clause of the Fifth Amendment"), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012); *Shenandoah*, 595 F.3d at 162 (*quoting Saenz v. Roe*, 526 U.S. 489 (1999)) ("[T]he 'constitutional right to travel from one State to another' is firmly embedded in our jurisprudence.").

[183] *Shenandoah*, 595 F.3d at 158-159 ("[M]oving from one jurisdiction to another entails many registration requirements required by law which may cause some inconvenience, but which do not unduly infringe upon anyone's right to travel."); *Prynne*, 848 F. App'x at 104 (holding that Virginia law, requiring registered sex offenders provide notice to other states of their registry status before traveling to those states, does not restrict sex offenders' fundamental right to travel); *Doe v. Jindal*, No. 15-1283, 2015 WL 7300506, at *9 (E.D. La. Nov. 18, 2015) (holding that Louisiana's requirement that sex offenders register for life does not "unreasonably burden the right to travel" because Louisiana's laws "treat an out-of-state resident with an out-of-state conviction and a lifelong Louisiana resident with an out-of-state conviction the same way"); *United States v. Byrd*, 419 F. App'x 485, 491 (5th Cir. 2011) (*quoting Saenz*, 526 U.S. at 500) (holding that "SORNA's registration requirements do not implicate the fundamental right to travel of convicted sex offenders because nothing in the statute precludes an offender from 'enter[ing] or leav[ing] another state,' being 'treated as a welcome visitor . . . in the second State,' or being 'treated like other citizens of that State' if the offender chooses to permanently relocate"); *Hope v. Comm'r of Ind. Dep't of Corr.*, 9 F.4th 513, 523 (7th Cir. 2021) (holding that Indiana's Sex Offender Registration Act (SORA), as applied to offenders who have relocated to Indiana from other states after the enactment of SORA, and who are required to register but would not have been required to do so if they had committed their crimes as residents of Indiana prior to the enactment of SORA and maintained citizenship in Indiana, does not violate the right to travel because, although it "may affect newer residents disproportionately," it does not expressly discriminate based on residency); *McGuire v. Marshall*, 512 F. Supp. 3d 1189, 1229 (M.D. Ala. 2021) (holding that provision under Alabama law requiring sex offenders who plan to travel for three or more days outside their county of residence to notify law enforcement does not violate the First Amendment noting that "the possibility that there may be 'some kernel of expression' in an activity 'is not sufficient to bring the activity within the protection of the First Amendment'"), *aff'd on other grounds*, 50 F.4th 986 (11th Cir. 2022); *United States v. Ambert*, 561 F.3d 1202, 1210 (11th Cir. 2009) (holding that sex offenders' requirement to update registration information under SORNA "is undoubtedly burdensome," it does not violate offenders' right to travel); *Doe v. Moore*, 410 F.3d 1337, 1345-46 (11th Cir. 2005) (holding that requirement that sex offenders notify Florida law enforcement in person when they change their permanent or temporary residences may be burdensome but does not unreasonably burden their right to travel); *State v. Yeoman*, 236 P.3d 1265, 1269 (Idaho 2010) (holding that the requirement that offender register as a sex offender upon relocating to Idaho did not infringe on his right to travel); *State v. Smith*, 344 P.3d 1244, 1249 (Wash. Ct. App. 2015) (holding that Washington law requiring sex offenders register their residence address or transient status when they change their residence or cease to have a fixed residence does not impair their constitutional right to travel).

[184] BLACK'S LAW DICTIONARY (11th ed. 2019).

Congress,[185] and the nondelegation doctrine prohibits Congress from transferring its legislative power to another branch of government.[186] In 2019, in *Gundy v. United States*, the U.S. Supreme Court held that SORNA's delegation of authority to the U.S. Attorney General to issue regulations under 34 U.S.C. § 20913 does not violate the U.S. Constitution's nondelegation doctrine.[187] Similar arguments have been raised by offenders at the state level, where offenders have unsuccessfully argued that the state's registration requirements violate separation of powers or are an unconstitutional delegation of legislative power or authority.[188]

8. Ex Post Facto

Sex offender registration and notification laws are meant to serve a regulatory function, and the majority of courts that have addressed the issue, including every circuit of the United States Court of Appeals, except the Federal Circuit, have held that state registration and notification requirements[189] and sex offender registration under SORNA is nonpunitive and/or a collateral

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[185] U.S. CONST. ART. I, § 1.

[186] *Gundy v. United States*, 139 S. Ct. 2116, 2121 (2019).

[187] *Id.* at 2121, 2129 (holding that SORNA's delegation of authority to the U.S. Attorney General to issue regulations under 42 U.S.C. § 16913 does not violate the nondelegation doctrine); *see also United States v. Cole*, 823 F. App'x 911 (11th Cir. 2020) (per curiam) (affirming offender's conviction for failure to register as a sex offender under 18 U.S.C. § 2250 and holding that Congress did not unconstitutionally delegate authority to the Attorney General to decide whether SORNA's registration requirements apply retroactively to offenders convicted prior to SORNA's enactment), *cert. denied*, 142 S. Ct. 122 (2021); *United States v. Mingo*, 964 F.3d 134, 139 (2d Cir. 2020) (holding that delegation of which military offenses should qualify as "sex offenses" under SORNA did not violate the nondelegation doctrine); *United States v. Johnson*, 632 F.3d 912, 920 (5th Cir. 2011) (holding that "SORNA is valid under . . . the principles of non-delegation"); *United States v. Brooks*, No. 23-1694, 2023 WL 6861861, at *1 (8th Cir. Oct. 18, 2023) (per curiam) (relying on *Gundy* and holding that "SORNA's limited delegation of authority as applied to pre-Act offenders was not impermissible"); *United States v. Zeroni*, 799 F. App'x 950, 951 (8th Cir. 2020) (citing *Gundy* and holding that SORNA's delegation under 34 U.S.C. § 20913(d) does not violate the nondelegation doctrine); *United States v. Kuehl*, 706 F.3d 917, 920 (8th Cir. 2013) (holding that "SORNA provides the Attorney General with an intelligible principle, and is a valid delegation of legislative authority" and "contains a 'clearly delineat[ed]' policy which guides the Attorney General in the exercise of his delegated authority"); *Ambert*, 561 F.3d at 1213 (holding that Congress provided the Attorney General with intelligible principles to guide his exercise of discretion under SORNA and therefore delegation of authority did not violate the nondelegation doctrine); *United States v. Larrier*, No. 21-CR-00240, 2022 WL 1092793 (N.D. Ga. Apr. 11, 2022) (relying on *Gundy* and holding that SORNA's provision delegating authority to the Attorney General is constitutional).

[188] *In re McClain*, 741 S.E.2d 893, 896 (N.C. Ct. App. 2013) (holding that North Carolina's registration law incorporating SORNA's clean record provisions was not an unconstitutional delegation of legislative authority under the North Carolina Constitution); *Commonwealth v. Torsilieri*, No. 15-CR-0001570-2016 (Pa. Ct. Common Pleas Aug. 22, 2022) (holding that Revised Subchapter H of Pennsylvania's SORNA violates separation of powers), *rev'd*, No. 97 MAP 2022, 2024 WL 2789201 (Pa. May 31, 2024) (holding that Pennsylvania's SORNA does not "usurp[] judicial power over sentencing in violation of the separation of powers doctrine"); *State v. Briggs*, 199 P.3d 935, 940-41 (Utah 2008) (holding that Utah's sex offender registration statute did not violate the nondelegation doctrine of the Utah Constitution by delegating legislative power to the Department of Correction); *State v. Batson*, 478 P.3d 75, 78 (Wash. 2020) (en banc) (holding that Wash. Rev. Stat. § 9A.44.128(10)(h) is not an unconstitutional delegation of legislative authority and the state legislature may impose a duty to register as a sex offender in Washington where an individual would be required to register in the state of conviction); *State v. Caton*, 260 P.3d 946, 952 (Wash. Ct. App. 2011) (holding that the legislature's delegation to county sheriffs to set the reporting date for sex offenders who are required to register did not violate separation of powers doctrine), *rev'd on other grounds*, 273 P.3d 980 (Wash. 2012).

[189] *See, e.g.*, *Anderson v. Holder*, 647 F.3d 1165, 1169-73 (D.C. Cir. 2011) (holding the District of Columbia's sex offender registration statute was not punitive); *Thomas v. United States*, 942 A.2d 1180, 1186 (D.C. Cir. 2008) (recognizing that the District of Columbia's Sex Offender Registration Act "is a remedial regulatory enactment, not a

consequence of a conviction.[190] However, some courts have interpreted state registration and notification requirements to constitute punishment.[191] This interpretation impacts how courts analyze constitutional challenges to offenders' duty to register, such as ex post facto challenges and challenges under the Fourth, Fifth, Sixth, and Eighth Amendments.[192]

There has been extensive debate regarding whether the retroactive application of SORNA's registration requirements violates the Ex Post Facto Clause of the U.S. Constitution, which prohibits the retroactive application of criminal laws.[193] Notably, all of the U.S. Court of Appeals—except

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penal law, that was adopted to protect the public, especially minors, from the threat of recidivism posed by sex offenders who have been released into the community"); *Doe v. Cuomo*, 755 F.3d 105, 111-12 (2d Cir. 2014) (holding that New York's sex offender registration laws are not punitive); *Burr v. Snider*, 234 F.3d 1052, 1054 (8th Cir. 2000) (upholding, in habeas context, North Dakota Supreme Court's determination that sex offender registration statute was nonpunitive and did not violate the Ex Post Facto Clause); *Shaw v. Patton*, 823 F.3d 556, 577 (10th Cir. 2016) (holding that Oklahoma's sex offender registration statute was not punitive); *Ridley v. Caldwell*, No. 21-13504, 2022 WL 2800203 (11th Cir. July 18, 2022) (per curiam) (holding that offender's registration as a sex offender in Georgia is a collateral consequence of his Florida battery conviction; that "Georgia courts have repeatedly held that Georgia's sex offender registry requirement is 'regulatory' in nature, not punitive, and that an individual may be compelled to register based on facts not found by a jury"), *cert. denied*, 143 S. Ct. 587 (2023); *State v. Scott*, 636 S.W.3d 768, 770 (Ark. 2022) (recognizing that "[s]ex-offender registration is not a form of punishment"); *Sullivan v. State*, 386 S.W.3d 507, 525 (Ark. 2012) (holding that the registration and notification requirements of the Arkansas Sex Offender Registration Act are "essentially regulatory and therefore non-punitive in nature"); *State v. Reed,* 399 P.3d 865, 904 (Kan. 2017) (holding that Kansas sex offender registration requirements do not constitute punishment); *Commonwealth v. Olaf O.*, 786 N.E.2d 400, 402 (Mass. 2003) (recognizing that sex offender registration and community notification is not considered "punishment . . . but rather to be a collateral, regulatory measure"); *State v. LaFountain*, 901 N.W.2d 441, 450 (Minn. Ct. App. 2017) (holding that Minnesota registration statute is not punitive); *State v. Boche*, 885 N.W.2d 523, 538-39 (Neb. 2016) (holding that Nebraska's sex offender registration requirements did not constitute punishment).

[190] *See, e.g.*, *United States v. Parks*, 698 F.3d 1, 5-6 (1st Cir. 2012) (holding that SORNA's registration requirements are not punitive); *United States v. Diaz*, 967 F.3d 107, 109-10 (2d Cir. 2020) (per curiam), *cert. denied*, 141 S. Ct. 1424 (2021) (holding that a defendant in a SORNA prosecution may not collaterally challenge his underlying predicate sex offender conviction and that the sex offender registration requirements are not punitive); *United States v. Shenandoah*, 595 F.3d 151, 158-159 (3d Cir. 2010) (holding SORNA's registration requirements are not punitive), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012); *United States v. Under Seal*, 709 F.3d 257, 266 (4th Cir. 2013) (holding that SORNA's registration requirements are not punitive); *United States v. Young*, 585 F.3d 199, 206 (5th Cir. 2009) (holding that SORNA's registration requirements are not punitive); *United States v. Felts*, 674 F.3d 599, 606 (6th Cir. 2012) (holding that SORNA's registration requirements are not punitive); *United States v. Leach*, 639 F.3d 769, 773 (7th Cir. 2011) (holding that SORNA's registration requirements are not punitive), *abrogated on other grounds by Nichols v. United States*, 578 U.S. 104 (2016); *United States v. May*, 535 F.3d 912, 919-920 (8th Cir. 2008) (holding that SORNA's registration requirements are not punitive and "[t]he only punishment that can arise under SORNA comes from a violation of § 2250, which punishes convicted sex offenders who travel in interstate commerce after the enactment of SORNA and who fail to register as required by SORNA"), *cert. denied,* 556 U.S. 1258 (2009), *abrogated on other grounds, Reynolds v. United States*, 565 U.S. 432 (2012); *United States v. Elk Shoulder*, 738 F.3d 948, 954 (9th Cir. 2013) (holding that SORNA's registration requirements are nonpunitive); *United States v. W.B.H.*, 664 F.3d 848, 851 (11th Cir. 2011) (holding that SORNA's registration requirements are not punitive).

[191] *See infra* note 196 and accompanying text; *see also Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963) (outlining seven factors to be considered when determining whether a statutory scheme is punitive).

[192] *See Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019) ("A statute can violate the Ex Post Facto Clause, the Eighth Amendment, or the Double Jeopardy Clause only if the statute is punitive."). For additional discussion concerning challenges based on the Ex Post Facto Clause and the Fourth, Fifth, Sixth, and Eighth Amendments, see *supra* III.A.8 and *infra* III.A.10, III.A.11, III.A.12, and III.A.13.

[193] U.S. CONST. ART. I, §§ 9-10.

the District of Columbia and the Federal Circuit, which have not addressed the issue—have held that the federal version of SORNA does not violate the federal Ex Post Facto Clause.[194]

Retroactive application of state sex offender registration and notification laws has also been addressed at both the federal and state level, and while many state laws have been found not to violate state or federal ex post facto prohibitions,[195] multiple state and federal courts have held that

[194] *United States v. Kebodeaux*, 570 U.S. 387, 389 (2013) (assuming without deciding that Congress did not violate the Ex Post Facto Clause in enacting SORNA's registration requirements); *Juvenile Male II*, 564 U.S. 932, 932 (2011) (declining to address whether SORNA's requirements violated the Ex Post Facto Clause on grounds of mootness); *Carr v. United States*, 560 U.S. 438, 442 (2010) (declining to address the issue of whether SORNA violates the Ex Post Facto Clause); *United States v. Parks*, 698 F.3d 1, 5-6 (1st Cir. 2012) (holding federal SORNA did not violate the Ex Post Facto Clause); *United States v. DiTomasso*, 621 F.3d 17, 25 (1st Cir. 2010) (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012); *United States v. Brunner*, 726 F.3d 299, 304 (2d Cir. 2013) (holding that the indictment, which charged offender with failing to comply with SORNA after its enactment, did not violate Ex Post Facto Clause of the U.S. Constitution); *United States v. Guzman*, 591 F.3d 83, 94 (2d Cir.) (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution), *cert. denied*, 561 U.S. 1019 (2010); *Shenandoah*, 595 F.3d at 158-159 (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution); *United States v. Gould*, 568 F.3d 459, 466 (4th Cir. 2009) (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution), *cert. denied,* 559 U.S. 974 (2010); *United States v. Johnson*, 632 F.3d 912, 917-18 (5th Cir. 2011) (holding that retroactive application of SORNA does not violate the Ex Post Facto Clause); *United States v. Young*, 585 F.3d 199, 203-206 (5th Cir. 2009) (analyzing issue of whether SORNA's registration regime as applied to offenders who committed sex offenses before SORNA's enactment operated to increase the punishment for those sex offenses after they had already been committed and holding that "SORNA is a civil regulation" and does not violate the Ex Post Facto Clause of the U.S. Constitution); *United States v. Felts*, 674 F.3d 599, 606 (6th Cir. 2012) (holding federal SORNA does not violate the Ex Post Facto Clause of the U.S. Constitution); *Leach*, 639 F.3d at 773 (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution), *abrogated on other grounds by Nichols v. United States*, 578 U.S. 104 (2016); *May*, 535 F.3d at 919-20 (holding that application of SORNA's registration requirements to an offender who was registered pursuant to state law before SORNA's enactment, and who traveled to another state after SORNA's enactment, did not violate the Ex Post Facto Clause because the statute did not punish an individual for previously being convicted of a sex crime, but for not registering as a sex offender or failing to update his registration after traveling in interstate commerce and therefore, SORNA does not violate the Ex Post Facto Clause of the U.S. Constitution), *cert. denied,* 556 U.S. 1258 (2009), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012); *Elk Shoulder*, 738 F.3d at 953-54 (holding that federal SORNA does not violate the Ex Post Facto Clause); *United States v. Elkins*, 683 F.3d 1039, 1045 (9th Cir. 2012) (holding that federal SORNA does not violate the Ex Post Facto Clause of the U.S. Constitution); *United States v. White*, 782 F.3d 1118, 1133-35 (10th Cir. 2015) (holding that SORNA does not violate the Ex Post Facto Clause of the U.S. Constitution "because it is a regulatory statute and any criminal penalties attach only to future failures to register"); *United States v. Hinckley*, 550 F.3d 926, 938 (10th Cir. 2008) (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution), *cert. denied,* 556 U.S. 1240 (2009), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012); *United States v. Lawrance*, 548 F.3d 1329, 1335 (10th Cir. 2008) (holding that SORNA does not violate the Ex Post Facto Clause of the U.S. Constitution); *W.B.H.*, 664 F.3d at 851 (holding that SORNA's registration requirements are civil rather than punitive and requiring offender convicted of a post-SORNA crime that was not a sex offense to register as a sex offender under SORNA did not violate the Ex Post Facto Clause where offender was convicted of a pre-SORNA sex offense in Alabama); *United States v. Ambert*, 561 F.3d 1202, 1207 (11th Cir. 2009) (holding federal SORNA does not violate Ex Post Facto Clause of the U.S. Constitution); *see also Commonwealth v. Perez*, 97 A.3d 747, 750 & n.4 (Pa. Super. Ct. 2014) (citing federal cases addressing SORNA and the Ex Post Facto Clause). *But see Juvenile Male I*, 581 F.3d 977, 979 (9th Cir. 2009) (holding that retroactive application of SORNA's juvenile registration provisions are unconstitutional and violate the Ex Post Facto Clause).

[195] *Smith v. Doe*, 538 U.S. 84, 105-06 (2003) (holding that Alaska sex offender registration and notification laws were not punitive and therefore retroactive application did not violate the Ex Post Facto Clause of the U.S. Constitution); *Doe v. Cuomo*, 755 F.3d 105, 110 (2d Cir. 2014) (holding retroactive application of New York's registration amendments to an offender did not violate the Ex Post Facto Clause); *Doe v. Pataki*, 120 F.3d 1263, 1285 (2d Cir. 1997) (holding that

the mandatory registration and notification requirements of New York State's Sex Offender Registration Act, which are analogous to SORNA's requirements, do not constitute punishment, are not punitive in purpose and effect, and do not violate the Ex Post Facto Clause); *Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019) (holding that Texas sex offender registration and notification law is not punitive and therefore does not violate the Ex Post Facto Clause); *King v. McCraw*, 559 F. App'x 278, 280-81 (5th Cir. 2014) (holding that application of Texas Sex Offender Registration Act (SORA) to offender, who pleaded guilty and was placed on a deferred adjudication for indecency with a child prior to SORA's enactment, did not violate the Ex Post Facto Clause); *Doe v. Bredesen*, 507 F.3d 998, 1000 (6th Cir. 2007) (upholding Tennessee's Sex Offender Registration, Verification, and Tracking Act and finding that it did not violate the Ex Post Facto Clause), *cert. denied*, 555 U.S. 921 (2008); *Hope v. Comm'r of Ind. Dep't of Corr.*, 9 F.4th 513, 534 (7th Cir. 2021) (holding that Indiana's Sex Offender Registration Act is not so punitive in purpose or effect to contravene Indiana's nonpunitive intent for the law and therefore, it is not an ex post facto violation); *Mueller v. Raemisch*, 740 F.3d 1128, 1133 (7th Cir. 2014) (holding that Wisconsin's sex offender registration and notification laws were not punitive and therefore did not trigger the constitutional prohibition of ex post facto laws); *Doe 1-36 v. Nebraska*, 734 F. Supp. 2d 882, 915-16 (D. Neb. 2010) (holding that newly enacted provisions of Nebraska's Sex Offender Registration Act, imposing new in-person reporting requirements, requiring certain information about offenders be made available on the public registry, and replacing a system of individualized risk assessments of sex offenders with an "offense of conviction" methodology, did not violate the Ex Post Facto Clauses of the U.S. Constitution and the Nebraska Constitution); *Warenback v. Ford*, No. 21-16964, 2023 WL 7121405, at *1 (9th Cir. Oct. 30, 2023) (holding that "in-person registration, including Nevada's in person registration, does not violate the Ex Post Facto Clause" and, "[l]ike any other registrant who moves to another jurisdiction, [the offender] was required to register in person when he moved to the new jurisdiction"); *Does 1-134 v. Wasden*, 982 F.3d 784, 791-92 (9th Cir. 2020) (holding the district court erred in dismissing offenders' ex post facto claims based on the retroactive application of Idaho's residency, travel, and internet restrictions where the court relied on cases that only addressed sex offender registration and notification provisions and noting that "the court should consider the effects of [Idaho's sex offender registration and notification laws'] regulatory scheme, as amended and in its entirety, in determining whether it runs afoul of the Constitution"); *Shaw v. Patton*, 823 F.3d 556, 577 (10th Cir. 2016) (affirming the retroactive application of Oklahoma sex offender registration laws and holding that Oklahoma sex offender registration and notification scheme did not violate the Ex Post Facto Clause); *Litmon v. Harris*, 768 F.3d 1237, 1243 (9th Cir. 2014) (holding that California's requirement that sex offenders register for life did not violate the Ex Post Facto Clause); *ACLU of Nev. v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (determining legislative amendments in A.B. 579, where legislation imposes registration and notification requirements based solely on the fact of conviction in Nevada, did not constitute retroactive punishment in violation of the Ex Post Facto Clause); *Hatton v. Bonner*, 356 F.3d 955, 967 (9th Cir. 2004) (holding that the legislative intent behind California's SORA was regulatory, rather than punitive, and therefore it did not violate the Ex Post Facto Clause of the U.S. Constitution); *Melnick v. Camper*, 487 F. Supp. 3d 1039, 1055 (D. Colo. 2020) (holding that the Colorado Sex Offender Registration Act does not violate the Ex Post Facto Clause because its effects are not punitive); *Herrera v. Williams*, 99 F. App'x 188, 190 (10th Cir. 2004) (holding that New Mexico's Sex Offender Registration and Notification Act only imposes civil burdens upon sex offenders and does not implicate criminal punishments and therefore does not violate the Ex Post Facto Clause); *Otey v. Dir. of Ala. Law Enf't Agency*, No. 16-cv-01540, 2017 WL 1317947, at *4 (N.D. Ala. Apr. 10, 2017) (*quoting McGuire v. Strange*, 83 F. Supp. 3d 1231, 1269 (M.D. Ala. 2015)) (noting that "[o]verall . . . [Alabama SORNA]'s scheme as a whole is [not] so punitive either in purpose or effect as to negate the Legislature's stated nonpunitive intent'"); *Windwalker v. Governor of Ala.*, 579 F. App'x 769, 919-920 (11th Cir. 2014) (holding Alabama's sex offender registration and notification statute does not violate the Ex Post Facto Clause); *People v. Castellanos*, 982 P.2d 211, 217-18 (Cal. 1999) (holding sex offender registration is regulatory in both purpose and effect and therefore is not "punishment" for the purposes of state and federal ex post facto clauses); *People v. Fioretti,* 54 Cal. App. 4th 1209, 1214 (1997) (holding that retroactive application of California's sex offender registration laws does not violate the Ex Post Facto Clause because registration itself is not considered punitive); *State v. Kelly*, 770 A.2d 908, 954 (Conn. 2001) (noting that because Connecticut's sex offender registration statute "is regulatory and not punitive in nature," retroactive application to offender did not violate Ex Post Facto Clause of the U.S. Constitution); *Getz v. State*, 281 A.3d 1271 (Del. 2022) (unpublished table decision) (holding "that the sex offender registration and community notification requirements . . . [under Delaware law] are not punitive in nature and, thus, the retroactive application of those requirements does not implicate the [Ex Post Facto Clause]" and offender convicted of first-degree rape in 1989 is required to register as a tier III sex offender); *Sanders v. State*, 278 A.3d 1148 (Del. 2022) (unpublished table decision) (holding that offender, convicted of attempted sexual extortion, is properly classified as a tier III sex offender under Delaware law, and retroactive application of Delaware's sex offender

registration and notification laws to offender does not violate the Ex Post Facto Clause because they are not punitive in nature); *Hickerson v. United States*, 287 A.3d 237, 250 (D.C. 2023) (citing *In re W.M.* and holding that the District of Columbia's Sex Offender Registration Act (SORA) does not violate the Ex Post Facto Clause); *Arthur v. United States*, 253 A.3d 134, 143 (D.C. 2021) (affirming sex offender's conviction for failure to comply with SORA's registration requirements and holding that SORA's requirements did not amount to punishment in violation of the Ex Post Facto Clause of the U.S. Constitution); *In re W.M.*, 851 A.2d 431, 446 (D.C. 2004) (holding that SORA is not punitive and does not violate the Ex Post Facto Clause of the U.S. Constitution); *State v. Yeoman*, 236 P.3d 1265, 1267 (Idaho 2010) (affirming the retroactive application of Idaho's sex offender registration laws to offenders who were convicted for sex crimes that occurred prior to enactment of Idaho's statute); *State v. Gragg*, 137 P.3d 461, 465 (Idaho Ct. App. 2005) (holding Idaho's sex offender registration and notification laws are not punitive and do not violate the ex post facto prohibition of the Idaho Constitution); *People v. Hall*, Nos. 4-19-0001, 4-19-0002 cons., 2021 WL 1251373, at *2 (Ill. App. Ct. Apr. 2, 2021) (holding that the re-registration requirements under the Illinois Sex Offender Registration Act do not violate the constitutional prohibitions against ex post facto laws); *State v. Zerbe*, 50 N.E.3d 368, 369-71 (Ind. 2016) (holding that offender who was required to register in Michigan was already under an obligation to register and therefore requiring registration in Indiana did not violate Indiana's prohibition against ex post facto laws); *Tyson v. State*, 51 N.E.3d 88, 96 (Ind. 2016) (holding that requirement, under Indiana's SORA, that offenders who are required to register as sex offenders in any other jurisdiction register in Indiana, did not violate the Ex Post Facto Clauses of the state or federal constitutions); *Jensen v. State*, 905 N.E.2d 384, 394 (Ind. 2009) (holding that amendment to Indiana's Sex Offender Registration Act (SORA), which lengthened the mandatory registration period for sexually violent predators from 10 years to life, did not violate the Ex Post Facto Clause, and offender convicted after the initial passage of SORA could be required to comply with the amended requirements); *Crowley v. State*, 188 N.E.3d 54, 63 (Ind. Ct. App. 2022) (holding that requiring offender, who was convicted of third-degree criminal sexual conduct in Michigan in 1988, prior to enactment of Indiana's SORA, and who had a duty to register in Michigan before he moved to Indiana, to register as a sex offender did not violate the Ex Post Facto Clause of the Indiana Constitution); *State v. Aschbrenner,* 926 N.W.2d 240, 250 (Iowa 2019) (holding that Iowa's sex offender registration statute is not punitive and therefore does not violate the Ex Post Facto Clauses under the state or federal constitutions); *State v. Huntoon*, 965 N.W.2d 635 (Iowa Ct. App. 2021) (unpublished table decision) (holding that Iowa's sex offender registry law amendments effective July 1, 2009, requiring a sex offender convicted of an aggravated offense to register for life, where the offender was convicted of an aggravated offense in June 2009, does not violate the Ex Post Facto Clauses of the U.S. and Iowa Constitutions); *Wolf v. State*, 964 N.W.2d 563 (Iowa Ct. App. 2021) (unpublished table decision) (holding that, because Iowa's lifetime registration requirement was in place at the time of offender's conviction, "his ex post facto claim fails as a matter of law"); *State v. Davidson*, 495 P.3d 9, 13-14 (Kan. 2021) (per curiam) (reaffirming the Kansas Supreme Court's decision in *Petersen-Beard*, and holding that Sex Offender Registration Act's (KORA) sex offender registration requirements are not punitive in purpose or effect and, therefore, retroactive application of KORA does not violate the Ex Post Facto Clause of the U.S. Constitution); *State v. Reed,* 399 P.3d 865, 904 (Kan. 2017) (extending the holding in *Petersen-Beard* to apply to ex post facto challenges and holding that registration under KORA does not constitute punishment and therefore, retroactive application of the tolling provision under KORA does not violate the Ex Post Facto Clause); *State v. Petersen-Beard*, 377 P.3d 1127, 1140-41 (Kan. 2016) (holding that Kansas' lifetime registration requirement for adult sex offenders is not punitive and does not violate the Ex Post Facto Clause of the U.S. Constitution); *State v. Proctor*, 237 A.3d 896, 903 (Me. 2020) (vacating the defendant's conviction and noting that, because the issue was undeveloped, the court could not determine whether retroactive application of Maine's SORNA of 1999 to the defendant, requiring he register for life, where his original sentences did not include any registration requirement, increases the punitive burden of his sentences and therefore violates the prohibitions against ex post facto laws under the U.S. and Maine Constitutions); *Doe I v. Williams*, 61 A.3d 718, 734 (Me. 2013) (holding that Maine's SORNA, as amended following *Letalien*, is not punitive and does not violate the Ex Post Facto Clauses of the Maine and U.S. Constitutions); *Roe v. Replogle*, 408 S.W.3d 759, 766-67 (Mo. 2013) (en banc) (holding that retroactive application of Missouri's SORA to offenders convicted of sex offenses prior to its enactment does not violate the Missouri Constitution's prohibition against ex post facto laws because registration is civil and not punitive); *Hyman v. State*, 208 A.3d 807, 820 (Md. 2019) (recognizing there is still some uncertainty about the circumstances in which sex offender registration is considered a "direct" consequence of a conviction as opposed to a "collateral" consequence for purposes of ex post facto claims); *In re Hall*, 768 S.E.2d 39, 46 (N.C. Ct. App. 2014) (holding that amendment to North Carolina's sex offender registration and notification laws, which incorporated SORNA's tiering structure, applied retroactively to sex offender and did not constitute a violation of ex post facto laws); *Commonwealth v. Lacombe*, 234 A.3d 602, 626-27 (Pa. 2020) (holding that Subchapter I of Pennsylvania's sex offender registration and notification laws

retroactive application of their state's sex offender registration and notification laws violate their respective constitutions and/or the U.S. Constitution.[196]

is not punitive and therefore does not violate the constitutional prohibition against ex post facto laws); *Perez*, 97 A.3d at 759 (holding that the federal and state Ex Post Facto Clauses did not prohibit the retroactive application of Pennsylvania's 25-year sex offender registration requirement to the defendant); *In re Vázquez Felix*, No. SJ2022CV05573, 2023 WL 3371328 (P.R. Cir. Apr. 17, 2023) (holding that retroactive application of Puerto Rico's sex offender registration laws to offender convicted of an offense in New York that is equivalent to the offense of rape in Puerto Rico and requiring offender to register for life does not violate the Ex Post Facto Clause because Puerto Rico's laws are "civil in nature, not criminal or punitive"); *People v. Ferrer Maldonado*, No. CC-2017-0478, 2019 WL 1461450 (P.R. Mar. 7, 2019) (holding that retroactive application of the amendments introduced by Law No. 243-2011 to Law No. 266-2004 requiring offender convicted of lewd acts and attempted rape to register as a sex offender for life in Puerto Rico does not violate the Ex Post Facto Clause of the Puerto Rico Constitution because the law, and its recent amendments, is civil in nature and not criminal or punitive); *Ex parte Cruz Delgado*, No. KLAN202200274, 2022 WL 2187757 (P.R. Cir. May 26, 2022) (holding that retroactive application of Law No. 243-2011, which requires an offender convicted of attempted rape to register as a tier III sex offender for life in Puerto Rico, does not violate the Ex Post Facto Clause of the Puerto Rico Constitution because it is civil and nonpunitive); *Harrison v. State*, 482 P.3d 353, 357-58 (Wyo. 2021) (holding that the Wyoming Sex Offender Registration Act "is not an ex post facto punishment," its purpose is "not to punish, but to facilitate law enforcement and protection of children," and it does not implicate the Ex Post Facto Clause of the U.S. Constitution); *Kammerer v. State*, 322 P.3d 827, 839 (Wyo. 2014) (acknowledging that Wyoming's sex offender registration and notification laws are "intended to impose regulatory, as opposed to punitive, requirements," and holding that they do not violate the Ex Post Facto Clause of the U.S. Constitution).

[196] *Doe #1 v. Lee*, 102 F.4th 330, 340-42 (6th Cir. 2024), *aff'g in part, rev'g in part Does #1-9 v. Lee*, 659 F. Supp. 3d 865 (M.D. Tenn. 2023) (holding that the district court misread *Snyder* and was required to engage in a "provision-by-provision analysis of Tennessee's regulatory regime to determine which portions violate the Ex Post Facto Clause and which do not"); *Does #1-5 v. Snyder*, 834 F.3d 696, 705-06 (6th Cir. 2016) (holding that Michigan's sex offender registration and notification scheme, when applied to individuals whose crimes preceded the scheme's adoption, violated the constitutional prohibition on ex post facto criminal punishments because the statute constituted punishment); *Does #1-9 v. Lee*, 659 F. Supp. 3d 865, 889 (M.D. Tenn. 2023), *aff'd in part, rev'd in part, and remanded by Doe #1 v. Lee*, 102 F.4th 330 (6th Cir. 2024) (granting the plaintiffs' motion for summary judgment and holding that Tennessee's sex offender registration scheme is punitive for purposes of the Ex Post Facto Clause); *Does #1-9 v. Lee*, 574 F. Supp. 3d 558, 561-62 (M.D. Tenn. 2021) (prohibiting enforcement of any provision of the Tennessee SORVTA, against John Does #1-8, and, relying on *Snyder* and other recent decisions, holding that "the state's policy of imposing ex post facto criminal punishments on some sexual offenders is unconstitutional" and Does #1-8 have established a high likelihood of success on the merits, they face irreparable harm, and the public interest would be served by removing them from the registry); *Doe v. Snyder*, 606 F. Supp. 3d 608, 616-17 (E.D. Mich. 2021) (holding that retroactive application of Michigan's Public Act 295, which adopted numerous amendments to Michigan's sex offender registration and notification laws, to conduct that occurred before March 24, 2021, the date of its enactment, violates the Ex Post Facto Clause); *Doe v. Rausch*, 461 F. Supp. 3d 747, 768-69 (E.D. Tenn. 2020) (holding in an as-applied challenge that lifetime compliance with SORVTA was punitive and unconstitutional and violates the Ex Post Facto Clause); *Reid v. Lee*, 476 F. Supp. 3d 684, 707-08 (M.D. Tenn. 2020) (granting plaintiff's motion for injunctive relief finding he presented enough evidence to support that the punitive effects of SORVTA outweigh any civil benefit and are enough to establish a strong likelihood of success on his ex post facto claim); *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1125 (D. Neb. 2012) (holding that Nebraska sex offender registration statutes, prohibiting sex offenders from using social networking sites, requiring sex offenders disclose internet identifiers, and requiring sex offenders consent to the search and installation of monitoring hardware and software, violate the Ex Post Facto Clauses of the state and federal constitutions); *ACLU of Nev. v. Masto*, 719 F. Supp. 2d 1258, 1260 (D. Nev. 2008) (enjoining the enactment of Nevada's SORNA-implementing legislation for a number of years based on ex post facto concerns), *aff'd in part, rev'd in part, and appeal dismissed in part*, 670 F.3d 1046 (9th Cir. 2012); *McGuire v. Strange*, 50 F.4th 986, 1020-21 (11th Cir. 2022) (holding that retroactive application of certain provisions of Alabama's Sex Offender Registration and Community Notification Act, including the requirement that homeless sex offenders register in-person weekly, requirement that offenders complete in-state travel permit applications, and direct community notification requirement, does not violate the Ex Post Facto Clause of the U.S. Constitution), *aff'g in part, vacating in part McGuire v. Strange*,

83 F. Supp. 3d 1231 (M.D. Ala. 2015); *Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008) (holding that the retroactive application of Alaska's sex offender registration and notification laws violates the Ex Post Facto Clause of the Alaska Constitution); *Wallace v. State*, 905 N.E.2d 371, 384 (Ind. 2009) (holding that the retroactive application of Indiana's sex offender registration and notification laws constitutes retroactive punishment in violation of the Ex Post Facto Clause of the Indiana Constitution); *State v. Hough*, 978 N.E.2d 505, 510 (Ind. Ct. App. 2012) (holding that, under state constitutional prohibition on ex post facto laws, Indiana could not require sex offender, who had been convicted of rape in Pennsylvania prior to enactment of Indiana's sex offender registration and notification laws, to register as a sex offender); *Andrews v. State*, 978 N.E.2d 494, 503 (Ind. Ct. App. 2012) (holding that requiring sex offender to register in Indiana violated the ex post facto provision of the Indiana Constitution); *Flanders v. State*, 955 N.E.2d 732, 752-53 (Ind. Ct. App. 2011) (holding that 2007 amendment eliminating an offender's eligibility to petition the court for termination of his sexually violent predator status is an ex post facto law that is unconstitutional and violates the Indiana Constitution and the offender must be allowed to petition for a change in status once a year after he has registered for 10 years); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009) (holding that retroactive application of Maine's SORNA 1999 requiring lifetime registration and quarterly in-person verification procedures to offenders originally sentenced under SORNA 1991 and SORNA 1995, without providing offenders an opportunity to be relieved of the duty to register, was punitive and therefore violated the Ex Post Facto Clauses of the Maine and U.S. Constitutions); *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 62 A.3d 123, 138-39 (Md. 2013) (holding that the retroactive application of the Maryland Sex Offender Registration Act violated the prohibition against ex post facto laws in the Maryland Constitution); *Quispe Del Pino v. Md. Dep't of Pub. Safety & Corr. Servs.*, 112 A.3d 522, 523 (Md. Ct. Spec. App. 2015) (holding that the retroactive application of the Maryland Sex Offender Registration Act, resulting in the increase of the offender's registration period from 10 to 25 years, violated the prohibition against ex post facto laws in the Maryland Constitution); *People v. Betts*, 968 N.W.2d 497, 574 (Mich. 2021) (holding that retroactive application of Michigan's 2011 Sex Offender Registration Act increases sex offenders' punishment for their committed offenses and violates the Ex Post Facto Clauses of the Michigan and U.S. Constitutions and, as a result, the 2011 SORA cannot be retroactively applied to offenders whose criminal acts subjecting them to registration occurred before enactment of the 2011 SORA amendments); *State v. Hinman*, 530 P.3d 1271, 1276-79 (Mont. 2023) (holding that Montana's Sexual or Violent Offender Registration Act "as amended since 2007, [which requires offenders appear in person for periodic verification and within three days of changing their address, employment, or school enrollment; appearing monthly if the offender is homeless; prohibiting Level 3 offenders from residing near schools or playgrounds; and requiring offenders provide DNA samples, driver's license numbers, vehicle information, email addresses, and social media screen names;] is punitive in nature," violates the Ex Post Facto Clause of the Montana Constitution, and the "requirements brought on by those amendments cannot be retroactively applied to defendants whose convictions predate them"); *Doe v. State*, 111 A.3d 1077, 1101 (N.H. 2015) (holding that requiring lifetime registration without the opportunity for review violates the ex post facto provisions of New Hampshire's Constitution and the state's registration requirements can only be applied to the offender if he is "promptly given an opportunity for either a court hearing, or an administrative hearing subject to judicial review, at which he is permitted to demonstrate that he no longer poses a risk sufficient to justify continued registration . . . [and] must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary to protect the public"); *State v. Williams*, 952 N.E.2d 1108, 1113 (Ohio 2011) (holding that imposing Ohio's current registration requirements, as amended by enactment of S.B. 10, on sex offenders whose crimes were committed prior to enactment of S.B. 10 is punitive and violates the Ohio Constitution); *Starkey v. Okla. Dep't of Corrs.*, 305 P.3d 1004, 1030 (Okla. 2013) (holding that retroactive application of Oklahoma's Sex Offender Registration Act violates the Ex Post Facto Clause of the Oklahoma Constitution); *Commonwealth v. Santana*, 266 A.3d 528, 538-39 (Pa. 2021) (holding that retroactive application of Pennsylvania's SORNA to offenders who committed their offenses in another state prior to SORNA's enactment violates the Ex Post Facto Clauses of the state and federal constitutions); *Commonwealth v. Torsilieri*, No. 97 MAP 2022, 2024 WL 2789201, at *26 (Pa. May 31, 2024) (holding that "weighing the *Mendoza-Martinez* factors does not compel the conclusion that Subchapter H is punitive"); *Commonwealth v. Torsilieri*, 232 A.3d 567, 591-92 (Pa. 2020) (addressing Pennsylvania's tiering structure and remanding for additional consideration of the *Mendoza-Martinez* factors to determine whether Pennsylvania's Revised Subchapter H is punitive); *Commonwealth v. Muniz*, 164 A.3d 1189, 1193 (Pa. 2017), *superseded by statute as stated in Lacombe*, 234 A.3d at 607 n.4 (holding that retroactive application of Pennsylvania's SORNA to offenders who committed their offenses in Pennsylvania prior to SORNA's enactment constitutes an ex post facto violation and violates the state and federal constitutions). *But see State v. Jedlicka*, 747 N.W.2d 580, 584 (Minn. Ct. App. 2008) (holding that Minnesota statute, which relieves offenders from the obligation to register as predatory offenders, applies retroactively and removing offenders from the registry when the statute is changed in a way that benefits them does not violate ex post facto prohibitions).

Ex post facto challenges often arise when an offender who was convicted prior to passage of SORNA is required to register or where a jurisdiction makes changes to its sex offender registration requirements resulting in an offender's registration requirements beginning, or becoming more burdensome, after the offender has been sentenced,[197] where an offender's classification is changed,[198] or when an offender's information is made publicly available on a jurisdiction's public registry.[199]

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[197] *Woe v. Spitzer*, 571 F. Supp. 2d 382, 388 (E.D.N.Y. 2008) (holding that amendment to New York's Sex Offender Registration Act extending the registration period from 10 years to 20 years for level 1 sex offenders did not violate the Ex Post Facto Clause because "inclusion in a sex offender registry is a civil matter"); *Dolak v. Ind. Dep't of Corr.*, 186 N.E.3d 614 (Ind. Ct. App. 2022) (unpublished table decision) (holding that the retroactive application of SORA's "age provision," which requires an offender who was at least 18 years old at the time of his offense and where the victim was less than 12 years old, to register for life, is punitive because it "does not provide any 'channel through which he may petition the trial court for review of his future dangerousness or complete rehabilitation'" and violates the Ex Post Facto Clause of the Indiana Constitution); *Jensen v. State*, 882 N.W.2d 873 (Iowa Ct. App. 2016) (unpublished table decision) (holding that offender was not entitled to a 10-year registration duration, as ordered by the court per a plea agreement, when the determination of registration duration was vested in the state's Department of Public Safety); *State v. Cook*, 187 P.3d 1283, 1290 (Kan. 2008) (holding that application of amendment to Kansas law, which increased punishment for a conviction of the offense of failure to register as a sex offender, to the defendant did not violate ex post facto prohibitions); *Buck v. Commonwealth*, 308 S.W.3d 661, 667-68 (Ky. 2010) (holding that "SORA is a remedial measure with a rational connection to the nonpunitive goal of protection of public safety" and increasing the penalties for failing to register as a sex offender does not violate the Ex Post Facto Clause); *State v. Davenport*, 948 N.W.2d 176, 179 (Minn. Ct. App. 2020) (reversing failure to register conviction under Minnesota law where offender was convicted of aiding and abetting criminal sexual conduct prior to amendment of Minnesota law requiring registration as a sex offender for a conviction of the same); *State v. Brown*, 243 A.3d 1233, 1240 (N.J. 2021) (holding that amendments to New Jersey's sex offender registration and notification law, which increased punishment for offenders who fail to register after the amendments' effective date, do not violate ex post facto protections and offenders could be charged with and convicted of the enhanced third-degree offense of failure to comply with sex offender registration requirements under New Jersey law when each offender's registration requirement arose from a conviction that occurred before the penalty for registration noncompliance was raised a degree); *Commonwealth v. Hainesworth*, 82 A.3d 444, 448 (Pa. 2014) (holding that, under the terms of the offender's plea agreement, he was not required to register as a sex offender and he was entitled to specific performance of his plea agreement, where a component of negotiation of the same was that he would not be required to register as a sex offender); *Commonwealth v. Giannatonio*, 114 A.3d 429, 438 (Pa. Super. Ct. 2015) (holding that retroactive enforcement of 15-year registration requirement under Pennsylvania's SORNA did not violate the Ex Post Facto Clause of the U.S. Constitution where the offender's conviction was secured pursuant to a federal plea agreement and registration was a nonpunitive, collateral consequence of the offender's conviction).

[198] *Johnson v. Madigan*, 880 F.3d 371, 375-76 (7th Cir. 2018) (holding that amendments made to the Illinois Sex Offender Registration Act (SORA), classifying certain offenders as sexual predators and requiring registration as sex offenders, were not retroactive and therefore, SORA did not violate the Ex Post Facto Clause); *State v. Stansell*, 173 N.E.3d 1273, 1283-84 (Ohio Ct. App. 2021) (holding that there was no violation of ex post facto principles where sex offender, who was classified as a sexually violent predator as part of his sentence, did not have a prior conviction of a sexually oriented offense, because Ohio law, defining a sexually violent predator as an offender who had previously been convicted of a sexually oriented offense was not applied retroactively to him), *appeal dismissed*, 195 N.E.3d 129 (Ohio 2022); *State v. Wallace*, 2020-Ohio-3959, No. C-190043, 2020 WL 4514702, at *2-3 (Ohio Ct. App. Aug. 5, 2020) (holding sex offender classifications under Ohio's registration law are civil and remedial and are legally distinct from the sentence for the underlying sexual offense).

[199] *Doe v. Harris*, 302 P.3d 598, 598 (Cal. 2013) (holding that sex offender was properly subjected to community notification in 2004 even though he had entered a plea agreement in 1991 that was silent on the issue); *Commonwealth v. Moore*, 222 A.3d 16, 23 (Pa. Super. Ct. 2019) (determining that the internet dissemination provision mandated by Pennsylvania law under SORNA II is not punitive and therefore does not violate the federal Ex Post Facto Clause), *judgment vacated by* 240 A.3d 102 (Pa. 2020), *aff'd*, 242 A.3d 452 (Pa. Super. Ct. 2020).

9. First Amendment / Internet & Social Media

The First Amendment protects freedom of religion, freedom of speech, and freedom of the press.[200] There are several instances in which an offender's First Amendment rights may be implicated in connection with sex offender registration, including, for example, internet and social media

[200] U.S. CONST. AMEND. I.

restrictions,[201] collection of internet identifiers[202] and other personal registration information,[203] limitations on sex offenders' changing their names,[204] requiring identification as a "sex offender" on

[201] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (invalidating North Carolina law generally prohibiting a registered sex offender from accessing "a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages" and holding that the sweeping terms of the statute violated the offender's rights of speech protected under the First Amendment); *United States v. Leone*, 813 F. App'x 665, 669-70 (2d Cir. 2020) (distinguishing the case from *Packingham* and finding that it was permissible to place conditions on the offender's use or possession of any computer or internet-capable device (i.e., requiring the offender to participate in a monitoring program or obtain advance permission) where he had a history of accessing child pornography over the internet); *Doe v. Prosecutor, Marion County, Ind.*, 705 F.3d 694, 697-98 (7th Cir. 2013) (holding that Indiana statute prohibiting sex offenders from using social networking websites, instant messaging services and chat programs violated the First Amendment); *Doe 1-36 v. Nebraska*, 734 F. Supp. 2d 882, 911 (D. Neb. 2010) (noting that "[p]eople who are convicted of crimes, even felony crimes related to children, do not forfeit their First Amendment right to speak by accessing the Internet"); *United States v. Crume*, 422 F.3d 728, 733 (8th Cir. 2005) (holding condition of supervised release, imposed upon a man who had been convicted of receiving and possessing child pornography, which completely barred the offender's access to computers and the internet was a greater deprivation of the offender's First Amendment rights than was reasonable); *Melnick v. Raemisch*, No. 19-cv-00154, 2021 WL 4133919, at *9 (D. Colo. Sept. 10, 2021) (holding that sex offender plausibly alleged constitutional violations, including an alleged violation of his right to free speech and assembly, based on the limitations on his use of the internet and an alleged violation of his First Amendment right to religious freedom noting a "complete prohibition from allowing [him] to go to Temple to practice his Jewish faith, as [he] alleges, runs afoul of the Establishment Clause"), *appeal dismissed*, No. 21-1330, 2021 WL 7627513 (10th Cir. Oct. 5, 2021); *Melnick v. Camper*, 487 F. Supp. 3d 1039, 1052-53 (D. Colo. 2020) (holding that Colorado Sex Offender Registration Act does not prohibit offender from visiting social media related websites or communicating with his family and, because he was not convicted of a child sex crime, he is not required to provide his internet identities to the registry, and, as a result his First Amendment freedom of speech claim fails); *Harris v. State*, 985 N.E.2d 767, 781 (Ind. Ct. App. 2013) (holding, in an as-applied challenge, that Indiana statute prohibiting use of a social networking site by a registered sex offender violated the offender's First Amendment rights); *Mutter v. Ross*, 811 S.E.2d 866, 872 (W. Va. 2018) (holding that special condition prohibiting sex offender from possessing or having contact with an electronic device enabled with internet access violates First Amendment right to free speech).

[202] *Cornelio v. Connecticut*, 32 F.4th 160 (2d Cir. 2022) (reversing dismissal of sex offender's First Amendment claim and holding that Connecticut statute requiring disclosure of internet identifiers plausibly fails intermediate scrutiny and offender has stated a First Amendment claim where the government has not shown that the challenged law advances important governmental interests and it is not narrowly tailored to those interests); *Cornelio v. State*, 691 F. Supp. 3d 529, 546 (D. Conn. 2023) (holding that as applied, Connecticut statute requiring disclosure of internet identifiers violates sex offender's right to free speech under the First Amendment); *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1112 (D. Neb. 2012) (holding that statute requiring sex offenders to disclose their internet identifiers was unconstitutional on First Amendment and other grounds); *Doe v. Shurtleff*, 628 F.3d 1217, 1224-26 (10th Cir. 2010) (holding that Utah statute requiring sex offenders register their internet identifiers did not violate First Amendment free speech rights); *White v. Baker*, 696 F. Supp. 2d 1289, 1300-12 (N.D. Ga. 2010) (holding that amendment to Georgia statute requiring offender provide his internet email addresses, usernames, and passwords to law enforcement violated his First Amendment right to anonymous free speech, where there was a possibility of public disclosure and use of his information, and the statute was not sufficiently narrow to accomplish the state's legitimate interest in protecting children from internet predators); *State v. Aschbrenner,* 926 N.W.2d 240, 254 (Iowa 2019) (holding that Iowa's internet identifier reporting requirement is constitutional under the First Amendment and the Iowa Constitution); *Coppolino v. Comm'r of Pa. State Police*, 102 A.3d 1254, 1284 (Pa. Commw. Ct. 2014) (holding Pennsylvania's requirement that sex offenders disclose their internet identifiers did not violate First Amendment); *Ex parte Odom*, 570 S.W.3d 900, 909-16 (Tex. Crim. App. 2018) (holding that Texas statute requiring registered sex offenders disclose their online identifiers did not violate the First Amendment); *Bailey v. Commonwealth*, 830 S.E.2d 62 (Va. Ct. App. 2019) (holding that Virginia statute requiring sex offenders report any changes to their internet identifiers within 30 minutes does not violate the First Amendment).

[203] *A.A. v. New Jersey*, 341 F.3d 206, 213-14 (3d Cir. 2003) (holding that New Jersey's publication of registered sex offenders' home addresses on its public sex offender registry website does not violate the right to privacy); *Willman v.*

an offender's license,[205] and requiring offenders to post signs announcing their status as sex offenders.[206] Offenders have also unsuccessfully attempted to challenge SORNA, more generally, under the First Amendment, by alleging that requiring them to provide registration information constitutes compelled speech.[207]

10. Fourth Amendment / Unreasonable Search & Seizure

The Fourth Amendment protects individuals from unreasonable searches and seizures by the government.[208] Fourth Amendment challenges to sex offender registration and notification requirements are often raised in connection with the imposition of GPS or satellite-based

Att'y Gen. of United States, 972 F.3d 819, 825 (6th Cir. 2020) (holding that SORNA does not violate sex offenders' First Amendment right to privacy and recognizing that the U.S. Constitution "does not encompass a general right to nondisclosure of private information"); *Cutshall v. Sundquist*, 193 F.3d 466, 480 (6th Cir. 1999) (holding that sex offender had "no constitutional right to keep his registry information from being disclosed").

[204] *Krebs v. Graveley*, 861 F. App'x 671, 673 (7th Cir. 2021) (holding that Wisconsin statute, which forbids sex offenders from legally changing their names, did not implicate offender's speech rights and therefore offender did not present a viable First Amendment claim); *In re C.G.*, 976 N.W.2d 318, 346 (Wis. 2022) (holding that Wisconsin statute prohibiting transgender juvenile sex offender from changing her name did not violate the First Amendment because "[p]roducing one's legal name is properly understood as conduct, subject to government regulation, not speech" and offender's "right to free speech does not encompass the power to compel the State to facilitate a change of her legal name").

[205] *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1327 (M.D. Ala. 2019) (holding that Alabama's "branded-identification" requirement which requires an offender's license include a designation that the individual is a sex offender violates the First Amendment); *State v. Hill*, 341 So. 3d 539, 542 (La. 2020) (holding that statutory requirement that persons convicted of sex offenses carry identification branded with the words "sex offender" violates the First Amendment), *cert. denied*, 142 S. Ct. 311 (2021).

[206] *McClendon v. Long*, 22 F.4th 1330, 1340-41 (11th Cir. 2022) (holding that the warning signs Sheriff placed in sex offenders' yards prior to Halloween are compelled government speech and their placement violates a homeowner's First Amendment rights).

[207] *United States v. Arnold*, 740 F.3d 1032, 1035 (5th Cir. 2014) (holding that SORNA's registration requirements do not violate the First Amendment's prohibition of compelled speech); *United States v. Fox*, 286 F. Supp. 3d 1219, 1222 (D. Kan. 2018) (concluding that SORNA does not compel a registered sex offender to speak in a fashion that would be protected by the First Amendment where it requires the offender to provide certain registration information); *but see Hill*, 341 So. 3d at 542 (holding that Louisiana's statutory requirement that registered sex offenders carry an identification card branded with the words "sex offender" constitutes compelled speech and is unconstitutional under the First Amendment).

[208] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. AMEND. IV.

monitoring.[209] Additionally, offenders have also unsuccessfully argued that home visits[210] and the collection of internet identifiers,[211] DNA,[212] and other registry information,[213] violate their Fourth Amendment right to be free from unreasonable searches and seizures.

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[209] *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1127 (D. Neb. 2012) (holding that Nebraska statute requiring sex offender consent to search and monitoring of the offender's electronic equipment, including installation of hardware or software to monitor the offender's internet usage, was unconstitutional under the Fourth Amendment and the Nebraska Constitution as it pertains to previously convicted sex offenders who are no longer on probation, parole, or court-monitored supervision on or after Jan. 1, 2010); *Commonwealth v. Roderick*, 194 N.E.3d 197, 210-11 (Mass. 2022) (holding that condition of probation requiring first-time sex offender convicted of rape to be subject to GPS monitoring was an unreasonable search in violation of the Massachusetts Constitution and the Fourth Amendment); *Commonwealth v. Feliz*, 119 N.E.3d 700 (Mass. 2019) (recognizing that GPS monitoring as a condition of probation constitutes a search under the Massachusetts Constitution and the Fourth Amendment and that, in order for the condition to be constitutional, the government must establish that its interest in imposing GPS monitoring outweighs the privacy intrusion occasioned by the monitoring and holding that GPS monitoring was unconstitutional as applied to sex offender, imposition of GPS monitoring on any offender required an individualized hearing, and GPS monitoring as a condition of probation "will not necessarily constitute a reasonable search for all individuals convicted of a qualifying sex offense"); *H.R. v. N.J. State Parole Bd.*, 231 A.3d 617, 620 (N.J. 2020) (holding in an as-applied challenge that GPS monitoring of H.R., a tier III sex offender on parole supervision for life, was constitutional because the search (GPS monitoring) falls within the "special needs" exception to the warrant requirement); *State v. Hilton*, 862 S.E.2d 806, 820 (N.C. 2021) (holding that "a search effectuated by the imposition of lifetime [satellite-based monitoring] . . . [on sex offenders who are aggravated offenders and who are not recidivists who are under State supervision] is reasonable under the Fourth Amendment" and satellite-based monitoring is constitutional under the Fourth Amendment and the South Carolina Constitution); *State v. Strudwick*, 864 S.E.2d 231, 234-35 (N.C. 2021) (holding that requiring sex offender to participate in satellite-based monitoring for the remainder of his life is constitutional under the Fourth Amendment where "the intrusion of lifetime [satellite-based monitoring] into the privacy interests of [the offender] is outweighed by lifetime [satellite-based monitoring]'s promotion of a compelling government interest" and "the inconvenience to [the offender] in wearing a small, unobtrusive device pursuant to [satellite-based monitoring] protocols that only provides the State with his physical location which the State may use solely for its legitimate governmental interest in preventing and prosecuting future crimes committed by [the offender], in conjunction with the added protection of judicial review as to the reasonableness of the search both at its imposition and at such times as circumstances may render the search unreasonable, . . . constitutes a pervasive but tempered intrusion upon [the offender's] Fourth Amendment interests"); *State v. Reed*, 863 S.E.2d 820 (N.C. Ct. App. 2021) (unpublished table decision) (holding that requiring a sex offender who entered an *Alford* plea to first-degree sexual offense of a child to register for life and participate in satellite-based monitoring was inappropriate because the offender did not plead guilty to a crime of penetration, an aggravated offense; he is not a recidivist; and he has not been classified as a sexually violent predator, while noting that an aggravated offense requires an element of penetration and although first-degree sex offense of a child requires a "sexual act," a sexual act "can be found on the basis of cunnilingus or fellatio; neither requiring penetration"); *but see State v. Grady*, 831 S.E.2d 542, 544-45 (N.C. 2019) (holding North Carolina statutes requiring lifetime satellite-based monitoring unconstitutional when based solely on offenders' recidivist status and that satellite-based monitoring constitutes a search in violation of the Fourth Amendment); *State v. Lindquist*, 847 S.E.2d 78, 80-81 (N.C. Ct. App. 2020) (vacating the satellite-based monitoring order and remanding to the trial court "for the limited purpose of amending the order to clarify upon which study the trial court relied in making its determination that [Lindquist] should be subject to lifetime satellite-based monitoring" where court could not determine the basis of the trial court's decision to subject Lindquist to lifetime satellite-based monitoring because of a discrepancy between the study admitted into evidence and the study referenced in the trial court's order).

[210] *See, e.g.*, *Jones v. County of Suffolk*, 936 F.3d 108, 119 (2d Cir. 2019) (holding that Suffolk County program which allows a nonprofit organization to conduct home visits with individuals on the sex offender registry to confirm the accuracy of their registration address did not violate the Fourth Amendment and were reasonable under the "special needs" doctrine).

[211] *Doe v. Shurtleff*, 628 F.3d 1217, 1226-27 (10th Cir. 2010) (holding that registered sex offender did not have a reasonable expectation of privacy in his online identifiers and requiring him to report them did not violate his Fourth Amendment right to be free from unreasonable searches and seizures).

11. Fifth Amendment / Takings & Double Jeopardy, Self-Incrimination

The Fifth Amendment requires the government compensate citizens when it takes private property for public use, forbids "double jeopardy," and protects against self-incrimination.[214] Offenders have unsuccessfully raised claims alleging violation of their Fifth Amendment right to be free from self-incrimination[215] as well as claims alleging violation of double jeopardy, especially as it pertains to

[212] *Johnson v. Terhune*, 184 F. App'x 622, 624-25 (9th Cir. 2006) (holding that, although involuntary collection of DNA from sex offender constitutes a search, the search was reasonable and did not violate the Fourth Amendment).

[213] *Melnick v. Camper*, 487 F. Supp. 3d 1039, 1054 (D. Colo. 2020) (holding that requiring sex offender to fill out the Colorado Sex Offender Registration Act registry form does not amount to an illegal search and seizure of information because offender has no reasonable expectation of privacy as to the information he is required to provide).

[214] U.S. CONST. AMEND. V. The Double Jeopardy Clause protects criminal defendants against three types of abuses: a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. *United States v. Halper*, 490 U.S. 435, 440 (1989), *abrogated on other grounds by Hudson v. United States*, 522 U.S. 93 (1997).

[215] Notably, when a disclosure is compelled by a noncriminal regulatory framework, an individual seeking to invoke the privilege against self-incrimination must "show that the compelled disclosures will themselves confront the [individual] with substantial hazards of self-incrimination." *State v. Benson*, 495 P.3d 717, 730-31 (Or. Ct. App. 2021) (holding that the regulatory requirement under Oregon law that sex offender acknowledge his awareness of his reporting obligations did not place him at a substantial risk of self-incrimination and did not compel self-incrimination in violation of state law or the Fifth Amendment); *see McKune v. Lile*, 536 U.S. 24, 30-31 (2002) (holding that a sex offender treatment program that requires disclosure of criminal conduct without guaranteeing immunity does not necessarily violate a person's Fifth Amendment right to be free from self-incrimination, but would if the consequences for nondisclosure were so serious that it effectively compelled the individual to make self-incriminating statements); *Melnick v. Camper*, 487 F. Supp. 3d at 1054 (holding that Colorado sex offender registration laws do not violate offender's Fifth Amendment right to be free from self-incrimination because the provision of information required under sex offender registry laws does not implicate a substantial risk of self-incrimination and does not open him up to any additional criminal exposure or liability); *United States v. Peters*, 856 F. App'x 230, 235 (11th Cir. 2021) (holding that court's use of offender's declaration of innocence that offender made at sentencing to deny offender's motion to reconsider the denial of his motion for early termination of supervised release did not violate the Fifth Amendment noting that a person's Fifth Amendment right to be free from self-incrimination is not violated at sentencing when a court considers the person's "'freely offered statements indicating a lack of remorse'"); *State v. LaFountain*, 901 N.W.2d 441, 450 (Minn. Ct. App. 2017) (holding that Minnesota registration statute is not a penal statute and therefore does not implicate the Fifth Amendment privilege against self-incrimination).

failure to register prosecutions.[216] Fifth Amendment claims based on the Takings Clause often arise in connection with state sex offender residency restrictions.[217]

[216] *United States v. Gamble*, 139 S. Ct. 1960, 1964 (2019) (holding two offenses are not the same for double jeopardy purposes if prosecuted by different sovereigns and therefore, the state may prosecute a defendant of failure to register under state law even if the federal government has prosecuted him for the same conduct under a federal statute); *United States v. Diaz*, 967 F.3d 107, 109-11 (2d Cir. 2020) (per curiam), *cert. denied*, 141 S. Ct. 1424 (2021) (affirming conviction for failure to register in violation of 18 U.S.C. § 2250, holding that a defendant in a SORNA prosecution may not collaterally challenge his underlying predicate sex offender conviction and that sex offender registration and notification requirements are not punitive and therefore SORNA does not violate the Fifth Amendment); *Artway v. Att'y Gen. of N.J.*, 81 F.3d 1235, 1267 (3d Cir. 1996) (holding that New Jersey's registration provisions of Megan's Law does not impose "punishment" for purposes of Double Jeopardy and Ex Post Facto Clauses); *Cutshall v. Sundquist*, 193 F.3d 466, 474-76 (6th Cir. 1999) (holding that Tennessee sex offender registry law does not violate prohibition against double jeopardy since state law imposes no affirmative disability or restraint, and its purpose is remedial and regulatory rather than punitive); *Steward v. Folz*, 190 F. App'x 476, 479 (7th Cir. 2006) (concluding Indiana's mandatory registration law did not constitute criminal punishment in violation of double jeopardy); *United States v. Fisher*, No. 21-1590, 2022 WL 468520 (8th Cir. Feb. 16, 2022) (per curiam) (holding that there was no violation of the Double Jeopardy Clause where sex offender, who failed to update his address, had his supervised release revoked and was charged with failure to register and noting that "[i]t has long been the jurisprudence of this court that the same conduct can result in both a revocation of a defendant's supervised release and a separate criminal conviction without raising double jeopardy concerns"); *United States v. Lusby*, 972 F.3d 1032, 1038 (9th Cir. 2020) (holding that jeopardy never attached where the district court made a "purely legal determination" regarding defendant's indictment for failing to register as a sex offender under 18 U.S.C. § 2250); *Terhune*, 184 F. App'x at 624 (*citing Kansas v. Hendricks*, 521 U.S. 346, 368-69 (1997)) (determining that California law requiring prisoner to register as sex offender did not violate Ex Post Facto or Double Jeopardy Clauses); *State v. Chapman,* 944 N.W.2d 864, 876 (Iowa 2020) (unpublished table decision) (holding that evidence was insufficient to prove sexual motivation requiring defendant's registration as a sex offender where court relied on defendant's *Alford* plea to child endangerment and a victim impact statement from the victim's mother to find the defendant's conduct was sexually motivated and that ordering defendant to register as a sex offender was not "punishment" to which double jeopardy could attach); *State v. Larson*, 980 N.W.2d 592, 598-99 (Minn. 2022) (holding that separate convictions under Minnesota law for failure to register involving the same assignment of corrections agent to offender violated the prohibition against double jeopardy because, for "double jeopardy purposes, the unit of prosecution for a violation of subdivision 3(a) is the assignment of a corrections agent" and offender can only be convicted of a single count); *State v. Sparks*, 657 S.E. 2d 655, 660-62 (N.C. 2008) (holding that a post-release hearing is not a criminal proceeding and therefore revocation of a sex offender's probation, parole, or supervised release and imposition of accompanying sanctions does not violate double jeopardy); *State v. Green*, 230 P.3d 654, 656 (Wash. Ct. App. 2010) (affirming dismissal of sex offender's charge for failure to register, noting that Washington statute requiring sex offender to register "in person, every ninety days" was ambiguous regarding whether the unit of prosecution, for double jeopardy purposes, was "each 90-day period in which an offender with a fixed residence fails to register" or if an offender's failure to register is treated as "an ongoing course of conduct," and holding that the unit of prosecution would be construed as involving an ongoing course of conduct); *State v. Durrett*, 208 P.3d 1174, 1176-77 (Wash. Ct. App. 2009) (holding that the defendant's conviction for two counts of failure to register as a sex offender violated double jeopardy where the defendant's failure to report weekly during two charged time periods constituted only a single criminal act or "one unit of prosecution"); *but see State v. Valencia*, 416 P.3d 1275, 1280 (Wash. Ct. App. 2018) (affirming offender's conviction of failure to register and holding that offender's conduct in failing to register as a sex offender within three days of move, and failing to report weekly as a transient offender approximately three months later, did not constitute the same criminal conduct and therefore did not violate double jeopardy).

[217] *Smith v. Commonwealth*, 743 S.E.2d 146, 150 (Va. 2013) (holding state's reclassification of sex offender's conviction was not an unconstitutional taking in violation of the state constitution). For additional discussion concerning Fifth Amendment challenges to state sex offender residency restrictions, see *supra* II.A.

12. Sixth Amendment / Right to Jury Trial & Ineffective Assistance of Counsel & *Apprendi v. New Jersey*

The Sixth Amendment affords individuals with the right to a speedy and public trial and the right to have assistance of counsel for their defense.[218] Challenges based on ineffective assistance of counsel often arise in failure to register cases where offenders allege their attorney failed to advise them that a conviction would require registration as a sex offender.[219] Ineffective assistance of counsel claims also arise when an offender enters into a guilty plea and later argues that the plea was not knowing, voluntary, and intelligent because of counsel's failure to provide notice of the duty to register as a sex offender,[220] or where counsel misrepresents or incorrectly states the

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[218] U.S. CONST. AMEND. VI.

[219] To establish a claim for ineffective assistance of counsel, an individual must show that his or her counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and that he or she was prejudiced by his or her counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 692-94 (1984) (indicating that to establish a claim for ineffective assistance of counsel, a petitioner must show (1) that counsel's representation fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defense); *Scott v. Fox*, No. 18-cv-2687 P, 2020 WL 3571476, at *9 (E.D. Cal. July 1, 2020) (holding that "[b]ecause there is no clearly established Supreme Court opinion requiring that criminal defendants be informed, in a particular manner, that they will be subject to a lifelong registration requirement, the state superior court's denial of [the offender's] claim [of ineffective assistance of counsel] was not unreasonable or contrary to clearly established Supreme Court authority").

[220] To establish ineffective assistance during the plea bargain process, an individual must demonstrate that, but for counsel's errors, the outcome of the process would have been different. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *see Saylor v. Nagy*, No. 20-1834, 2021 WL 5356030, at *4 (6th Cir. Nov. 17, 2021) (holding that offender's trial counsel, who failed to advise offender that the consequences of his plea would include lifetime electronic monitoring and registration as a sex offender, did not provide constitutionally deficient representation where lifetime electronic monitoring and sex offender registration are more analogous to collateral consequences, and offender only needed to be aware of direct consequences of the plea); *United States v. Cottle*, 355 F. App'x 18, 21 (6th Cir. 2009) (holding that court had no duty to inform offender that he would be required to register as a sex offender and therefore his guilty plea was valid); *Mireles v. Bell*, No. 06-13706, 2008 WL 126581, at *3 (E.D. Mich. Jan. 11, 2008) (noting that "[t]he classification, registration, and notification requirements of a sex offender statute are 'more properly characterized as a collateral consequence of conviction,'" and "an attorney is not ineffective for failing to notify his client of all the collateral consequences of a plea" and therefore, offender's attorney was not ineffective for failing to inform offender that he would be required to register as a sex offender); *Rodriguez-Moreno v. State*, No. 08-493-TC, 2011 WL 6980829, at *4 (D. Or. Nov. 15, 2011) (holding that counsel's failure to inform offender of the permanent sex offender registration requirement that went along with his guilty plea did not constitute ineffective assistance of counsel); *Washington v. United States*, 74 M.J. 560, 561 (A.C.C.A. 2014) (holding that the requirement that a military judge advise an offender that he would be required to register as a sex offender before accepting his guilty plea is not retroactively applicable); *United States v. Riley*, 72 M.J. 115, 121 (C.A.A.F. 2013) (holding that, for purposes of determining whether a guilty plea was voluntary, sex offender registration was not a collateral consequence of the offender's guilty plea to charge of kidnapping a minor and judge's failure to inform offender that she would be required to register as a sex offender as a result of her plea resulted in "a substantial basis to question the providence of [the offender's] guilty plea"); *Taylor v. State*, 698 S.E.2d 384, 388-89 (Ga. Ct. App. 2010) (holding that "the failure to advise a client that pleading guilty will require him to register as a sex offender is constitutionally deficient performance" and "mandating that criminal defendants facing the serious consequence of registration as a sex offender be properly informed of the same"); *State v. Flowers*, 249 P.3d 367, 372 (Idaho 2011) (holding that trial court's failure to inform offender that he would be required to register as a sex offender if he pleaded guilty did not invalidate offender's plea because the court is only required to inform an offender of the direct consequences of his plea and sex offender registration is a collateral consequence of a guilty plea); *People v. Cowart*, 28 N.E.3d 862, 868 (Ill. App. Ct. 2015) (holding that trial court's failure to advise offender that he would be required to register as a sex offender if he pleaded guilty did not render offender's plea unknowing or involuntary); *Commonwealth v. Thompson*, 548 S.W.3d 881, 892-93 (Ky. 2018) (holding that defense counsel's failure to advise offender that sex offender registration would be

required if he pleaded guilty to attempted kidnapping violated the offender's Sixth Amendment right to effective assistance of counsel); *Taylor v. State*, 887 N.W.2d 821, 826 (Minn. 2016) (holding that because Minnesota's sex offender registration statute is nonpunitive, defense counsel's failure to advise the defendant regarding registration requirements prior to entry of a guilty plea did not violate defendant's right to effective assistance of counsel under the United States Constitution and the Minnesota Constitution); *Magyar v. State*, 18 So. 3d 807, 811-12 (Miss. 2009) (holding that, since the requirement to register as a sex offender is a collateral consequence of a guilty plea, the court did not err in failing to advise offender of his duty to register before accepting guilty plea and citing case law addressing ineffective assistance of counsel); *People v. Gravino*, 928 N.E.2d 1048, 1056 (N.Y. 2010) (addressing whether sex offender's guilty plea was knowing, voluntary and intelligent as it relates to an ineffective assistance of counsel claim where the trial court failed to apprise offender of consequences of his guilty plea and noting that sex offender registration is a "collateral consequence"); *People v. Nash*, 48 A.D.3d 837, 837-38 (N.Y. App. Div. 2008) (holding that sex offender registration is a collateral consequence and therefore failure to inform offender of the duty to register does not undermine the voluntariness of his or her guilty plea); *State v. Trammell*, 387 P.3d 220, 227 (N.M. 2016) (holding that defense counsel's "advisement of a plea agreement's SORNA registration requirement . . . is, and long has been, a prerequisite to effective assistance of counsel"); *State v. Dornoff,* 2020-Ohio-3909, No. WD-16-072, 2020 WL 4384223, at *3 (Ohio Ct. App. July 31, 2020) (holding that the offender was not entitled to have his guilty plea vacated where the trial court failed to inform him of all sex offender registration requirements because the offender failed to establish that he would not have entered the guilty plea but for the trial court's failure to fully advise him of all of the details of the sex offender classification scheme); *Curtis v. Menard*, No. 99-2-18 Wncv, 2022 Vt. Super. LEXIS 56, at *1-2 (Apr. 11, 2022) (holding that offender's conviction, where he pleaded guilty to lewd and lascivious conduct with a 2-year-old, should not be vacated nor his plea withdrawn, even though the sentencing court failed to specifically ensure, before accepting his plea, that the offender was aware that he would be required to register as a sex offender because sex offender registration "is a collateral consequence of a relevant conviction, not a direct consequence," it is not punitive, and "the sentencing court has no discretion to waive it"); *State v. Dantzler*, Nos. 2020AP1823-CR, 2020AP1824-CR, 2021 WL 8692893, at *3 (Wis. Ct. App. Oct. 26, 2021) (holding that, since sex offender registration requirements are a collateral consequence of a plea, the defendant's counsel did not render ineffective assistance of counsel where he failed to advise the defendant of his duty to register prior to entering a guilty plea). *But see People v. Fonville*, 804 N.W.2d 878, 895-895 (Mich. Ct. App. 2011) (holding that defense counsel was required to advise offender that he would be required to register as a sex offender if he pleaded guilty to the charge of child enticement and, therefore, his failure to do so amounted to ineffective assistance of counsel); *Ex parte Weatherly*, No. WR-61,215-10, 2023 WL 2000064, at *1 (Tex. Crim. App. Feb. 15, 2023) (per curiam) (holding that offender's guilty plea to unlawful restraint of a child was involuntary where offender was never notified that he would have a duty to register as a sex offender); *Ex parte Massey*, No. WR-93,646-01, 2022 WL 1160822 (Tex. Crim. App. Apr. 20, 2022) (per curiam) (holding that offender's plea was involuntary because neither trial counsel nor the trial court advised her about the requirement to register as a sex offender and the judgment specifically stated that the sex offender registration requirement did not apply to her).

offender's duty to register.[221] However, the Sixth Amendment does not require attorneys to inform their clients of a conviction's collateral consequences.[222]

In *Apprendi v. New Jersey*, the U.S. Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."[223] As a result of *Apprendi*, additional challenges to sex offender registration requirements have been raised by sex offenders who allege that registration is punitive and therefore, argue that a jury must determine whether or not they should be required to register.[224]

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[221] *United States v. Shepherd*, 880 F.3d 734, 741-42 (5th Cir. 2018) (finding defense counsel ineffective when counsel advised offender to plead guilty to failure to register as a sex offender even though the offender's out-of-state indecency convictions did not require him to register as a sex offender under Texas law); *Edmonds v. Pruett*, No. 13cv1167, 2014 WL 4182664, at *6 (E.D. Va. Aug. 20, 2014) (holding that sex offender registration is a collateral consequence of a guilty plea and sex offender failed to allege ineffective assistance of counsel where his counsel incorrectly advised him that he would not be subject to sex offender registration if he entered into a guilty plea); *People v. Armstrong*, 50 N.E.3d 745, 750 (Ill. App. Ct. 2016) (holding that trial counsel rendered ineffective assistance when he advised offender to plead guilty to failing to register as a sex offender when offender's prior conviction of unlawful restraint did not subject him to sex offender registration); *People v. Dodds*, 7 N.E.3d 83, 93 (Ill. App. Ct. 2014) (holding that counsel provided ineffective assistance where he misrepresented to offender that offender would only be required to register as a sex offender for 10 years rather than for life if he pleaded guilty to possession of child pornography); *Ex parte Dauer*, No. WR-88,114-01, 2018 WL 1406696, at *1 (Tex. Crim. App. Mar. 21, 2018) (per curiam) (finding that counsel's failure to advise offender that his sex offender registration requirements had expired prior to his failure to register offense date constituted ineffective assistance of counsel); *State v. Snider*, 508 P.3d 1014, 1020-22 (Wash. 2022) (en banc) (holding that sex offender's guilty plea was constitutionally valid where the court accurately described the "knowledge" element of the failure to register offense and, based on the totality of the circumstances, offender was "properly informed of the elements and nature of the crime when he pleaded guilty" and "his plea was therefore made knowingly, voluntarily, and intelligently").

[222] *Chaidez v. United States*, 568 U.S. 342, 349 & n.5 (2013) (*citing Padilla v. Kentucky*, 559 U.S. 356, 375-76 (Alito, J., concurring in judgment)) (noting that "sex offender registration" is commonly viewed as a collateral consequence and the Sixth Amendment does not require attorneys inform their clients of a conviction's collateral consequences); *United States v. Talkington*, 73 M.J. 212, 217 (C.A.A.F. 2014) (holding that, notwithstanding *Riley*, sex offender registration is a collateral consequence for sentencing purposes); *United States v. Molina*, 68 M.J. 532, 535 (C.G. Ct. Crim. App. 2009) (holding that it was proper to withdraw offender's guilty plea where there was a mutual misunderstanding between the parties regarding the requirement to register as a sex offender under California law); *State v. Trotter*, 330 P.3d 1267, 1276 (Utah 2014) (holding that sex offender registration requirement "is a civil remedy and is properly categorized as a collateral consequence rather than a direct consequence of a defendant's guilty plea because it is unrelated to the length or nature of the sentence" and because registration is a collateral consequence, sex offender's Sixth Amendment right to effective assistance of counsel was not violated where offender's counsel failed to advise him of the same).

[223] *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

[224] Notably, Sixth Amendment rights only attach to offenses, not enhancements. *United States v. Beck*, 957 F.3d 440, 445-46 (4th Cir. 2020); *see also United States v. Haymond*, 139 S. Ct. 2369, 2378, 2384 (2019) (stating that, "under our Constitution, when 'a finding of fact alters the legally prescribed punishment so as to aggravate it' that finding must be made by a jury of the defendant's peers beyond a reasonable doubt" and holding that 18 U.S.C. § 3583(k), which required a five-year mandatory minimum prison sentence for certain sex offenses committed by offenders on supervised release, violated the right to jury trial guaranteed under the Fifth and Sixth Amendments); *Alleyne v. United States*, 570 U.S. 99, 111, 114 (2013) (concluding that "any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury" and noting that "any facts that increase the prescribed range of penalties to which a criminal defendant is exposed" must be found by a jury beyond a reasonable doubt); *Thomas v. United States*, 942 A.2d 1180, 1186 (D.C. Cir. 2008) (holding that the underlying misdemeanor charges which required offender to register as a sex offender upon conviction were "petty" for purposes of the Sixth Amendment and therefore, a jury trial was not required); *State v. Trujillo*, 462 P.3d 550, 561-62 (Ariz. 2020) (concluding that Arizona's sex offender registration

13. Eighth Amendment / Cruel & Unusual Punishment

The Eighth Amendment prohibits the government from imposing excessive fines and protects citizens from cruel and unusual punishment.[225] Offenders often challenge sex offender registration

statutes are civil regulatory statutes, not criminal penalties, and therefore *Apprendi* does not apply); *Fushek v. State*, 183 P.3d 536, 543-44 (Ariz. 2008) (en banc) (holding that, because of the seriousness of the consequences of being designated a sex offender, when there is a special allegation of sexual motivation in a misdemeanor case, a jury trial must be afforded); *People v. Picklesimer*, 226 P.3d 348, 358 (Cal. 2010) (holding that because sex offender registration is not punishment, *Apprendi* does not require jury findings to support registration order); *People v. Schaffer*, 53 Cal. App. 5th 500, 509-13 (2020) (holding that sex offender does not have a right to have a jury determine whether he violated his parole for failure to wear his GPS device and that the reasoning of *Haymond* does not apply); *People v. Presley*, 156 Cal. App. 4th 1027, 1035 (2007) (holding, based on *Smith v. Doe*, that the public notification and residency requirements under California's sex offender registration laws do not constitute punishment that would require jury findings under the Sixth Amendment); *People v. Rowland*, 207 P.3d 890, 892-93 (Colo. App. 2009) (holding that community notification requirements for offender designated as a sexually violent predator (SVP) did not constitute punishment and therefore *Apprendi* did not preclude the court from finding that an offender is an SVP); *Fallen v. United States*, 290 A.3d 486, 499 (D.C. 2023) (holding that sex offender charged with misdemeanor sex offenses was entitled to a jury trial because "when viewed together with the 180-day maximum period of incarceration and up to five years of probation for misdemeanor sexual abuse of a minor, sex offender registration overcomes the presumption that [sex offender] was charged with a petty offense and triggers the Sixth Amendment right to a trial by jury"); *People v. Adams*, 581 N.E.2d 637, 641 (Ill. 1991) (holding that Illinois Sex Offender Registration Act does not constitute punishment); *Buck v. Commonwealth*, 308 S.W.3d 661, 667-68 (Ky. 2010) (holding that "SORA is a remedial measure with a rational connection to the nonpunitive goal of protection of public safety"); *Wallman v. State*, No. 1116, 2023 WL 195247, at *8 (Md. Jan. 17, 2023) (holding that *Rogers* does not apply where the victims' ages were established during the adjudicatory phase through an agreed statement of facts and requiring an offender convicted of possession of child pornography to register as a tier I sex offender does not constitute an illegal sentence); *Rogers v. State*, 226 A.3d 261, 285, 288 (Md. 2020) (holding that anything needed to be shown in order to classify an offender in a particular tier must be proven beyond a reasonable doubt and noting that "[sex offender] registration has developed in the direction of being punitive"); *Young v. State*, 806 A.2d 233, 235 (Md. 2002), *superseded by statute as recognized in In re Nick H.*, 123 A.3d 229, 241 (Md. Ct. Spec. App. 2015) (holding that Maryland Sex Offender Registration Act in effect at the time was not punishment for *Apprendi* purposes); *Werlich v. Schnell*, 958 N.W.2d 354, 370-71 (Minn. 2021) (holding that Minnesota sex offender registration and notification requirements are not punitive); *State v. Meredith*, No. A06-2234, 2008 WL 942616, at *4 (Minn. Ct. App. Apr. 8, 2008) (unpublished decision) (holding Minnesota statute requiring registration as a sex offender was not punitive and therefore *Apprendi* did not apply); *Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn. 1999), *superseded by statute as recognized in Werlich v. Schnell*, 958 N.W.2d 354 (Minn. 2021) (holding that the Minnesota predatory offender registration statute was not punitive, but regulatory); *State v. Bowers*, 167 N.E.3d 947, 952 (Ohio 2020) (holding that the trial court's finding that sex offender used force in the commission of rape in sentencing the offender violated the Sixth Amendment); *State v. Williams*, 952 N.E.2d 1108, 1112 (Ohio 2011) (holding that Ohio's sex offender registration requirements are punitive); *State v. Conley*, 2016-Ohio-5310, No. 27869, 2016 WL 4211252, at *2-3 (Ohio Ct. App. Aug. 10, 2016) (recognizing that Ohio's sex offender registration requirements are punitive); *Commonwealth v. Butler*, 226 A.3d 972, 992-93 (Pa. 2020) (holding that Pennsylvania's registration, notification, and reporting requirements that are applicable to sexually violent predators do not constitute criminal punishment, and therefore the procedure for designating sexual offenders as sexually violent predators does not violate *Apprendi* or *Alleyne*); *Commonwealth v. Torsilieri*, No. 15-CR-0001570-2016 (Pa. Ct. Common Pleas Aug. 22, 2022) (holding that Revised Subchapter H of Pennsylvania's SORNA constitutes criminal punishment and violates *Apprendi* and *Alleyne*), *rev'd*, No. 97 MAP 2022, 2024 WL 2789201 (Pa. May 31, 2024) (holding that Subchapter H of Pennsylvania's SORNA does not constitute criminal punishment). For additional discussion concerning challenges by offenders concerning their right to a jury trial under the Sixth Amendment, see *supra* notes 218 to 222 and accompanying text.

[225] U.S. CONST. AMEND. VIII.

requirements under the Eighth Amendment by alleging that requiring registration amounts to cruel and unusual punishment.[226]

[226] *United States v. Diaz*, 967 F.3d 107, 109-10 (2d Cir. 2020) (per curiam), *cert. denied*, 141 S. Ct. 1424 (2021) (affirming conviction for failure to register in violation of 18 U.S.C. § 2250 and holding that sex offender registration and notification requirements are not punitive and therefore SORNA does not violate the Eighth Amendment); *Dongarra v. Smith*, 27 F.4th 174 (3d Cir. 2022) (holding that requiring offender to live in prison while being falsely identified as a sex offender does not constitute cruel and unusual punishment under the Eighth Amendment); *Farmer v. Harman*, No. 18-CV-02216, 2021 WL 2222720, at *3-4 (M.D. Pa. June 2, 2021) (holding that Pennsylvania's sex offender registry does not constitute punishment and therefore does not violate the Eighth Amendment); *Doe v. Settle*, 24 F.4th 932, 946 (4th Cir. 2022) (holding that Virginia's sex offender registration and notification laws are regulatory and not punitive, and therefore do not constitute cruel and unusual punishment for purposes of the Eighth Amendment); *Groys v. City of Richardson*, No. 20-cv-03202, 2021 WL 3852186, at *7 (N.D. Tex. Aug. 9, 2021) (holding that City of Richardson's ordinance prohibiting sex offenders who appear on the Texas sex offender registry from living within 2,000 feet of any premises where children commonly gather is not punitive and therefore cannot violate the Eighth Amendment); *Rollin v. Off. of Comm'r of Ky. Dep't of Corr.*, No. 22-5519, 2023 WL 4112081 (6th Cir. Feb. 27, 2023) (holding that requiring an offender convicted of distribution of obscene matter to register as a sex offender does not constitute punishment and "therefore does not implicate the Eighth Amendment" and, even though the court failed to include the registration requirement in the judgment, offender was still obligated to register under Kentucky law); *Kitterman v. City of Belleville*, 66 F.4th 1084, 1092 (7th Cir. 2023) (holding that requiring offender to register as a sex offender for life did not violate the Eighth Amendment's prohibition against cruel and unusual punishment); *Millard v. Camper*, 971 F.3d 1174, 1181 (10th Cir. 2020) (holding that the Colorado Sex Offender Registration Act (CSORA) does not impose "punishment," and, because CSORA is not punitive, it does not violate the Eighth Amendment), *rev'g Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017); *Carney v. Okla. Dep't of Pub. Safety*, 875 F.3d 1347, 1352 (10th Cir. 2017) (holding that requiring a sex offender to obtain driver's license which indicates he is a sex offender does not violate the Eighth Amendment); *Melnick v. Camper*, 487 F. Supp. 3d 1039, 1051-52 (D. Colo. 2020) (holding that CSORA is not punitive and does not constitute cruel and unusual punishment even though sex offender asserts that CSORA has made it hard for him to hold a job or find housing and that he has been shamed and harassed for being on the registry); *In re Alva*, 92 P.3d 311, 325 (Cal. 2004) (holding that registration as a sex offender under California law is not punishment, but a legitimate, nonpunitive regulatory measure and does not amount to cruel and unusual punishment under the state and federal constitutions); *People v. Castellanos*, 982 P.2d 211, 217-18 (Cal. 1999) (holding that California's sex offender registration was not punishment for purposes of prohibition against cruel and unusual punishment); *People v. Nichols*, 176 Cal. App. 4th 428, 437 (2009) (holding that an indeterminate life sentence imposed on sex offender for failing to register under California's three-strikes law did not violate the Eighth Amendment); *State v. Joslin*, 175 P.3d 764, 775 (Idaho 2007) (holding that the requirement that sexual offenders register does not constitute punishment and does not amount to cruel and unusual punishment in violation of the state or federal constitutions); *State v. Kinney*, 417 P.3d 989, 994-96 (Idaho Ct. App. 2018) (holding that Idaho's Sex Offender Registration Act is not punitive and requiring offender to register as a sex offender did not violate constitutional prohibitions against cruel and unusual punishment); *State v. Huntoon*, 965 N.W.2d 635 (Iowa Ct. App. 2021) (unpublished table decision) (reiterating that offender's placement on the sex offender registry is not punitive and, therefore, cannot be deemed as cruel and unusual punishment under the Eighth Amendment); *State v. Petersen-Beard,* 377 P.3d 1127, 1129 (Kan. 2016) (holding that Kansas Offender Registration Act's lifetime registration requirements for adult offenders are not punitive and therefore do not violate state or federal prohibitions against cruel and unusual punishment); *State v. Mossman*, 281 P.3d 153, 171 (Kan. 2012) (holding that imposition of lifetime postrelease supervision for sex offender does not constitute cruel and unusual punishment in violation of the Eighth Amendment); *People v. Humphrey*, No. 362770, 2024 WL 2228374, at *8 (Mich. Ct. App. May 16, 2024) (per curiam) (holding that requiring offender convicted of third-degree criminal sexual conduct to register as a sex offender is not cruel or unusual and does not violate the Michigan or U.S. Constitutions, and noting that, unlike in *Lymon*, the offense involved a sexual component); *People v. Evans*, No. 353139, 2022 WL 1195296, at *10-11 (Mich. Ct. App. Apr. 21, 2022) (holding that, although sex offender registration constitutes punishment as noted in *Betts*, requiring offender to register as a sex offender for life does not constitute cruel or unusual punishment in violation of the Eighth Amendment because it "is not unjustifiably disproportionate as applied to the facts of defendant's offense," "it is unclear whether his exploitive behavior would have ceased if the victim did not disclose the incidents," and "being placed on the sex offender registry for life may serve as a deterrent against recidivating"); *People v. Jarrell*, 1 N.W.3d 359, 372 (Mich. Ct. App. 2022) (holding that SORA's lifetime registration

14. Tenth Amendment / Federalism

The Tenth Amendment outlines the principle of federalism, which distinguishes the relationship between the federal government and states and reserves to the states all powers that the U.S. Constitution does not delegate to the federal government or prohibit to the states.[227] Offenders have raised Tenth Amendment commandeering arguments, claiming that enforcement of SORNA violates the Tenth Amendment because it forces state officials to register sex offenders in compliance with SORNA.[228]

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requirement is neither cruel nor unusual and is not unjustifiably disproportionate under the circumstances of this case where offender was convicted of first-degree criminal sexual conduct because he sexually penetrated the victim without consent and under circumstances involving the commission of unlawful imprisonment and acknowledging that *Lymon* did not apply); *People v. Ringle*, No. 352693, 2021 WL 5405753, at *2-5 (Mich. Ct. App. Nov. 18, 2021) (unpublished decision) (holding that lifetime electronic monitoring and requiring offender to register as a sex offender for life is not cruel and unusual punishment facially or as applied to him under the Michigan Constitution or the Eighth Amendment of the U.S. Constitution); *State v. Conley*, 2016-Ohio-5310, No. 27869, 2016 WL 4211252, at *3-5 (Ohio Ct. App. Aug. 10, 2016) (concluding that Ohio's tier I sex offender registration requirements do not constitute cruel and unusual punishment); *Commonwealth v. Prieto*, 206 A.3d 529, 536 (Pa. 2019) (concluding that the 15-year registration requirement for tier I sex offenders under Revised Subchapter H of Pennsylvania's SORNA "constitutes neither an illegal sentence nor cruel and unusual punishment"); *In re C.G.,* 955 N.W.2d 443, 457 (Wis. App. Ct. 2021) (holding that sex offender registration does not constitute punishment and therefore, the offender's registration requirement under Wisconsin law does not violate the Eighth Amendment), *aff'd*, 976 N.W.2d 318 (Wis. 2022); *but see Gonzalez v. Duncan*, 551 F.3d 875, 889 (9th Cir. 2008) (holding that offender's "three-strikes" sentence based on a failure to register conviction is cruel and unusual punishment); *Bradshaw v. State*, 671 S.E.2d 485, 492 (Ga. 2008) (holding that mandatory life imprisonment for a second conviction of failure to register is cruel and unusual punishment); *People v. Lymon*, 993 N.W.2d 24, 47 (Mich. Ct. App. 2022) (holding that requiring an offender convicted of unlawful imprisonment, a crime that lacks a sexual component and that is not sexual in nature, to register as a sex offender under Michigan's SORA constitutes cruel or unusual punishment under the Michigan Constitution), *appeal granted*, 983 N.W.2d 82 (Mich. Jan. 11, 2023); *Commonwealth v. Torsilieri*, No. 15-CR-0001570-2016 (Pa. Ct. Common Pleas Aug. 22, 2022) (holding that Revised Subchapter H of Pennsylvania's SORNA constitutes cruel and unusual punishment under the federal and state constitutions), *rev'd*, No. 97 MAP 2022, 2024 WL 2789201 (Pa. May 31, 2024) (holding that Revised Subchapter H of Pennsylvania's SORNA does not constitute criminal punishment).

[227] U.S. CONST. AMEND. X.

[228] *Thomas v. Blocker*, No. 21-1943, 2022 WL 2870151 (3d Cir. July 21, 2022) (holding that federal SORNA does not violate the Tenth Amendment where "[i]n exchange for federal funding, Pennsylvania willingly chose to comply with federal SORNA"); *Kennedy v. Allera*, 612 F.3d 261, 269 (4th Cir. 2010) (holding that SORNA does not commandeer Maryland in violation of the Tenth Amendment noting that "while SORNA imposes a duty on the sex offender to register, it nowhere imposes a requirement on the State to accept such registration"); *United States v. Johnson*, 632 F.3d 912, 920 (5th Cir. 2011) (holding that SORNA does not violate the Tenth Amendment because, while it "orders sex offenders traveling interstate to register and keep their registration current, SORNA does not require the States to comply with its directives," but instead "allows jurisdictions to decide whether to implement its provisions or lose 10 percent of their federal funding otherwise allocated for criminal justice assistance" and further noting that "[o]f course the Tenth Amendment does not forbid conditioning of federal funding on a state's implementation of a federal program"); *United States v. Felts*, 674 F.3d 599, 607-08 (6th Cir. 2012) (holding that, because SORNA relies on Congress' spending power, Congress "has not commandeered Tennessee, nor compelled the state to comply with [SORNA's] requirements," and instead, "has simply placed conditions on the receipt of federal funds" and therefore SORNA does not violate the Tenth Amendment); *United States v. Smith*, 504 F. App'x 519, 520 (8th Cir. 2012) (per curiam), (holding that SORNA does not violate the Tenth Amendment because, although it requires sex offenders who are traveling interstate to register and keep their registration current, it does not require states to comply with its directives), *aff'g* 655 F.3d 839 (2011); *United States v. Richardson*, 754 F.3d 1143, 1146 (9th Cir. 2014) (holding that SORNA does not violate the Tenth Amendment's anti-commandeering principle); *United States v. Neel*, 641 F. App'x 782, 793 (10th Cir. 2016) (holding that SORNA does not violate the Tenth Amendment); *United States v. White*, 782

15. Fourteenth Amendment / Due Process & Equal Protection

The Fourteenth Amendment protects an individual's right to due process and equal protection.[229]

The Due Process Clause of the U.S. Constitution provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law"[230] and protects both procedural[231] and substantive due process.[232] A variety of challenges to sex offender laws have been raised under the federal Due Process Clause, including, among others,[233] challenges to (1) offenders'

F.3d 1118, 1128 (10th Cir. 2015) (holding that SORNA does not violate the Tenth Amendment); *Roe v. Replogle*, 408 S.W.3d 759, 768 (Mo. 2013) (en banc) (holding that requiring offender to register as a sex offender under SORNA, even though he completed his involvement with the criminal justice system before SORNA became effective, did not violate federalism).

[229] U.S. CONST. AMEND. XIV.

[230] *Id.* § 1.

[231] Procedural due process provides that a State "may not deprive a person of life, liberty, or property without notice and an opportunity to be heard." *Doe v. Moore*, 410 F.3d 1337, 1342 (11th Cir. 2005).

[232] Substantive due process protects fundamental rights "that are so 'implicit in the concept of ordered liberty' that 'neither liberty nor justice would exist if they were sacrificed.'" *Id.* To establish a substantive due process violation, an individual must demonstrate that a fundamental right was violated and that the conduct shocks the conscience. *King v. McCraw*, 559 F. App'x 278, 283 (5th Cir. 2014) (holding that Texas Sex Offender Registration Act's registration requirements do not violate substantive due process because "the restrictions [do not] rise to the level of shocking the conscience").

[233] *Woe v. Spitzer*, 571 F. Supp. 2d 382, 388-89 (E.D.N.Y. 2008) (holding that offender did not have a protected liberty interest in the right to a 10-year registration period and, as a result, the amendment to New York's Sex Offender Registration Act extending the registration period from 10 years to 20 years for level 1 sex offenders did not violate offender's substantive due process rights); *Blocker*, 2022 WL 2870151 (holding that Pennsylvania's requirement that offenders register as sex offenders without first being provided a hearing does not violate offenders' due process rights because they have already been afforded due process since federal SORNA's requirements turn on an offender's conviction alone and an offender has already had a procedurally safeguarded opportunity to contest the same); *Farmer v. Harman*, No. 18-CV-02216, 2021 WL 2222720, at *4 (M.D. Pa. June 2, 2021) (holding that sex offender convicted of rape in Pennsylvania who is required to register for life received all the due process that is required under the Fourteenth Amendment); *Desper v. Clarke*, 1 F.4th 236, 247 (4th Cir. 2021) (holding that there is no clearly established constitutional right to visitation in prison and therefore, prison regulation prohibiting inmates, who are required to register as sex offenders, from having in-person visitation with minors, does not violate procedural due process); *Groys v. City of Richardson*, No. 20-cv-03202, 2021 WL 3852186, at *9 (N.D. Tex. Aug. 9, 2021) (holding that City of Richardson's ordinance prohibiting sex offenders who appear on the Texas sex offender registry from living within 2,000 feet of any premises where children commonly gather does not violate sex offender's substantive or procedural due process rights because offender does not have a fundamental right to live wherever he wants); *Murphy v. Rychlowski*, 868 F.3d 561, 566-68 (7th Cir. 2017) (holding that requiring offender, who was convicted of rape by force in California, to register in Wisconsin did not violate offender's right to due process where his registration status in California "was established after a procedurally safeguarded proceeding (in criminal proceedings)" and Wisconsin's post-registration process provided offender with an avenue to challenge his registration requirement); *Litmon v. Harris*, 768 F.3d 1237, 1242 (9th Cir. 2014) (holding that California's requirement that sexually violent predators register in person every 90 days did not violate substantive due process); *Juvenile Male III*, 670 F.3d 999, 1012 (9th Cir. 2012) (noting that individuals who have been convicted of serious sex offenses do not have a fundamental right to be free from sex offender registration requirements); *Doe v. Tandeske*, 361 F.3d 594, 596-97 (9th Cir. 2004) (per curiam) (holding that Alaska's sex offender registration law does not violate procedural or substantive due process and noting that "persons who have been convicted of serious sex offenses do not have a fundamental right to be free from . . . registration and notification requirements"); *Doe v. Wasden*, 558 F. Supp. 3d 892, 910, 916-17 (D. Idaho 2021) (granting the plaintiffs' motion for preliminary injunction, enjoining Idaho from requiring the plaintiffs from registering as sex offenders in Idaho, and holding that the plaintiffs, who have been convicted of Idaho's crime against nature offense, are likely to prevail on their claim that Idaho is violating their right to substantive due process where there is no legitimate interest in requiring them to register as sex offenders for engaging in private, consensual acts), *appeal*

dismissed, No. 21-35826, 2022 WL 19333636 (9th Cir. Dec. 12, 2022); *Millard v. Camper*, 971 F.3d 1174, 1185 (10th Cir. 2020) (holding that Colorado's sex offender registration and notification system, the purpose of which is to give members of the public the opportunity to protect themselves and their children from sex offenses, is rationally related to a legitimate government interest and does not violate substantive due process), *rev'g Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017); *Moore*, 410 F.3d at 1345-46 (holding that the Florida Sex Offender Act is rationally related to a legitimate government interest in protecting the public from sexual abuse and therefore does not violate sex offenders' substantive due process rights); *Doe v. Alaska Dep't of Pub. Safety*, 444 P.3d 116, 136 (Alaska 2019) (holding that Alaska's Sex Offender Registration Act (ASORA) violates due process because it imposes registration requirements on all offenders convicted of designated offenses without affording them a hearing at which they might show that they are not dangerous and, without invalidating the entire statute, remedying the deficiency by requiring an individualized risk-assessment hearing); *Doe v. Alaska Dep't of Pub. Safety*, 92 P.3d 398, 409-11 (Alaska 2004) (holding that ASORA as applied to a sex offender whose conviction was set aside prior to its enactment violates the offender's due process rights under the Alaska Constitution); *State v. Arthur H.*, 953 A.2d 630, 644 (Conn. 2008) (holding that the trial court did not violate offender's right to procedural due process where it failed to hold an evidentiary hearing prior to ordering offender to register as a sex offender); *People v. Pepitone*, 106 N.E.3d 984, 995 (Ill. 2018) (holding Illinois statute, which prohibits certain sex offenders from knowingly entering or being present in public parks, does not violate due process under the Illinois and U.S. Constitutions); *Moffitt v. Commonwealth*, 360 S.W.3d 247, 259 (Ky. Ct. App. 2012) (holding that Kentucky's Sex Offender Registration Act, which required offender convicted of kidnapping a minor to register as a sex offender for life, did not violate federal procedural or substantive due process rights); *Doe (No. 216697) v. Sex Offender Registry Bd.*, 170 N.E.3d 359 (Mass. App. Ct. 2021) (unpublished table decision) (holding that offender's substantive due process rights were not violated where he was required to register as a tier I offender in Massachusetts resulting from an Ohio conviction from 25 years ago because he did not have a fundamental privacy or liberty interest involved and although his risk of reoffense and dangerousness to the public was low, it was not nonexistent); *People v. Temelkoski*, 905 N.W.2d 593, 594 (Mich. 2018) (holding that retroactive application of Michigan's Sex Offender Registration Act which defined the defendant's youthful training as a conviction and required him to register as a sex offender violated his constitutional right to due process); *Powell v. Keel*, 860 S.E.2d 344, 348 (S.C. 2021) (holding that lifetime registration under South Carolina law, without the opportunity for judicial review to assess an offender's risk of reoffending, is unconstitutional and violates due process under the Fourteenth Amendment); *McCabe v. Commonwealth*, 650 S.E.2d 508, 512 (Va. 2007) (holding that offender's "right to be free from lifetime quarterly reregistration as a sex offender does not qualify as a liberty interest specially protected by the Due Process Clause for purposes of a substantive due process claim").

requirement to register;[234] (2) offenders' classifications or tier;[235] (3) public notification requirements;[236] (3) determinations as to what constitutes a "sex offense,"[237] being labeled as a sex

[234] *Pierre v. Vasquez*, No. 20-51032, 2022 WL 68970, at *3 (5th Cir. Jan. 6, 2022) (holding that the district court erred in finding no standing based on its conclusion that offender, who was convicted of violating 18 U.S.C. § 2241 and was required to register as a sex offender in Texas as an "extrajurisdictional registrant," alleged no injury because "the reputational damage to [offender] from being required to register as a sex offender constitutes injury"), *remanded to*, No. 20-CV-224, 2022 WL 3219421, at *6 (W.D. Tex. Aug. 9, 2022) (holding that "[b]y failing to give [offender] a formal hearing or opportunity to rebut Defendants' determination that [he] was an extrajurisdictional registrant [based on offender's conviction of attempted interstate transportation of individual for prostitution under 18 U.S.C. § 2421], Defendants violated [offender's] procedural-due-process right—a right that exists to protect [offender's] liberty interest in being free from sex-offender classification absent a sex offense conviction"); *Menges v. Knudsen*, 538 F. Supp. 3d 1082, 1116 (D. Mont. 2021) (holding that the inclusion of offender in Montana's sex offender registry for his 1994 conviction under Idaho's crimes against nature statute is unconstitutional and violates his right to substantive due process under the Fourteenth Amendment and his right to privacy under the Montana Constitution and further noting that "having consensual intimate sexual contact with a person of the same-sex does not render someone a public safety threat to the community. It does not increase the risk that [Montana's] children or other vulnerable groups will be victimized, and law enforcement has no valid interest in keeping track of such persons whereabouts. And, while it can be undoubtedly said that Montana's sexual offender registration statutes generally serve compelling governmental interests, they are not narrowly tailored to serve those interests to the extent they pull [the offender] within their grasp"), *appeal dismissed as moot*, No. 21-35370, 2023 WL 2301431 (9th Cir. Mar. 1, 2023); *Melnick v. Camper*, 487 F. Supp. 3d 1039, 1056 (D. Colo. 2020) (holding that CSORA does not violate offender's substantive due process rights because sex offender registration laws do not implicate fundamental rights and CSORA is rationally related to a legitimate government interest nor does CSORA violate offender's right to privacy because he does not have a legitimate expectation of privacy in the information that must be provided to the sex offender registry); *Roe v. Replogle*, 408 S.W.3d 759, 767 (Mo. 2013) (en banc) (holding that sex offender registration requirements under Missouri's Sex Offender Registration Act and SORNA do not violate substantive due process).

[235] *Fowlkes v. Parker*, No. 08-CV-1198, 2010 WL 5490739, at *8 (N.D.N.Y. Dec. 9, 2010) (holding that New York's Sex Offender Registration Act "provides an elaborate procedural scheme for making and challenging sex offender designation levels" and "the availability of these procedural safeguards satisfies the Fourteenth Amendment's procedural due process requirements"), *adopted by* 2011 WL 13726 (N.D.N.Y Jan. 4, 2011); *Doe v. Settle*, 24 F.4th 932, 953 (4th Cir. 2022) (holding that classifying offender convicted of taking indecent liberties with a child as a tier III sex offender does not violate substantive due process); *Meza v. Livingston*, 607 F.3d 392, 401-02 (5th Cir. 2010) (holding that offender had a liberty interest in being free from registration requirements where he had not been convicted of a sex offense and was "owed procedural due process before sex offender conditions may attach"); *Brown v. Montoya*, 662 F.3d 1152, 1168 (10th Cir. 2011) (holding that requiring a person to register as a sex offender triggers the protections of procedural due process); *Gwinn v. Awmiller*, 354 F.3d 1211, 1218-19 (10th Cir. 2004) (holding that classification of offender as a sex offender and requiring him to participate in treatment for sex offenders, where offender was not convicted of a sex offense, violated procedural due process); *Anthony A. v. Comm'r of Corr.*, 260 A.3d 1199, 1218 (Conn. 2021) (holding that classification of sex offender, where offender was not provided an opportunity to call witnesses, was not given adequate notice of the information to be relied on in the decision making, and did not have an impartial decision-maker, violated the offender's due process rights); *Crump v. State*, 285 A.3d 125 (Del. 2022) (unpublished table decision) (holding that retroactive application of Delaware's sex offender registration laws does not violate due process under the Delaware Constitution because Delaware law "does not 'provide a basis for finding a broad liberty interest protectable from State-directed disclosure of information arising from criminal prosecutions' and . . . the procedural protections provided in the criminal proceeding itself were therefore sufficient to satisfy due process"); *Helman v. State*, 784 A.2d 1058, 1064 (Del. 2001) (holding that assignment of sex offender to a statutorily mandated risk assessment tier does not violate due process); *Mehringer v. State*, 152 N.E.3d 667, 678 (Ind. Ct. App. 2020) (holding that offender's due process rights were not violated when he was deemed a sexually violent predator by operation of law); *Doe (No. 7546) v. Sex Offender Registry Bd.*, 168 N.E.3d 1100, 1104-06 (Mass. 2021) (holding that the board's final classification of an incarcerated offender, that occurs at a time that is not reasonably close to the actual date of the offender's discharge, violates due process); *Doe (No. 380316) v. Sex Offender Registry Bd.*, 41 N.E.3d 1058, 1072-73 (Mass. 2015) (holding that sex offender risk classifications must be established by clear and convincing evidence to avoid violating procedural due process); *Smith v. Commonwealth*, 743 S.E.2d 146, 151 (Va. 2013) (holding

that reclassification of offender's conviction as a sexually violent offense for purposes of sex offender registration did not violate offender's right to procedural due process).

[236] *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 7-8 (2003) (holding that Connecticut law, requiring that registration information about all sex offenders, not just those that are currently dangerous, must be publicly disclosed, without providing offenders with a "predeprivation hearing" to determine their level of dangerousness, does not violate due process because due process does not require the opportunity to prove a fact that is not material to the state's statutory scheme and "no liberty interest was implicated because the . . . . [sex offender] statute turned 'on an offender's conviction alone'"); *Alaska Dep't of Pub. Safety*, 444 P.3d at 131 (holding that publication of sex offender information under ASORA is justified by a compelling state interest); *State v. Bani*, 36 P.3d 1255, 1268 (Haw. 2001) (holding that, on state constitutional grounds, public notification provisions of statute that provided neither notice nor opportunity to be heard prior to notification was violative of due process); *Moe v. Sex Offender Registry Bd.*, 6 N.E.3d 530, 544 (Mass. 2014) (holding that retroactive application of amendments to Massachusetts' law, which requires internet publication of registry information for level 2 sex offenders, violated due process under the state constitution).

[237] *Doe (No. 339940) v. Sex Offender Registry Bd.*, 170 N.E.3d 1143, 1154 (Mass. 2021) (holding that Massachusetts' sex offender law, which required offender convicted of kidnapping a child to register as a sex offender, was constitutional and did not violate due process, even though the offender's offense did not have a sexual component); *but see Meredith v. Stein*, 355 F. Supp. 3d 355, 165-66 (E.D.N.C. 2018), *superseded by statute*, N.C. Stat. § 14-208.6, *as recognized in Grabarczyk v. Stein*, No. 21-CV-94, 2021 WL 5810501 (E.D.N.C. Dec. 7, 2021) (holding that North Carolina's process of determining whether out-of-state offenses are "substantially similar" to reportable convictions in North Carolina violates an offender's procedural due process rights under the Fourteenth Amendment); *People v. Malloy*, 228 A.D.3d 1284, 1290 (N.Y. App. Div. 2024) (holding that requiring offender convicted of a non-violent out-of-state felony sex offense to register as a sexually violent offender in New York under New York's foreign registration clause, which requires offenders convicted of a felony in any other jurisdiction for which the offender is required to register as a sex offender to register in New York, violates the Fourteenth Amendment as applied).

offender,[238] or an inherently dangerous offender;[239] and (4) being required to register as a condition of parole or supervised release.[240]

[238] *Kreilein v. Horth*, 854 F. App'x 733, 734-35 (7th Cir. 2021) (holding that offender is barred from seeking damages for being labeled as a sex offender because the lawsuit is against the state and he did not allege that any of the defendants were personally involved in any due-process violations and, since he is currently incarcerated and is not expected to be released until 2025 he is not currently subject to any registration requirement and there is no ongoing conduct to enjoin); *Fletcher v. Idaho Dep't of Corr.*, No. 18-cv-00267, 2020 WL 7082690, at *7 (D. Idaho Dec. 3, 2020), *aff'd*, No. 21-35128, 2023 WL 3018288 (9th Cir. Apr. 20, 2023) (holding that there is no liberty interest involved in being required to attend sex offender treatment or in being informally referred to as a sex offender and "the sex offender 'label' is not a formal, [stigmatizing] classification" and it is "merely an internal designation used to facilitate an individual's treatment and supervision and, thus, does not give rise to a protected liberty interest"); *ACLU of Nev. v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (determining legislative amendments in A.B. 579, where legislation imposes registration and notification requirements based solely on the fact of conviction, to sex offender registration did not violate the Due Process Clause); *Neal v. Shimoda*, 131 F.3d 818, 830 (9th Cir. 1997) (holding that prison inmates have a liberty interest at stake in the determination of their status as sex offenders); *Kirby v. Siegelman*, 195 F.3d 1285, 1292 (11th Cir. 1999) (holding that an "inmate who has never been convicted of a sex crime is entitled to due process before the state declares him to be a sex offender"); *Blanke v. Utah Bd. of Pardons & Parole*, 467 P.3d 850, 857-58 (Utah 2020) (holding that the Utah Parole Board did not violate offender's due process rights under the Utah Constitution where it found that the offender, who was convicted of attempted child kidnapping, a registerable offense, was a sex offender and conditioned his parole on sex offender treatment without using the procedures set forth in *Neese* and noting that "[d]ue process does not require those procedures when an inmate has been convicted of—or, in a procedural setting like a sentencing hearing, has admitted to—a crime that requires him to register as a sex [offender]"); *Neese v. Utah Bd. of Pardons & Parole*, 416 P.3d 663, 674 (Utah 2017) (holding that the Utah Parole Board violated the state's Due Process Clause where it denied an offender parole based on its determination that the offender, who was never convicted of a sex offense, was a sex offender).

[239] *Gunderson v. Hvass*, 339 F.3d 639, 643-44 (8th Cir. 2003) (holding that Minnesota registration statute is nonpunitive in nature and therefore does not implicate the presumption of innocence, which is "only implicated by a statute that is punitive or criminal in nature," and does not violate substantive due process); *id.* (holding that Minnesota statute requiring offender, who was not convicted of a predatory offense, to register as a predatory offender, did not violate due process even though offender alleged injury to his reputation); *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 971 A.2d 975, 981-82 (Md. Ct. Spec. App. 2009) (holding that Maryland statute which "conclusively presumes that anyone convicted of a sex offense is dangerous" is permissible and requiring offender convicted of rape, a sexually violent offense, to register as a sex offender for life and verify registration every six months did not violate due process); *Spencer v. State Police Dir.*, No. 352539, 2020 WL 6814649, at *7-8 (Mich. Ct. App. Nov. 19, 2020) (per curiam) (holding that the lack of an individualized assessment of each particular sex offender's actual dangerousness does not make Michigan's Sex Offender Registration Act unconstitutional); *State v. Briggs*, 199 P.3d 935, 948 (Utah 2008) (holding that Utah's registration statute requiring publication of "target" information, which could include, among other things, a description of the offender's preferred victim demographics, implies that the offender is currently dangerous and violates procedural due process unless the Department of Correction provides the offender with a hearing).

In Massachusetts and Alaska, before an offender will be required to register as a sex offender, a hearing must be held. At the due process hearing, the Massachusetts Sex Offender Registry Board must find that the offender poses a danger to the community before requiring registration. 803 MASS. CODE REGS. 1.06; *see also Doe (No. 972) v. Sex Offender Registry Bd.*, 697 N.E.2d 512, 513 (Mass. 1998) (holding that the board must hold an evidentiary hearing to prove the appropriateness of an offender's risk classification before requiring the offender to register as a sex offender), *overruled by Doe (No. 380316) v. Sex Offender Registry Bd.*, 41 N.E.3d 1058 (Mass. 2015). Similarly, in Alaska, an individualized risk-assessment hearing must be held to determine the offender's dangerousness and to comport with due process. *Alaska Dep't of Pub. Safety*, 444 P.3d at 136 (requiring the court hold an individualized-risk assessment hearing before imposing sex offender registration requirements on offenders).

[240] For additional discussion regarding conditions of supervised release, see *infra* III.C.5.

Under the Equal Protection Clause of the U.S. Constitution, no state may "deny to any person within its jurisdiction the equal protection of the laws."[241] Equal protection challenges often arise where sex offender registration statutes treat similarly situated individuals differently.[242]

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[241] U.S. CONST. AMEND. XIV, § 1.

[242] *Farmer v. Harman*, No. 18-CV-02216, 2021 WL 2222720, at *5 (M.D. Pa. June 2, 2021) (holding that requiring sex offender, who was convicted of rape, a tier III offense, to register for life in Pennsylvania did not violate equal protection and the offender has not been deprived equal protection just because other sex offenders "who have been convicted of lesser offenses have been removed from the registry whereas [he] has not"); *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 112 (3d Cir. 2008) (holding that Pennsylvania law "subjecting out-of-state sex offenders to community notification without providing equivalent procedural safeguards as were given to in-state sex offenders was not rationally related to the interest of protecting citizens from sexually violent predators" and subjecting a sex offender, who was convicted in New Jersey but serving probation in Pennsylvania, to community notification, violates Equal Protection where Pennsylvania offenders are only subject to community notification if they are designated as "sexually violent predators"); *Doe v. Jindal*, 851 F. Supp. 2d 995, 1006 (E.D. La. 2012) (holding that Louisiana's sex offender registration law, requiring individuals convicted of violating state crime against nature by solicitation statute to register as sex offenders, violated equal protection where offenders convicted of violating solicitation of prostitution statute, where both offenses had the same elements, were not required to register as sex offenders); *Hope v. Comm'r of Ind. Dep't of Corr.*, 66 F.4th 647 (7th Cir. 2023) (holding that requiring pre-SORA sex offenders who have a duty to register in another jurisdiction to register in Indiana is rationally related to a legitimate state interest in seeking to register as many sex offenders as possible, "[r]equiring offenders who are already subject to the burdens of registration elsewhere rationally promotes public safety through the maintenance of a sex-offender registry that is as complete as the Indiana Constitution permits" and does not violate the Equal Protection Clause); *Doe v. Wasden*, 558 F. Supp. 3d 892, 915-17 (D. Idaho 2021) (granting the plaintiffs' motion for preliminary injunction, enjoining Idaho from requiring the plaintiffs to register as sex offenders in Idaho, and holding that the plaintiff, who was convicted of Idaho's crime against nature offense, is likely to prevail on his claim that Idaho is violating his right to equal protection of the law because there is no rational basis for "requiring a male who engages in consensual sex with another male to register as a sex offender, where the State does not require a similarly situated male who has consensual sex with a female to register as a sex offender"), *appeal dismissed*, No. 21-35826, 2022 WL 19333636 (9th Cir. Dec. 12, 2022); *Menges v. Knudsen*, 538 F. Supp. 3d 1082, 1116 (D. Mont. 2021) (holding that, because offender's underlying criminal conviction was not for having sexual contact with a minor, but for having sexual contact with another male, the statute infringes on his liberty interest and inclusion in Montana's sex offender registry for his 1994 conviction under Idaho's crimes against nature statute is unconstitutional, violates his right to equal protection under the Fourteenth Amendment, and the defendants were permanently enjoined from requiring offender to register as a sex offender under Montana's Sexual or Violent Offender Registration Act), *appeal dismissed as moot*, No. 21-35370, 2023 WL 2301431 (9th Cir. Mar. 1, 2023); *Carney v. Okla. Dep't of Pub. Safety*, 875 F.3d 1347, 1352-53 (10th Cir. 2017) (holding that Oklahoma law, requiring an aggravated sex offender to obtain a driver's license that indicates he is a sex offender, does not violate the Equal Protection Clause because he was not similarly situated to ordinary sex offenders and he was not being treated differently than other aggravated sex offenders); *Johnson v. Dep't of Just.*, 341 P.3d 1075, 1083 (Cal. 2015) (holding that California's mandatory sex offender registration requirement does not violate equal protection); *State v. Dickerson*, 97 A.3d 15, 23-24 (Conn. App. Ct. 2014) (finding that a rational basis exists for Connecticut's different registration requirements for violent and nonviolent offenders and holding that Connecticut's sex offender registration laws do not violate equal protection); *Oulman v. Setter*, No. A13-2389, 2014 WL 3801870, at *1, *4 (Minn. Ct. App. Aug. 4, 2014) (holding that Minnesota law, which "honors the registration laws of other states by requiring offenders who relocate to Minnesota to register [in Minnesota] under the terms imposed by the vacated state," did not violate equal protection by requiring an offender, who was convicted in Colorado and required to register as a predatory offender for life in Colorado, to register for life in Minnesota, even though the offender would have only been required to register for 10 years in Minnesota had he committed, and been convicted of, the offense in Minnesota); *Hendricks v. Jones ex rel. State*, 349 P.3d 531, 534 (Okla. 2013) (holding that applying Oklahoma's sex offender registration and notification laws to sex offenders "now residing in Oklahoma who were convicted in another jurisdiction prior to SORA's enactment but not applying the same requirements to a person convicted in Oklahoma of a similar offense prior to SORA's enactment, violates a person's equal protection guarantees"); *Watson-Buisson v. Commonwealth*, No. 200955, 2021 WL 4628456, at *2-3 (Va. Oct. 7, 2021) (holding that sex offender's classification as a "sexually violent offender" in Virginia, where

B. State Constitution Issues

Occasionally, challenges to sex offender registration and notification laws based on unique rights guaranteed by a jurisdiction's constitution may also arise,[243] including claims that sex offender registration requirements violate an offender's due process right to reputation[244] and a state constitution's "single subject" rule.[245]

C. Other Legal Issues

A variety of other legal issues may also arise from an offender's status as a "sex offender," from being required to register as a sex offender, or where an offender has failed to register as a sex offender.

1. Administrative Procedure Act

Federal agencies often develop and issue rules and regulations to help clarify how certain laws should be applied and enforced. In doing so, they must comply with the Administrative Procedure Act (APA).[246] Some litigation has ensued in which offenders argue that certain sex offender registration and notification requirements under SORNA should not be applied to them due to the Attorney General's failure to comply with the procedural requirements set forth by the APA. There is currently a circuit split over whether the Attorney General properly complied with the APA in

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he was convicted of "computer-aided solicitation of a minor" in Louisiana, does not violate the Equal Protection Clause because the Louisiana crime is comparable to the Virginia crime of taking indecent liberties with a child and the offender was not treated differently than a Virginia defendant who is convicted of a similar crime in Virginia), *cert. denied*, 142 S. Ct. 1161 (2022).

[243] *In re Gadlin*, 477 P.3d 594, 596 (Cal. 2020) (holding that the California Department of Corrections and Rehabilitation regulations, which prohibit nonviolent sex offenders from seeking early parole consideration, violate the California Constitution).

[244] *Commonwealth v. Torsilieri*, 232 A.3d 567, 587-88 (Pa. 2020) (remanding to determine whether presumption that sex offenders pose a high risk of committing additional sex offenses requiring lifetime registration violates offenders' due process right to reputation under Pennsylvania Constitution); *Commonwealth v. Torsilieri*, No. 15-CR-0001570-2016 (Pa. Ct. Common Pleas Aug. 22, 2022) (holding that Pennsylvania SORNA's irrebuttable presumption that sex offenders pose a high risk of committing additional sex offenses requiring lifetime registration violates an individual's due process right to reputation under the Pennsylvania Constitution), *rev'd*, No. 97 MAP 2022, 2024 WL 2789201 (Pa. May 31, 2024) (holding that offender failed to meet his burden to establish that Pennsylvania SORNA's irrebuttable presumption that sex offenders pose a high risk of reoffense is unconstitutional); *Commonwealth v. Morgan*, 258 A.3d 1147, 1157 (Pa. Super. Ct. 2021) (holding that the sexually violent predator designation under Pennsylvania law does not violate an offender's right to reputation under the Pennsylvania Constitution because the hearing procedure comports with due process and Subchapter I is narrowly tailored to a compelling state purpose of protecting the public from those who have been found to be dangerously mentally ill).

[245] *Commonwealth v. Nieman*, 84 A.3d 603, 605 (Pa. 2013) (holding that legislation amending state's sex offender registration and notification laws violated the "single subject" rule of the state constitution and striking the same).

[246] 5 U.S.C. § 553. Under the Administrative Procedure Act, agencies are generally required to follow certain rules in promulgating rules, including procedural requirements. However, under the APA's "good cause" exception, an agency can bypass the notice and comment requirement "if the agency for good cause finds" that compliance would be "impracticable, unnecessary, or contrary to the public interest." *Id.*

enacting the interim rule[247] applying SORNA to offenders who committed sex offenses prior to its passage.[248]

2. Americans with Disabilities Act

In at least one instance, an offender alleged violation of the Americans with Disabilities Act based on his status as a sex offender. However, sex offender status does not qualify as a disability under the Americans with Disabilities Act.[249]

3. Child Custody

Being required to register as a sex offender can also have an impact on an individual's parental rights, including child custody.[250] In at least one state, there is a statutory presumption against any registered sex offender being granted unsupervised visitation, custody, or residential placement of a child.[251]

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[247] *See* Applicability of the Sex Offender Registration and Notification Act, 72 Fed. Reg. 8,8894 (Feb. 28, 2007) (to be codified at 28 C.F.R. § 72.3), *available at* www.govinfo.gov/content/pkg/FR-2007-02-28/pdf/E7-3063.pdf (hereinafter Interim Retroactivity Rule). In 2010, the Attorney General issued a final rule addressing the applicability of SORNA. Final Retroactivity Rule, *supra* note 145.

[248] *United States v. Ross*, 848 F.3d 1129, 1133 (D.C. Cir. 2017) (holding that the interim rule declaring SORNA applicable to pre-enactment offenders was invalid where Attorney General failed to establish good cause to bypass the Administrative Procedure Act's notice and comment procedures); *United States v. Mingo*, 964 F.3d 134, 137 (2d Cir. 2020) (affirming conviction for failure to register under SORNA holding that SORNA's delegation to the Secretary of Defense does not violate the nondelegation doctrine and the Secretary did not violate the Administrative Procedure Act in designating military sex offenses as sex offenses under SORNA where the designation fell within the military affairs exception); *United States v. Dean*, No. 08-CR-67, 2020 WL 3073340, at *3-4 (S.D.N.Y. June 9, 2020) (recognizing the existence of a circuit split on whether the Attorney General had good cause to excuse the Administrative Procedure Act's procedural requirements, agreeing with the Eleventh Circuit, and finding that the Attorney General had good cause to bypass the notice and comment requirements of the APA to provide for the public safety regarding the interim rule applying SORNA to offenders who committed sex offenses prior to its passage); *United States v. Reynolds*, 710 F.3d 498, 509 (3d Cir. 2013) (holding that the Attorney General did not show cause for waiving the Administrative Procedure Act's notice and comment requirements in promulgating the interim rule governing retroactivity of SORNA's registration requirements); *United States v. Gould*, 568 F.3d 459, 470 (4th Cir. 2009) (holding that the Attorney General had good cause to bypass the notice and comment period and recognizing there "was a need for legal certainty about SORNA's 'retroactive' application to sex offenders convicted before SORNA and a concern for public safety that these offenders be registered in accordance with SORNA as quickly as possible"), *cert. denied,* 559 U.S. 974 (2010); *United States v. Johnson*, 632 F.3d 912, 920 (5th Cir. 2011) (holding that, although the Attorney General failed to follow the Administrative Procedure Act's procedural requirements, such error was harmless); *United States v. Utesch*, 596 F.3d 302, 312 (6th Cir. 2010) (holding that Attorney General's failure to follow the Administrative Procedure Act's notice and comment provisions was not harmless error); *United States v. Valverde*, 628 F.3d 1159, 1166 (9th Cir. 2010) (holding Attorney General lacked good cause for waiving the Administrative Procedure Act's notice and comment requirements in issuing interim rule); *United States v. Dean*, 604 F.3d 1275, 1281 (11th Cir. 2010) (holding that the Attorney General had good cause to bypass the Administrative Procedure Act's notice and comment procedures and promulgate rule making SORNA retroactive).

[249] *Grant-Davis v. Felker*, No. 19-cv-3468, 2021 WL 4055162 (D.S.C. July 15, 2021) (*citing Al-Wahhab v. Commonwealth*, No. 18-CV-00197, 2018 WL 3614212, at *2 (W.D. Va. July 27, 2018)) (noting that sex offender status does not qualify as a disability under the ADA).

[250] *See, e.g.*, *State v. Mitchell*, 757 N.W.2d 431, 439 (Iowa 2008) (affirming conviction of child endangerment where mother of two children cohabitated with a known sex offender).

[251] *See* 13 DEL. CODE ANN. § 724A.

4. Civil Commitment

Under both federal and state law, certain individuals who are deemed to be "sexually dangerous" or "sexually violent" may be involuntarily civilly committed. The Adam Walsh Act authorizes additional civil commitment of an individual who is already in federal custody if the government can show that he or she is a "sexually dangerous person."[252] Although civil commitment is generally considered to be a collateral consequence,[253] civil commitment statutes have still regularly been challenged.[254] Notably, the constitutionality of the federal civil commitment statute has been upheld on various grounds.[255]

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[252] 18 U.S.C. § 4248 (providing mechanism for civil commitment of sexually dangerous persons); *see e.g.*, *United States v. Hunt*, 21 F.4th 36, 37 (1st Cir. 2021) (addressing sex offender's motion for unconditional discharge from civil commitment under the Adam Walsh Act).

[253] *See Steele v. Murphy*, 365 F.3d 14, 17 (1st Cir. 2004) (holding that the possibility of civil commitment for life as a sexually dangerous person is a collateral consequence of pleading guilty); *United States v. Youngs*, 687 F.3d 56, 61 (2d Cir. 2012) (holding that civil commitment under the Adam Walsh Act is a collateral consequence); *United States v. Hollins*, 70 F.4th 1258, 1262-63 (9th Cir. 2023) (holding that the possibility of civil commitment under state or federal law and possible Arizona-specific geographic restrictions and community notification requirements were "collateral consequences" of sex offender's guilty plea); *State v. LeMere*, 879 N.W.2d 580, 598 (Wis. 2016) (noting that civil commitment under Wisconsin Sexually Violent Person Commitments statute is a collateral consequence of a guilty plea resulting in conviction of a sexually violent offense).

[254] *Kansas v. Hendricks*, 521 U.S. 346, 347 (1997) (holding that Kansas' Sexually Violent Predator Act which establishes procedures for civil commitment is not punishment and therefore is nonpunitive and does not violate the Ex Post Facto Clause); *Tilley v. United States*, 238 A.3d 961, 977 (D.C. Cir. 2020) (holding that the District of Columbia's Sexual Psychopath Act violates substantive due process and is unconstitutional on its face and a civil commitment statute "must require the court find that the [person] is afflicted with a mental illness, mental abnormality, or mental disorder that makes it seriously difficult for the person to control (i.e., refrain from) his or her dangerous behavior"); *Daywitt v. Harpstead*, No. 20-CV-1743, 2021 WL 2210521, at *4 (D. Minn. June 1, 2021) (holding that the plaintiffs have "brought colorable claims that the [Minnesota Sex Offender Program's] policies [restricting civilly committed offenders' ability to use technology and access the internet] violate the First Amendment"); *In re Civil Commitment of W.W.*, 246 A.3d 219, 227 (N.J. 2021) (holding that, in assessing the continuing need for the involuntary commitment of a convicted sexually violent offender, the New Jersey Sexually Violent Predator Act requires the state produce psychiatric testimony in support of commitment); *In re P.D.*, 236 A.3d 885, 888 (N.J. 2020) (holding that "a person subject to [a Sexually Violent Predator Act (SVPA)] civil commitment hearing is entitled to limited discovery focusing on the elements of the State's burden of proof" and adopting a new court rule enumerating the categories of documents subject to discovery in an SVPA proceeding and setting forth the requirements for the reports of the state's experts); *In re Civil Commitment of W.X.C.*, 8 A.3d 174, 183 (N.J. 2010) (holding that civil commitment of sexually violent predators pursuant to the New Jersey Sexually Violent Predator Act is not punitive and does not violate the Ex Post Facto Clauses of the federal and state constitutions); *In re K.H.*, 609 S.W.3d 247, 253 (Tex. App. 2020) (affirming trial court's judgment ordering offender to be civilly committed under Texas law where offender's Oregon convictions for sexual abuse required proof that he touched the genitals of a child with the intent to arouse or gratify the sexual desire of any person and, the elements of the offense "display a high degree of likeness to the elements of the Texas offense of indecency with a child by contact," such that "the offenses are substantially similar for purposes of Chapter 841").

[255] *United States v. Comstock*, 560 U.S. 126, 133 (2010) (holding that federal statute allowing a district court to order civil commitment of a sexually dangerous federal prisoner, beyond the date the prisoner would otherwise be released, is constitutional under the Necessary and Proper Clause); *Steele*, 365 F.3d at 17 (holding that failure to inform sex offender, before he pleaded guilty, of the possibility that he could be civilly committed as a sexually dangerous person did not affect the validity of his plea); *Youngs*, 687 F.3d at 61 (holding that court's acceptance of offender's guilty plea, without advising him of the civil commitment implications of the Adam Walsh Act, did not violate due process); *United States v. Vandivere*, 88 F.4th 481, 493 (4th Cir. 2023) (holding that "in an Adam Walsh Act discharge hearing, the detainee bears the burden of proof to show his recovery [and that he is no longer sexually dangerous] by a preponderance of the evidence" and requiring a civilly committed sex offender to bear the burden of proving that he is

5. Conditions of Supervised Release & *United States v. Haymond*

Special conditions of supervised release may be imposed on offenders so long as they are reasonably related to the nature and circumstances of the offense and the history and characteristics of the offender and do not involve any greater deprivation of liberty than is reasonably necessary. Courts have grappled with the constitutionality of various special conditions of supervised release that have been imposed on sex offenders, including the requirement to register as a sex offender,[256]

no longer sexually dangerous at his civil commitment discharge hearing does not violate due process), *petition for cert. filed*, No. 23-7418 (U.S. May 8, 2024); *LeMere*, 879 N.W.2d at 598 (holding that defense counsel's failure to inform offender, who was charged with a sexually violent offense, about the possibility of civil commitment under Wisconsin law before he pleaded guilty did not violate the Sixth Amendment and did not constitute ineffective assistance of counsel).

[256] *United States v. Alexander*, No. 21-11237, 2022 WL 3134226, at *1-3 (5th Cir. Aug. 5, 2022) (per curiam) (holding that requiring offender convicted of production of child pornography to register as a sex offender under SORNA as a condition of supervised release "does not constitute a punishment in excess of the statutory maximum because it does not violate the statutory limitations on supervised release conditions set forth in § 3583(d)"); *United States v. Smith*, 852 F. App'x 780, 786-87 (5th Cir. 2021) (holding that imposition of lifetime supervised release on offender convicted of a child pornography offense, which included a condition that he register as a sex offender, was not substantively or procedural unreasonable and noting that it "has previously upheld lifetime terms of supervised release in child pornography cases"); *United States v. Massey*, No. 05-37, 2021 WL 1267798, at *6, *8 (E.D. La. Mar. 18, 2021) (holding that offender's conditions of supervised release could not be modified to require registration as a sex offender where the elements of the sex offense were not explained to the offender and, therefore, he was not fully aware of the ramifications of his guilty plea); *United States v. Lee*, No. 21-5060, 2021 U.S. App. LEXIS 35976, at *6-7, *11 (6th Cir. Dec. 6, 2021) (holding that imposition of the term of lifetime supervised release on sex offender, including conditions requiring sex offender submit to searches by his probation officer and requiring sex offender participate in cognitive behavior therapy, were reasonable); *United States v. Shannon*, 511 F. App'x 487, 490-91 (6th Cir. 2013) (holding that it was not punitive and did not violate the prohibition against ex post facto laws to require offender, who was convicted of possession of firearm by a felon, to register as a sex offender as a condition of supervised release, where offender had a prior Ohio adjudication of delinquency for gross sexual imposition); *United States v. Gifford*, 991 F.3d 944, 947-48 (8th Cir. 2021) (per curiam) (holding that the trial court did not impose an unreasonable sentence and finding that, although it erred in imposing a life term of supervised release for offender's § 2260A conviction, because the error did not affect offender's substantial rights—offender would still be subject to a life term of supervised release for his § 2251 conviction, even if the term imposed for violation of § 2260A was eliminated—there was no prejudice from the court's error); *United States v. Moore*, 449 F. App'x 677, 680 (9th Cir. 2011) (holding that condition of supervised release requiring registration as a sex offender under SORNA when, at the time of sentencing, the defendant's registration period had already expired, was invalid); *United States v. Hahn*, 551 F. 3d 977, 986 (10th Cir. 2008) (holding that requiring offender convicted of fraud to register as a sex offender as a condition of probation was proper where offender had a prior state conviction for a sex offense); *Melnick v. Camper*, 487 F. Supp. 3d 1039, 1049 (D. Colo. 2020) (holding that Colorado's Sex Offender Registration Act's requirements requiring offender register as a sex offender and participate in a sex offender treatment program are valid conditions of parole); *United States v. Sewell*, 712 F. App'x 917, 919-20 (11th Cir. 2017) (holding that condition of supervised release requiring offender to register as a sex offender under SORNA does not violate the Ex Post Facto Clause); *State v. Stutzman*, No. DA 20-0167, 2021 Mont. LEXIS 337, at *1-2 (Apr. 13, 2021) (holding that court's judgment designating sex offender, who was convicted of failure to register as a sexual offender under Montana law, as a level 2 sexual offender was improper because sex offender's failure to register conviction is not a "sexual offense"); *Ex parte Evans*, 338 S.W.3d 545, 552-53 (Tex. Crim. App. 2011) (holding that requiring an offender to register as a sex offender as a condition of parole, where the underlying convictions are not sexual in nature, violates due process); *State v. Deel*, 788 S.E.2d 741, 748 (W. Va. 2016) (reversing sentencing order subjecting offender, who was convicted of multiple sex offenses, to 20 years of supervised release and holding that "[a]ny retroactive application of [West Virginia's] supervised release statute to an individual who committed any of the enumerated sex offenses prior to the effective date of the supervised release statute violates the constitutional prohibition against ex post facto laws" under the West Virginia and federal constitutions).

limitations or complete bans on internet access,[257] restricting access to minor children,[258] prohibiting access to pornographic materials,[259] requiring participation in sex offender assessments or treatment[260] and polygraph exams,[261] and GPS or electronic monitoring.[262]

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[257] *United States v. Perazza-Mercado*, 553 F.3d 65, 72-74 (1st Cir. 2009) (holding that condition of supervised release completely banning offender from using the internet was overly broad where the offender, who was convicted of knowingly engaging in sexual contact with a female under the age of 12, did not use the internet to commit the underlying offense); *United States v. Morse*, No. 21-3110-cr, 2023 WL 1458832, at *2 (2d Cir. Feb. 2, 2023) (holding that conditions of supervised release prohibiting sex offender from using or possessing a computer without obtaining prior authorization and restricting access to the internet and certain websites are reasonable where offender committed sexual offenses against minors, used the internet to meet women who had minor children, and has failed on multiple occasions to comply with requirements intended to prevent him from having unauthorized contact with minors); *United States v. Leone*, 813 F. App'x 665, 669 (2d Cir. 2020) (finding it permissible to place conditions on sex offender's use or possession of any computer or internet capable device (i.e., requiring the offender participate in a monitoring program or obtain advance permission) where he had a history of accessing child pornography over the internet); *United States v. Eaglin*, 913 F.3d 88, 99, 101 (2d Cir. 2019) (holding that conditions of supervised release amounting to virtual ban on internet access and the prohibition on viewing or possessing adult pornography were substantively unreasonable); *United States v. Freeman*, 316 F.3d 386, 391-92 (3d Cir. 2003) (holding that condition of supervised release prohibiting offender from accessing the internet without permission of his probation officer was improper where offender was convicted of receipt and possession of child pornography but did not have a history of using the internet to contact children); *United States v. Ellis*, 984 F.3d 1092, 1099-1100 (4th Cir. 2021) (noting that while § 3583(d) permits a complete ban on pornography, the district court must adequately explain its findings and the record must support such a finding and holding that special conditions of release banning an offender convicted of possession of child pornography, where there was no evidence linking the offender's offense or criminal history to unlawful use of the internet, from internet access and from possessing any pornography were not reasonably related to the offender's conviction or supervised release violations and were impermissibly overbroad); *United States v. Hamilton*, 986 F.3d 413, 421-22 (4th Cir. 2021) (holding that special internet condition prohibiting sex offender from accessing the internet without prior approval from the offender's probation officer was not overbroad and "clearly meets the statutory requirements of § 3583(d), as there is both a connection to 'the nature and circumstances of the offense and the history and characteristics of the defendant' and a need 'to protect the public from further crimes of the defendant,'" especially here, where the offender used the internet to find his victim, communicate with her for months, and coerce her to create and send him sexually explicit images); *United States v. Hidalgo*, No. 23-60123, 2023 WL 5973070, at *1 (5th Cir. Sept. 14, 2023) (per curiam) (holding that there was no abuse of discretion in imposing special conditions, including a condition prohibiting the offender from possessing material depicting sexually explicit conduct, a condition limiting his use of the internet, and a condition prohibiting him from having unsupervised contact with children under 18, on sex offender); *United States v. Becerra*, 835 F. App'x 751, 758 (5th Cir. 2021) (vacating special conditions of supervised release banning offender convicted of multiple child pornography offenses from using the internet, computers, and other electronic devices for 10 years holding that the restrictions were not narrowly tailored by scope or duration and seriously affected the fairness, integrity, or public reputation of judicial proceedings); *United States v. Hidalgo*, No. 21-60208, 2021 WL 4597198, at *3 (5th Cir. Oct. 6, 2021) (per curiam) (holding that there was no abuse of discretion in imposing special conditions, including a condition prohibiting the offender from possessing material depicting sexually explicit conduct, a condition limiting his use of the internet, and a condition prohibiting him from having unsupervised contact with children under 18, on sex offender); *United States v. Goodpasture*, No. 21-1264, 2021 WL 4859699, at *2-3 (7th Cir. Oct. 19, 2021) (holding that the district court did not adequately justify placing restrictions on sex offender's computer and internet use where it only relied on his previous conviction for aggravated criminal sexual abuse, his designation as a "sexually dangerous person," his failure to attend sex offender treatment, and recommendations from his sex offender evaluation); *United States v. Holm*, 326 F.3d 872, 877-78 (7th Cir. 2003) (holding that condition of supervised release completely banning offender, who was convicted of possession of child pornography, from accessing the internet was overbroad and imposed a greater deprivation on the offender's liberty than necessary where offender "had not used any of the computer systems at his place of work in committing his crimes"); *United States v. Mays*, 993 F.3d 607, 621-22 (8th Cir. 2021) (holding that condition of supervised release prohibiting offender, who was convicted of receipt of child pornography, from accessing the internet was improper where the court failed to engage in an individualized inquiry and did not make sufficient findings on the record); *United States v. Wiedower*, 634 F.3d 490,

495 (8th Cir. 2011) (holding that court abused its discretion in imposing conditions of supervised release restricting offender's access to the internet and banning him from online gaming, where "the record only shows that [the offender] used his computer to receive and access child pornography"); *United States v. Cordero*, 7 F.4th 1058, 1070-71 (11th Cir. 2021) (holding that condition of supervised release prohibiting sex offender from possession or use of a computer with access to the internet without written approval did not violate the First Amendment); *United States v. Bobal*, 981 F.3d 971, 976-77 (11th Cir. 2020) (holding that court did not err in imposing special condition of supervised release on offender, who was convicted of an offense involving electronic communications sent to a minor, which restricted his use of a computer, because the condition was tailored to the offender's offense, it did not extend beyond his term of supervised release, and the offender could obtain approval to use a computer in connection with employment and further noting that a district court may "'impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens' during supervised release"); *United States v. Washington*, 763 F. App'x 870, 871 (11th Cir. 2019) (holding that district court did not plainly err in imposing condition of supervised release that prohibited sex offender, who was convicted of possession of child pornography and had admitted to using the internet to view and share child pornography, from using a computer without court approval); *Dalton v. State*, 477 P.3d 650, 656 (Alaska Ct. App. 2020) (holding that the probation condition prohibiting sex offender from contacting his victims, which included his 12-year-old stepdaughter and his wife, without written permission, must be narrowly construed to avoid infringement of his constitutional right to familial association and, further, that his wife, rather than the probation officer, should have the power to determine whether and to what extent to allow contact and that, even though there was a nexus between the offender's offense and the internet, his probation condition requiring he obtain approval from his probation officer before accessing the internet "unduly restricts [his] liberty"); *People v. Landis*, 497 P.3d 39, 42-44 (Colo. App. 2021) (holding that probation conditions restricting offender, who was convicted of attempted sexual assault on a child, from using the internet and social media are reasonably related to the offender's rehabilitation and the purposes of probation and did not violate the offender's right to free speech under the state and federal constitutions); *Belair v. State*, 263 A.3d 127 (Del. 2021) (unpublished table decision) (holding that condition of supervised release prohibiting offender, who was convicted of sexual solicitation of a child, from possessing any electronic equipment that has the ability to access the internet did not violate the First Amendment and *Packingham* was inapplicable because not only did the offender acknowledge using the internet to sexually solicit a child, but the internet condition only applies to him during his term of probation); *Rutledge v. State*, 861 S.E.2d 793, 297-98 (Ga. Ct. App. 2021) (holding that neither of the offender's conditions of probation, which prohibit the offender from possessing any sexually oriented materials and requires the offender to obtain prior written approval before using the internet, violate the offender's rights to free speech under the First Amendment and the state constitution); *People v. Chiovari*, No. 5-22-0383, 2023 WL 2301579 (Ill. App. Ct. Mar. 1, 2023) (vacating condition of sex offender's mandatory supervised release prohibiting him from using or accessing social networking websites where there was nothing in the record to show offender used social networking websites to seek out victims and and holding that the statutory provision is overbroad and facially unconstitutional and "'unnecessarily sweeps within its purview those who never used the Internet—much less social media—to commit their offenses and who show no propensity to do so, as well as those whose Internet activities can be supervised and monitored by less restrictive means'"); *Doss v. State*, 961 N.W.2d 701, 721-22 (Iowa 2021) (holding that terms and conditions of parole agreement, including requirement to complete sex offender treatment and refrain from using the internet or social media without approval, are collateral consequences and do not need to be disclosed at the time of the initial guilty plea); *State v. Hotchkiss*, 474 P.3d 1273, 1278 (Mont. 2020) (holding that conditions of supervised release, which completely prohibit sex offender from accessing the internet and from possessing certain electronic devices, without prior approval, were overbroad, because they went beyond what is reasonably related to the offender's criminal history and his underlying offense and failed to take into consideration the many legitimate purposes for using the internet); *State v. King*, 950 N.W.2d 891, 909 (Wis. Ct. App. 2020) (holding that condition of supervised release restricting offender, who was convicted of using a computer to facilitate a child sex crime and child enticement, from accessing the internet did not violate his First Amendment rights to freedom of speech and freedom of association).

[258] *United States v. Benoit*, 975 F.3d 20, 26-27 (1st Cir. 2020) (holding that district court did not abuse its discretion in imposing conditions of supervised release on sex offender, who was convicted of transporting and possessing child pornography, prohibiting him from interacting with children or going places where he knew children could be without probation approval, even though offender had not committed any "contact" offenses); *Montoya v. Jeffreys*, 565 F. Supp. 3d 1045, 1075 (N.D. Ill. 2021) (denying the parties' cross-motions for summary judgment regarding the plaintiffs' procedural due process challenge to the personnel who make and review parent-child contact decisions; denying the plaintiffs' motion for summary judgment; granting IDOC's motion for summary judgment as to IDOC's requirements

"that chaperones and guardians do not deny or refute, or allow parolees to deny or refute, the details of their convictions and . . . that parolees regularly attend therapy" but denying the remainder of IDOC's motion (regarding the 35-day presumptive ban, the insufficient duration of therapy requirement, the polygraph requirement, the requirement that offenders' comply with all mandatory supervised release conditions, and regarding the lack of a neutral decisionmaker)); *United States v. Hutson*, 59 F.4th 965, 967 (8th Cir. 2023) (per curiam) (holding that special condition of supervised release prohibiting sex offender from having contact with minor children without prior written consent did not prohibit him from visiting with his stepchildren and was not an unconstitutional restriction on his ability to associate with his family); *People v. Langley*, No. C093397, 2021 WL 5577928, at *4-5 (Cal. Ct. App. Nov. 29, 2021) (unpublished decision) (holding that, while there is a compelling state interest in preventing recidivism, the term "access to" contained in sex offender's probation condition, which prohibited him from having access to children's clothing, toys, games, or similar material related to children's interests, is overbroad and the condition should be modified to read: "Defendant is not to possess or have children's clothing, toys or games, or other material related to children's interests"); *Commonwealth v. Harding*, 158 N.E.3d 1, 7 (Mass. 2020) (holding that sex offender's condition of probation, which prohibits him from working, volunteering, or residing with children under 16 years old, did not prohibit him from performing home improvement work in a home where a young child resided, noting that working *with* children is different from working *in the presence of* children).

[259] *United States v. Bilyou*, No. 20-3675, 2021 WL 5121135, at *2 (2d Cir. Nov. 4, 2021) (holding that the condition of supervised release prohibiting sex offender from accessing pornography "is sufficiently narrowly tailored and involves no greater deprivation of liberty that is reasonably necessary to serve the legitimate needs of sentencing" and was not unlawful because it was "fluid," would only remain in place until the offender was evaluated by a treatment provider and that it provided the possibility of reevaluation over the course of the offender's supervised release); *United States v. Ochoa*, 932 F.3d 866, 870-71 (9th Cir. 2019) (holding that condition of supervised release prohibiting offender's access to material depicting sexually explicit conduct involving adults was permissible where offender was convicted of possession of child pornography).

[260] *United States v. Voyles*, No. 21-5634, 2022 WL 3585637 (6th Cir. Aug. 22, 2022) (holding that the district court did not abuse its discretion in imposing sex-offender conditions, including requirement to attend a sex offender therapy program and to submit to polygraph testing, on offender convicted of theft of government property after he impersonated a veteran where offender wrote a sexually explicit note revealing his desire to commit several sex offenses against children because "[t]here was no evidence to rebut the dangerous message conveyed by the note," the "narrowly tailored sex-offender conditions were reasonably related to protecting the public from future criminal activity," and the court was not precluded from imposing sex offender special conditions of supervised release "even though the crime was not a sex-related offense or committed in a sexual nature"); *Wiedower*, 634 F.3d at 494 (affirming special condition of supervised release requiring offender attend sex offender treatment where there was demonstrable evidence of the offender's addiction to pornography); *United States v. Johnson*, 697 F.3d 1249, 1251 (9th Cir. 2012) (holding that condition of supervised release requiring the offender to undergo a sexual offender assessment was reasonable where the offender had two prior convictions of serious and violent sexual offenses).

[261] *United States v. Rogers*, 988 F.3d 106, 113 (1st Cir. 2021) (noting that "a court can impose mandatory periodic polygraph examinations in connection with sex offender treatment programs as a condition of supervised release, where the condition prohibits basing any revocation in any way on the defendant's assertion of his Fifth Amendment privilege" and holding that the special condition of the offender's supervised release requiring he submit to periodic random polygraph examinations did not violate his privilege against self-incrimination); *Leone*, 813 F. App'x at 670 (holding that the district court did not abuse its discretion in imposing condition of supervised release requiring offender, who had a history of accessing child pornography over the internet, to submit to two polygraphs per year); *United States v. Hohag*, 893 F.3d 1190, 1195 (9th Cir. 2018) (holding that district court did not abuse its discretion by imposing conditions of supervised release requiring the defendant to participate in a sex-offense assessment and to submit to polygraph testing in conjunction with the sex offender specific assessment because the conditions were not particularly burdensome and they related to the defendant's crime of conviction, failure to register); *United States v. Stoterau*, 524 F.3d 988, 1003-04 (9th Cir. 2008) (holding that condition of supervised release requiring offender submit to polygraph testing did not violate the Fifth Amendment); *United States v. Boykin*, No. 22-10327, 2022 WL 1558894, at *4 (11th Cir. May 17, 2022) (per curiam) (holding imposition of polygraph testing as a special condition of supervised release where offender was convicted of failing to register under 18 U.S.C. § 2250 was reasonable).

[262] *United States v. Russell*, 45 F.4th 436, 440-41 (D.C. Cir. 2022) (holding that the district court did not abuse its discretion in imposing two years of GPS monitoring as a condition of sex offender's supervised release, the GPS monitoring condition "is not a 'greater deprivation of liberty than is reasonably necessary' to deter [offender], protect

Federal law outlines both mandatory and discretionary conditions of probation and supervised release that are to be imposed by the sentencing court.[263]

In *United States v. Haymond*, the U.S. Supreme Court held that the last two sentences of 18 U.S.C. § 3583(k), which provide for a mandatory revocation of supervised release and concomitant term of imprisonment for individuals who are required to register under SORNA and commit certain crimes while on supervised release, were unconstitutional and violated the Fifth and Sixth Amendments.[264]

6. Defamation

Defamation is a civil tort action that can be pursued when an individual's reputation in the community has been injured by false or malicious statements, and it has served as the basis of some sex offenders' claims under 42 U.S.C. § 1983.[265]

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the public, and provide [offender] correctional treatment" where it was related to enforcing other conditions of his supervised release, it is directly related to deterring him and protecting the public, it is related to "a jurisdictional component—travel—of [offender's] underlying offense," and it is related to his child-sex crime in Maryland); *United States v. Johnson*, 773 F.3d 905, 908-09 (8th Cir. 2014) (holding that the court did not abuse its discretion in imposing GPS monitoring as a condition of supervised release where offender was previously convicted of possession of child pornography and his record of repeatedly violating his supervised-release conditions); *Commonwealth v. Crayton*, 185 N.E.3d 942 (Mass. App. Ct. 2022) (unpublished table decision) (holding that the special condition of probation prohibiting sex offender from entry into public libraries for three years and requiring GPS monitoring to enforce that condition is reasonably related to the goal of protecting the public, especially "[g]iven the history underlying the defendant's current and past convictions, and the evidence that he has used a public library to view and download child pornography, and that minors observed that child pornography while in the library"); *State v. Smith*, 488 P.3d 531, 546 (Mont. 2021) (holding that the condition of sex offender's sentence requiring GPS supervision for the remainder of his life is constitutional because the "statute's requirement for lifetime supervision accords with a stated purpose of Montana's sentencing policies to 'protect the public' and to 'punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable"); *H.R. v. N.J. State Parole Bd.*, 231 A.3d 617, 620 (N.J. 2020) (holding in an as-applied challenge that GPS monitoring of a tier III sex offender on parole supervision for life was constitutional because the search (GPS monitoring) falls within the "special needs" exception to the warrant requirement).

[263] 18 U.S.C. §§ 3563(a), 3583(d), 4209; *see also* ADMIN. OFFS. OF THE U.S. CTS. PROB. & PRETRIAL SERVS. OFF., OVERVIEW OF PROBATION AND SUPERVISED RELEASE CONDITIONS (2016), https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.

[264] *United States v. Haymond*, 139 S. Ct. 2369, 2384-85 (2019) (holding in an as-applied challenge that application of § 3583(k)'s mandatory minimum five-year term of imprisonment based on judicial factfinding rather than a jury verdict is unconstitutional and violates the Fifth and Sixth Amendment rights to a jury trial); *but see United States v. Shakespeare*, 32 F.4th 1228 (10th Cir. 2022) (holding that *Haymond* is not applicable and application of § 3583(k) to the revocation of sex offender's supervised release is not unconstitutional where offender pleaded guilty to one count of abusive sexual contact with a minor in violation of his supervised release and admitted to committing the crime).

[265] *Balentine v. Tremblay*, 554 F. App'x 58, 60-61 (2d Cir. 2014) (holding that offender failed to make a claim under 42 U.S.C. § 1983 on the basis of defamation because he failed to satisfy the "stigma plus" test which requires a stigmatizing statement and a deprivation of a tangible interest where offender was properly classified as a sex offender and posted on the sex offender registry website and "'reputation alone, apart from some more tangible interests' is not 'sufficient to invoke the procedural protection of the Due Process Clause'").

7. Fair Credit Reporting Act

The federal Fair Credit Reporting Act regulates the collection, maintenance, and disclosure of consumers' personal credit information, and often comes into play when a sex offender must undergo a background check.[266] Challenges under the law have been raised with limited success.[267]

8. Firearms

Federal law prohibits anyone convicted of a felony from possessing a firearm.[268] Several jurisdictions have similar laws, some of which are specific to individuals convicted of sex offenses.[269]

9. Habeas Corpus / Post-Conviction Relief—State Custody (28 U.S.C. § 2254) & "In Custody"

Offenders who have exhausted all other remedies under state law and who are trying to challenge the constitutionality of their state registration requirements often seek federal habeas corpus relief.[270] Under the federal habeas corpus statute, an individual may petition the court for a writ only if he or she is "in custody pursuant to the judgment of a State court" where he or she "is in custody in violation of the Constitution or laws or treaties of the United States."[271] For the purposes of habeas corpus relief, an offender must establish that he or she is "in custody" before the court will consider the offender's petition.[272] The majority of courts to consider this issue have held that sex offender registration, alone, does not make an offender "in custody" for purposes of habeas corpus relief.[273]

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[266] 15 U.S.C. §§ 1681-1681x.

[267] *Meyer v. Nat'l Tenant Network Inc.*, 10 F. Supp. 3d 1096, 1101-03 (N.D. Cal. 2014) (holding that the plaintiffs stated a claim for violation of the Fair Credit Reporting Act where they were incorrectly reported by a credit bureau as having prior sex offense convictions, the defendants failed to provide all information in their credit report file after one of the plaintiff's credit reports inaccurately reported three criminal sex offense records, and where the defendant relied on an inaccurate consumer report which identified one of the plaintiffs as a violent sex offender); *but see Erickson v. First Advantage Background Servs., Corp.*, 981 F.3d 1246, 1253-54 (11th Cir. 2020) (holding that the plaintiff failed to establish a violation of the Fair Credit Reporting Act where the report was factually accurate—it stated that a registered sex offender in Pennsylvania shared the plaintiff's first and last name; it did not wrongfully attribute the record to the plaintiff—it explained that the matching record was located based on a name-only search; and it was not misleading—a reasonable user of the report would not be misled by the report to such an extent that it would take any adverse action against the plaintiff).

[268] 18 U.S.C. § 922(g). This prohibition applies to any individual who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year and includes certain sex offenders.

[269] *See, e.g.*, COLO. REV. STAT. § 18-12-108(7); D.C. CODE § 7-2502.03; KY REV. STAT. ANN. § 527.040; LA. REV. STAT. ANN. § 14:95.1(C); VA. CODE ANN. § 18.2-308.2; *see also Stoddart v. Commonwealth*, 107 Va. Cir. 108 (Va. Cir. Ct. 2021) (unpublished decision) (holding that registered sex offender in Virginia, who is classified as a tier III sex offender and is required to register for life, was not entitled to have his right to possess a firearm restored).

[270] Federal prisoners who claim that their conviction or sentence is contrary to the U.S. Constitution or the laws of the United States may seek habeas corpus relief under 28 U.S.C. § 2255.

[271] 28 U.S.C. § 2254(a).

[272] An individual must be "in custody" under the conviction or sentence under attack at the time the petition is filed. *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989).

[273] *Alaska v. Wright*, 141 S. Ct. 1467, 1468 (2021) (per curiam) (holding that offender's state conviction, which served as the predicate for a federal failure to register conviction, did not render the offender "in custody" for purposes of

seeking habeas corpus relief under 28 U.S.C. § 2254, where the offender had already finished serving his sentence for the state conviction and noting a "habeas petitioner does not remain 'in custody' under a conviction 'after the sentence imposed for it has fully expired, merely because the possibility that the prior conviction will be used to enhance the sentences imposed for any subsequent crimes of which he is convicted" and even though his state conviction served as a predicate for his federal conviction, it did not render him "'in custody pursuant to the judgment of a State court' under § 2254(a)"); *Johnson v. Ashe*, 421 F. Supp. 2d 339, 342-43 (D. Mass. 2006) (addressing Massachusetts sex offender registration laws and holding that "compulsory registration as a sex offender is a collateral consequence of conviction that does not meet the 'in custody' requirement" for purposes of habeas corpus relief); *Lefkowitz v. Fair*, 816 F.2d 17, 20 (1st Cir. 1987) (holding that sex offender who completed his sentence and had his medical license revoked was not "in custody" for purposes of federal habeas corpus relief); *White v. LaClair*, No. 19-CV-1283, 2021 WL 200857, at *7 (E.D.N.Y. Jan. 18, 2021) (holding that offender is not "in custody" merely because he is subject to New York's sex offender registration requirements and New York's Sex Offender Registration Act "is a remedial statute" and its "registration and risk-level determinations are nonpenal consequences that result from the fact of conviction for certain crimes"); *Davis v. Nassau Cnty.*, 524 F. Supp. 2d 182, 187-89 (E.D.N.Y. 2007) (addressing New York and Oklahoma sex offender laws and concluding that the burdens and requirements of sex offender laws are merely collateral consequences of a conviction and they do not cause a registered sex offender to be "in custody" for purposes of habeas corpus relief); *Preik v. Dist. Att'y of Allegheny Cnty.*, No. 10-1612, 2011 U.S. Dist. LEXIS 100417, at *33-35 (W.D. Pa. Aug. 12, 2011) (holding that petitioner did not satisfy "in custody" requirement "simply because he was subject to the requirements of a sex offender registration law" and noting "at least three Pennsylvania courts have concluded that Pennsylvania sex offender requirements are insufficient to establish that a petitioner is in custody for purposes of federal habeas corpus review"); *Coleman v. Arpaio*, No. 09-6308, 2010 WL 1707031, at *3 (D.N.J. Apr. 27, 2010) (collecting cases holding that the requirements of sex offenders imposed by state statutes does not satisfy the custody requirement of federal habeas review and holding that "the requirement to register ensuing from the New Jersey sex offender statute is merely a collateral consequence to [the offender's] conviction" and therefore does not satisfy the "in custody" requirement for purposes of habeas corpus review); *Wilson v. Flaherty*, 689 F.3d 332, 338 (4th Cir. 2012) (holding that sex offender registration requirements do not place sex offenders "in custody" for purposes of filing federal habeas corpus petitions); *Lempar v. Lumpkin*, No. 20-50664, 2021 WL 5409266, at *1 (5th Cir. June 8, 2021) (holding that an offender's "obligation to register as a sex offender does not render him 'in custody' for purposes of a § 2254 challenge"); *Johnson v. Davis*, 697 F. App'x 274, 275 (5th Cir. 2017) ("The fact that [the offender] is required to register as a sex offender as a result of his 1976 convictions does not mean that he is 'in custody' within the meaning of § 2254."); *Corridore v. Washington*, 71 F.4th 491, 500-01 (6th Cir. 2023) (holding that offender subject to mandatory lifetime electronic monitoring and lifetime sex offender registration in Michigan was not "in custody" for purposes of habeas corpus relief); *Denoma v. Ohio Dep't of Rehab. & Corr.*, No. 20-cv-00227, 2021 WL 1185481, at *1 (N.D. Ohio Mar. 30, 2021) (holding that an offender's status as a registered sex offender under Ohio law does not satisfy the "in custody" requirement for purposes of seeking federal habeas corpus relief); *Dennard v. Haviland*, No. 17CV1773, 2019 WL 8326452, at *9 (N.D. Ohio Feb. 15, 2019) (holding that offender's designation as a sexual predator is a collateral consequence of his conviction and does not satisfy the "in custody" requirement for federal habeas corpus relief); *Hautzenroeder v. Dewine*, 887 F.3d 737, 743-44 (6th Cir. 2018) (holding that Ohio sex offender and registration laws which required offender to register as a sex offender for life did not render the offender "in custody" for purposes of federal habeas relief); *Ali v. Carlton*, No. 04-398, 2005 WL 1118066, at *1-2 (E.D. Tenn. April 25, 2005) (concluding that the burdens and requirements of sex offender laws are merely collateral consequences of a conviction and they do not cause a registered sex offender to be "in custody" for purposes of habeas corpus relief); *Leslie v. Randle*, 296 F.3d 518, 521-23 (6th Cir. 2002) (holding that Ohio's sexual-predator statute is a civil regulation and its classification, registration, and community notification provisions "are more analogous to collateral consequences" and therefore offender was not "in custody" for purposes of habeas relief and noting that "[t]he Sixth Circuit has held that the classification of a defendant as a sexual predator is a collateral disability resulting from a conviction and, thus, does not satisfy the 'in custody' requirement of federal habeas corpus"); *Thomas v. Morgan*, 109 F. Supp. 2d 763, 767 (N.D. Ohio 2000) (indicating that "the classification of a sex offender as a sexual predator is a collateral disability from a conviction and thus does not satisfy the 'in custody' requirement of federal habeas corpus"); *Virsnieks v. Smith*, 521 F.3d 707, 720 (7th Cir. 2008) (holding that Wisconsin's sex offender law "imposes minimal restrictions on a registrant's physical liberty of movement" and that "courts have rejected uniformly the argument that a challenge to a sentence of registration under a sexual offender statute is cognizable in habeas"); *De La Hunt v. Villmer*, No. 16-CV-2171, 2021 WL 4523095, at *6 (E.D. Mo. Sept. 30, 2021) (noting that district courts in the Eighth Circuit agree that "[c]ivil commitment as a sexually violent predator and related consequences to classification are collateral consequences rather

than severe restraints on liberty" and holding sex offender registration requirement is insufficient to satisfy the "in custody" requirement for habeas corpus relief); *Holmes v. Nebraska*, No. 21CV159, 2021 WL 3663885, at *1 (D. Neb. July 9, 2021) (holding that "registration as a sex offender, and the potential for future incarceration for failure to do so, does not satisfy the 'in custody' requirement for habeas relief," and that offender has not suffered restriction on his freedom of movement merely because he had to register as a sex offender); *Maxwell v. Larkins*, No. 08 CV 1896, 2010 WL 2680333, at *3 (E.D. Mo. July 1, 2010) (holding that habeas petition was barred because although petitioner remained incarcerated for other crimes, he had already served his sentence for sexual abuse at the time he filed his habeas petition, and noting that "petitioner's potential civil commitment under . . . [Missouri law] and mandatory registration as a sex offender do not establish the 'in custody' requirement"); *Hansen v. Marr*, 594 F. Supp. 2d 1097, 1100 (D. Neb. 2009) ("Where sex offender registration statutes are remedial, rather than punitive, 'the registration requirements resemble more closely those collateral consequences of a conviction that do not impose a severe restriction on an individual's freedom of movement' and do 'not satisfy the "in custody" requirements.'"); *Wright v. State*, 47 F.4th 954, 960 (9th Cir. 2022) (holding that sex offender convicted of sexual abuse of a minor in Alaska is not "in custody" pursuant to the judgment of a state court under § 2254(a) even though he is required to register in Tennessee as a result of his Alaska conviction); *Munoz v. Smith*, 17 F.4th 1237, 1240 (9th Cir. 2021) (holding that Nevada's lifetime supervision conditions, including payment of a monthly fee, electronic monitoring, and residency approval requirements, are not "custodial" to render sex offender "in custody" for purposes of federal habeas corpus relief); *id.* at 1243 (*citing Maciel v. Cate*, 731 F.3d 928 (9th Cir. 2013)) (noting that *Maciel* found that "California's sex offender registration and tracking requirements, though burdensome, could be regarded as collateral consequences of conviction, not 'custodial' requirements"); *Rider v. Frierson*, No. 19-cv-01831, 2021 U.S. Dist. LEXIS 8300, at *3 (D. Nev. Jan. 14, 2021) (holding that offenders' claims challenging the constitutionality of Nevada's sex offender registration requirements are not cognizable in a habeas action because "[s]ex offender registration requirements do not constitute custody within the meaning of the habeas corpus statute"); *Caires v. Iramina*, No. 08-110, 2008 WL 2421640, at *3 (D. Haw. June 16, 2008) (holding that requirement that offender register as a sex offender under Hawaii law does not render the offender "in custody" for purposes of habeas corpus relief); *Henry v. Lungren*, 164 F.3d 1240, 1241-42 (9th Cir. 1999) (holding that offender, who is required to register as a sex offender under California law, is not "in custody" for purposes of habeas corpus relief); *McNab v. Kok*, 170 F.3d 1246, 1247 (9th Cir. 1999) (holding that Oregon's sex offender registration statute does not place sex offender "in custody" for purposes of habeas corpus relief); *Williamson v. Gregoire*, 151 F.3d 1180, 1183-84 (9th Cir. 1990) (holding that offender who had completed sentence but was required to register as sex offender under Washington law was not "in custody" for purposes of habeas relief and that Washington's law was "regulatory and not punitive"); *Clark* v. *Oklahoma*, 789 F. App'x 680, 682, 684 (10th Cir. 2019) (holding that habeas court properly denied offender's petition for certificate to appeal court's decision dismissing habeas petition because requirement under Oklahoma law that offender register as sex offender resulting from an Oklahoma conviction did not satisfy condition of federal statute that offender, who was incarcerated in Texas as result of Texas conviction, must be in custody for conviction being challenged when habeas petition is filed); *Dickey v. Allbaugh*, 664 F. App'x 690, 693-94 (10th Cir. 2016) (holding that, even though Oklahoma has found its sex offender registration and notification system "punitive," "Oklahoma's sex-offender registration conditions are collateral consequences of [the offender's] conviction, and not a continuation of punishment," therefore offender required to register as a sex offender in Oklahoma does not render him "in custody" for purposes of a habeas corpus petition); *Calhoun v. Att'y Gen. of Colo.*, 745 F.3d 1070, 1074 (10th Cir. 2014) ("[J]oin[ing] the circuits uniformly holding that the requirement to register under state sex-offender registration statutes does not satisfy § 2254's condition that the petitioner be 'in custody' at the time he files a habeas petition"); *Frazier v. People*, No. 08-02427, 2010 WL 2844080, at *3, *5 (D. Colo. July 16, 2010) (holding that, although Colorado's sex offender registration statute places burdens on sex offenders that are not shared by the general public, the registration requirements are collateral consequences of a conviction and fail to satisfy the "in custody" requirement for purposes of habeas corpus relief); *Clements v. Florida*, 59 F.4th 1204, 1215-17 (11th Cir. 2023) (holding that sex offender convicted of lewd and lascivious conduct and required to register as a sex offender in Florida was not "in custody" for purposes of habeas corpus relief and Florida's sex offender registration and reporting requirements did not substantially limit offender's actions or movement); *Ridley v. Caldwell*, No. 21-13504, 2022 WL 2800203 (11th Cir. July 18, 2022) (per curiam) (holding that "[b]ecause registration in Georgia is a collateral consequence of [offender's] battery conviction rather than part of his punishment, his presence on the registry does not render him 'in custody'" for habeas corpus purposes); *Goguen v. Comm'r of Corr.*, 267 A.3d 831, 845, 847 (Conn. 2021) (recognizing that the Connecticut sex offender registration requirements are remedial and not punitive in nature and an offender's requirement to register as a sex offender is a collateral consequence of his conviction and "[c]ollateral consequences of a conviction generally are not sufficient to satisfy the condition that a

10. Housing

Sex offenders who are subject to a lifetime registration requirement under state or federal law are generally prohibited from admission to federally assisted housing.[274] Some jurisdictions also prohibit sex offenders from living in campus student housing at a public institution of higher learning.[275]

11. Immigration & Deportation

Under the Adam Walsh Act, an individual who is convicted of a specified offense against a minor is prohibited from filing a petition to sponsor a family member or fiancée unless the Secretary of the Department of Homeland Security determines that the offender poses no risk to the individual on whose behalf the petition is filed.[276] Additionally, offenders who commit crimes involving moral

habeas petitioner must be in custody"); *but see Piasecki v. Ct. of Common Pleas, Buck Cnty., Pa.*, 917 F.3d 161, 170 (3d Cir. 2019) (holding that offender's registration requirements under Pennsylvania law "were sufficiently restrictive to constitute custody" for purposes of habeas corpus relief where offender was required to register in person with law enforcement every three months for life and to appear in person any time the offender planned to leave home for more than seven days, travel internationally, change his residence or employment, enroll as a student, add or change a phone number, change ownership of a car, or add or change any email address or online designation); *Zichko v. Idaho*, 247 F.3d 1015, 1019 (9th Cir. 2001) (holding that sex offender is "'in custody' for the purposes of challenging an earlier, expired rape conviction, when he is incarcerated for failing to comply with a state sex offender registration law because the earlier rape conviction 'is a necessary predicate' to the failure to register charge").

[274] 42 U.S.C. § 13663; 24 C.F.R. §§ 982.553(a)(2), 982.553(c), 960.204(a)(4). *See, e.g.*, *Bostic v. D.C. Hous. Auth.*, 162 A.3d 170, 174 (D.C. Cir. 2017) (addressing sex offenders and federally assisted housing and holding that D.C. Housing Authority permissibly terminated the plaintiff from a housing-voucher program where he was required to register for life as a convicted sex offender); *Grant-Davis v. Hendrix*, No. 22-cv-1872, 2023 WL 4758751, at *1, *3 (D.S.C. July 26, 2023) (holding that it was unnecessary for the court to "interfere with the deference afforded to local housing authorities" where sex offender required to register for life in South Carolina was denied admission to public housing); *Henley v. Hous. Auth. of New Orleans*, No. 12-2687, 2013 WL 1856061, at *6 (E.D. La. May 1, 2013) (permitting termination of a beneficiary's federal assistance based only on the fact that the address displayed on the jurisdiction's public sex offender registry website for the individual was in a federally subsidized housing development). *But see Miller v. McCormick*, 605 F. Supp. 2d 296, 310-11 (D. Me. 2009) (holding that 24 C.F.R. § 982.553(c), the regulation that prohibits admission of lifetime sex offender registrants to the Section 8 program, does not authorize a state public housing authority to terminate a program participant's benefits, even if the participant is a lifetime sex offender registrant, where the participant has already been lawfully admitted to the program); *cf.* U.S. DEP'T OF HOUS. & URBAN DEV., STATE REGISTERED LIFETIME SEX OFFENDERS IN FEDERALLY ASSISTED HOUSING, NOTICE PIH 2012-28/H 2012-11 (June 11, 2012), www.hud.gov/sites/documents/12-28PIHN12-11HSGN.PDF (noting that sex offenders subject to a lifetime registration requirement who are wrongfully admitted to Section 8 housing are subject to termination procedures). Additionally, a person may be prosecuted for perjury if they have lied on an application for Section 8 housing about a lifetime registered sex offender living in the residence. *Johnson v. California*, No. EDCV 10-716-DOC, 2011 WL 3962119, at *1-3 (C.D. Cal. July 25, 2011) (holding that an individual, who lied on an application for Section 8 housing about a lifetime registered sex offender living in the residence, could be prosecuted for perjury).

[275] *See, e.g.*, S.C. CODE ANN. § 23-3-465 (prohibiting anyone required to register as a sex offender in South Carolina from living in campus student housing at a public institution of higher learning supported in whole or in part by the state).

[276] Adam Walsh Act, *supra* note 1, § 402; 8 U.S.C. § 21154(a)(1); *see also Joynes v. Wilkinson*, No. 21-11501, 2022 WL 3098079, at *5 (D.N.J. Aug. 4, 2022) (holding that the Adam Walsh Act "has the broad purpose of protecting the public in general—as opposed to only children—from sex offenders and offenders against children," which is "indisputably a legitimate governmental interest" and it is "rationally related to the goal of protecting the public from sex offenders and offenders against children" and does not violate equal protection); *Bakran v. Sec'y, U.S. Dep't of Homeland Sec.*, 894 F.3d 557, 564 (3d Cir. 2018) (holding that the Adam Walsh Act, which restricts a convicted sex offender's ability to sponsor his spouse's immigration petition, does not infringe on his fundamental right to marry);

turpitude are subject to deportation.[277] In some cases, convictions for failure to register as a sex offender have also triggered deportation proceedings.[278] Other immigration and deportation issues may also arise for individuals who are required to register as sex offenders.[279]

Struniak v. Lynch, 159 F. Supp. 3d 643, 657 (E.D. Va. 2016) (noting that the Adam Walsh Act restricts a person convicted of a specified offense against a minor from filing a petition to sponsor a fiancé(e) or family member unless the Secretary of the Department of Homeland Security determines that the offender poses no risk to the person on whose behalf the petition is filed); *Suhail v. U.S. Att'y Gen.*, No. 15-cv-12595, 2015 WL 7016340, at *6 (E.D. Mich. Nov. 12, 2015) (outlining Adam Walsh Act provision); *In re Aceijas-Quiroz*, 26 I. & N. Dec. 294, 295-96 (B.I.A. 2014) (recognizing Adam Walsh Act's provision "barring a United States citizen who has been convicted of a 'specified offense against a minor' from having a family-based visa petition approved unless the Secretary of Homeland Security . . . determines that the citizen poses 'no risk' to the alien beneficiary"); *In re Introcaso*, 26 I. & N. Dec. 304, 306 (B.I.A. 2014) (recognizing provision under Adam Walsh Act prohibiting offender convicted of a "specified offense against a minor" from filing a visa petition for his wife).

[277] 8 U.S.C. § 1227(a)(2)(A)(i); *see also Grijalva Martinez v. Att'y Gen. of United States*, 978 F.3d 860, 865 (3d Cir. 2020) (holding that the BIA correctly concluded that offender, who was convicted of criminal sexual contact under New Jersey law, was removable as an alien convicted of an aggravated felony and a crime involving moral turpitude because criminal sexual contact constitutes both a crime involving moral turpitude and an aggravated felony); *Moreno v. Att'y Gen. of United States*, 887 F.3d 160, 164 (3d Cir. 2018) (holding a conviction for possession of child pornography under Pennsylvania law is a crime involving moral turpitude for purposes of immigration and deportation); *Maya Alvarado v. Wilkinson*, 847 F. App'x 445, 448 (9th Cir. 2021) (holding that California conviction for possession of child pornography qualifies as a crime involving moral turpitude for purposes of removal and noting that although it has previously held that "not all sex-based crimes involving minors are [crimes involving moral turpitude]," the crime of possession of child pornography "harms a child's reputation and well-being" and it has "long recognized that victims of child pornography continue to suffer long into the future"); *Syed v. Barr*, 969 F.3d 1012, 1017 (9th Cir. 2020) (holding that Cal. Penal Code § 288.3(a), attempting to contact a child with intent to commit an offense, predicated on the crime of lewd and lascivious acts upon a child, qualifies as a crime of moral turpitude for purposes of removal of an alien under 8 U.S.C. § 1227(a)(2)(A)(i)).

[278] Notably, there is currently a circuit split as to whether a conviction for a state offense of failure to register as a sex offender constitutes a crime involving moral turpitude for the purposes of immigration and deportation. *See, e.g.*, *Totimeh v. Att'y Gen. of United States*, 666 F.3d 109, 114 (3d Cir. 2012) (holding that Minnesota offense of failure to register as a sex offender does not constitute a crime of moral turpitude for purposes of immigration and deportation); *Mohamed v. Holder*, 769 F.3d 885, 888-89 (4th Cir. 2014) (holding that Virginia offense of sexual battery is a crime involving moral turpitude but Virginia offense of failing to register as a sex offender is not a crime involving moral turpitude for purposes of immigration and deportation); *Bushra v. Holder*, 529 F. App'x 659, 660-61 (6th Cir. 2013) (holding that conviction for failure to register under Michigan law is a crime involving moral turpitude for purposes of immigration and deportation); *Bakor v. Barr*, 958 F.3d 732, 738 (8th Cir. 2020) (holding that Minnesota's offense of failure to register as a sex offender is a crime involving moral turpitude for purposes of immigration and deportation); *Plasencia-Ayala v. Mukasey*, 516 F.3d 738, 747 (9th Cir. 2008) (holding that offense of failure to register as a sex offender under Nevada law is not a crime involving moral turpitude for purposes of immigration and deportation), *overruled on other grounds by Marmolejo-Campos v. Holder*, 558 F.3d 903 (2009); *Efagene v. Holder*, 642 F.3d 918, 926 (10th Cir. 2011) (holding that misdemeanor offense of failure to register as a sex offender under Colorado law is not a crime involving moral turpitude).

[279] *Bado v. United States*, 186 A.3d 1243, 1262 (D.C. Cir. 2018) (holding that the possible penalty of deportation, when combined with a maximum period of incarceration of six months, for conviction of misdemeanor sexual abuse of a minor, triggers the Sixth Amendment right to a jury trial); *Kaufman v. Nielsen*, 896 F.3d 475, 479-89 (D.C. Cir. 2018) (addressing some of the difficulties that may arise when a U.S. citizen, convicted of a sex offense and required to register, attempts to renounce their citizenship); *United States v. Gayle*, 996 F. Supp. 2d 42, 54-55 (D. Conn. 2014) (holding that a naturalized U.S. citizen, who concealed and misrepresented the fact that he committed sexual abuse against his niece, a minor, during the naturalization process, can be denaturalized and have his citizenship revoked); *United States v. Estrada*, 349 F. Supp. 3d 830, 838 (D. Ariz. 2018) (revoking citizenship of naturalized U.S. citizen where individual illegally procured citizenship by lying on his application and by failing to disclose that he committed crimes involving moral turpitude where he engaged in sexual intercourse and oral sexual contact with his daughter, a minor under the

12. Sentencing Enhancement Under Federal Law (18 U.S.C. § 2260A)

Sentencing enhancements exist under both federal and state law and provide courts with the ability to increase an offender's sentence beyond the normal range for a variety of reasons. Under 18 U.S.C. § 2260A, an individual who commits certain felony offenses involving a minor while required to register as a sex offender are subject to enhanced penalties, including a 10-year mandatory minimum sentence which must run consecutively to any other sentences imposed.[280] Application of § 2260A depends on an offender's registration status at the time the offender committed the predicate offense[281] and violation of the statute does not require a minor's actual involvement in the underlying offense.[282] Additionally, retroactive application of § 2260A, the federal sentencing enhancement statute, does not violate the Ex Post Facto Clause.[283]

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age of 14); *People v. Duarte*, No. H048568, 2022 WL 1468316, at *2-3 (Cal. Ct. App. May 10, 2022) (unpublished decision) (affirming denial of offender's motion to withdraw 2002 guilty plea for statutory rape and holding that offender understood the immigration consequences of his plea at the time it was made, his "lack of awareness that the Supreme Court in 2017 would define sexual abuse of a minor under the [Immigration and Nationality Act] to implicate a violation of [California law] does not constitute error," and he failed to show prejudice because it was "not reasonably probable that [he] would have risked going to trial on readily provable charges carrying prison exposure and mandatory sex offender registration, had he known that a guilty plea . . . would pose an impediment to naturalization 15 years later" and "even if [he] had known in 2002 that his conviction would pose an impediment to naturalization 15 years later, it is not reasonably probable that he would have rejected the plea bargain"); *Barrie v. United States*, 279 A.3d 858 (D.C. 2022) (holding that "a remand is necessary for the court to determine, after an evidentiary hearing, what advice [sex offender's] counsel gave him and, if counsel did not correctly convey information about the likelihood of deportation [where offender pleaded guilty to first-degree sexual abuse and kidnapping], to determine whether there is a reasonable probability that [offender] would have gone to trial, rather than entered a guilty plea, if he had received the correct immigration-consequence advice").

[280] 18 U.S.C. § 2260A. Section 2260A applies to individuals who are required to register as sex offenders "by Federal or other law." *Id.*; *see also United States v. Walizer*, 600 F. App'x 546, 546-47 (9th Cir. 2015) (mem.) (noting that 18 U.S.C § 2260A includes offenders required to register pursuant to state sex offender registry laws).

While several courts have held that § 2260A constitutes a sentencing enhancement, at least one court has held otherwise. *Compare United States v. Hardeman*, 704 F.3d 1266, 1268 (9th Cir. 2013) (holding that 18 U.S.C. § 2260A is a recidivism enhancement statute), *with United States v. Beck*, 957 F.3d 440, 450 (4th Cir. 2020) (holding that 18 U.S.C. § 2260A creates a substantive offense rather than a sentencing enhancement, noting that "if a provision includes an aggravating-circumstance element, it is an offense, even if it also includes a prior-conviction element," and recognizing the importance of the distinction between the two because the right to a jury trial only attaches to offenses, not enhancements).

[281] *Walizer*, 600 F. App'x at 546-47 (addressing 18 U.S.C § 2260A and noting that application of the statute depends on an offender's registration status as it actually existed at the time the offender committed the predicate offense; that the statute "is triggered when a defendant 'commits' a predicate felony," it does not require a defendant to have previously been convicted of the predicate offense, and "a defendant may be prosecuted under § 2260A at the same time he stands trial for the predicate felony").

[282] *Walizer*, 600 F. App'x at 546-47 (holding that violation of § 2260A does not require a minor's actual involvement in the underlying offense); *United States v. LaSane*, No. 21-10088, 2021 WL 4958689, at *1 (11th Cir. Oct. 26, 2021) (per curiam) (holding that a conviction under § 2260A, when predicated on a violation of § 2422(b), only requires finding that the offender committed a felony offense under § 2422(b) and that the offender was required to register as a sex offender at the time he committed the felony; involvement of an actual minor is not required); *United States v. Slaughter*, 708 F.3d 1208, 1215 (11th Cir. 2013) (holding that, when a conviction under § 2260A is predicated on a violation of § 2422(b), the involvement of an actual minor is not required).

[283] *See, e.g.*, *United States v. Morgan*, 255 F. Supp. 3d 221, 233 (D.D.C. 2017) (holding that § 2260A is equivalent to a recidivist enhancement statute and retroactive application does not violate the Ex Post Facto Clause); *Hardeman*, 704 F.3d at 1268 (holding that retroactive application of 18 U.S.C. § 2260A, a recidivism statute, does not violate the Ex

Post Facto Clause). For a more detailed discussion concerning challenges based on the Ex Post Facto Clause, see *supra* III.A.8.