

APPENDIX

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICKY LYNN THOMAS,

Defendant.

No. 18-CR-10-LRR

ORDER

I. INTRODUCTION

The matter before the court is Defendant Ricky Lynn Thomas's "Motion to Dismiss" ("Motion") (docket no. 18).

II. RELEVANT PROCEDURAL HISTORY

On February 22, 2018, a grand jury returned a one-count Indictment (docket no. 2) charging Defendant with failure to register as a sex offender, in violation of 18 U.S.C. § 2250(a). *See* Indictment at 1-2. On April 2, 2018, Defendant filed the Motion. On April 3, 2018, the government filed a Resistance (docket no. 19). The matter is fully submitted and ready for decision.

III. STANDARD OF REVIEW

Federal Rule of Criminal Procedure 12(b) authorizes pretrial motions to present "any defense, objection, or request that the court can determine without a trial on the merits." Fed. R. Crim. P. 12(b)(1). "A motion is capable of pretrial determination 'if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity' of the motion." *United States v. Turner*, 842 F.3d 602, 604-05 (8th Cir. 2016) (quoting *United States v. Covington*, 395 U.S. 57, 60 (1969)). "[T]o be valid, an indictment must allege that the defendant performed acts which, if proven, constitute the violation of law for which he is charged. If the acts alleged in the

indictment do not constitute a violation of the law, the indictment is properly dismissed.” *United States v. Polychron*, 841 F.2d 833, 834 (8th Cir. 1988). “The defense of failure of an indictment to charge an offense includes the claim that the statute apparently creating the offense is unconstitutional.” *United States v. Seuss*, 474 F.2d 385, 387 n.2 (1st Cir. 1973).

IV. ANALYSIS

Defendant is charged with failing to register as a sex offender as required by the Sex Offender Registration and Notification Act (“SORNA”), in violation of 18 U.S.C. § 2250(a). *See* Indictment at 1-2. In the Motion, Defendant argues that the court should find that SORNA “violate[s] the United States Constitution’s Non-Delegation Doctrine.” Brief in Support of Motion (docket no. 18-1) at 1-2. He argues that the court should find that SORNA is unconstitutional and dismiss the Indictment. *Id.* at 3.

The United States Constitution vests “[a]ll legislative [p]owers” in Congress. U.S. Const. art. I § 1. Congress may not “abdicate or . . . transfer to others the essential legislative functions with which it is thus vested.” *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 421 (1935). Congress is permitted, however, to delegate some authority to other persons or agencies if it provides “an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.” *Mistretta v. United States*, 488 U.S. 361, 372 (1989) (alteration in original) (quoting *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928)). “The Supreme Court has further clarified that Congress provides an intelligible principle ‘if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.’” *United States v. Kuehl*, 706 F.3d 917, 920 (8th Cir. 2013) (quoting *Am. Power & Light Co. v. Sec. & Exch. Comm’n*, 329 U.S. 90, 105 (1946)).

SORNA authorizes the United States Attorney General to determine whether its provisions apply to sex offenders convicted before its enactment. *See* 34 U.S.C.

§ 20913(d). Defendant argues that “the Attorney General has not received any guidance from Congress regarding how the Attorney General should exercise this delegation,” and, thus, that the delegation lacks an “intelligible principle,” rendering SORNA unconstitutional. Brief in Support of Motion at 2-3. Defendant’s argument is contrary to binding authority. The Eighth Circuit has already found that “SORNA provides the Attorney General with an intelligible principle, and is a valid delegation of legislative authority.” *Kuehl*, 706 F.3d at 920. The Eighth Circuit determined that “the congressional policy of SORNA, ‘to protect the public from sex offenders and offenders against children’ [is] . . . sufficient to provide an intelligible principle for delegation.” *Id.* (quoting 42 U.S.C. § 16901 (now codified at 34 U.S.C. § 20913)).

Defendant offers no argument that the court is not bound by *Kuehl*. Indeed, Defendant acknowledged the binding nature of *Kuehl* in a prior motion, but requested permission to file the Motion untimely because the United States Supreme Court has recently granted certiorari in a case that addressed whether SORNA’s “delegation of authority to the [A]ttorney [G]eneral. . . violates the non-delegation doctrine.” Motion to File Untimely Motion to Dismiss (docket no. 16) at 1; *see also United States v. Grundy*, 695 F. App’x 639 (2d Cir. 2017), *cert. granted*, 86 U.S.L.W. 3438 (U.S. Mar. 5, 2018) (17-6086). The granting of certiorari does not disturb the binding nature of *Kuehl*. Absent a decision that overturns *Kuehl*, Defendant’s argument is “foreclosed by Eighth Circuit precedent.” *United States v. Manning*, 786 F.3d 684, 686 (8th Cir. 2015). Accordingly, the court shall deny the Motion.

V. CONCLUSION

In light of the foregoing, the Motion to Dismiss (docket no. 18) is **DENIED**.
IT IS SO ORDERED.

DATED this 1st day of June, 2018.

A handwritten signature in black ink, appearing to read "Linda R. Reade", is written over a horizontal line.

LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA

v.

RICKY LYNN THOMAS

) JUDGMENT IN A CRIMINAL CASE

)

) Case Number: 0862 1:18CR00010-001

)

) USM Number: 17453-029

)

☒ ORIGINAL JUDGMENT☐ AMENDED JUDGMENT

Date of Most Recent Judgment:

Reason for Amendment:

Christopher J. Nathan

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment filed on February 22, 2018☐ pleaded nolo contendere to count(s) _____

which was accepted by the court.

☐ was found guilty on count(s) _____

after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2250(a)	Failure to Register as a Sex Offender	01/18/2018	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Linda R. Reade
United States District Court Judge

Name and Title of Judge

October 11, 2018

Date of Imposition of Judgment



Signature of Judge

October 12, 2018

Date

DEFENDANT: **RICKY LYNN THOMAS**
CASE NUMBER: **0862 1:18CR00010-001**

PROBATION

☐ The defendant is hereby sentenced to probation for a term of:

IMPRISONMENT

☒ The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
24 months on Count 1 of the Indictment.

☒ The court makes the following recommendations to the Federal Bureau of Prisons:
It is recommended that the defendant be designated to a Bureau of Prisons medical facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant must surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Federal Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the United States Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **RICKY LYNN THOMAS**
CASE NUMBER: **0862 1:18CR00010-001**

SUPERVISED RELEASE

- ☒ Upon release from imprisonment, the defendant will be on supervised release for a term of:
5 years on Count 1 of the Indictment.

MANDATORY CONDITIONS OF SUPERVISION

- 1) The defendant must not commit another federal, state, or local crime.
- 2) The defendant must not unlawfully possess a controlled substance.
- 3) The defendant must refrain from any unlawful use of a controlled substance.
The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*
- 4) ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- 5) ☒ The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*
- 6) ☐ The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **RICKY LYNN THOMAS**
CASE NUMBER: **0862 1:18CR00010-001**

STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

- 1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
- 3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
- 5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
- 7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
- 10) The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **RICKY LYNN THOMAS**
CASE NUMBER: **0862 1:18CR00010-001**

SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:

1. **The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**
2. **The defendant must participate in a mental health evaluation, which may include an evaluation for sex offender treatment. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program. The defendant will be required to submit to periodic polygraph testing at the discretion of the United States Probation Office as a means to ensure that the defendant is in compliance with the requirements of the defendant's supervision or treatment program. The defendant must take all medications prescribed to the defendant by a licensed medical provider.**
3. **The defendant must not knowingly have contact with children under the age of 18 (including through letters, communication devices, audio or visual devices, visits, electronic mail, the Internet, or any contact through a third party) without the prior written consent of the United States Probation Office. The United States Probation Office may work with the defendant and the defendant's family to set up supervised communications and visits with the defendant's biological and legally adopted children.**
4. **The defendant must not knowingly be present at places where minor children under the age of 18 are congregated, such as residences, parks, beaches, pools, daycare centers, playgrounds, and schools without the prior consent of the United States Probation Office.**
5. **The defendant must not use or possess alcohol. The defendant is prohibited from entering any establishment that holds itself out to the public to be a bar or tavern without the prior permission of the United States Probation Office.**
6. **The defendant must participate in a substance abuse evaluation. The defendant must complete any recommended treatment program, which may include a cognitive behavioral group, and follow the rules and regulations of the treatment program. The defendant must participate in a program of testing for substance abuse. The defendant must not attempt to obstruct or tamper with the testing methods.**
7. **Immediately following release from custody, the defendant must reside in a Residential Reentry Center for a period of up to 180 days, or until discharged by the United States Probation Office, after consultation with the Court. This placement will be in the pre-release component with work release privileges. While a resident of the Residential Reentry Center, the defendant must abide by all rules and regulations of the facility. The defendant must report to the Residential Reentry Center at a time and date to be determined by the Bureau of Prisons, the Residential Reentry Center, and the United States Probation Office.**

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

Defendant

Date

United States Probation Officer/Designated Witness

Date

DEFENDANT: **RICKY LYNN THOMAS**
CASE NUMBER: **0862 1:18CR00010-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment¹</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0	\$ 0

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss²</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

¹Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

²Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **RICKY LYNN THOMAS**
CASE NUMBER: **0862 1:18CR00010-001**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant must pay the cost of prosecution.
- ☐ The defendant must pay the following court cost(s):
- ☐ The defendant must forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 18-3275

United States of America

Plaintiff - Appellee

v.

Ricky Lynn Thomas

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: September 23, 2019
Filed: October 31, 2019
[Unpublished]

Before SMITH, Chief Judge, WOLLMAN and BEAM, Circuit Judges.

PER CURIAM.

After moving to Iowa in March 2017, Ricky Thomas failed to register with the sex offender registry as required by the Sex Offender Registration and Notification Act, 34 U.S.C. § 20913 (SORNA), based upon his 1993 Minnesota conviction for second-degree criminal sexual conduct. Thus, in February 2018, Thomas was

indicted with one count of Failure to Register as a Sex Offender in violation of 18 U.S.C. § 2250(a). SORNA was not enacted until 2006, but in 2007, the Attorney General declared that the Act would be applied retroactively to individuals like Thomas who were convicted of offenses that require registration under SORNA but were committed prior to its enactment. Thomas moved to dismiss the federal indictment, arguing that retroactive application of § 20913(d) unconstitutionally violated the nondelegation doctrine of Article I, § 1 of the United States Constitution. The district court¹ denied the motion to dismiss, citing Eighth Circuit precedent contrary to the argument advanced. See United States v. Kuehl, 706 F.3d 917, 920 (8th Cir. 2013) (rejecting the constitutional nondelegation objection to the retroactive application of SORNA). Thomas entered a conditional guilty plea, reserving his right to advance the constitutional argument on appeal. The Supreme Court recently rejected the argument Thomas now makes, holding that Congress did not “make an impermissible delegation when it instructed the Attorney General to apply SORNA’s registration requirements to pre-Act offenders as soon as feasible.” Gundy v. United States, 139 S. Ct. 2116, 2129 (2019). Accordingly, we affirm.

¹The Honorable Linda R. Reade, United States District Court for the Northern District of Iowa.

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

No: 18-3275

United States of America

Plaintiff - Appellee

v.

Ricky Lynn Thomas

Defendant - Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:18-cr-00010-LRR-1)

JUDGMENT

Before SMITH, Chief Judge, WOLLMAN, and BEAM, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

October 31, 2019

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans