Question presented: Is the in-person appearance requirement for sex offender registration an affirmative disability violating Ex Post Facto.

The argument is based on a single paragraph from Smith v. Doe, 538 U.S. 84 (2003) :

“The Court of Appeals reasoned that the requirement of periodic updates imposed an affirmative disability. In reaching this conclusion, the Court of Appeals was under a misapprehension, albeit one created by the State itself during the argument below, that the offender had to update the registry in person. Id., at 984, n. 4. The State’s representation was erroneous. The Alaska statute, on its face, does not require these updates to be made in person. And, as respondents conceded at the oral argument before us, the record contains no indication that an in-person appearance requirement has been imposed on any sex offender subject to the Act. Tr. of Oral Arg. 26–28.”

Where “n. 4.” is from the lower Court’s footnote, Doe v. Otte 259 F.3d 979,984 (2001):

“[4] The Alaska statute, on its face, does not clearly specify that these registrations must be made in person at local police stations. However, the government represented at oral argument that periodic in-person registration at local police stations is required by the Act. When specifically asked whether registrants must "go to the police station" for their annual or quarterly registrations, the government answered "under the current law, yes."."

From Smith above, “...Court of Appeals was under a misapprehension…” this misapprehension is referenced from 259 F.3d 986 II. EX POST FACTO CLAIM :

“1. Affirmative disability or restraint
The Alaska Sex Offender Registration Act imposes an affirmative disability on the plaintiffs. First, its registration provisions impose a significant affirmative disability by subjecting offenders to onerous conditions that in some respects are similar to probation or supervised release. Like Washington's sex offender registration statute, Alaska's requires offenders being released from confinement to register. Alaska Code § 12.63.010(a); Russell, 124 F.3d at 1082. However, unlike the Washington statute, Alaska's requires sex offenders such as the plaintiffs to reregister at police stations four times each year every year of their lives. Alaska Code § 12.63.010(d). Moreover, in order to do so, they must appear in person at a police station on each occasion, and provide, under oath, a wide variety of personal information, including address, anticipated change of address, employer address, vehicle description, and information concerning mental health treatment for any "mental abnormality or personality disorder." § 12.63.010(b).”

See footnote 1 where the 9th circuit created a conflicting opinion of the above (3 years later).

The analysis of the above:

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“First, the Court emphasized that the Alaska statute required only calling the police once a year or, in some cases, once a quarter. “The Alaska statute, on its face, does not require these updates to be made in person. And…the record contains no indication that an in-person appearance requirement has been imposed on any sex offender subject to the Act.” Id. The Court noted that the lower court had factually erred in finding that the statute had in-person reporting requirements, but the Court’s language strongly suggests that if such requirements *had* existed, they would have constituted affirmative disabilities and restraints. The Alaska law is a first-generation registration requirement, imposing comparatively minor burdens: offenders did not need to register in person.”

The argument centers around, “...Court’s language strongly suggests that if such requirements *had* existed...” which answers the question presented, “the in-person appearance requirement for sex offender registration is an affirmative disability”

As the footnote indicated, the in-person appearance requirement actually did exist, just not on the “face” at the time. ("under the current law, yes.") And 3 years later, in-person appearance was made Federal law:

“34 U.S. Code § 20918, Periodic in person verification.
A sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than—(1) each year, if the offender is a tier I sex offender; (2) every 6 months, if the offender is a tier II sex offender; and (3) every 3 months, if the offender is a tier III sex offender. (Pub. L. 109–248, title I, § 116, July 27, 2006, 120 Stat. 595.)”

Which put the Supreme Court’s finding back into question. The Amici Curiae was the only authority I could find that “ strongly suggests” my question has merit.

And, as relevant to the matter here, Nevada law mirrors Federal law:

“NRS 179D.480.
When offender or sex offender is required to appear in person and provide certain information to local law enforcement agency; duties of Central Repository if offender or sex offender fails to comply.
1. Except as otherwise provided in subsection 3, an offender convicted of a crime against a child or a sex offender shall appear in person in at least one jurisdiction in which the offender or sex offender resides or is a student or worker: (a) Not less frequently than annually, if the offender or sex offender is a Tier I offender; (b) Not less frequently than every 180 days, if the offender or sex offender is a Tier II offender; or (c) Not less frequently than every 90 days, if the offender or sex offender is a Tier III offender,
and shall allow the appropriate local law enforcement agency to collect a current set of fingerprints and palm prints, a current photograph and all other information that is relevant to updating the offender or sex offender’s record of registration, including, but not limited to, any change in the offender or sex offender’s name, occupation, employment, work, volunteer service or driver’s license and any change in the license number or description of a motor vehicle registered to or frequently driven by the offender or sex offender.”

I note that when I have to appear for registration bi-annually, during that time, I am in custody, although it may be a 1-3 hour wait process, multiplied by 2 times a year, times 25 years, that's 50-150 hours (2-6 days) of custody. (not including the additional times required to appear for changes in employment, automobile, etc.) This results in a cumulative violation of my "constitutionally protected interest in liberty" as the above dissenting opinion stated. Because 2-6 days is spread out over a longer period of time, suddenly it's not considered a violation of liberty? 2-6+ days of custody is punishment.

I have to be there, that is restraint, under penalty of a crime. I am restrained by the obligation, completely out of my control, although it would appear brief, one hour of restraint is no different than a year in custody. It is not a sliding scale, or something that is balanced against other liberty interests or public safety. Restraint must be measured independently, it is not contextual. Ex Post Facto is absolute, not something negotiable.

Footnote 1:

356 F.3d 955 (2004) HATTON v. BONNER, No. 02-15586. United States Court of Appeals, Ninth Circuit : "It is true that, unlike the Alaska statute, § 290 requires Petitioner to register in person. Although this fact is important, when balanced against the other facts highlighted above, it is simply not enough to turn § 290 into an affirmative disability or restraint. Thus, this factor weighs in favor of the state court's conclusion that application of § 290 to Petitioner does not violate the Ex Post Facto Clause."