

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH W. HOLT,

Defendant.

No. 3:07-cr-0630-JAJ

ORDER

This matter comes before the Court pursuant to Defendant's Motion to Dismiss dated March 13, 2008. [Clerk's No. 21]. Defendant moves this Court to dismiss the November 15, 2007, indictment charging him with one count of violating 18 U.S.C. § 2250. Defendant contends that 18 U.S.C. § 2250, in conjunction with registration requirements under the Sex Offender Registration and Notification Act ("SORNA"), violate his Fifth Amendment right to due process and exceed congressional authority under the Commerce Clause. For the reasons set out below, Defendant's motion is denied.

FACTUAL AND PROCEDURAL BACKGROUND¹

On December 7, 2006, Defendant was convicted in Glens Falls, New York, of one count of sexual abuse in the second degree. The victim of the offense was Defendant's 13-year-old daughter. Defendant was sentenced to six years of probation.

On January 18, 2007, Defendant registered as a sex offender with the State of New York Division of Criminal Justice Services (NYDCJS). Sometime between January 18, 2007, and October 1, 2007, Defendant moved from New York to Iowa, and established

¹ The facts contained in this section are based on a sworn affidavit given by Deputy United States Marshal Terry C. Bumann on October 30, 2007. The affidavit was submitted as a part of a criminal complaint against Defendant filed in the United States District Court for the Southern District of Iowa on October 30, 2007. [Clerk's No. 1]. A warrant for Defendant's arrest was issued based on the complaint.

residency in Iowa. Defendant resided first in Walcott, Iowa, and later in Park View, Iowa. Defendant did not notify NYDCJS of his move to Iowa. Defendant failed to register as a sex offender with authorities in Iowa.

On October 22, 2007, authorities were alerted to Defendant's presence in Iowa, and his status as a sex offender when his girlfriend lodged a harassment complaint against him with the Scott County Deputy Sheriff's Department. On October 23, 2007, Defendant was arrested in Scott County, Iowa, for failing to register as sex offender. On November 15, 2007, the government filed a single-count indictment against Defendant alleging that he violated 18 U.S.C. § 2250. On March 13, 2008, Defendant filed a motion to dismiss the indictment. On March 27, 2008, the Government filed a response in opposition to Defendant's motion to dismiss.

CONCLUSIONS OF LAW

SORNA is a part of the Adam Walsh Child Protection and Safety Act of 2006 ("the Act"), Pub.L. No. 109-248, codified at 42 U.S.C. §§ 16901-16991. Congress enacted the Act on July 27, 2006. SORNA establishes a national sex offender registry. Section 2250 of Title 18 is the enforcement provision for the SORNA. Section 2250 of Title 18 states:

(a) In general.–Whoever–

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

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

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

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

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

18 U.S.C. § 2250(a).

Defendant is required to register as a sex offender under SORNA. SORNA defines “sex offender” as a person who has been convicted of a sex offense. 42 U.S. § 16911(1). The term “sex offense” means “a criminal offense that has an element involving sexual act or contact with another[.]” 42 U.S.C. § 16911(5)(A)(i). In 2006, Defendant was convicted of sexual assault in the second degree in New York. Thus, the Defendant is subject to the registration requirements established by SORNA.

The Government alleges that Defendant violated 18 U.S.C. § 2250 by failing to keep his registration current as required by SORNA when he moved from New York to Iowa. After initial registration, a sex offender is required to appear, in person, in at least one relevant jurisdiction within three business days of a change in name, residence, employment, or student status. 42 U.S.C. § 16913(c). Defendant does not dispute the Government’s contention that he traveled in interstate commerce from New York to Iowa and failed to register pursuant to SORNA. See 18 U.S.C. § 2250(a)(2)(B), 18 U.S.C. § 2250(a)(3). Instead, Defendant contends that (1) the violation alleged in the indictment contravenes his Fifth Amendment due process right to notice; and (2) enactment of the SORNA is an impermissible exercise of congressional power under the Commerce Clause.

A. Fifth Amendment Due Process

A basic principle of Fifth Amendment due process is that “a criminal statute must give fair warning of the conduct that it makes a crime.” Rogers v. Tennessee, 532 U.S. 451, 457 (2001) (internal quotation omitted). Defendant claims that the Government’s

prosecution of him under SORNA violates due process because state and federal authorities failed to issue proper notice of SORNA's registration requirements. Defendant claims that no system was in place to notify him of the federal registration requirements under SORNA, and that he was, in fact, never informed of them.² Defendant was aware of state registration requirements, but contends that such notice is not sufficient to serve as notice of the federal registration requirements under SORNA. The Government argues that Defendant's knowledge of the state registration requirements constitutes sufficient notice that his change of residency from one state to another, without updating his registration as a sex offender, was a crime.

Since the passage of SORNA in 2006, defendants across the nation have brought challenges against the law on Fifth Amendment due process grounds. Consistent with other district courts faced with the same issue, this Court finds that Defendant's knowledge of state registration requirements constitutes sufficient notice that failure to register as sex offender was illegal. See, e.g., United States v. Akers, 2008 WL 914493, at *6-7 (N.D. Ind. April 3, 2008) (holding that application of SORNA to defendant did not violate Fifth Amendment due process because defendant's knowledge of state registration requirements constituted sufficient notice); United States v. May, 2007 WL 2790388, at *6 (S.D. Iowa Sept. 24, 2007) (same); United States v. Hinen, 487 F. Supp. 2d 747 at 754 (W.D. Va. 2007) (same); United States v. Manning, 2007 WL 624037, at *2 (W.D. Ark. February

² The notice mechanism for SORNA requirements is contained in 42 U.S.C. § 16917. Under that statute, an appropriate official must 1) inform and explain to a sex offender his registration requirements, 2) require a sex offender to read and sign a form acknowledging that the requirements have been explained and the sex offender understands them, and 3) ensure that the sex offender is registered. 42 U.S.C. § 16917. The sex offender must be informed of his obligations before the sex offender is released from custody, or immediately after sentencing if the sex offender is not in custody. 42 U.S.C. § 16917. Pursuant to 42 U.S.C. § 16924, the deadline for implementation of the notice mechanism is July 27, 2009. The Government does not contend that Defendant ever received notification, as specified in 42 U.S.C. § 16917, of the SORNA requirements.

23, 2007) (same). Defendant knew that he had to register with state authorities in New York as a sex offender, and he successfully completed the initial registration. [Bumann's Affidavit, ¶ 5]. Defendant signed a form acknowledging if he established residency in another state, he must register as a sex offender in that state within ten days of establishing residency. [Bumann's Affidavit, ¶ 5]. While Defendant may not have known of the federal registration requirements imposed by SORNA, he was aware that his change of residency from Iowa to New York, without updating his registration, was unlawful. Accordingly, this Court finds that the indictment of Defendant for a violation of SORNA is not a violation of due process under the Fifth Amendment.

B. Commerce Clause

Congressional power to regulate interstate commerce derives from the Commerce Clause contained in Article I, Sectional 8, Clause 3 of the United States Constitution. Defendant argues Congress exceeded its authority under the Commerce Clause by enacting SORNA because the federal registration requirements do not fit within any of three categories of permissible regulation recognized and discussed by the Supreme Court in United States v. Lopez, 514 U.S. 549 (1995) and in United States v. Morrison, 529 U.S. 598 (2000). Additionally, Defendant argues that no nexus exists between interstate commerce and the activity regulated by 18 U.S.C. § 2250. The Government argues that SORNA is a lawful exercise of congressional power pursuant to the Commerce Clause because the activity it regulates falls within both the second and third permissible categories of regulation identified by the Supreme Court in Lopez.³ The Government

³ The three categories that the Supreme Court identified in Lopez are (1) “the use of the channels of interstate commerce[;]” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities[;]” and (3) activities that substantially affect interstate commerce. Lopez, 514 U.S. 558-59.

argues that SORNA is lawful because Congress has a “rational basis” to conclude that the activity regulated by SORNA substantially affects interstate commerce. See Gonzales v. Raich, 545 U.S. 1 (2005). Lastly, the Government argues that 18 U.S.C. 2250 is distinguishable from the statutes examined by the Supreme Court in Lopez and Morrison because interstate travel is an element of the violation established under Section 2250.

Consistent with other district courts that have addressed challenges to SORNA based on the Commerce Clause, this Court finds that enactment of SORNA is a lawful exercise of congressional authority. A rational basis exists for concluding that the activity regulated by SORNA substantially affects interstate commerce. See Raich, 545 U.S. at 22. See, e.g., United States v. Madera, 474 F. Supp. 2d 1257, 1265 (M.D. Fla. 2007) (holding that SORNA does not violate the Commerce Clause because “Congress’s desire to track sex offenders as they move between states” to promote public safety satisfies the rational basis test established by the Supreme Court in Raich); Akers, 2008 WL 914493, at *3 (same); United States v. Hacker, 2008 WL 312689, at *2 (D. Neb. Feb. 1 2008) (same); United States v. Dixon, 2007 WL 4553720, at *5 (N.D. Ind. Dec. 18, 2007) (same); May, 2007 WL 2790388, at *7 (same). The requirement in Section 2250 that a sex offender must “travel[] in interstate or foreign commerce” provides a jurisdictional nexus between the activity regulated by SORNA and interstate commerce. See United States v. Templeton, 2007 WL 445481, at *4 (W.D. Okla. Feb. 7 2007); United States v. Gould, 526 F. Supp. 2d 538, 547 (D. Md. 2007) (same); United States v. Elliott, 2007 WL 4365599, at *3 (S.D. Fla. Dec. 13 2007) (same); United States v. Mason, 510 F. Supp. 2d 923, 932 (M.D. Fla. 2007) (same). Accordingly, this Court finds that the indictment of Defendant for a violation of SORNA is not unlawful because passage of SORNA did not violate the Commerce Clause.

Upon the foregoing,

IT IS ORDERED that Defendant's Motion to Dismiss Indictment (Clerk's No. 21) is denied.

DATED this 14^h day of April, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA