

App. 1

**NOT PRECEDENTIAL**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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No. 19-1774

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ANGEL LUIS THOMAS, SR.;  
NORMAN E. GREGORY; GLENN MORRIS

v.

Col. TYREE C. BLOCKER; Sgt. O. E. ROWLES;  
Capt. MAURICE A. TOMLINSON; Tpr. DAVID  
HOWANITZ; KEVIN KAUFFMAN; BRIAN HARRIS;  
NICOLE PITTMAN; JAMEY LUTHER; BRIAN  
URBAN; MICHELE JAMES; JAMES RIEVEL; KIM  
HAWN; PHILLIP CHAMBERLAIN; ADAM ROSS

Angel Luis Thomas, Sr.,  
Appellant

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Civil Action No. 4-18-cv-00812)  
District Judge: Hon. Matthew W. Brann

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Submitted Under Third Circuit L.A.R. 34.1(a)  
Tuesday, January 14, 2020

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App. 2

Before: HARDIMAN, PORTER, and PHIPPS,  
*Circuit Judges.*

(Filed: January 29, 2020)

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OPINION\*

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PORTER, *Circuit Judge.*

Angel Luis Thomas, Sr. is a registered sex offender. He was convicted of rape, involuntary deviate sexual intercourse, aggravated assault, reckless endangering, and unlawful restraint. Before being released from prison, he registered as a sex offender, which led to his name being published on the Pennsylvania sex-offender registry's publicly accessible website. Thomas believes his constitutional rights were violated when he was required to register as a sex offender. He filed a motion for a preliminary injunction seeking the removal of his name from the sex-offender registry. The District Court denied Thomas's motion. Because Thomas was required by federal law to register as a sex offender, he is unlikely to succeed on the merits of his claim. We will affirm.

**I**

In 1991, Thomas was convicted of several sex-related crimes. He was imprisoned from 1991 until his

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

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2018 release. One month before his release, Thomas was told that he must register as a sex offender on Pennsylvania's registry, which he did. Thomas was also told that upon his release, he was required to register again. When he was released in January 2018, he registered again; a new photo of Thomas and his home address were added to the registry.

Eventually, Thomas wished to be removed from the sex-offender registry, so he sought injunctive relief in the District Court. He filed a motion for a preliminary injunction, asking the District Court to order the Commissioner of the Pennsylvania State Police, Colonel Tyree C. Blocker, to remove Thomas's name from the sex-offender registry. The Magistrate Judge issued a Report and Recommendation, recommending that the District Court deny Thomas's motion. Thomas objected to the Magistrate Judge's Report and Recommendation. The District Court rejected Thomas's arguments, adopted the Report and Recommendation, and denied Thomas's motion. Thomas timely appealed.

## II<sup>1</sup>

Thomas challenges the denial of his motion for a preliminary injunction. "A preliminary injunction is an extraordinary remedy granted in limited

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<sup>1</sup> The District Court had jurisdiction under 28 U.S.C. §§ 1331, 1343. We have jurisdiction under 28 U.S.C. § 1292(a)(1). When reviewing the denial of a preliminary injunction, we review legal conclusions de novo and the decision to deny the injunction for abuse of discretion. *Del. Strong Families v. Att'y Gen. of Del.*, 793 F.3d 304, 308 (3d Cir. 2015).

circumstances.” *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 131 (3d Cir. 2017) (citation omitted). “Those seeking one must establish that (A) they are likely to succeed on the merits of their claims, (B) they are likely to suffer irreparable harm without relief, (C) the balance of harms favors them, and (D) relief is in the public interest.” *Id.* (citation omitted). “[A] failure to show a likelihood of success . . . must necessarily result in the denial of a preliminary injunction.” *In re Arthur Treacher’s Franchisee Litig.*, 689 F.2d 1137, 1143 (3d Cir. 1982).

The District Court denied Thomas’s motion for a preliminary injunction. Because federal SORNA requires Thomas to register as a sex offender, the District Court agreed with the Magistrate Judge’s recommendation that Thomas failed to show a likelihood of success on the merits. Thomas disagrees with that conclusion and raises three primary arguments for why his claim will likely succeed on the merits.<sup>2</sup> First, he asserts that federal SORNA’s registration requirement applies to states and not individuals. Second, he claims that he is exempted from federal SORNA’s registration requirement because he is not planning to travel outside Pennsylvania. And third, he argues that, because he is purportedly exempted from Pennsylvania’s sex-offender registration regime, he cannot be

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<sup>2</sup> Thomas suggests that the District Court failed to review Thomas’s objections to the Report and Recommendation de novo. He is incorrect. The District Court considered Thomas’s objections and briefly explained its rationale for rejecting them. And the District Court said that it “reviewed Mr. Thomas’s objections de novo[.]” JA at 13.

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compelled by state officials to comply with federal SORNA. Because all of Thomas’s arguments are unavailing, we will affirm.

### A

First, Thomas claims that federal SORNA applies to states and not individuals. He is wrong. Federal SORNA states that “[a] sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.” 34 U.S.C. § 20913(a). “[T]he directive . . . applies to sex offenders—not to states.” *United States v. Shenandoah*, 595 F.3d 151, 157 (3d Cir. 2010), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012). Federal SORNA imposes “an independent and federally enforceable duty . . . on sex offenders to register.” *Id.* Thus, Thomas’s first argument is foreclosed by our own precedent.

### B

Second, Thomas argues that federal SORNA should not apply to him because he has not traveled outside Pennsylvania and has no plans to do so. We are unpersuaded. In *United States v. Pendleton*, we considered whether the registration requirement in § 20913(a)—which, at the time, was codified at 42 U.S.C. § 16913(a)—was “beyond the bounds of the Commerce Clause because it requires registration from all sex offenders, not just those who travel in

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interstate commerce.” 636 F.3d 78, 86 (3d Cir. 2011). We held that federal SORNA’s registration requirement was constitutional “because it is necessary and proper for carrying into [e]xecution Congress’s power under the Commerce Clause[.]” *Id.* at 88 (quotation marks omitted) (quoting U.S. Const. art. I, § 8, cl. 18 and *M’Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 424 (1819)). In reaching our conclusion, we relied on Justice Scalia’s concurrence in *Gonzales v. Raich*, in which he noted that “[when] necessary to make a regulation of interstate commerce effective, Congress may regulate even those intrastate activities that do not themselves substantially affect interstate commerce.” 545 U.S. 1, 35 (2005) (Scalia, J., concurring).

In short, we held in *Pendleton* that under the Commerce Clause and the Necessary and Proper Clause, federal SORNA’s registration requirement applies to all sex offenders—even those who do not travel in interstate commerce. *Pendleton*, 636 F.3d at 87–88. *Pendleton* therefore governs this case, and Thomas’s argument fails.

To be sure, § 20913(a)—the registration requirement provision—contains no enforcement provision. Instead, federal SORNA’s enforcement provision is codified at 18 U.S.C. § 2250. Relevant here, this criminal statute has, among others, three elements: criminal penalties may be imposed on whoever (a) is required to register under federal SORNA; (b) travels in interstate commerce; and (c) knowingly fails to register or update a registration as federal SORNA requires. *See id.* According to Thomas, the registration

requirement in § 20913(a) may not be enforced against him because he has not violated § 2250—the criminal enforcement provision—by traveling in interstate commerce or failing to register or update his registration under federal SORNA.

We rejected this argument in *Pendleton*. There, we held that a defendant must register under the registration requirement in federal SORNA—i.e., § 20913(a). 636 F.3d at 87–88. We said that “§ 2250 and [§ 20913(a)] are clearly complementary: without § 2250, [§ 20913(a)] lacks federal criminal enforcement, and without [§ 20913(a)], § 2250 has no substance.” *Id.* at 87 (quotation marks and citation omitted). “[R]equiring sex offenders to register . . . before . . . they travel in interstate commerce—which . . . has a minimal practical [influence] on *intrastate* sex offenders . . . []—is ‘reasonably adapted’ to the goal of ensuring that sex offenders register and update previous registrations when moving among jurisdictions.” *Id.* at 88 (emphasis added) (quoting *United States v. Whaley*, 577 F.3d 254, 261 (5th Cir. 2009)). In sum, just because Thomas has not violated § 2250 does not mean that he need not register under § 20913(a).

## C

Lastly, Thomas argues that, because he claims to be exempted from registering as a sex offender under Pennsylvania’s registration regime, state officials may not compel him to register under federal SORNA. We are unconvinced. In *Pendleton*, we concluded that a sex

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offender’s “federal duty to register under [federal] SORNA was not dependent upon his duty to register under [state] law.” 636 F.3d at 86; *cf. Shenandoah*, 595 F.3d at 157 (stating that a state’s “failure to implement a federal law . . . [would] not give sex offenders a reason to disregard their federal obligation to update their state registrations.”). Here, Thomas’s federal duty to register under § 20913(a) is independent of Pennsylvania law.<sup>3</sup> Accordingly, we reject Thomas’s final argument.

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In sum, we conclude that Thomas has failed to show a likelihood that his claim will succeed on the merits. The District Court correctly denied Thomas’s motion for a preliminary injunction, so we will affirm.

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<sup>3</sup> Thomas suggests that federal SORNA’s registration requirement violates the anticommandeering principles of the Tenth Amendment if the registration requirement applies to an individual like Thomas, who is putatively excluded from registering as a sex offender under state law. This argument rings hollow. Congress enacted the parts of federal SORNA that are directed to the states using its spending power. *See United States v. Kebodeaux*, 570 U.S. 387, 391 (2013) (noting that “[federal] SORNA . . . used the *federal spending power* to encourage [s]tates to adopt sex offender registration laws.” (emphasis added) (citations omitted)).

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ANGEL LUIS THOMAS, Sr., NORMAN E. GREGORY, and GLENN MORRIS, Plaintiffs, v. COL. TYREE C. BLOCKER, <i>et al.</i> , Defendants.	No. 4:18-CV-00812 (Judge Brann) (Magistrate Judge Schwab)
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**ORDER**

**MARCH 20, 2019**

In 1991, Angel Louis Thomas was convicted of rape and other crimes in a Pennsylvania state trial court.<sup>1</sup> In 1992, he began serving a lengthy prison term, from which he was released on January 11, 2018.<sup>2</sup> Shortly before that release, Defendants required him to register as a sex offender.<sup>3</sup>

This lawsuit, at its core, argues that Mr. Thomas's compelled registration was, and remains, unlawful. To that end, he moved for preliminary injunctive relief, seeking to have his name immediately removed from Pennsylvania's sex offender registry.<sup>4</sup> Chief Magistrate

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<sup>1</sup> Report and Recommendation (ECF No. 44) 1.

<sup>2</sup> *Id.* at 8.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> ECF No. 14.

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Judge Susan E. Schwab issued a Report and Recommendation recommending that this Court deny that requested relief.<sup>5</sup>

Mr. Thomas's objections to Chief Magistrate Judge Schwab's Report and Recommendation dispute her conclusion that federal law imposes a registration duty on Mr. Thomas that is independent of any duty imposed by state law.<sup>6</sup> Specifically, Mr. Thomas argues (1) that the federal law duty is imposed on states, not on individuals;<sup>7</sup> (2) that the federal law duty is triggered only when Mr. Thomas crosses a state border;<sup>8</sup> and (3) that the federal law duty is inapplicable when a state's registration scheme violates the state's constitution.<sup>9</sup>

As to (1), this Court is bound by the Third Circuit's determination that, under federal law, "an independent and federally enforceable duty is placed on sex offenders to register."<sup>10</sup> As to (2), while criminal penalties attach only when an unregistered sex offender crosses

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<sup>5</sup> Report and Recommendation at 22.

<sup>6</sup> Plaintiff's Objections (ECF No. 46) 1. Mr. Thomas also objects to Magistrate Judge Schwab's refusal to strike certain documents from the record. Because neither Magistrate Judge Schwab nor this Court relied on those documents when analyzing the legal issues, Magistrate Judge Schwab's decision to not strike them will not be overturned.

<sup>7</sup> Report and Recommendation at 4-13.

<sup>8</sup> *Id.* at 13-17.

<sup>9</sup> *Id.* at 17-22.

<sup>10</sup> *United States v. Pendleton*, 636 F.3d 78, 85 (3d Cir. 2011); *see also United States v. Shenandoah*, 595 F.3d 151, 157 (3d Cir. 2010) ("the directive found in [34 U.S.C. § 20913] applies to sex offenders—not states.").

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states lines,<sup>11</sup> there is no corresponding interstate travel requirement in the statutory provision imposing that registration requirement in the first place.<sup>12</sup> And as to (3), while the Pennsylvania Supreme Court held that Pennsylvania’s previous “Megan’s Law” violated the state constitution,<sup>13</sup> it has not (yet) made such a ruling on Pennsylvania’s current registration law or on the federal law.

Having reviewed Mr. Thomas’s objections *de novo*,  
**IT IS HEREBY ORDERED** that:

1. Chief Magistrate Judge Schwab’s Report and Recommendation, ECF No. 44, is **ADOPTED**.
2. The Motion for a Preliminary Injunction, ECF No. 14, filed by Angel Luis Thomas, Sr., is **DENIED**.<sup>14</sup>

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<sup>11</sup> 18 U.S.C. § 2250(a).

<sup>12</sup> 34 U.S.C. § 20913(a) (“A sex offender *shall register*, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.”). In fact, federal law requires states to impose their own separate criminal penalties for failing to register, with no mention of interstate travel requirements. *Id.* § 20913(e).

<sup>13</sup> *Commonwealth v. Muniz*, 640 Pa. 699 (2017).

<sup>14</sup> The parties should note that the denial of the requested preliminary injunctive relief has no binding effect on this Court when it decides the ultimate legal issues in this case—*i.e.*, when it decides whether Mr. Thomas’s initial and continued registration on the Pennsylvania sex offender registry is lawful. *See University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (noting that “conclusions of law made by a court granting a preliminary injunction are not binding at trial,” and that “it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits”).

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- 3 Pursuant to this Court's February 14, 2019 Order, ECF No. 63, Defendants' Answer to Plaintiffs' Second Amended Complaint is due no later than **April 1, 2019**.
4. No later than April 15, 2019, and in less than 1,000 words, Plaintiffs **SHALL SHOW CAUSE** why this matter should not be stayed pending the Pennsylvania Supreme Court's decision in *Commonwealth v. LaCombe*, 35 MAP 2018.

BY THE COURT:

s/ Matthew W. Brann  
Matthew W. Brann  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANGEL LUIS THOMAS, SR.,	:	CIVIL NO:
Plaintiff	:	4:18-CV-00812
v.	:	(Judge Brann)
COL. TYREE C. BLOCKER, JR., <i>et al.</i> ,	:	(Chief Magistrate
Defendant	:	Judge Schwab)
	:	

**REPORT AND RECOMMENDATION**

(Filed Nov. 26, 2018)

**I. Introduction.**

Plaintiff Angel Luis Thomas, Sr. claims that the defendants violated his federal Constitutional rights as well as state law by requiring him to register as a sex offender. Currently pending is Thomas's motion for a preliminary injunction seeking an order requiring the Commissioner of the Pennsylvania State Police to remove his name from the sex-offender registry. Because we conclude that Thomas does not have a reasonable likelihood of succeeding on the merits of his claim that he should not be part of the sex-offender registry, we recommend that the Court deny his motion for a preliminary injunction.

## **II. Background and Procedural History.**

On April 15, 2018, Thomas began this action by filing a complaint naming as defendants: (1) Col. Tyree C. Blocker, Jr., the Commissioner of the Pennsylvania State Police (PSP); (2) Sergeant O.E. Rowles, the Commander of the Megan's Law Section of the PSP Division of Operational Records; (3) Captain Maurice A. Tomlinson, a commander with the PSP; (4) Trooper Davis Howanitz, a trooper with the PSP; (5) Kevin Kauffman, the Superintendent of the State Correctional Institute at Huntingdon (SCI-Huntingdon); (6) CO Harris, a corrections officer who works in the Security Office of SCI-Huntingdon; (7) Ms. Hawn, a corrections counselor at SCI-Huntingdon; and (8) Nicole Pittman, a records specialist at SCI-Huntingdon. On November 1, 2018, Thomas along with two other plaintiffs filed an amended complaint. Although the amended complaint names other defendants in addition to the eight listed above, those additional defendants are named in connection with the claims of the other two plaintiffs; the additional defendants are not named in connection with Thomas's claims.

Thomas alleges that the defendants required him to register as a sex offender and refused to remove him from the sex-offender registry even though they knew that no statute required his registration.<sup>1</sup> He alleges that the corrections defendants did so as retaliation for

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<sup>1</sup> As we are addressing Thomas's motion for a preliminary injunction, we briefly summarize only the allegations that relate to Thomas. In connection with the current motion, the allegations relating to the other plaintiffs are not relevant.

his prior civil lawsuits against prison officials. He alleges that the PSP defendants did so because they disliked the Pennsylvania Supreme Court's decision in *Commonwealth v. Muniz*, 164 A.3d 1189, 706 [sic] (Pa. 2017) (holding that the retroactive application of Pennsylvania's Sex Offender Registration and Notification Act (Pennsylvania SORNA)<sup>2</sup> to a petitioner convicted of a sex offense prior to the effective date of Pennsylvania SORNA violated the Ex Post Facto Clauses of the Pennsylvania and United States Constitutions), *cert. denied*, 138 S. Ct. 925 (2018), as well as the limitations set forth in a later statute and they sought to covertly continue to register men like Thomas, who they deemed to be dangerous and predestined to re-offend.

Thomas alleges that he has been wrongfully listed on Pennsylvania's sex-offenders registry since December 27, 2017, with the exception of a brief time in late January and early February of 2018, when, following the United States Supreme Court's denial of certiorari in *Muniz*, he was temporarily removed from the registry. According to Thomas, after Pennsylvania enacted a new sex-offender registration statute, known as Act 10, on February 21, 2018, defendants Blocker and Rowles restored Thomas's information to Pennsylvania's online sex-offender website. He alleges that they did so even though they knew that Act 10 did not apply to him because Act 10 applies only to those who committed offenses on or after April 22, 1996, and to those

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<sup>2</sup> We refer to the Pennsylvania statute as "Pennsylvania SORNA" so as to distinguish it from the federal Sex Offender Registration and Notification Act, which we refer to as "SORNA."

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who had been required to register under a prior statute, whereas he committed his offense in 1991 and he had never been required to register under a prior statute because none of the prior registration statutes required registration during incarceration and he had been continuously incarcerated from 1991 until his release in January of 2018. Although Thomas's counsel informed the PSP that ACT 10<sup>3</sup> did not apply to Thomas, she was informed that Thomas's name and information would remain on the sex-offender registry unless a court ordered the PSP to remove them. Thomas's counsel was also informed that Thomas would be arrested and charged if he did not present himself to the PSP by May 22, 2018, for another round of registration. Thomas alleges that given those threats, he had no choice but to continue to cooperate with the improper registration regime. He alleges that he has been harmed by being listed on the registry.

Thomas presents five counts against the defendants. Count I is a due process claim. Count II is a retaliation claim against the corrections defendants. Count III is an *ex post facto* claim. Count IV is a state-law defamation claim. And Count V is a state-law claim of invasion of privacy. Thomas seeks compensatory and punitive damages as well as injunctive relief

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<sup>3</sup> Although the Pennsylvania General Assembly again later amended the sex-offender registration act effective June 12, 2018, *see* 2018 Pa. Legis. Serv. Act 2018-29 (H.B. 1952) (Act 29), the parties continue to refer to the statute as Act 10. We will do the same, but we cite to the current version of the statute.

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enjoining the PSP from listing him in the sex-offender registry.

Two days after filing the complaint, Thomas filed a motion for a temporary restraining order (TRO), which Judge Brann denied without prejudice to Thomas filing a motion for a preliminary injunction after the defendants had been served. After the defendants were served, Thomas filed a “Second Application for Temporary Restraining Order,” in which he seeks a TRO against defendant Blocker and the PSP instructing them to immediately remove him from the sex-offender registry and a hearing as to a preliminary injunction. *Doc. 14.*

Thereafter, the defendants filed answers to the complaint, and with leave of court, Thomas filed a reply. Thomas also filed a notice that he was challenging the constitutionality of certain provisions of Pennsylvania’s Act 10 and of certain provisions of SORNA. The Clerk of Court then certified the constitutional challenges to the Attorney General of Pennsylvania and the Attorney General of the United States and gave them until October 1, 2018, to intervene in this action. Neither has intervened.

Although Thomas filed his second motion for a TRO on June 6, 2018, he did not file a brief in support of that motion until October 5, 2018, after being ordered by the Court to do so. Thomas concedes that the relief he is now seeking is a preliminary injunction, rather than a TRO. On October 19, 2018, defendant

Blocker<sup>4</sup> filed a brief in opposition to Thomas’s motion, and on October 21, 2018, Thomas filed a reply brief.

### **III. Preliminary Injunction Standards.**

A motion for preliminary injunctive relief is governed by Rule 65 of the Federal Rules of Civil Procedure and is judged against exacting legal standards. To obtain a preliminary injunction, a party must show: (1) a reasonable probability of success on the merits; and (2) that he or she will suffer irreparable harm if the injunction is denied. *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017). These “factors are prerequisites for a movant to prevail.” *Holland v. Rosen*, 895 F.3d 272, 286 (3d Cir. 2018). “If these gateway factors are met, a court then considers” “(3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.” *Reilly*, 858 F.3d at 176, 179. And the Court must determine “in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief.” *Id.* at 179.

Preliminary injunctive relief is not granted as a matter of right. *Kershner v. Mazurkiewicz*, 670 F.2d 440, 443 (3d Cir. 1982). Rather, the decision to grant or deny such relief is committed to the discretion of the

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<sup>4</sup> Although all the defendants named in the original complaint filed the brief in opposition, because Thomas’s motion and brief make clear that he is seeking preliminary injunctive relief only as to defendant Blocker, from here on out we refer to the brief and the arguments in the brief as if they were made only by defendant Blocker.

district court. *United States v. Price*, 688 F.2d 204, 210 (3d Cir. 1982). “A preliminary injunction ‘is an extraordinary remedy . . . which should be granted only in limited circumstances.’” *Holland*, 895 F.3d at 285 (quoting *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994)). A “preliminary injunction must be the only way of protecting the plaintiff from harm.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). “It has been well stated that upon an application for a preliminary injunction to doubt is to deny.” *Madison Square Garden Corp. v. Braddock*, 90 F.2d 924, 927 (3d Cir. 1937).

#### **IV. Undisputed Facts.<sup>5</sup>**

The following facts are not in dispute. In 1991, Thomas was convicted in the Court of Common Pleas of York County, Pennsylvania of rape, involuntary deviate sexual intercourse, aggravated assault, reckless endangering, and unlawful restraint. *See Docket in Commonwealth v. Thomas*, CP-67-CR-0000447-1991 (C.C.P. York Cty).<sup>6</sup> His conviction was based on an

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<sup>5</sup> Because the facts set forth here are undisputed and are sufficient to decide the motion for a preliminary injunction, we deny Thomas’s request for a hearing.

<sup>6</sup> The court may take judicial notice of adjudicative facts that are not subject to reasonable dispute because they are “generally known within the trial court’s territorial jurisdiction” or because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed.R.Evid. 201(b)(2). The docket in Thomas’s criminal case is a public record of which we can take judicial notice. *See Wilson v. McVey*, 579

offense that occurred on January 4, 1991. *Id.* In 1992, he was sentenced to an aggregate term of imprisonment of 12½ to 27 years. *Id.* Thomas was in prison continuously from 1991 until his release on January 11, 2018. *Doc. 1* (Complaint) at ¶ 3 and *Doc. 16* (Answer of PSP defendants) at ¶ 3.<sup>7</sup>

At the time Thomas was charged, tried, and sentenced, there was no provision for the registration of sex offenders in Pennsylvania. *Doc. 1* at ¶ 16 and *Doc. 16* at ¶ 16. In 1995, Pennsylvania's General Assembly enacted Megan's Law (Megan's Law I). *Muniz*, 164 A.3d at 1196. After the Pennsylvania Supreme Court struck down certain provisions of Megan's Law I, the General Assembly enacted Megan's Law II in May of 2000. *Id.* "The General Assembly made further amendments to Megan's Law II with the passage of Act 152 of 2004, commonly referred to as Megan's Law III, which was signed into law on November 24, 2004." *Id.* at 1197. The Pennsylvania Supreme Court struck down Megan's Law III because it violated the "single subject" rule of the Pennsylvania Constitution.

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F. Supp. 2d 685, 688 (M.D. Pa. 2008) (taking judicial notice of court docket).

<sup>7</sup> Even though an amended complaint was recently filed, we cite here to facts set forth in Thomas's original complaint. The facts to which we cite are materially the same as set forth in the complaint and in the amended complaint. The amended complaint was only very recently filed, and the PSP defendants have not yet answered the amended complaint. Thus, in order to avoid delaying a decision on the motion for a preliminary injunction, we rely on the facts sets [sic] forth in the original complaint as admitted by the defendants in their answers to the original complaint.

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*Commonwealth. v. Neiman*, 84 A.3d 603, 605 (Pa. 2013). The General Assembly then enacted Pennsylvania SORNA, which became effective on December 20, 2012. *Muniz*, 164 A.3d at 1193 n.3, 1198.

On July 19, 2017, the Pennsylvania Supreme Court issued its decision in *Muniz*, holding that the retroactive application of Pennsylvania SORNA to a petitioner convicted of a sex offense prior to the effective date of Pennsylvania SORNA violated the Ex Post Facto Clauses of the Pennsylvania and United States Constitutions. *Muniz*, 164 A.3d at 1193. Thereafter, the Commonwealth filed a petition for a writ of certiorari, which the United States Supreme Court denied on January 22, 2018. *Pennsylvania v. Muniz*, 138 S. Ct. 925 (2018).

Thomas was scheduled to be release [sic] from prison in January of 2018. *Doc. 1* at ¶ 21 and *Doc. 16* at ¶ 21. After certain of the corrections defendants told Thomas he was required to register as a sex offender, on December 27, 2017, defendant Harris escorted Thomas to the prison records office and compelled him to undergo registration procedures. *Doc. 1* at ¶¶ 22–23 and *Doc. 15* (Answer of Corrections defendants) at ¶¶ 22–23. Certain of the corrections defendants fingerprinted and photographed Thomas and then entered his name, home address, photograph, and criminal record into the online sex-offender registry. *Doc. 1* at ¶ 24 and *Doc. 15* at ¶ 24. The Corrections defendants told Thomas that upon his release he was required to report to the PSP to register again. *Doc. 1* at ¶ 28 and *Doc. 15* at ¶ 28.

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Thomas was released from SCI-Huntingdon on January 11, 2018. *Doc. 1* at ¶ 29 and *Doc. 16* at ¶ 29. On January 13, 2018, he went to the PSP station in Lancaster where he was again photographed, and his new photo and home address were entered into the registry. *Doc. 1* at ¶¶ 29–30 and *Doc. 16* at ¶ 29–30.

After the Supreme Court denied the petition for writ of certiorari in *Muniz*, Thomas's name was temporarily removed from the sex-offender registry. *Doc. 1* at ¶ 42 and *Doc. 16* at ¶ 42. On February 21, 2018, the Pennsylvania legislature enacted Act 10, which became effective immediately. *Doc. 1* at ¶ 43 and *Doc. 16* at ¶ 43. At some point after February 21, 2018, Thomas's name, home address, and photograph were again displayed on the sex-offender website. *Doc. 1* at ¶ 47 and *Doc. 16* at ¶ 47.

In April of 2018, Thomas's counsel contacted the PSP about Thomas's status. *Doc. 1* at ¶ 48 and *Doc. 16* at ¶ 48. Thomas's counsel was told that the PSP would not remove Thomas's name and photograph from the registry unless ordered by a court to do so. *Doc. 1* at ¶ 49 and *Doc. 16* at ¶ 49. Thomas's counsel was also informed that Thomas would be arrested and charged if he did not present himself to the PSP by May 22, 2018, for another round of registration. *Doc. 1* at ¶ 50 and *Doc. 16* at ¶ 50.

Because of Thomas's inclusion on the sex-offender registry, Thomas's name, photograph, home address, conviction, and other sensitive information is exposed to anyone with Internet access, including but not

limited to potential employers, landlords, and friends. *Doc. 1* at ¶ 64 and *Doc. 16* at ¶ 64.

#### **V. Discussion.**

Judged against the exacting standards applicable to motions for a preliminary injunction, Thomas's motion for a preliminary injunction fails. Thomas cannot meet the first element for such injunctive relief, which requires the movant to show that he "can win on the merits (which requires a showing significantly better than negligible but not necessarily more likely than not)." *Reilly*, 858 F.3d at 179. Thomas cannot satisfy that element since his claims are premised on the conclusion that he is not required to register or maintain his registration as a sex offender, but we conclude that he is so required.

Thomas contends that at the time of his release from prison, he was not required to register as a sex offender because the Pennsylvania Supreme Court in *Muniz* had declared Pennsylvania SORNA unconstitutional as retroactively applied to offenders, like him, who committed a sexual offense before the Pennsylvania SORNA became effective. He also contends that even after Pennsylvania enacted Act 10, he was not required to register or update his registration because Act 10 by its terms does not apply to him.

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Act 10<sup>8</sup> requires “[a]n individual who committed a sexually violent offense within this Commonwealth and whose period of registration with the Pennsylvania State Police, as specified in section 9799.55 (relating to registration), as of February 21, 2018, has not expired” to register with the Pennsylvania State Police. 42 Pa.C.S.A. § 9799.54(a)(1). Thomas is required to register under Act 10 only if he committed a “sexually violent offense” as defined in Act 10.

Act 10 contains a two-prong definition of “sexually violent offense.” The first prong of that definition provides that a “sexually violent offense” is “a criminal offense specified in section 9799.55 (relating to registration) committed on or after April 22, 1996, but before December 20, 2012, for which the individual was convicted.” Because Thomas committed his offense in 1991, his offense does not meet the first prong of Act 10’s definition of a “sexually violent offense.”

Thus, Thomas is required to register under Act 10 only if his offense meets the second prong of the definition of “sexually violent offense.” That prong provides that a “sexually violent offense” is “a criminal offense for which an individual was required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth on or

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<sup>8</sup> Act 10 was amended effective June 12, 2018. *See* 2018 Pa. Legis. Serv. Act 2018-29 (H.B. 1952) (Act 29). The parties continue to refer to Pennsylvania’s current registration statute as Act 10. Although for ease of reference in tracking the parties’ arguments, we will do the same, our citations are to the current version of the Act as amended by Act 29.

after April 22, 1996, but before December 20, 2012, whose period of registration has not expired.” Whether Thomas’s offense meets this definition depends on whether Thomas was required to register with the PSP under Pennsylvania’s Megan’s Laws I through III on or after April 22, 1996, but before December 20, 2012. Thomas contends that he was not because those laws did not require him to register until he was released from incarceration, and he was not released from incarceration until January of 2018.<sup>9</sup> Blocker admits in his brief that “[a]lthough [Thomas] was subject to all prior versions of the registration statutes (because he would have had to have registered under them upon release from incarceration), the statutes did not require registration until he was released.” *Doc.* 35 at 4 (footnote omitted). Yet, without explanation, Blocker suggests that Act 10 applies to Thomas.

But we need not decide whether Act 10 applies to Thomas because regardless of whether Act 10 applies to Thomas, Thomas was required to register as a sex offender under SORNA. As we discuss below, SORNA contains a registration requirement that does not

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<sup>9</sup> Although Thomas’s construction of the phrase “required to register” may be a plausible one, it is not the only plausible one. *Cf. United States v. Gundy*, 804 F.3d 140, 145–47 (2d Cir. 2015) (deciding that there is a difference between when the requirement to register under SORNA attaches and the deadline for initial registration under SORNA and concluding that “a sex offender is ‘required to register’ [under SORNA] once he or she is ‘subject to’ SORNA’s registration requirements” even though that may be well before the deadline for initial registration) *cert. granted in part on other issue*, 138 S. Ct. 1260, 1261 (2018).

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depend upon state law. Thus, even if Thomas was not required to register under Act 10, he was required to register under SORNA. And since Thomas had a duty to register under SORNA and to maintain his registration under SORNA, he cannot show that he is entitled to a preliminary injunction.

In 2006, “Congress enacted SORNA as Title I of the Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109–248, §§ 101–155, 120 Stat. 587, 590–611 (2006).” *United States v. Cooper*, 750 F.3d 263, 264 (3d Cir. 2014).<sup>10</sup> Aware that before SORNA, “registration law consisted of a patchwork of federal and 50 individual state registration systems,” Congress sought “to make those systems more uniform and effective.” *Reynolds v. United States*, 565 U.S. 432, 435 (2012). SORNA “does so by repealing several earlier federal laws that also (but less effectively) sought uniformity; by setting forth comprehensive registration-system standards; by making federal funding contingent on States’ bringing their systems into compliance with those standards; by requiring both state and federal sex offenders to register with relevant

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<sup>10</sup> On September 1, 2017, without any change in statutory language, SORNA was transferred from 42 U.S.C. § 16901 *et seq.* to 34 U.S.C. § 20901 *et seq.* *United States v. Sedlak*, No. 1:09-CR-0079-01, 2018 WL 3056188, at \*1 n.2 (M.D. Pa. June 20, 2018). Although defendant Blocker briefly mentions the Adam Walsh Child Protection and Safety Act of 2006 in connection with a review of a history of Pennsylvania’s registration statutes, he does not argue that SORNA required Thomas to register and keep his registration current. We cannot, however, overlook SORNA in deciding whether Thomas is entitled to a preliminary injunction.

jurisdictions (and to keep registration information current); and by creating federal criminal sanctions applicable to those who violate the Act’s registration requirements.” *Id.*

SORNA sets forth requirements for states. “Among its many provisions, SORNA instructs States to maintain sex-offender registries that compile an array of information about sex offenders, § 16914; to make this information publicly available online, § 16918; to share the information with other jurisdictions and with the Attorney General for inclusion in a comprehensive national sex-offender registry, §§ 16919–16921; and to ‘provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter,’ § 16913(e).” *Carr v. United States*, 560 U.S. 438, 455–56 (2010).

SORNA also contains separate requirements applicable to sex offenders. SORNA requires a “sex offender” to “register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.” 34 U.S.C. § 20913 (formerly codified at 42 U.S.C. § 16913).<sup>11</sup> SORNA “defines ‘sex offender’

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<sup>11</sup> SORNA provides when a sex offender shall initially register—either before completing his sentence of imprisonment or if not sentenced to a term of imprisonment, within three days of sentencing—and how a sex offender shall keep his registration current—by appearing in person in a least one jurisdiction where he is required to register within three days after “each change of name, residence, employment, or student status” and informing that jurisdiction of such change. 34 U.S.C. §§ 20913(b), 20913(c)

broadly to include any ‘individual who was convicted of a sex offense.’” *Reynolds*, 565 U.S. at 442 (quoting 42 U.S.C. § 16911(1) (now codified at 34 U.S.C. § 20911)). And with limited exceptions not applicable here, it broadly defines “sex offense” to include “a criminal offense that has an element involving a sexual act or sexual contact with another.” 34 U.S.C. § 20911(5)(A)(i) (formerly codified 42 U.S.C. § 16911(5)(A)(i)).<sup>12</sup> “There is no doubt here that Thomas was convicted of sexual offenses.” *Doc. 37* (Thomas’s Reply Brief) at 11.

Although SORNA “defines ‘sex offender’ to include individuals who were convicted of sex offenses prior to

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(formerly codified at 42 U.S.C. §§ 16913(b), 16913(c)). The registration requirement of SORNA—§ 16913 (now codified at 34 U.S.C. § 20913)—“does not have an enforcement provision, but under 18 U.S.C. § 2250(a), . . . a person commits a crime when he or she ‘(1) is required to register under the Sex Offender Registration and Notification Act; (2) . . . (B) travels in interstate or foreign commerce . . . ; and (3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act.’” *United States v. Pendleton*, 636 F.3d 78, 83 (3d Cir. 2011). “In other words, ‘[o]nce a person becomes subject to SORNA’s registration requirements . . . that person can be convicted under § 2250 if he thereafter travels and then fails to register.’” *Id.* (quoting *Carr*, 560 U.S. at 447). Here, we are not dealing with the criminal provision of SORNA. Rather, we are dealing with only the registration requirement.

<sup>12</sup> SORNA divides offenders into Tier I, Tier II, or Tier III sex offenders, and it requires offenders to periodically “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” every year for Tier I sex offenders, every six months for Tier II sex offenders, and every three months for Tier III sex offenders. 34 U.S.C. §§ 20911, 20918 (formerly codified at 42 U.S.C. §§ 16911, 16916).

the enactment of SORNA,” it “does not set forth the registration procedures for pre-SORNA sex offenders.” *Cooper*, 750 F.3d at 265. Rather, “in 42 U.S.C. § 16913(d), Congress delegated to the United States Attorney General the authority to determine whether SORNA’s registration requirements would apply retroactively to pre-SORNA sex offenders.” *Id.*

The Supreme Court held that SORNA’s “registration requirements do not apply to pre-Act offenders until the Attorney General so specifies.” *Reynolds*, 565 U.S. at 445. In 2007, the Attorney General issued an “Interim Rule that made SORNA’s registration requirements retroactive for all pre-SORNA offenders.” *United States v. Reynolds*, 710 F.3d 498, 505 (3d Cir. 2013). The Third Circuit held that the Attorney General promulgated that Interim Rule in violation of the Administrative Procedure Act’s notice-and-comment requirements. *Id.* at 514. But after the Interim Rule and after a notice-and-comment period, the Attorney General “issued a Final Rule, which became effective as of January 28, 2011.” *Cooper*, 750 F.3d at 266; 75 F.R. 81849-01 (Dec. 29, 2010). That final rule provides that 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. 28 C.F.R. § 72.3.

Thomas contends that Congress impermissibly delegated its legislative authority to the Attorney General to determine whether the registration requirements of SORNA apply to sex offenders convicted before SORNA was enacted. But the Third Circuit has

held otherwise. *See Cooper*, 750 F.3d at 272 (holding that “SORNA’s delegation to the Attorney General in 42 U.S.C. § 16913(d) does not violate the nondelegation doctrine”). Thomas correctly notes that this issue is currently pending before the Supreme Court. *See United States v. Gundy*, 695 F. App’x 639, 641 n.2 (2d Cir. 2017), *cert. granted in part*, 138 S. Ct. 1260, 1261 (2018). But unless and until the Supreme Court holds that SORNA violates the nondelegation doctrine, we are bound by the Third Circuit’s decision that it does not.

Thomas also contends that SORNA violates the anticommandeering doctrine of the Tenth Amendment by “purporting to require state officials to perform certain tasks.” *Doc. 32* at 10–11. The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X. “The principles of limited national powers and state sovereignty are intertwined.” *Bond v. United States*, 564 U.S. 211, 225 (2011). “While neither originates in the Tenth Amendment, both are expressed by it.” *Id.* “[A]ction that exceeds the National Government’s enumerated powers undermines the sovereign interests of States,” and such “unconstitutional action can cause concomitant injury to persons in individual cases.” *Id.* “[C]onspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1476 (2018). “The anticommandeering

doctrine simply represents the recognition of this limit on congressional authority.” *Id.*

“If Congress acts under one of its enumerated powers . . . there can be no violation of the Tenth Amendment.” *Treasurer of New Jersey v. U.S. Dep’t of Treasury*, 684 F.3d 382, 413 (3d Cir. 2012) (quoting *United States v. Parker*, 108 F.3d 28, 31 (3d Cir. 1997)). Thomas’s Tenth Amendment challenge to SORNA’s registration requirement fails because Congress enacted SORNA pursuant to its enumerated powers. The Third Circuit has held that in enacting SORNA’s registration requirement Congress acted pursuant to its authority under the Commerce Clause. *Pendleton*, 636 F.3d at 88 (holding that § 16913’s registration requirement is a proper exercise of “Congress’s power under the Commerce Clause, U.S. Const. art. I, § 8, cl. 18”). In enacting SORNA, Congress also acted under its Spending Clause authority. *See* 42 U.S.C. §§ 16925(a), (d) (now codified at 34 U.S.C §§ 20927(a), (d)) (“The provisions of this subchapter that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section”); *see also United States v. Shenandoah*, 572 F. Supp. 2d 566, 584 (M.D. Pa. 2008) (“Moreover, a second enumerated power—the spending power of Article I, § 8, cl. 1—insulates SORNA from Tenth Amendment challenge.”), *aff’d on other grounds*, 595 F.3d 151, 161 (3d Cir. 2010), *abrogated in part by*, *Reynolds*, 565 U.S. at 445, and *Bond*,

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564 U.S. at 226 (2011);<sup>13</sup> *United States v. Kebodeaux*, 570 U.S. 387, 398 (2013) (stating in dicta that SORNA uses “Spending Clause grants to encourage States to adopt its uniform definitions and requirements” but that “[i]t did not insist that the States do so”). Accordingly, Thomas’s Tenth Amendment challenge to SORNA fails.<sup>14</sup>

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<sup>13</sup> As the Third Circuit has recognized:

Central to *Shenandoah*’s holding that the defendant lacked standing for his nondelegation and APA claims was its interpretation of SORNA—namely that SORNA’s registration requirements applied to pre-SORNA sex offenders automatically, without any action needed by the Attorney General. This understanding of SORNA made the administrative rule challenged by the defendant irrelevant to his case, in that SORNA, rather than the rule, was the basis of his conviction. *Id.* at 157–58, 163–64. This understanding of SORNA was rejected by the Supreme Court in its *Reynolds* decision. *Reynolds v. United States*, [565 U.S. 432], 132 S.Ct. 975, 978, 181 L.Ed.2d 935 (2012).

The defendant lacked standing to raise his Tenth Amendment claim because, at the time of the decision, private parties were thought to be unable to assert Tenth Amendment claims absent the involvement of a State. *Id.* at 161–62. This holding was rejected by the Supreme Court in *Bond v. United States*, [564 U.S. 211], 131 S.Ct. 2355, 180 L.Ed.2d 269 (2011). In that case, the Supreme Court held that private persons may assert Tenth Amendment arguments even when an apparatus of the State is not a party to the suit. *Id.* at 2360, 2367.

*United States v. Reynolds*, 710 F.3d 498, 504 n.4 (3d Cir. 2013).

<sup>14</sup> In his brief, although Thomas challenges SORNA on the basis of the nondelegation doctrine and the anticommandeering doctrine, he does not argue that SORNA violates the Ex Post

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Thomas's duty to register under SORNA does not depend upon state law. *Pendleton*, 636 F.3d at 86 (“Put simply, Pendleton’s federal duty to register under SORNA was not dependent upon his duty to register under Delaware law.”). And since Thomas had a duty to register under SORNA, he has not shown that he has a reasonable likelihood of success on the merits of his claims that he is not currently required to maintain his registration as a sex offender.<sup>15</sup> Thus, Thomas is not entitled to a preliminary injunction. *See Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 366 (3d Cir. 2012) (“The moving party’s failure to show a likelihood of success on the merits ‘must necessarily result in the denial of a preliminary injunction.’”) (quoting *In re Arthur Treacher’s Franchisee Litig.*, 689 F.2d 1137, 1143 (3d Cir. 1982)).<sup>16</sup>

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Facto Clause. Thus, we do not consider whether SORNA violates the Ex Post Facto Clause.

<sup>15</sup> Thomas contends that SORNA is addressed to state legislatures, not state employees acting in their official capacity, like the defendants in this action. But state employees acting in their official capacities are the equivalent of the state. And because we are here addressing a motion for a preliminary injunction that seeks removal of Thomas from the sex-offender registry, the issue is whether Thomas is at this time required to be registered and keep his registration up to date under SORNA. We need not at this time, determine the propriety of the actions taken by the defendants in the past.

<sup>16</sup> Because we conclude that Thomas cannot show a reasonable likelihood of success on the merits, we do not consider the other preliminary-injunction factors, including the public-interest factor. As to that factor, however, we note that Blocker submitted a criminal complaint and an arrest warrant affidavit setting forth the purported details of Thomas’s offense. Thomas

## **VI. Recommendation.**

Based on the foregoing, we recommend that the Court deny Thomas's motion (doc. 14) for a preliminary injunction.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is

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contends that the Court should strike those documents because they are inflammatory, impertinent, and irrelevant, and because Blocker filed them for an improper purpose. He also contends that those portions of Blocker's brief that set forth the details from the criminal complaint and affidavit should be stricken as well. We will not strike the documents or parts of Blocker's brief because although we conclude that we need not reach the public interest factor, the documents could reasonably be seen as relevant to that factor.

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made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 26th day of November, 2018.

**S/Susan E. Schwab**

Susan E. Schwab  
Chief United States  
Magistrate Judge

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**2018 – Act 10**

Act of Feb. 21, 2018, Pub. L. 27, No. 10.

**Section 20.** This act applies as follows:

(1) The amendment of 18 Pa.C.S. § 4915.1 and 42 Pa.C.S. Ch. 97 Subch. H shall apply to an individual who commits an offense on or after December 20, 2012.

(2) The addition of 18 Pa.C.S. § 4915.2 and 42 Pa.C.S. Ch. 97 Subch. I shall apply to:

(i) An individual who committed an offense set forth in 42 Pa.C.S. § 9799.55 on or after April 22, 1996, but before December 20, 2012, and whose period of registration as set forth in 42 Pa.C.S. § 9799.55 has not expired.

(ii) An individual required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth as set forth in 42 Pa.C.S. § 9799.55(a)(1)(i), (b)(2) and (4).

(iii) An individual who, before or after the effective date of this paragraph:

(A) commits an offense subject to 42 Pa.C.S. Subch. H; but

(B) because of a judicial determination on or after the effective date of this section of the invalidity of 42 Pa.C.S. Subch. H, is not subject to registration as a sexual offender.

H.B. 631, 202 Gen. Assem., Reg. Sess. (Pa. 2018), Act 10 of 2018.

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**2018 – Act 29**

Act of June 12, 2018, Pub. L. 140, No. 29.

**Section 21.** This act shall apply as follows:

(1) The reenactment or amendment of 18 Pa.C.S. § 4915.1 and 42 Pa.C.S. Ch. 97 Subch. H shall apply to an individual who commits an offense on or after December 20, 2012.

(2) The reenactment or amendment of 18 Pa.C.S. § 4915.2 and 42 Pa.C.S. Ch. 97 Subch. I shall apply to:

(i) An individual who committed an offense set forth in 42 Pa.C.S. § 9799.55 on or after April 22, 1996, but before December 20, 2012, and whose period of registration as set forth in 42 Pa.C.S. § 9799.55 has not expired.

(ii) An individual required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth as set forth in 42 Pa.C.S. § 9799.55(a)(1)(i), (b)(2) and (4).

(iii) Before or after February 21, 2018, an individual who:

(A) commits an offense subject to 42 Pa.C.S. Ch. 97 Subch. H; but

(B) because of a judicial determination on or after February 21, 2018 of the invalidity of 42

Pa.C.S. Ch. 97 Subch. H, is not subject to registration as a sexual offender.

H.B. 1952, 202 Gen. Assem., Reg. Sess. (Pa. 2018), Act 29 of 2018.

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**Pennsylvania Consolidated Statutes**

**Chapter 42, Subchapter I**

**§ 9799.54. Applicability.**

**(a) Registration.** – The following individuals shall register with the Pennsylvania State Police as provided in this subchapter:

- (1) An individual who committed a sexually violent offense within this Commonwealth and whose period of registration with the Pennsylvania State Police, as specified in section 9799.55 (relating to registration), as of February 21, 2018, has not expired. The individual shall register for the period of time under section 9799.55 less any credit for time spent registered with the Pennsylvania State Police prior to February 21, 2018.
- (2) An individual who committed a sexually violent offense within this Commonwealth and who has failed to register with the Pennsylvania State Police. In such a case, the individual shall register for the period of time under section 9799.55.
- (3) An individual who committed a sexually violent offense within this Commonwealth and is an inmate in a State or county correctional facility of this Commonwealth, including a community corrections center or a community contract facility, is

being supervised by the Pennsylvania Board of Probation and Parole or county probation or parole, is subject to a sentence of intermediate punishment or has supervision transferred under the Interstate Compact for Adult Supervision in accordance with section 9799.62(e) (relating to other notification). The individual shall register for the period of time under section 9799.55, except that the period required in section 9799.55 shall be tolled for any period of time the individual is re-committed for a parole violation or sentenced to a term of imprisonment.

(4) An individual who was convicted of an offense similar to an offense set forth in section 9799.55 under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or under a former law of this Commonwealth or who was court martialed for a similar offense and who, as of February 21, 2018, has not completed registration requirements. The period of registration shall be as set forth in section 9799.56(b)(4) (relating to registration procedures and applicability) less any credit for time spent on a sexual offender registry of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation or with the Pennsylvania State Police prior to February 21, 2018.

**(b) Initial registration.** – Individuals required to register under this section shall have 90 days from February 21, 2018, to initially register with the Pennsylvania State Police. The individual shall appear at

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an approved registration site to be photographed, fingerprinted and to verify information. The Pennsylvania State Police shall send a notice by first class United States mail to the individual's last reported residence in order to inform the individual of the requirements of this subchapter. The notice shall specifically inform the individual of the duties specified in section 9799.57 (relating to sentencing court information). The notice shall be sent no later than 30 days from February 21, 2018. The notice shall also provide a list of approved registration sites. Neither failure on the part of the Pennsylvania State Police to send nor failure of an individual to receive notice or information under this paragraph shall relieve the individual of the requirements of this subchapter.

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### **§ 9799.55. Registration.**

**(a) Ten-year registration.** – Except as provided under subsection (a.1) or (b), the following individuals shall be required to register with the Pennsylvania State Police for a period of 10 years:

(1)

(i)

(A) Individuals convicted within this Commonwealth of any of the following offenses committed on or after April 22, 1996, but before December 20, 2012:

18 Pa.C.S. § 2901 (relating to kidnapping) where the victim is a minor.

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18 Pa.C.S. § 3126 (relating to indecent assault) where the offense is graded as a misdemeanor of the first degree or higher.

18 Pa.C.S. § 4302 (relating to incest) where the victim is 12 years of age or older but under 18 years of age.

18 Pa.C.S. § 5902(b) or (b.1) (relating to prostitution and related offenses) where the actor promotes the prostitution of a minor.

18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances) where the victim is a minor.

18 Pa.C.S. § 6312 (relating to sexual abuse of children).

18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(B) Individuals convicted within this Commonwealth of an offense set forth in clause (A) who were required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth on or after April 22, 1996, but before December 20, 2012, whose period of registration has not expired.

(ii) Individuals convicted within this Commonwealth of any of the following offenses committed on or after January 26, 2005, but before December 20, 2012:

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18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).

18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(2) Individuals convicted of an attempt, conspiracy or solicitation to commit any of the offenses under paragraph (1)(i) or (ii) or subsection (b)(2).

(3) Individuals who currently have a residence in this Commonwealth who have been convicted of offenses similar to the crimes cited in paragraphs (1)(i) or (ii) and (2) under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation or under a former law of this Commonwealth.

**(a.1) Exception to 10-year registration.** – Except as provided under subsection (b), an individual considered to be an offender under section 9799.56(b) (relating to registration procedures and applicability) shall be required to register with the Pennsylvania State Police for a period less than life, the duration of which is to be determined under sections 9799.54 (relating to applicability) and 9799.56(b).

**(b) Lifetime registration.** – The following individuals shall be subject to lifetime registration:

(1) An individual with two or more convictions of any of the offenses set forth in subsection (a).

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(2) Individuals convicted:

(i)

(A) in this Commonwealth of the following offenses, if committed on or after April 22, 1996, but before December 20, 2012:

18 Pa.C.S. § 3121 (relating to rape);

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);

18 Pa.C.S. § 3124.1 (relating to sexual assault);

18 Pa.C.S. § 3125 (relating to aggravated indecent assault); or

18 Pa.C.S. § 4302 when the victim is under 12 years of age; or

(B) in this Commonwealth of offenses set forth in clause (A) who were required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth on or after April 22, 1996, but before December 20, 2012, whose period of registration has not expired; or

(ii) of offenses similar to the crimes cited in subparagraph (i) under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation or under a former law of this Commonwealth, if committed, or for which registration with the Pennsylvania State Police under a

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former sexual offender registration law of this Commonwealth was required, on or after April 22, 1996, but before December 20, 2012, who currently reside in this Commonwealth.

- (3) Sexually violent predators.
- (4) An individual who is considered to be a sexually violent predator under section 9799.56(b) or who is otherwise required to register for life under section 9799.56(b), if the sexual offense which is the basis for the consideration or requirement for which the individual was convicted was committed, or for which registration with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth was required, on or after April 22, 1996, but before December 20, 2012.

**(c) Natural disaster.** – The occurrence of a natural disaster or other event requiring evacuation of residences shall not relieve an individual of the duty to register or any other duty imposed by this subchapter.

**(d) Residents in group-based homes.** –

- (1) A group-based home may not provide concurrent residence in the group-based home to more than five individuals in total who are required to register under Subchapter H (relating to registration of sexual offenders) and this subchapter as sexually violent predators.
- (2) A group-based home that violates paragraph (1) shall be subject to a civil penalty in the amount of \$2,500 for a first violation and in the amount of \$5,000 for a second or subsequent violation.

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(3) The Pennsylvania State Police or local law enforcement agency of jurisdiction shall investigate compliance with this subsection, and the Attorney General or district attorney may commence a civil action in the court of common pleas of the county in which a group-based home is located to impose and collect from the group-based home the penalty under paragraph (2).

(4) As used in this subsection, the term “group-based home” has the meaning given to it in 61 Pa.C.S. § 6124(c) (relating to certain offenders residing in group-based homes).

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Sex Offender Registration and Notification Act relevant sections		
Statute: Pub. L. No. 109-248, Title I, July 27, 2006, 12 Stat. 587-602	Former Codification	Current Codification
§ 141(a)	18 U.S.C. § 2250	18 U.S.C. § 2250
§ 111	42 U.S.C. § 16911	34 U.S.C. § 20911
§ 112	42 U.S.C. § 16912	34 U.S.C. § 20912
§ 113	42 U.S.C. § 16913	34 U.S.C. § 20913
§ 114	42 U.S.C. § 16914	34 U.S.C. § 20914
§ 117	42 U.S.C. § 16917	34 U.S.C. § 20919
§ 122	42 U.S.C. § 16922	34 U.S.C. § 20924
§ 125	42 U.S.C. § 16925	34 U.S.C. § 20927

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18 U.S.C. § 2250.  
Failure to register.

(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 the purposes of the Sex Offender Registration and Notification Act by reason of a 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.

(b) International travel reporting violations. – Whoever –

- (1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 *et seq.* [34 U.S.C. § 20901 *et seq.*]);

- (2) knowingly fails to provide information required by the Sex Offender Registration and

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Notification Act relating to intended travel in foreign commerce; and

(3) engages or attempts to engage in the intended travel in foreign commerce;

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

(c) Affirmative defense. – In a prosecution for a violation under subsection (a) or (b), it is an affirmative defense that –

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

(d) Crime of violence. –

(1) In general. – An individual described in subsection (a) or (b) who commits a crime of violence 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 shall be imprisoned for not less than 5 years and not more than 30 years.

(2) Additional punishment. – The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a) or (b).

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34 U.S.C. § 20911.  
Relevant definitions.

In this subchapter the following definitions apply:

**(1) Sex offender**

The term “sex offender” means an individual who was convicted of a sex offense.

**(2) Tier I sex offender**

The term “tier I sex offender” means a sex offender other than a tier II or tier III sex offender.

**(3) Tier II sex offender**

The term “tier II sex offender” means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and –

(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:

(i) sex trafficking (as described in section 1591 of Title 18);

(ii) coercion and enticement (as described in section 2422(b) of Title 18);

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(iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a))<sup>1</sup> of Title 18;

(iv) abusive sexual contact (as described in section 2244 of Title 18);

(B) involves –

(i) use of a minor in a sexual performance;

(ii) solicitation of a minor to practice prostitution; or

(iii) production or distribution of child pornography; or

(C) occurs after the offender becomes a tier I sex offender.

**(4) Tier III sex offender**

The term “tier III sex offender” means a sex offender whose offense is punishable by imprisonment for more than 1 year and –

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18); or

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<sup>1</sup> So in original. The second closing parenthesis probably should follow “18”.

- (ii) abusive sexual contact (as described in section 2244 of Title 18) against a minor who has not attained the age of 13 years;
- (B) involves kidnapping of a minor (unless committed by a parent or guardian); or
- (C) occurs after the offender becomes a tier II sex offender.

**(5) Amie Zyla expansion of sex offense definition**

**(A) Generally**

Except as limited by subparagraph (B) or (C), the term “sex offense” means –

- (i) a criminal offense that has an element involving a sexual act or sexual contact with another;
- (ii) a criminal offense that is a specified offense against a minor;
- (iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18;
- (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
- (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

**(B) Foreign convictions**

A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 20912 of this title.

**(C) Offenses involving consensual sexual conduct**

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

**(6) Criminal offense**

The term “criminal offense” means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.

**(7) Expansion of definition of “specified offense against a minor” to include all offenses by child predators**

The term “specified offense against a minor” means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of Title 18.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.

**(8) Convicted as including certain juvenile adjudications**

The term “convicted” or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent

as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18), or was an attempt or conspiracy to commit such an offense.

**(9) Sex offender registry**

The term “sex offender registry” means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

**(10) Jurisdiction**

The term “jurisdiction” means any of the following:

- (A) A State.
- (B) The District of Columbia.
- (C) The Commonwealth of Puerto Rico.
- (D) Guam.
- (E) American Samoa.
- (F) The Northern Mariana Islands.
- (G) The United States Virgin Islands.
- (H) To the extent provided and subject to the requirements of section 20929 of this title, a federally recognized Indian tribe.

**(11) Student**

The term “student” means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

**(12) Employee**

The term “employee” includes an individual who is self-employed or works for any other entity, whether compensated or not.

**(13) Resides**

The term “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives.

**(14) Minor**

The term “minor” means an individual who has not attained the age of 18 years.

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34 U.S.C. § 20912.

Registry requirements for jurisdictions.

**(a) Jurisdiction to maintain a registry**

Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter.

**(b) Guidelines and regulations**

The Attorney General shall issue guidelines and regulations to interpret and implement this subchapter.

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34 U.S.C. § 20913.

Registry requirements for sex offenders.

**(a) In general**

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

**(b) Initial registration**

The sex offender shall initially register –

- (1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or
- (2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

**(c) Keeping the registration current**

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1

jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

**(d) Initial registration of sex offenders unable to comply with subsection (b)**

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

**(e) State penalty for failure to comply**

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

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34 U.S.C. § 20914.  
Information required in registration

**(a) Provided by the offender**

The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

- (1) The name of the sex offender (including any alias used by the individual).
- (2) The Social Security number of the sex offender.
- (3) The address of each residence at which the sex offender resides or will reside.
- (4) The name and address of any place where the sex offender is an employee or will be an employee.
- (5) The name and address of any place where the sex offender is a student or will be a student.
- (6) The license plate number and a description of any vehicle owned or operated by the sex offender.
- (7) Information relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General.
- (8) Any other information required by the Attorney General.

**(b) Provided by the jurisdiction**

The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

- (1) A physical description of the sex offender.
- (2) The text of the provision of law defining the criminal offense for which the sex offender is registered.
- (3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.
- (4) A current photograph of the sex offender.
- (5) A set of fingerprints and palm prints of the sex offender.
- (6) A DNA sample of the sex offender.
- (7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.
- (8) Any other information required by the Attorney General.

**(c) Time and manner**

A sex offender shall provide and update information required under subsection (a), including information relating to intended travel outside the United States required under paragraph (7) of that subsection, in

conformity with any time and manner requirements prescribed by the Attorney General.

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34 U.S.C. §20919.

Duty to notify sex offenders of registration requirements and to register

**(a) In general**

An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register –

- (1) inform the sex offender of the duties of a sex offender under this subchapter and explain those duties;
- (2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and
- (3) ensure that the sex offender is registered.

**(b) Notification of sex offenders who cannot comply with subsection (a)**

The Attorney General shall prescribe rules for the notification of sex offenders who cannot be registered in accordance with subsection (a).

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### 34 U.S.C. § 20924.

#### Actions to be taken when sex offender fails to comply

An appropriate official shall notify the Attorney General and appropriate law enforcement agencies of any failure by a sex offender to comply with the requirements of a registry and revise the jurisdiction's registry to reflect the nature of that failure. The appropriate official, the Attorney General, and each such law enforcement agency shall take any appropriate action to ensure compliance.

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### 34 U.S.C. § 20927.

#### Failure of jurisdiction to comply.

##### **(a) In general**

For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this subchapter shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).<sup>1</sup>

##### **(b) State constitutionality**

###### **(1) In general**

When evaluating whether a jurisdiction has substantially implemented this subchapter, the Attorney

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<sup>1</sup> Reclassified to 34 U.S.C. § 10151 *et seq.*

General shall consider whether the jurisdiction is unable to substantially implement this subchapter because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.

**(2) Efforts**

If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this subchapter and to reconcile any conflicts between this subchapter and the jurisdiction's constitution. In considering whether compliance with the requirements of this subchapter would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court.

**(3) Alternative procedures**

If the jurisdiction is unable to substantially implement this subchapter because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this chapter if the jurisdiction has made, or is in the process of

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implementing<sup>2</sup> reasonable alternative procedures or accommodations, which are consistent with the purposes of this chapter.

### **(4) Funding reduction**

If a jurisdiction does not comply with paragraph (3), then the jurisdiction shall be subject to a funding reduction as specified in subsection (a).

### **(c) Reallocation**

Amounts not allocated under a program referred to in this section to a jurisdiction for failure to substantially implement this subchapter shall be reallocated under that program to jurisdictions that have not failed to substantially implement this subchapter or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this subchapter.

### **(d) Rule of construction**

The provisions of this subchapter that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section.

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<sup>2</sup> So in original. Probably should be followed by a comma.

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