Comments on Rulemaking

SUBJECT: Registration Requirements Under the Sex Offender Registration and Notification Act (SORNA), 28 CFR Part 72

DATE: October 5, 2020

Reference: Docket No. OAG 157

Introduction to Comments

Due to ever increasing state and federal laws and the continued lack of enforcement of the federal ICAC standards of investigation, the state and federal sex offender registries have become bureaucratic monsters for a record number of US citizens. Many requirements placed on registrants go far beyond simple administrative purpose. Since registries were first created, registrants in some jurisdictions now have restrictions on where they can live, they are restricted from visiting churches, parks and schools, they cannot participate in certain holidays like Halloween, they cannot vote or own or possess firearms for self-defense, face harsher penalties by law than non-registrants for future non-sex related offenses, their DNA is kept in a database for future reference without probable cause, they cannot get mortgage loans and business loans, or rent property, they cannot enter public property like the Pentagon even if they are a federal contractor, they cannot attend certain colleges or schools, they cannot travel abroad to many places in the world, and they are subject to a whole host of private industry restrictions like not being able to visit Disney World or other theme parks, not being able to stay at certain hotels when traveling, and not being able to obtain a decent, if any, job. Part of the reason for this is because the federal SORNA act allows states to be more restrictive than the federal SORNA act, which is highly unusual for federal law, which generally does not allow states to create laws that are more restrictive than the federal law due to possible violations by the states of the federal Constitution's inalienable liberties and rights of US citizens.

The sort of segregation that the sex offender registries have created was ended in the landmark Supreme Court ruling in Brown V. Board of Education and is reminiscent of the Jim Crow laws that unfairly demonized a specific class of human beings to justify regulating them. Therefore, the federal SORNA rules must be constructed in such a way as to respect state's rights and the rights of registrants under state law and perhaps more importantly, must require states to respect registrants' federal rights and privileges guaranteed by the federal Constitution and Bill of Rights. Anything less would be inadequate and fly in the face of Brown v. Board of Education.

Comments

In light of the ongoing question as to the constitutionality of the sex offender registries and the fact that the registries duplicate criminal records already publicly available on line and at courthouses and police stations across the U.S., the following comments are submitted on the proposed federal SORNA rules contained in the Federal Register, Docket Number OAG 157:

1. The Congress may not have the right to regulate sex offenders because most sex offenses do not involve acts of commerce nor is the creation of a sex offender registry a power explicitly granted to Congress by the Constitution (United States v. Morrison, 529 U.S. 598 (2000)).

Discussion: Crime is regulated under Article I, section 8 of the Constitution because most crime involves commerce. Sex offenses, for the most part, do not. In general, sex crimes also do not represent felonies and crimes committed on the high seas or violations of the law of nations. Therefore, the federal registry should be crafted to cover only a very few offenses, if any. The U.S. should not be in the business of legally taking action against persons for crimes that they might commit at some point in the future. To do so, may in fact, be considered cruel and unusual punishment. Arrest, punishment and other legal action that restricts a citizen's liberty must be predicated upon the actual commission of an offense. If we start down the road to taking legal action against a singular class of people (registrants) who are not granted a hearing before a judge to present the facts of their case and who MIGHT commit an offense in the future, we are progressing down a very dangerous and likely unconstitutional slope.

In addition, when a court deems a sex offender safe enough to be released from prison, a very high bar is created for the Congress to jump over in order to continue regulation of an offender after completing a court ordered sentence. In United States V. Comstock (560 U.S. 126 (2010)), the Court ruled the federal government has the right to hold a sex offender in civil commitment if the person is deemed "sexually dangerous" under the authority of the Adam Walsh Act. Therefore, if the courts allow a person to leave incarceration without civil commitment, the offender must not be considered "sexually dangerous," by definition, and should not continue to be regulated by either the federal or state governments after release into the community.

Further, Justice Antonin Scalia wrote in a dissenting opinion in US vs. Kebodeaux 570 U.S. 387 (2013) in which he argued that an act intended to execute a power of Congress is only necessary and proper if the power is as well. He stated that because it is not clear that the Wetterling Act's registration requirement is a valid Congressional power, SORNA's modification and execution of that power is equally unsure. In the same case, Justice Clarence Thomas' separate dissent argued that SORNA's registration requirements are unconstitutional because they do not execute any Congressional powers explicitly granted by the Constitution. Instead, SORNA represents an unconstitutional usurpation of state powers regarding sex offender registration and that SORNA failed the "legitimate use" test Chief Justice John Marshall set forth in McCulloch v. Maryland 17 U.S. (4 Wheat.) 316 (1819). Thomas also argued that although Congress has the power to regulate the conduct of members of the military, once Kebodeaux became a civilian, there was no justification for the involvement of the federal government and that the decision violated the precedent set by United States v. Comstock 560 U.S. 126 (2010). Kebodeaux did not decide the Constitutional legality of SORNA but only whether it could regulate Kebodeaux.

2. SORNA's criminal provision 18 USC 2250 indicates that the registry is no longer simply a civil requirement for simple administrative purposes because section 18 USC 2250 contains explicit criminal punishments for violating SORNA's requirements in direct contrast to the assertions of Smith (538 US 92-106) and Felts (674 F.3d 605-606).

Discussion: Civil laws and regulations are penalized with civil penalties not criminal penalties. The question becomes whether the intention of sex offender registries is to impose a punishment or are they merely a "civil proceeding". If the intention is to punish, that ends the inquiry. If the intention is to enact only a regulatory scheme that is civil and non-punitive, the courts must examine whether the scheme is so punitive as to negate the State's intention to deem it civil. Creating a piece of the

registries that is clearly a criminal punishment with a penalty of up to ten years in prison should end these questions so that the ex post facto clause now clearly applies. The dissenting justices in Smith V. Doe (538 U.S. 84 (2003) contended that the sex offender registration law was punitive and imposed severe deprivations of liberty. Since 2003 the registries have become even more restrictive. Justice Stevens' dissenting opinion said, "It is also clear beyond peradventure that these unique consequences of conviction of a sex offense are punitive. They share three characteristics, which in the aggregate are not present in any civil sanction. The sanctions (1) constitute a severe deprivation of the offender's liberty, (2) are imposed on everyone who is convicted of a relevant criminal offense, and (3) are imposed only on those criminals. Unlike any of the cases that the Court has cited, a criminal conviction under these statutes provides both a sufficient and a necessary condition for the sanction". In addition, he asserted that SORNA fails the legitimate use test Chief Justice John Marshall set forth in McCulloch v. Maryland 17 U.S. (4 Wheat.) 316 (1819). Justice Ruth Bader Ginsburg stated in her dissent in Doe v. Lee, 132 F. Supp. 2d57, 69 (D. Conn. 2001), 'community notification is an "onerous and intrusive obligation" on the offender, [and] the result is "profound humiliation and community-wide ostracism," it resembles historical practices of shaming, reliance upon convictions rather than present dangerousness, and the law's "excessiveness in relation to its non-punitive purpose."

3.The SORNA should be amended to clarify that it is subject to the ex post facto clause of the U.S. Constitution.

Discussion: Since registries were first created, registrants in most jurisdictions now have restrictions that amount to criminal punishment such as limiting where they can live, restricting visits to churches, parks and schools, prohibiting participation in certain holidays like Halloween, prohibiting voting or firearm ownership for self-defense, facing harsher penalties by law than non-registrants for future non-sex related offenses, having their DNA kept in a database for future reference without probable cause. Registrants are often denied mortgage loans, business loans, or renting of property on the basis of being listed on the registry. They are often prohibited from entering public property like the Pentagon even if they are a federal contractor, and prohibited from attending certain colleges or schools. They cannot travel abroad to many places in the world, and they are subject to a whole host of private industry restrictions like not being able to visit Disney World or other theme parks, not being able to stay at certain hotels when traveling, and not being able to obtain a decent, if any, job.

SORNA now contains criminal punishments for registrants who violate the rules per 18 USC 2250. Criminal punishments are not applied to simple administrative rule violations. The government has asserted, in general, that the sex offender registry rules are not subject to the ex post facto clause of the Constitution in accordance with Smith v. Doe, 538 U.S. 1009 (2003). However, in Doe v. Snyder (834 F.3d 696 (6th Cir. 2016), the Sixth Circuit Court of Appeals held in an as-applied challenge that Michigan's SORNA-implementing law is punitive and, therefore, could not be applied retroactively. This ruling was upheld by the US Supreme Court in October of 2017. In addition, eight state supreme courts in recent years have held that the retroactive application of their sex offender registration and notification laws violate their respective state constitutions. In addition, other state courts have found issues with the retroactive application of their sex offender registration laws, albeit in less sweeping fashion. These rules must, therefore, be crafted in such a way as to respect

state's rights and the rights of registrants under state law and more importantly to ensure states do not violate a registrant's rights and privileges granted by the federal Constitution and Bill of Rights.

I will also assert for the record, that even though the ex post facto application of sex offender registries does not, in DOJ's opinion, violate the prohibition on the application of ex post facto laws against a person registered before the enactment of the new rules/legislative amendments, I believe it does violate Article I, Section 10 of the US Constitution which says that, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." When an accused person reviews the laws with which he/she is charged with violating, and makes a decision to either pursue a trial or opt for a plea bargain, that decision is based on the law and the registry requirements as they exist at the time. As such, when the state or federal government subsequently changes the law or registry requirements after the contract for a plea bargain is signed or after a judge signs off on the sentencing contract of a convicted person, they are violating the contract to which they obligated themselves. This too is unconstitutional and must not be allowed.

4. Section $72.5— How Long Sex Offenders Must Register. This section conflicts with the Federal Fair Credit and Reporting Act. As such, the conflict must be corrected.

Discussion: This section appears to be in direct conflict with the Federal Fair Credit Reporting Act which states that arrests/convictions may only be reported on background checks for seven years after release from prison. This has been interpreted to apply to criminal records and bars background screening companies from reporting "records of arrest that, from date of entry, antedate the report by more than seven years." Allowing this information to appear on a public registry for more than the requisite 7 years would amount to allowing background check companies to report the information because banks, employers and landlords, among others, check the registry as do most background check companies.

This section should also be changed to establish standardized procedures for determining which tier an offender will be placed in, how long each offender will remain on the registry, what restrictions can be placed on registrants in compliance with their federal Constitutional rights and also create a way for tier II offenders to petition for early removal from the registry. Currently, the states and territories are responsible for establishing what constitutes a sex offense in their state or territory and which of these offenses make up each tier, independent of other states and territories and the federal government. Since registries were first created, registrants in some jurisdictions now have restrictions on where they can live. They are restricted from visiting churches, parks and schools, they cannot participate in certain holidays like Halloween, they often cannot vote or own or possess firearms for self-defense, They face harsher penalties by law, than non-registrants for future non-sex related offenses, their DNA is kept in a database for future reference without probable cause, they often cannot get mortgage loans, business loans or rent property, they are not allowed to enter public property like the Pentagon even if they are a federal contractor, they not allowed to attend certain colleges or schools, they cannot obtain business or professional licenses, they cannot travel abroad to many places in the world, and they are subject to a whole host of private industry restrictions like not being able to visit Disney World or other theme parks, not being able to stay at most hotels when traveling, and not being able to obtain a decent, if any, job.

There are also likely to be sex offenders whose offense places them in a given tier in one state, but a different tier for the same offense in a different state or in the federal registry. The only way to prevent this is to have standardized definitions of what constitutes a sex offense and the tier to which that offense must be assigned and what restrictions can be placed on a registrant as a result of their tier assignment. As an example, using the arbitrary federal definition for tier II, that any offense with a punishment of one year or more is a tier II classification, an offender caught urinating in public (lewd and lascivious offenses) could be classified as Tier II in certain cases and therefore, have no chance to petition for early removal from the registry for a very low-level offense. As another example, in states like Florida that require registration in person with the Sheriff's department and then a visit to the Florida Department of Highway Safety and Motor Vehicles (DHSMV) to obtain a valid Florida sex offender ID card in any Florida county where a registrant is present for 48 hours or longer and places all registrants on a single Tier (the equivalent of Tier III because it is a lifetime registration requirement), registrants who are convicted of very low-level offenses such as urinating in public would be required to register for life with no chance to petition for early removal. Florida state law also prohibits those convicted of certain sex crimes against a child under 16 years of age (an arbitrary age) from living within 1,000 feet of a school, day care center, playground, park, or other place commonly frequented by children. State law also places restrictions on where certain registered sex offenders may work. In cases where the victim was a minor, sex offenders cannot volunteer or work at any business, school, day care, park, playground, or other place where children regularly are present. In Miami-Dade County, Florida, some registered sex offenders are prohibited from living within 2,500 feet of a school, day care center, park, or playground. The county also recently added "child safety zones" to its ordinance, which prohibits sex offenders from loitering within the 300 feet of schools, day cares, parks, and school bus stops. Currently, there more than 160 municipalities in Florida that impose greater restrictions on convicted sex offenders than required by state law. Simply traveling from city to city would require registrants to know up to 161 or more different rules in order to remain in compliance. Failure to comply with these requirements is a level three felony for violation of what is supposed to be a simple civil administrative requirement. This would appear to violate a registrant's due process, create potentially large time requirements of the offender to re-register every three to six months on a different date for every county/municipality in every county where they were ever present for more than 48 hours and potentially be cruel and unusual punishment because low level offenders would be required to register for life, which some courts have deemed punishment. Therefore, a system that allows Tier II and possibly some Tier III offenders to petition for early removal and uses a court hearing for each offender to assess whether they pose a relatively low, moderate or high risk of re-offense, based on application of elements such as the characteristics of the sex offense or offenses they committed, their offense history and other criteria such as response to treatment, medical doctor or psychiatric recommendations and community support, would be more legally fair and ensure the due process of each offender. In addition, before community notification takes place under this system, offenders would receive a final classification order from the court which would then allow the opportunity for a hearing to challenge the offender's tier placement and restrictions on travel, residency or employment. Such a system was used by Governor Chris Christie's administration in New Jersey and remains in place there today. By using this procedure nationwide we could prevent dangerous people who receive a charge with less than a one year sentence who still pose a danger, to be placed on a tier higher than tier I and people who

are not dangerous who are classified as Tier II or III, but should be on a lower tier, are not unfairly penalized due to the arbitrary federal rule that anyone with a charge with a sentence of one year or more is at least a tier II registrant. This would also prevent a registrant's federal Constitutional Rights, Privileges and Immunities from being violated by creating standardized federal restrictions on registrants that states must follow or risk losing federal monies.

There is an important fact that must be taken into consideration here. Persons deemed "sexually dangerous" by the court are allowed to be civilly committed under the authority of the Adam Walsh Act, after their prison term is served. As a result, the legal claim of a need to continue to have a registry to monitor registrants after incarceration or the end of probation because they are still "sexually dangerous" would not appear to be a sound legal argument.

1. Section (B) $72.6—The requirements of the Keeping the Internet Devoid of Sexual Predators Act of 2008 (KIDS Act) which directed the attorney general to require sex offenders to provide internet identifiers was likely voided by the ruling in Packingham v. North Carolina, (582 U.S 2017) which gave sex offenders the 1st Amendment right to use the internet, after North Carolina's bill passed in 2008 making it a felony for sex offenders to use the internet was overturned by the ruling.

Discussion: Requiring sex offenders to divulge their internet identifiers is seen as an attempt to discourage their exercise of 1st amendment rights. This section also does not specify how often a registrant must use a phone number, internet identifier, or email address in order to be required to report it to the registry. If a registrant uses a customer's phone while performing work for a one-time customer, should the registrant be required to report it? If the registrant uses a fellow employee's phone once or twice because the registrant's cell phone ran out of battery, should the registrant be required to report the other employee's phone number? If a registrant uses a business's email address once a month due to the malfunction of his/her own email address, should the registrant be required to report that email address?

2. Section (C) 2 $72.6-- The requirement to report travel to destinations inside the U.S. if the registrant will be using temporary lodging for more than 7 days will generally have the effect of preventing travel into a state or different jurisdictions within a state, if and when the travel plans are reported to the place of temporary lodging, as most places of lodging will not knowingly allow sex offenders to stay at their locations. If this section is to be retained, a specific prohibition against a commercial lodging provider discriminating against a sex offender in any way should be included in the rule/statute.

Discussion: Because the effect of this section will be to prevent travel into a state or a location other than the home jurisdiction of the registrant, it is an unconstitutional violation of the inalienable liberty to travel. Furthermore, the U.S. should not be in the business of taking legal action legal against a single class of persons for crimes that they might commit in the future who have not been granted a hearing before a judge to present the facts of their case. Arrest, punishment, and other legal action must only be predicated upon the actual commission of an

offense. If the U.S. starts down the road to taking legal action against people by enforcing specific travel limitations against only a singular class of people who are not granted a hearing before a judge to present the facts of their case because they might commit an offense while traveling, we are progressing down a very dangerous and likely unconstitutional slope.

Certainly, tier I and II offenders should not have this travel restriction. This SORNA requirement as listed violates the Commerce Clause, the Privileges and Immunities Clause of Article IV, the Privileges or Immunities Clause of the Fourteenth Amendment, and/or a substantive due process right to travel, especially since they are only being applied to one class of persons, registrants, who are not granted a hearing before a judge to present the facts of their case. The U.S. Supreme Court in Crandall v. Nevada, 73 U.S. 35 (1868) declared that freedom of movement is a fundamental right. Article 13 of the Universal Declaration of Human Rights, of which the United States is a signatory, states that everyone has the right to freedom of movement and residence within the borders of each State and everyone has the right to leave any country, including his own, and to return to his country. As a result, this section should be omitted.

3. Section (C) 3 $72.6—The requirement to list a registrant's place of employment is punishment for the employer and risks the safety and competitiveness of the business. This requirement should be eliminated.

Discussion: Vigilantes have been known to seek out registrants and kill or threaten them, and customers have been known to stop patronizing businesses that employ sex offenders. As a simple civic administrative action, the registry should not penalize employers. Therefore, employment information should either not be collected or not be published to a public registry. Many employers will not hire sex offenders, and making the registrant's place of employment public will only make the employment problem faced by sex offenders who are not deemed sexually dangerous, worse.

4. Section (C) 4 $72.6 -- Requiring registrants to register their school and its location is likely a violation of a citizen's right to attend public schools without hindrance from the government as the registration is only required of one class of persons who are not granted a fact finding hearing before being denied this right.

Discussion: Most colleges and universities will not allow people on a sex offender registry to enroll. This is also likely a violation of the right to freely associate granted by the 1st Amendment because the government is maintaining a public list that contains people who wish to attend school with others of a like mind who will not be allowed to attend because they are listed on the registry. Regardless of the intent, this will be the effect.

This sort of segregation was to have ended with Brown V. Board of Education and is reminiscent of Jim Crow laws that unfairly demonized a class of human beings in order to justify their regulation. Justice John Marshall Harlan II wrote: "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP v. Alabama (1958)

5. Section (D) $72.6—The effect of requiring a registrant to report all international travel to the U.S. government which is, in turn, allowed to notify the country of destination will be to

encourage the country of destination to disallow the registrant entry into the destination country. The U.S. Government should be prohibited from providing travel plans to foreign nations.

Discussion: The Registrant Travel Action Group keeps a list of all countries that do not allow registrants entry at registranttag.org. The list is long. Whether it is the intent to interfere with a citizen's international travel rights is not the question here, it will be the effect. The federal government is not allowed to regulate international travel to the extent that the burden denies the registrant the ability to travel internationally at all. Especially, if the travel is not commerce related. However, this is what will happen in most cases when the federal government reports registrant's travel plans and the status as a registrant to the destination country (i.e., Canada or Mexico). Furthermore, the U.S. is not in the business of taking legal action against persons for crimes that they might commit at some point in the future. Arrest, punishment, and other legal action must only be predicated upon the actual commission of an offense. If we start down the road to taking legal action against people by enforcing specific requirements to travel against only a singular class of people who are not granted a hearing before a judge to present the facts of their case and who might commit an offense while traveling, we are progressing down a very dangerous and likely unconstitutional slope. These SORNA requirements as listed violate the Commerce Clause, the Privileges and Immunities Clause of Article IV, the Privileges or Immunities Clause of the Fourteenth Amendment, and/or a substantive due process right to travel. Especially, since they are only being applied to one class of persons, registrants. The U.S. Supreme Court in Crandall v. Nevada, 73 U.S. 35 (1868) declared that freedom of movement is a fundamental right. Article 13 of the Universal Declaration of Human Rights, of which the United States is a signatory, states that everyone has the right to freedom of movement and residence within the borders of each State and everyone has the right to leave any country, including their own, and to return to their country. Certainly, tierl I and II offenders should not be subject to this notification requirement. This section should be omitted.

6. Section (G) $72.6—This section, requiring registrants to disclose any professional license they possess, violates the guaranteed inalienable liberty to engage in commerce.

Discussion: If notified they have given a professional license to a registered sex offender; a state is allowed to immediately revoke the license. Thereby, denying the liberty to engage in commerce to every registrant who reports their license to the registry, even if the registrant is not sexually dangerous. This can be demonstrated in Illinois where six medical doctors and five registered nurses had their professional license revoked when it was discovered they were sex offenders.

7. Section 72.8 —This section should clearly define interstate travel for foreign commerce and that the travel restrictions in this rule apply only to travel involving interstate or intrastate travel for purposes of commerce.

Discussion: Business travel or travel where the intent is strictly for commerce purposes is the only travel that is explicitly allowed to be regulated by Congress under the U.S. Constitution. Traveling for the purpose of pleasure or for a family funeral or anniversary, or traveling because a person won a ten night all expenses paid trip to a jurisdiction away from their home jurisdiction, among other similar reasons, would not constitute travel in commerce and therefore, should not be considered regulated by this section.

8. Section 72.6(c)(3), “Place of Employment.” Name and address of place of employment should not be placed on the public registry.

Discussion: These SORNA rules and the registries themselves may violate the Regulatory Flexibility Act (5 U.S.C. 605(b)) due to the requirement for registrants to report their place of employment to registries which will then publish the places of employment on public registries. The placement of the name of a registrant’s place of employment on a public registry particularly burdens small businesses who have small budgets, sensitive client bases, and less access to the best employees. When an employer employs a registrant, it is usually done because the employee is not viewed as “sexually dangerous” and is essential to the company’s success both in the past and in the foreseeable future. Publicly exposing the company as an employer of a registered sex offender by placing the company name on a registrant’s public profile means that some of the company’s customers are likely to stop patronizing the company and the resultant loss of sales can be catastrophic. This is an unfair punishment for the employer.

In addition, due to budget limitations, it is very hard for small businesses to replace top employees at an affordable salary. Also, many top employees for small business started when the company was newly opened and worked for years at low wages in the hopes that in the long run, they would be paid a reasonable salary. These employees, in most cases, accept pay that is lower than what a top employee employed by a large corporation or who graduated from a top college or university would require to join a small business because of the inherent risks of working for a small company. Employers must remain loyal to this type of employee if they hope to survive. Small businesses should not be penalized in this fashion. Thy are not committing a crime.

9. Executive order 12866 and 13563, “Regulatory Planning and Review”—These new SORNA rules and regulations are unnecessary and will not save registrants or the states time or money.

Discussion: Because SORNA allows states to create registry requirements that are stricter than SORNA or have different rules than SORNA, registrants will be required to know at least two sets of registry rules, the federal SORNA and their home jurisdiction’s, instead of just knowing their home jurisdiction only. If the registrant works or goes to school in a district different than their home jurisdiction the registrant could have to know up to three different sets of registration rules. Certainly, that is an unnecessary and unfair burden on registrants and costly in terms of the time and money to appear in person to keep registrations current.

The requirement to re-register every six months for tier II and every three months for tier III requires more time and money from registrants and the various states as they will likely need new computers and software, and more administrative and enforcement personnel to handle the extra workload not required when tier I and II registrants were only required to re-register once per year and tier III every six months. These extra registration requirements will undoubtedly cause more people to be required to register and will likely result in more people inadvertently violating the re-registration requirements due to the frequency of reregistration, which in turn will also require the states to hire more enforcement personnel to enforce the rules equitably. The attorney general is therefore, wrong to say that these new rules create cost reductions and that they do not violate the Unfunded Mandates Reform Act of 1995 because in aggregate total, the states will likely have to spend $100 million or more on new computer equipment, software, administrative personnel and

enforcement personnel, not to mention the extra expense in time and money to the private sector due to the extra burdens on registrants and small business as discussed above.

10. Executive order 13132," Federalism"—These new rules will have a significant impact on the relationship between states and the federal government.

Discussion: The new rules 1) create federal criminal penalties for violation of the registration requirements and the federal government demands that states help enforce the requirements, and 2) create monetary penalties for states that do not implement and enforce the new SORNA rules.

11. Small Business Regulatory Enforcement Fairness Act of 1996 (5 USC 804 (2))—These new rules will have a serious effect on the employment of registrants and put employers who have registrants working for them at an unfair disadvantage compared to companies that do not employ registrants.

Discussion: Often the reaction from the general public upon learning that a business employs a registrant is to stop patronizing the business. Federal agencies, often the source of business for small companies through the SBA, will refuse to grant security clearances to companies that hire registrants. If they do grant clearances to these companies, they will not allow a registrant access to federal buildings and spaces even if the registrant is the employee who can best do the work. Thereby, destroying the company's ability to successfully compete with companies that do not employ registrants.

Employers should not suffer this sort of discrimination for being loyal to employees who are not sexually dangerous. Forcing employers to fire employees due to pressure from customers and the various government agencies for reasons cited above means these employers may not be as competitive or as innovative as they could be because often times registrants are their best employees who have worked at lower pay rates for long periods of time and are the most productive.

12. Section 72.6(c)(3), Temporary Lodging Away from Residence" -- The rules must forbid the home jurisdiction from routinely notifying a jurisdiction to which a registrant plans to travel or notify a place of lodging that a registrant plans to stay there.

Discussion: SORNA rules, generally, only require a person to register in a specific jurisdiction if planning to reside, work, or go to school there. However, when traveling for more than 7 days to a jurisdiction outside their home jurisdiction, a registrant is required to report the travel destination and place of temporary lodging to their home jurisdiction in advance of travel, but is not required to register in the jurisdiction where they will be temporarily lodging. This creates multiple problems regarding the inalienable liberty to travel not only interstate but intrastate. The first is that it appears to be the intent that the home jurisdiction will report to the place of planned temporary lodging that a sex offender plans to be staying there. Such notification will have the effect of preventing the registrant from traveling because the temporary lodging providers (e.g., Disney World Hotels) will often not allow a registered sex offender to stay on their property.

Another concern is that travel for pleasure and not for the purpose of commerce should be outside the constitutional jurisdiction of Congress to regulate. The temporary lodging reporting requirement may unfairly burden intrastate travel because states do not have the right to burden or

restrict travel that is not for the purpose of commerce. Some states require registrants to register in each municipality, county or state jurisdiction where they are present for more than 48 hours, including where they will be staying in the jurisdiction. This requirement will have the effect on registrants of significantly restricting their travel, even intrastate travel, when the place of lodging or temporary lodging is notified that a sex offender is planning to stay there and there exists different registration rules for every municipality within the state.

Florida state law also prohibits those convicted of certain sex crimes against a child under 16 years of age from living within 1,000 feet of a school, day care center, playground, park, or other place commonly frequented by children.

Florida state law also places restrictions on where certain registered sex offenders may work. In cases where the victim was a minor, sex offenders cannot volunteer or work at any business, school, day care, park, playground, or other place where children regularly are present. In Miami-Dade County, Florida, some registered sex offenders are prohibited from living within 2,500 feet of a school, day care center, park, or playground. The county also recently added "child safety zones" to its ordinance, which prohibits sex offenders from loitering within the 300 feet of schools, day cares, parks, and school bus stops.

Currently, there more than 160 municipalities in Florida that impose greater residency restrictions on convicted sex offenders than required by state law. Simply traveling from city to city in Florida could require registrants to know up to 161 or more different rules. In addition, states like Florida require any registrant in the state for more than 48 hours to register in Florida where lifetime registration is required across all tiers and remains in effect even if the offender leaves the state or dies.

Florida also requires all registrants to visit the Florida Department of Highway Safety and Motor Vehicles (DHSMV) to obtain a valid Florida sex offender ID card and report to every sheriff in every jurisdiction where they are present for more than 48 hours thereby creating a monetary penalty and administrative burden above and beyond simple civic registration. Due to the fact that these SORNA rules allow jurisdictions to make their own rules more stringent than federal rules, places like Florida are creating burdens to interstate and intrastate travel by forcing registrants only temporarily lodging in a jurisdiction to register for life with the sheriff in every jurisdiction where they reside for more than 48 hours. The effect in places like Florida is to prevent access to Florida by requiring lifetime registration for every registrant from outside Florida who is present in the state for more than 48 hours and to restrict people who reside in Florida from leaving their home jurisdiction because they would have to learn over 160 different rules – one for each municipality in the state with its own requirements stricter than state law.

Therefore, the SORNA rules should mandate a uniform set of rules that states must adopt to avoid potential excessive burdens on the inalienable liberty to travel interstate and intrastate. The SORNA requirements as listed in the proposed rule violate the Commerce Clause, the Privileges and Immunities Clause of Article IV, the Privileges or Immunities Clause of the Fourteenth Amendment, and/or a substantive due process right to travel, especially since they are only being applied to only one class of persons, registrants, who are not granted a hearing before a judge to present the facts of their case. The U.S. Supreme Court in Crandall v. Nevada, 73 U.S. 35 (1868) declared that freedom of movement is a fundamental right. Article 13 of the Universal Declaration of Human Rights, of

which the United States is a signatory, states that everyone has the right to freedom of movement and residence within the borders of each State and everyone has the right to leave any country, including his own, and to return to his country. At the very least, the rules should include a prohibition against requiring registrants to register in a state where they are temporarily lodging (less than 30 days) in order to secure the liberties of interstate/intrastate travel from excessive burdens on federal rights and privileges. The burden of learning 160 or more municipalities' rules in order to travel intrastate, like Florida requires, would seem to be an excessive burden on a registrant's rights to travel and should be prohibited by the federal rule. The federal rule should also contain a provision that does not allow a jurisdiction to report to a place of temporary lodging that a registrant plans to be staying there.