UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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ORDER

March 24, 2022

Before
FRANK H. EASTERBROOK, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-1325	UNITED STATES OF AMERICA, Plaintiff - Appellee v. ROBERTO CRUZ-RIVERA, Defendant - Appellant
Originating Case Information:	
District Court No: 1:21-cr-00160-TWP-DLP-1 Southern District of Indiana, Indianapolis Division District Judge Tanya Walton Pratt	

The following are before the court: **STATEMENT OF APPELLANT AND MOTION FOR RELEASE ON APPEAL**, filed on March 21, 2022, by the pro se appellant,

We typically do not consider a represented litigant's motions that are not submitted through counsel, but in these circumstances where appellant is awaiting appointment of new counsel, we will decide the motion.

IT IS ORDERED that the motion is **DENIED** because it makes no arguments and there are no apparent grounds for satisfying the demanding standards for release pending appeal.

form name: **c7_Order_3J** (form ID: 177)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:20-cr-00245-JPH-TAB
	)	
ROBERTO CRUZ-RIVERA	)	
a/k/a ROBERT RIVERA	)	
a/k/a ROBERTO CARLOS CRUZ RIVERA,	)	-01
	)	
Defendant.	)	

ORDER

Defendant, Roberto Cruz-Rivera, has moved to dismiss the indictment with prejudice because it was untimely under the Speedy Trial Act. Dkt. [33]. For the reasons that follow, that motion is **GRANTED in part and DENIED in part**. The indictment, dkt. [9], is **DISMISSED without prejudice**.

I.
Facts & Background

On July 22, 2020, Mr. Cruz-Rivera was charged by criminal complaint with violating 18 U.S.C. § 2250(a) for failure to register as a sex offender. Dkt. 2. He was arrested on July 23, 2020, in the Northern District of Florida. Dkt. 33 at 1 ¶ 2; dkt. 35 at 2. That same day, Mr. Cruz-Rivera appeared by appointed counsel before a magistrate judge in Florida, *id.*, who ordered the United States Marshals Service ("USMS") to "transport the defendant . . . to [this] district and deliver the defendant" and "immediately notify [this district] .

. . of the defendant's arrival so that further proceedings may be promptly scheduled," dkt. 5.

On September 15, 2020, the government filed a motion to extend time to file an indictment in this district, asking to retroactively exclude the period from September 1 until the filing of an indictment from the Speedy Trial Act's calculation. *See* dkt. 7. The magistrate judge granted that request, making an ends-of-justice finding[1] under 18 U.S.C. § 3161(h)(7). Dkt. 8.

On September 24, 2020, Mr. Cruz-Rivera was indicted for Failure to Register under the Sex Offender Registration and Notification Act ("SORNA") in violation of 18 U.S.C. § 2250(a). Dkt. 9.

Mr. Cruz-Rivera filed three *pro se* requests for dismissal of the indictment against him, dkt. 17; dkt. 21; dkt. 23, but the Court denied these requests and referred the issues to Mr. Cruz-Rivera's counsel,[2] dkt. 19; dkt. 20; dkt. 24.

On February 23, 2021, Mr. Cruz-Rivera's initial appearance was held in this district. Dkt. 29. On March 3, 2021, Defendant, by counsel, filed a motion to dismiss the indictment. Dkt. 33.

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[1] The government has abandoned the ends-of-justice rationale in its response brief, conceding that its previous approach was "mistaken." *See* dkt. 35 at 4 n.2; *see Zedner v. United States*, 547 U.S. 489, 506–07 (2006) ("[T]he Act is clear that the [ends-of-justice] findings must be made . . . *before* granting the continuance . . . .") (citing 18 U.S.C. § 3161(h)(8)(A)) (emphasis added); *United States v. Janik*, 723 F.2d 537, 545 (7th Cir. 1983) ("Since the Act does not provide for retroactive continuances, a judge could not grant an 'ends of justice' continuance *nunc pro tunc* . . . .").

[2] "A defendant does not have a right to represent himself when he is also represented by counsel," so a court "has wide discretion to reject *pro se* submissions by defendants represented by counsel." *United States v. Cross*, 962 F.3d 892, 899 (7th Cir. 2020), *cert. denied*, No. 20-7062, 2021 WL 850708 (U.S. Mar. 8, 2021).

II.
Analysis

The Speedy Trial Act requires an indictment to be filed within 30 days of a defendant's arrest. 18 U.S.C. § 3161(b). If an indictment is not filed "within the time limit required by section 3161(b) . . . such charge against the individual contained in [the criminal] complaint shall be dismissed or otherwise dropped." 18 U.S.C. § 3162(a)(1).

A. Dismissal of the Indictment

Mr. Cruz-Rivera asks the Court to dismiss the indictment with prejudice because it was filed 33 days after the Speedy Trial Act's 30-day arrest-to-indictment time limit had expired. *See* dkt. 33. It is undisputed that Mr. Cruz-Rivera was arrested on July 23, 2020, dkt. 33 at 1 ¶ 2; dkt. 35 at 2, and no indictment was filed until September 24, 2020, dkt. 9. It was thus approximately 63 days[3] from arrest to indictment, which exceeds the Speedy Trial Act's general 30-day limit by 33 days.

The government argues that this delay is excludable under Section 3161(h)(1)(F) of the Speedy Trial Act, *see* dkt. 35, which provides that a period of "delay resulting from transportation of any defendant from another district" "shall be excluded in computing the time within which an . . . indictment must be filed," "except that any time consumed in excess of ten days from the date . .

[3] In counting days, the Speedy Trial Act "exclude[s] the day of the event that triggers the period." Fed. R. Crim. P. 45(a)(1)(A).

. an order direct[s] such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable."

The government has not shown that the delay in bringing the indictment "result[ed] from transportation" of Mr. Cruz-Rivera. *See* 18 U.S.C. § 3161(h)(1)(F). The government devotes most of its response to explaining why there was a delay in transporting Mr. Cruz-Rivera from Florida to Indiana. *See* dkt. 35 at 5–7. But the government has not explained why, as a threshold matter, it could not have pursued an indictment in Mr. Cruz-Rivera's absence. *See id.* And the arguments that the government presented in support of its motion for an extension of time to indict, *see* dkt. 7; dkt. 35 at 3, are belied by the fact that the government indicted Mr. Cruz-Rivera a short time after seeking the extension and months before he was transported, *see* dkt. 9. Moreover, the government admits that its failure to bring the indictment within the required timeframe was an oversight. Dkt. 7 at 2 ¶ 7. In short, the government has not shown a nexus between the delay in transporting Mr. Cruz-Rivera and the delay in bringing the indictment against him, so the transportation exclusion under Section 3161(h)(1)(F) of the Speedy Trial Act does not apply.

Because "no indictment or information [wa]s filed within the time limit required," the "charge against [Mr. Cruz-Rivera] . . . shall be dismissed." 18 U.S.C. § 3162(a)(1).

B. Dismissal with or without prejudice[4]

"In determining whether to dismiss the case with or without prejudice, the court shall consider, among other[factors], . . . the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice." 18 U.S.C. § 3162(a)(1). In addition to these enumerated factors, "the court should consider whether the defendant has been prejudiced." *United States v. Sykes*, 614 F.3d 303, 309 (7th Cir. 2010).

1. Seriousness of the Offense

Mr. Cruz-Rivera is charged with Failure to Register as a Sex Offender in violation of 18 U.S.C. § 2250(a), a very serious offense. Violations of this statute are punishable by up to ten years' imprisonment, and the offense that requires Mr. Cruz-Rivera to register is first-degree rape. *See* dkt. 35 at 8. There is a strong public interest in enforcing laws designed to keep track of persons convicted of sex offenses. *See Carr v. United States*, 560 U.S. 438, 441 (2010). The seriousness of the charged offense weighs in favor of dismissal without prejudice.

2. Facts and Circumstances

The facts and circumstances of the events leading to dismissal include both the government's and the defendant's roles in the delay. *See United States v. Taylor*, 487 U.S. 326, 338–40 (1988). The Court asks first whether

[4] Mr. Cruz-Rivera's requests a hearing on this issue, but he has pointed to no case law requiring such a hearing under the Speedy Trial Act nor has he designated disputed facts that a hearing could help resolve. *See* dkt. 33 at 2. Therefore, his request for a hearing is **DENIED**.

"the Government acted in bad faith" with respect to the defendant, whether there is "any pattern of neglect by the local United States Attorney," or any other "apparent antipathy" toward the defendant. *Id.* at 339.

Here, the government states that its delay was an "oversight," dkt. 35 at 9, and that it "acted in good faith and sought to rectify the issue by seeking a court-ordered extension of time to indict," *id.* at 2. The government also contends that the COVID-19 pandemic contributed to the delay in bringing the indictment. *See id.* at 2.

Mr. Cruz-Rivera responds "that the government's intentional delay was to harass, to gain tactical advantage . . . and to knowingly violate his rights," but he has not supported these claims. Dkt. 37 at 4; *see Taylor*, 487 U.S. at 339. While the government's attempt to remedy the oversight was mistaken, dkt. 35 at 4 n.2, its explanations for the delay are plausible, and Mr. Cruz-Rivera has not shown that the delay was the result of bad faith, misconduct, or a pattern of neglect. On balance, this factor also supports dismissal without prejudice. *See Sykes*, 614 F.3d at 310.

Last, Mr. Cruz-Rivera does not appear to have engaged in any level of "culpable conduct" that may have contributed to "the failure to meet the timely . . . schedule." *Taylor*, 487 U.S. at 340.

In sum, the facts and circumstances of the delay here weigh in favor of dismissal without prejudice.

3. Impact of Reprosecution

As to the impact of reprosecution on the administration of justice and of the Speedy Trial Act, the Supreme Court "encourage[s] district courts to take" this factor seriously and has explained that "[i]t is self-evident that dismissal with prejudice . . . is more likely to induce salutary changes in procedures, reducing pretrial delays." *Taylor*, 487 U.S. at 342. However, this factor "does not require dismissal with prejudice for every violation" because "[d]ismissal without prejudice is not a toothless sanction: it forces the Government to obtain a new indictment if it decides to reprosecute, and it exposes the prosecution to dismissal on statute of limitations grounds," which "may make reprosecution, even if permitted, unlikely." *Id.* Although the statute of limitations does not appear to be an issue yet in this case, *see* 18 U.S.C. § 3282(a), dismissal without prejudice would still place a burden on the government to seek a new indictment. Therefore, the impact of dismissal without prejudice here would not detract from the Speedy Trial Act's goal of "assur[ing] a speedy trial" for defendants and the public. *See* 18 U.S.C. § 3161(a).

4. Prejudice

Finally, courts should consider "the presumptive or actual prejudice to the defendant" due to a delay beyond the Speedy Trial Act's limits. *Taylor*, 487 U.S. at 340. "The longer the delay, the greater the . . . prejudice to the defendant, in terms of his ability to prepare for trial or the restrictions on his liberty." *Id.* Specifically, courts consider whether the delay "disrupt[ed] his

employment, drain[ed] his financial resources, curtail[ed] his associations, subject[ed] him to public obloquy, and create[d] anxiety in him, his family, and his friends." *Id.* (citations omitted).

Here, Mr. Cruz-Rivera faced a 33-day delay beyond the Speedy Trial Act's allowable period for bringing an indictment, but that alone is not enough to justify dismissal with prejudice. *See Sykes*, 614 F.3d at 310 ("[A] delay of 224 nonexcludable days does not by itself require dismissal with prejudice.").

While Mr. Cruz-Rivera "feels [that] his life . . . was stripped from him the day of his arrest" and that he has suffered "irreparable harm," dkt. 37 at 4, such generalities do not constitute prejudice, *see Sykes*, 614 F.3d at 310–11. He has not, for example, shown that the 33-day delay harmed his ability to prepare for trial or caused him prejudice beyond that involved with a criminal prosecution in general. *See United States v. Scott*, 850 F.2d 316, 321 (7th Cir. 1988) (stating that a showing of prejudice requires "evidence of anxiety beyond that which reasonably corresponds with a criminal prosecution, conviction, and imprisonment"). Moreover, Mr. Cruz-Rivera is also under separate criminal charges based on the same facts brought by the State of Indiana. *See State of Indiana v. Cruz-Rivera*, Case No. 49D18-2003-F6-012519 (Marion Cty. Super. Ct. Mar. 27, 2020). Therefore, Mr. Cruz-Rivera has not shown that any challenges he has faced rise to a level requiring dismissal with prejudice.

Considering all relevant factors, dismissal without prejudice is appropriate.

III.
Conclusion

For the reasons discussed above, Mr. Cruz-Rivera's motion to dismiss the charge against him with prejudice is **GRANTED in part and DENIED in part**. Dkt. [33]. The indictment, dkt. [9], is **DISMISSED without prejudice**. The government's request for a 21-day stay of the execution of the order of dismissal, dkt. 35 at 10-11, which is not supported by authority, is **DENIED**.

SO ORDERED.

Date: 5/5/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:21-cr-00160-TWP-DLP
	)	
ROBERTO CRUZ-RIVERA	)	
a/k/a ROBERT RIVERA	)	
a/k/a ROBERTO CARLOS CRUZ RIVERA,	)	-01
	)	
Defendant.	)	

ENTRY FOR SEPTEMBER 22, 2021
THE HONORABLE TANYA WALTON PRATT, CHIEF JUDGE

The Government appeared by Adam Eakman and James Marshall Warden, Assistant United States Attorneys. The Defendant appeared in person, in custody and *pro se*. Dominic Martin appeared as stand-by counsel. Rob Jackson attended as agent for the Government. David Moxley was the Court Reporter. Parties appeared for a bench trial at the Indianapolis Courthouse.

AUSA Eakman presented an opening statement.

Defendant Cruz-Rivera reserved presenting an opening statement.

AUSA Eakman requested the Court take judicial notice of the following documents and particular exerts which were read into the record: Dkt. 41 p.13, Dkt. 41 p.18, Dkt. 41 p.19, Dkt. 42 p.20, Dkt. 50 p.3, Dkt. 50 p.4, Dkt. 50 p.6, Dkt. 50 p.18, Dkt. 50 p.24, Dkt. 50 p.25, Dkt. 61 p.2, Dkt. 61 p.3, Dkt. 662 p 1, Dkt. 65 p.3, Dkt. 70 p.3, Dkt. 70 p.5, Dkt. 70 p.6, Dkt. 86 p.11, Dkt. 93 p.4, Dkt. 93 p.6, Dkt. 93 p.14, Dkt. 94 p.10, Dkt. 94 p.13, Dkt. 94-11 p.3, Dkt. 95 p.2, Dkt. 95 p. 3, Dkt. 142 pp.3 and 4 and Dkt. 94-7. The Court **DENIED** the request to take judicial notice of Dkt. 94-7. The Court conditionally granted the request to take judicial notice of the remaining

documents and the Government was ordered to provide additional authority to support its request for judicial notice.

AUSA Eakman began presentation of the Government's case–in-chief. Testimony was presented from the following witnesses: Deputy U.S. Marshal Robert Jackson, Daniel Morlan, Nicholas Smith, Tracee Hedge, Michael McCalip, Rachel Martin, Travis Micheler, Joyce Williams, Chris Jaussaud, Tyra Stephens, Geena Fleener, Michelle Sechrist and Brent Myers. Exhibits were admitted into evidence: 1, 2, 3, 100, 101, 102, 103, 104, 4, 5, 6, 7, 8, 9 and 10.

The Government rested its case-in-chief.

Defendant Cruz-Rivera orally requested a judgment of acquittal. Argument was presented. The Court **DENIED** the motion.

Defendant Cruz-Rivera presented his case-in-chief. The following witness testified: Roberto Cruz-Rivera. The Defendant, then, rested his case-in-chief.

The Government requested to offer into evidence under Federal Rule of Evidence 801(d)(2), the documents to which it had previously requested judicial notice. The Court granted that request.

AUSA Eakman presented closing argument.

Defendant Cruz-Rivera presented closing argument.

AUSA Eakman presented rebuttal argument.

The Court retired for deliberation.

The Court found Defendant Cruz-Rivera guilty of Count 1 Failure to Register as a Sex Offender in violation of 18 U.S.C § 2250(a). As required by Federal Rule of Criminal Procedure 23(c), the Court stated its specific findings of fact in open court.

The U.S. Probation Office is directed to prepare a presentence investigation report. This matter will be set for sentencing after disclosure of the presentence investigation report.

Defendant Cruz-Rivera was remanded to the custody of the U.S. Marshal Service.

IT IS SO ORDERED.

Date: 9/23/2021

Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

Distribution:

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1:21-cx-160-TWP-DLP
USA v. Roberto Cruz-Rivera
Bench Trial September 22, 2021

EX. NO.	DESCRIPTION	SHOW	OFFER	ADMIT	COMMENTS
	PLAINTIFF'S EXHIBITS				
1	Certified copy of New York Judgment	X	X	AWO	Jackson
2	Fingerprint card from New York conviction	X	X	AWO	Jackson
3	Certified Records from New York State Division of Criminal Justice Services	X	X	AOO	Jackson
4	Fingerprint card from fingerprints taken June 28, 2021	X	X	AWO	Morlan
5	Certified Indiana BMV Documents	X	X	AWO	Hedge
6	LGC Associates, LLC Employment Application	X	X	AOO	Martin
7	LGC Associates, LLC Statements of Earnings and Deductions	X	X	AOO	Martin
8	LGC Associates, LLC W-2s	X	X	AOO	Martin
9	Page 6 of Sex Offender Registration Form	X	X	AWO	Micheler
10	New York Change of Address Form Dated 5-23-2016	X	X	AWO	Williams
11	Marion Superior Criminal Court Plea Agreement				
12	Roberto Cruz-Rivera case notes maintained by Marion County Probation				

1:21-cx-160-TWP-DLP
USA v. Roberto Cruz-Rivera
Bench Trial September 22, 2021

EX. NO.	DESCRIPTION	SHOW	OFFER	ADMIT	COMMENTS
	DEFENDANT'S EXHIBITS	X	X	AWO	Jackson
100	DOJ report of investigation	X	X	AOO	Jackson
101	T-mobile records	X	X	AWO	Jackson
102	Search warrant submission form	X	X	AWO	Jackson
103	Search warrant affidavit 765-422-2613	X	X	AWO	Jackson
104	Search warrant 765-422-2613	X	X	AWO	Jackson
102	Duties sheet				Show to Micheler – not offered

UNITED STATES SUPREME COURT
WRIT OF CERTIORARY

[redacted]

[redacted]

UNITED STATES OF AMERICA,

Plaintiff,

V.

ROBERTO CRUZ-RIVERA

Appellant.

Brief in Support of Petition for Writ of Certiorary
No.1:21-cr-00160-TWP

Seventh Circuit Appeal No. 22-1325

Rules of The United States Supreme Court, See Rule 11

Oral Argument Requested

JURISDICTIONAL STATEMENT

The Court of appeals shall have jurisdiction over all final decisions of the United States District Court . The Basis for the Seventh Circuit Jurisdiction is pursuant to title 18, United States Codes, Section 1291, The United States Supreme Court Jurisdiction is Pursuant To 28 U.S.C § 1651 (a). This is being filed under Rule 11 of The U.S Supreme Court.

The aforementioned action was originally filed by Criminal Complaint on July 22, 2020, for a violation of 18 U.S.C. 2250(a) leading to an indictment on September 24, 2020, under case no.1:20-cr-00254-JPH-TAB, which was subsequently dismissed for a Speedy Trial Act violation on May 5, 2021. The case was re-filed on May 6, 2021, based on the conduct of the original criminal complaint, and a new indictment was filed on May 18, 2021, under case no.1:21-cr-00160-TWP-DLP. The case was set for Bench Trial on August 18, 2021, and re-scheduled for September 22, 2021, where the Court reached a guilty verdict. This is a Petition for Writ of Certiorary from a Pending appeal filed February 28, 2022, in The United States Court of Appeals for the Seventh Circuit. The appendix for this Brief is filed with the Appellant's Brief in the court below. The case number is 22-1325.

STATEMENT OF THE CASE

This case originated when Deputy Corporal Christopher Jaussaud of the Marion County

Sheriff's Office contacted the Marion County Probation Department on March 11, 2020, seeking to reach Mr. Cruz-Rivera. When Mr. Cruz-Rivera could not be reached he was charged with a probation violation filed on or about March 19, 2020, by Marion County Probation Officer "Geena Fleener". The probation term was for resisting law enforcement with a vehicle under Marion County Superior Court Cause no.49D18-1808-F6-027408. When Deputy Corporal Christopher Jaussaud could not make contact with Mr. Cruz-Rivera he contacted the United States Marshal Service. As a result a "fugitive investigation" was intitiated by the Great Lakes Regional Fugitive Task Force, and Agent Jackson was assigned to the investigation.

On June 26, 2020, Agent Jackson requested two search warrants for telephone number (765) 422-2613 seeking to use cell-site simulator technology to aprehend Mr. Cruz-Rivera. The search warrants applications were made in Marion County Superior Court and were granted by two seperate judges. Both search warrants were to be executed in the State of Indiana. Neither of the search warrants were reviewed for their veracity; Both search warrants noted Mr.Cruz-Rivera's last reported location as Savannah, Georgia.

Mr.Cruz-Rivera was arrested in front of his home in Gainesville, Florida on July 6, 2020, based on the use of cell-site simulator technology by United States Marshal Service, and was placed in Alachua County Jail based on an alleged arrest warrant out of the State of Indiana. On July 22, 2020, Deputy U.S. Marshal Robert Jackson filed a criminal Complaint in the Southern District of Indiana charging Mr. Cruz-Rivera in a criminal complaint with violating 18 U.S.C 2250(a). On or about September 24, 2020, an indictment was filed under case no.1:20-cr-00245-JPH-TAB; The case was dismissed on May 5, 2021, for a Speedy Trial Act violation.

On May 6, 2021, Agent Jackson filed a new criminal complaint charging the same conduct. An indictment was filed on May 18, 2021, under case no.1:21-cr-00160-TWP-DLP. On June 11, 2021, the Appellant filed an Omnibus Motion (Dkt.41) and a Motion to Dismiss (Dkt.42). The Omnibus motion sought to dipose several witnesses, to issue several subpoenas, and to supress evidence of the search warrants and documents that the government intended to introduce in trial. The Motion to Dismiss challenged the illegal use of the Appellant's cell phone as a tracking device by employing cell-cite simulator technology on July 6, 2021, without a search warrant or a tracking warrant, and using the Appellant's cell location information to apprehend him in

Gainesville, Florida, on the basis of a "Fugitive Investigation" initiated by the Great Lakes Regional Fugitive Task Force, which was conducted by Deputy U.S. Marshal Robert Jackson in the Southern District of Indiana. The motion also challenged the government's failure to apprise the Appellant of the nature or means by which he engaged in interstate commerce, how he affected interstate commerce, and for what purpose did he traveled in interstate commerce. The motion goes on to challenge the legitimacy of the Appellant's Status, and the goverment's failure to present sufficient evidence or cause that the Appellant "knowingly" violated 18 U.S.C 2250(a).

The government to moved for seperate continuances on June 9, 2021 (Dkt.33) and June 16, 2021 (Dkt.44). The District Court granted both motions on June 11, 2021 (Dkt.37) and June 17, 2021 (Dkt.45). The trial date was moved from July 17, 2021, to August 18, 2021. On August 17, 2021, the District Court, on its own motion, moved for and ends-of-justice continuance due to uncorroborated COVID-19 allegations (Dkt.133). The Appellant filed a seconnd Motion to Dismiss for violation of the Speedy Trial Act (Dkt.141). Trial was held on September 22, 2021. A motion for Judgement of Acquittal was filed twice (Dkt.94) and (Dkt.150). The Court found the Appellant guilty of violating 18 U.S.C 2250(a). The Appellant moved to arrest judgement (Dkt.162), and filed a third Motion to Dismiss for lack of Jurisdiction (Dkt.169) in addition to a Sentencing Memorandum (Dkt.175), Sentencing Consideration (Dkt.173), and a Motion for Variance (Dkt.184).

SUMMARY OF THE ARGUMENT

The trial Court abused its discrection and violated the substantive rights of the Appellant under the 5th, 6th, and 14th amendments of the United States constitution:

1. When the trial court denied the Appellant's requests for dipositions to preserve trial testimony from material witnesses. See 1:21-cr-00160-TWP-DLP at Dkt.105.

2. When the lower court denied the Appellant's motion for pre-trial release to avail himself of the compulsory process of securing witnesses and preparing a defense while in Pro Se

status.See 1:21-cr-00160-TWP-DLP at Dkt.70 and Dkt.110.

3. When the lower court denied the Appellant's motion for subpoenas of documents that were material and relevant to presenting a viable defense. See 1:21-cr-00160-TWP-DLP at Dkt.77, Dkt.96, and Dkt.104.

4. When the lower Court denied the Appellant's motion for appointment of a handwriting expert witness for purposes of showing handwriting comparisons from the documents the government used in their case in chief where the Appellant denied writing or signing the document's presented, and would have demonstrated the Appellan't actual innocence. See 1:21-cr-00160-TWP-DLP at Dkt.77

5. When the lower court denied the Appellant's motion for appointment of expert witness to testify concerning the New York State Correction Law, Article 6-C.

6. When the lower Court denied the Appellant's Motion to dismiss, and Motion for Judgement of Acquittal and new trial. See 1:21-cr-00160-TWP-DLP at (Dkt.42, 141, 145) and (Dkt.94,98,149,167,190, and 191).

7. When the trial court forced the Appellant to be tried in Jail clothing.

THE APPELLANT'S SUBSTANTIVE RIGHTS UNDER THE SPEEDY TRIAL ACT UNDER 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION WERE REPEATEDLY VIOLATED

The Sixth amendment of the United States Constitution guarantees that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial" In 1974 Congress enacted the Speedy Trial Act to give effect to this Constitutional guaranteed by setting "specified limits whithin which criminal trials must be commenced." Pursuant to the Speedy Trial Act the trial of a defendant charged in an information or an indictment with the commission of a crime shall commence within 70 days from the filing of the indictment, or from the date the defendant

has made his first appearance pursuant to Federal Rules of Criminal Procedures, Rule 5. See 18 U.S.C 3161. c.f United States v. Williams, 917 F.3d 195 (3rd Cir. 2019). Here the Appellant's sixth amendment right under the Speedy Trial Act was violated several times as follows:

{A} CASE NO.1:20-cr-00245-JPH-TAB (Dkt.7)

On July 6, 2020 the Appellant was arrested in front of his home in Gainesville, Florida, following the tracking of his phone by United States Marshal Service based on a "Fugitive Investigation" conducted by Deputy United States Marshal Robert Jackson in the Southern District of Indiana. On July 22, 2020, Deputy U.S. Marshal filed a criminal complaint in the Southern District of Indiana charging Mr. Cruz-Rivera with violating 18 U.S.C 2250(a). On July 23, 2020, a Federal Judge in Gainesville, Florida, Ordered that the Appellant be transported to the Southern District of the State of Indiana where he was being charged with violating 18 U.S.C 2250(a). Here the Court Order triggered the Speedy Trial Act clock. See United States v. Clifton, 756 F.Supp.2d 773 (S.D. Miss.2010). The appellant was moved from Alachua County Jail to Dixie Couty Jail, and transported to Tallahassee Federal Detention Center within four days of the transportation order. The Appellant was to be transported to the State of Indiana within ten days of the transporttion order. On September 15, 2020, the government filed a motion seeking an "ends of justice continuance" to extend the time to file an indictment against the Appellant (Mr.Cruz-Rivera). The government requested that the motion be granted "Nunc Pro Tunc," and the District Court granted the motion. The motion was granted after the expiration of the Speedy Trial Act; Mr. Cruz-Rivera was indicted 33 days after the expiration of the Speedy Trial Act in violation of 18 U.S.C. 3161(b).

The speedy trial Act requires that when "a District Court grants an ends-of-justice continuance, it must set forth in the record of the case, either orally or in writing, its reasons for finding that the end-of-justice are served and they outweight other interests." See Zedner v. US, 547 U.S. 489 (2006). See 18 U.S.C. 3161(h)(8)(A). The District Court failed to state its reasons on record, and no reason would have suffice to justify a nunc pro tunc continuance ~~after~~ after the expiration of the Speedy Trial Act. See Uinted States v. Janik, 723 F.2d 537 (7th Cir. 1983). c.f U.S. v. Carey, 746 F.2d 228 (7th Cir. ~~1991~~ 1984). After the Order was issued to bring the Appellant to the State of Indiana the United States Marshal Service should have transported him within the

time provided by the Speedy Trial Act.

It is the custom of United States Marshal Service personnel to request time extensions for transportation of detainees, and the goverment must show clear and convincing evidence for transportation delay. See United States v. Castle, 906 F.2d 134 (5th Cir. 1990); See Also United States v. Taylor 437 U.S. 326 (1988)("Delay in transportation to accomodate the government in its desire to effect economical transportation of prisoners in larger groups are not excludable under the Act"). Pursuant to the C.A.R.E.S. Act the Appellant could have been seen by the Court via video teleconferencing or via teleconferencing, and he did not have to be in the State of Indiana, nor in the United States. Yet neither the government nor the Court moved to hold any hearings pursuant to the provisions of the C.A.R.E.S. Act. Here the administration of the Speedy Trial Act was seriously undermined making it a hollow guarantee, and the District Court should have responded sternly to the violation by dismissing the indictment with prejudice.

At the time the motion for a nunc pro tunc continuance was filed by the government Mr. Cruz-Rivera was still at Tallahassee Federal Detention Center waiting to be transported to the State of Indiana. He was eventually transported to the State of Indiana on or about February 16, 2021, and arraigned on February 19, 2021, which was 78 days after the expiration of the Speedy Trial Act pursuant to 18 U.S.C. 3161(c). Here the government's unreasonable delay in transporting the appellant from the State of Florida to the State of Indiana violated the Speedy Trial Act, and caused the legal representative of the case (Dominic David Martin) to move for a continuance (Dkt.34) due to being unprepared for trial. Although he did not articulate the prejudicial nature of the unreasonable delay on the Motion to Dismiss (Dkt.33), it is a matter of questionable substance under the ineffective assistance of counsel standard pursuant to Strickland v. Washington 466 U.S 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). David Dominic Martin has over 28 years of experience as an attorney, and has succifient knowledge in federal legal practice to have effectively argued that the Appellant was prejudiced as a result of the unreasonable delay in bringing him to the State of Indiana where preparation for trial was hindered by his absence in the Southern District of Indiana resulting in the request for a continuace (Dkt.34). Here the Appellant was denied effective assistance of counsel when counsel failed to file any pre-trial motions, failed to investigate the facts of the case, and failed to argue

the substantial prejudicial nature of the transportation delay that caused him to seek a continuance (Dkt.34) after filing the Motion to Dismiss (Dkt.33). Thus the Appellant's conviction should be reversed and the indictment dismissed with prejudice. See United States v. Taylor, 487 U.S. 326 (1988).

B} CASE NO.1:21-cr-00160 (Dkt.42, Dkt.141)

On May 6, 2021 a criminal complaint was filed by Deputy U.S Marshal Robert Jackson charging the Appellant with violating 18 U.S.C. 2250(a). An Indictment was returned on May 18, 2021, and trial was scheduled for July 17, 2021. Upon the government's motions for continuances on June 9, 2021 (Dkt.33) and June 16, 2021 (Dkt.44) the trial date was extended to August 18, 2021, and upon the Court's own motion for an "ends-of-justice continuance" the trial was rescheduled to September 22, 2021. No other continuances were stated orally or on record by the Court. From the time the indictment was filed on May 18, 2021 to the trial date of September 22, 2021, there were approximately 129 days.

The Appellant moved to dismiss the indictment for the Court's violation of the Speedy Trial Act (Dkt.141). The Court denied the motion stating in part:

> "The length of the delay from the continuance to the new trial setting is minimal considering that the Center for Disease Control and prevention recommends a 10-14 day quarantine. The rescheduled Bench Trial is only 35 days later" (Dkt. 145 at 7)

The purpose of the Speedy Trial Act is to guarantee a safeguard to prevent undue and oppressive incarceration prior to trial. To minimize anxiety and concern accompanying public accusation, to limit the possibility that the long delay will impair the accused ability to defend himself. See United States v. Ewell, 383 U.S. 116 (1966). Here the District Court undermined the detailed requirements of the provisions regulating ends-of-justice continuances. See Zedner v. U.S, 547 U.S 489 (2006). The trial date of the Appellant was 59 days after the expiration of the Speedy Trial Act essentially violating the provisions of the Speedy Trial Act. See 18 U.S.C 3161(c). Thus the Appellant's conviction should be reversed and the indictment dismissed with prejudice.

See United States v. Taylor, 487 U.S. 326 (1988).

PRE-INDICTMENT DELAY VIOLATED THE APPELLANT'S FUNDAMENTAL DUE PROCESS RIGHT

An accused is protected from a violation of his due process right to liberty by the shield against oppressive delay only where the delay "violate those fundamental conceptions of justice which lie at the thresshold of fair play and decency." The Appellant's Motion to Dismiss in this case (Dkt.42) properly raised two questions that neither the government nor the District Court contested. The Appellant, relying on United States v. Marion, 404 U.S. 307 (1971) asked the District Court the following:

- What was the importance of the 14 month delay between Mr. Cruz-Rivera's arrest on July 23, 2020, and the projected trial date of September 20, 2021?

- Why did it take the Marion County Sheriff's Office over two years to notify the United Statets Marshal Service about Mr. Cruz-Rivera's presence in the State of Indiana given the criminal case originally filed by Deputy Corporal Christopher Jaussaud on September 15, 2017, which was dismissed by the State of Indiana on November 5, 2018?

According to the Criminal Complaint filed by U.S. Deputy Marshal Robert Jackson in case No.1:20-cr-00245-JPH-TAB the date of the Appellant's alleged violation of 18 U.S.C. 2250(a) was reported to be September 15, 2017, which essentially substantiate that the government had requisite proof for probable cause in September of 2017, and were not prevented or hindered from prosecuting Mr. Cruz-Rivera by any means for the following reasons:

a. There was only one defendant

b. Immediate arrest would not have impaired the goverment's ability to continue investigation

c. Immediate prosecution would not have pressured the goverment into resolving doubtful case in favor of early and possibly unwarranted prosecution.

Here the goverment's pre-indictment delay was unjustified, unnecessary, and unreasonable. See United States v. Lovasco, 431 U.S. 783 (1977). Government witness Travis Micheler had absolutely no recollection of the Appellant at trial. More that two years had passed since the alleged offense was commited, and more than five years had passed since Travis Micheler completed the New York State Sex Offender Form in question. Approximately five years had passed between the time the Appellant allegedly was apprised of his registration duties by government witness Travis Micheler and the date he was indicted in case No.1:20-cr-00245-JPH-TAB. By the time the Appellant was charged and tried under case No.1:21-cr-00160-TWP-DLP he had essentially been placed at a great disadvantage, particularly where his request for pre-trial release to prepare a defense was denied. The Appellant was Pro Se and did not have any support from his Co-Counsel, Dominic David Martin. This gave the government and unfair advantage over the Appellant, and deprived the Appellant of a fair trial.

The Appelllant was initially represented by Counsel Dominic David Martin without court appointment. The said attorney was neither contacted by the Appellant nor requested by the Appellant to represent his case. Counsel Dominic David Martin admitted that he entered the case on his own free will. The said counsel admitted in open Court on August 9, 2021, that he had no strategy to represent the Appellant in spite of being acqainted with his case since October 8, 2020. He did not filed any pre-trial motions, nor conducted any investigation into the facts of the case. He did not interviewed witnesses, nor sought pertinent documents to the Appellant's defense.

Mr. Dominic David Martin had admitted to the Mr.Cruz-Rivera in their first conversation on December 8, 2020, that he had no case law nor a strategy to defend him. In support he filed for a continuance in case No.1:20-cr-00245-JPH-TAB four months after the indictment was filed. The continuance was filed on March 9, 2021, which was four days after he filed the Motion to Dismiss that closed case No.1:20-cr-00245-JPH-TAB. Although the case was dismissed for a Speedy trial violation on May 5, 2021, he failed to argue that he was prejudiced by the unreasonable delay in bringing the Appellant to the State of Indiana from the State of Florida.

He did not mention on the motion that 148 days had passed between the indictment and the arraignment on February 19, 2021, which was not excludable under 18 U.S.C. 3161. This delay was a violation of 18 U.S.C. 3161(c), and warranted dismissal with prejudice under 18 U.S.C 3162. Therefore his performance fell below reasonable standard and caused the appellant to be prejudiced. See Strickland v. Washington 466 U.S 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Here the conviction should be reversed, and the indictment should be dismissed with prejudice.

THE APPELLANT PROPERLY PRESERVED CLAIM OF ERROR PURSUANT TO FEDERAL RULES

A party may preserve a claim of error by informing the court. See Federal Rules of Criminal Procedure, Rule 51. The Court must consider an error that affects the substantial rights of a defendant whenever it becomes apparent to the Court, or if is made known to the Court. Federal Rules of Criminal Procedure, Rule 52(b); See Also Federal Rules of Evidence, Rule 103(e). Upon a defendant's motion the court may vacate a judgement and take additional testimony where the case was tried without a Jury. See Federal Rules of Criminal Procedure, Rule 33. The Appellant raised all claims of error mentioned herein in several motions, and the District Court denied each motion. See Docket 191 and Docket 192.

THE DISTRICT COURT WAS PRESENTED WITH SUFFICIENT OPPORTUNITIES TO RECONSIDER CLAIMS

On October 29, 2021, the Court denied various motions/requests by the aforementioned defendant (Mr. Cruz-Rivera) at Dkt.167. In deciding Mr.Cruz-Rivera's various motions/requests the Court's decision fell outside the adversarial issues presented to the Court warranting reconsideration. Davis v. Carmel Clay Schs, 286 F.R.D 411, 412 (S.D. Ind.2012). The Court did not address the filings at Dkt.152, 156, and 162, foreshadowing any reasoning of the issues raised and focusing instead on apprehension, which was inherently prejudicial. Here the District Court should have reconsidered its decision in light of manifest error of law. In re Prince, 85 F.3d 314,

324 (7th Cir.1996). The United States Supreme Court has long ago established that offenses involving the violation of registration laws must meet the Due Process requirement established in Lambert v. California, 355 U.S. 225 (1957). No other precedent by the United States Supreme Court has reversed, modified or annulled this law.

The right to a fair trial is a fundamental liberty secured by the fourteenth amendment of the United States Constitution. See Drope v. Missouri, 420 U.S. 162, 172 (1975). The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic, and elementary, and its enforcement lies at the foundation of the administration of justice. See Coffin v. United States, 156 U.S 432 (1895). Therefore the Constitution protects every criminal defendant against conviction except upon proof of facts necessary to constitute the crime charged beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 511 (1995). Here the verdict was against the manifest weight of the evidence warranting Judgement of acquittal or a new trial. It was plain error and manifest error of law for the Court to deny the appellant's motion to reargue and to reconsider various claims of error as more fully described in its decision at Docket 167. *see arguments below.*

"It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon". Hale v. Henkel, 201 U.S. 43 (1946)

DISTRICT COURT IMPROPERLY TOOK JUDICIAL NOTICE OF APPELLANT'S DISPUTED LEGAL ARGUMENTS

All statements referenced by the Court in its "Findings of Facts" at Docket 167 were admitted at trial against Federal Rules of Evidence, Rule 201 (See Dkt.111), Rule 801, Rule 802, and Rule 803. "The inderdiction of the Fifth Amendment operates only where a witness is asked to incriminate himself, but if the criminality has already been taken away the amendment ceases to apply." Quoting Hale v. Henkel, 201 U.S 43 (1906). Here the Court, in its holding at docket 167, referenced the statements from various motions filed by Mr.Cruz-Rivera as "Statements against interest," yet both the Court and the government failed to identify the envidentiary value of the said statements rendering their use at trial a violation of Mr.Cruz-Rivera's presumption of

innocence and his rights under the first, fifth, sixth and fourteenth amendment of the United States Constitution. The statements were part of various arguments in various motions, and were not developed or used as admissions of guilt by Mr. Cruz-Rivera. Therefore the Court's reliance on them to deny various motions at docket 167 was an abuse of discretion and obfuscation of facts.

The quintessential fundamental right to Due Process is not waived during the litigation of a case by a Pro Se Defendant. This case did not involve the violation of anyone's rights by Mr. Cruz-Rivera. Therefore Mr. Cruz-Rivera as an "Individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the States or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecendent the organization of the States, and can only be taken from him by Due Process of Law, and in accordance with the constitution. Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon the rights of anyone." *Quoting Hale v. Henkel*, 201 U.S. 43 (1906). Here the District court unconstitutionally obtained the appellant's conviction.

ILLEGAL SEIZURE (ARREST) IN GAINESVILLE, FLORIDA BY UNITED STATES MARSHAL SERVICE WAS UNCONSTITUTIONAL

The Appellant's original motion to dismiss challeged the government's use of Cell Site Simulator Technology to apprehend him on July 6, 2020, in Gainesville, Florida. This point was challenged again in the Appellant's motion for judgement of acquittal and new trial. In its decision at Docket 167 the District Court reiterated its unfounded ruling that Mr. Cruz-Rivera's 4th amendment right was not violated when he was arrested in Gainesville, Florida, on July 6, 2020. Here the Court's ruling was manifest error of law. At the trial the government complained

that Mr.Cruz-Rivera was taking "too long" in his cross-examination of government witness Deputy United States Marshal Robert Jackson, and the Court did told Mr.Cruz-Rivera to stop questioning the witness about the tracking of his cell phone. The Court misunderstood Mr.Cruz-Rivera's legal claim of his right to be secured within his person and his effects from illegal search and seizure, particularly where his arrest in Gainesville, Florida, on July 6, 2020, was the direct result of Robert Jackson's documented "Fugitive Investigation."

Preventing Mr. Cruz-Rivera from thouroughly cross-examining government witness "Robert Jackson" (agent Jackson) about his role in Mr. Cruz-Rivera's apprehension in the State of Florida was an abuse of discretion. The Court improperly repeatedly admonished Mr.Cruz-Rivera during the cross-examination of agent Jackson after numerous complaints from the government essentially seeking to discourage Mr.Cruz-Rivera from asking agent Jackson further questions about his role in the apprehension of Mr. Cruz-Rivera in the State of Florida by tracking his cell phone without a warrant.

On September 22, 2021 agent Jackson testified at trial, and for the first time stated on record that what he actually used (or requested) to apprehend Mr. Cruz-Rivera on July 6, 2020, was "GPS Technology," but he could not specify where in the search warrants he made the request. Here the sizure of Mr. Cruz-Rivera on July 6, 2020, was without a fugitive warrant or a rendition warrant, and was without a "tracking warrant" or a warrant from a Court of competent jurisdiction authorizing the tracking of his cell phone in the State of Florida. Thus his seizure was unconstitutional. See Federal Rules of Criminal Procedure, Rule 41.

The United States Supreme Court has consistenly held that Individuals have a reasonable expectation of privacy in the whole of their physical movements. See Riley v. California, 134 S.Ct. 2473 (2014). Whether the goverment employed its own surveillance technology as in United States v. Jones, 565 U.S 400 (2012), or leveraged the technology of a wireless carrier as in United States v. Carpenter, 138 S.Ct. 2206 (2018), the United States Supreme Court has consistently held that Mr.Cruz-Rivera maintains a legitimate expectation of privacy in his physical movements. Here Mr. Cruz-Rivera relies on United States v. Jones, 565 U.S 400 (2012), and United States v. Carpenter, 138 S.Ct. 2206 (2018); The physical intrusion of an "effect" (i.e. Cell Phone) constitutes a search, and the government does not deny such intrusion into Mr. Cruz-

Rivera's cell phone. Therefore Mr. Cruz-Rivera privacy was violated and his arrest was illegal, which essentially tainted the results of Deputy U.S. Marshal Robert Jackson entire investigation rendering it "fruit of the poisonous tree."

Here the Court is reminded that Mr. Cruz-Rivera as an "Individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the States or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecendent the organization of the States, and can only be taken from him by Due Process of Law, and in accordance with the constitution. Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon the rights of anyone." *Quoting Hale v. Henkel*, 201 U.S. 43 (1906). Here the judgement and conviction should be reversed.

IT WAS PLAIN ERROR FOR THE DISTRICT COURT TO MISINTERPRET RELEVANT LAW OF INTERSTATE COMMERCE JURISDICTIONAL CLAUSE

Article 1, Secction 8, of the United States Constitution empowers Congress to regulate interstate commerce, and commerce with foreign countries. Historically the Congress Commerce Clause has been appropriately applied to the regulation of interstate commerce travel that involves economic activities, or affect interstate commerce. See Gibbons v. Ogden, 22 U.S. 1, 9 Wheat 1, 6 L.Ed.23 (1824). The Appellant maintains that traveling in a public road on a non-commercial vehicle for non-commercial purposes is not synonymous with interstate commerce. The government did not show the court that Mr. Cruz-Rivera was presented with any material fact or contract that demostrated or gave proof that he was engaged in commerce while traveling via non-commercial transportation. No commercial consensual encounter took place in any manner whatsoever without full disclosure. The government did not present any evidence that Mr. Cruz-Rivera injured or damaged any person, place or thing, nor breached any contract of

lawful and enforceable nature within the scope of his non-commercial travel in open public roads.

On September 22, 2021, the District Court relied on US V. Vasquez, 611 F.3d 325 (7th Cir. 2010) in its determination that Mr. Cruz-Rivera did not have to know that he was violating federal law to be guilty of violating 18 U.S.C. 2250(a). One of the elements of violating 18 U.S.C. 2250(a) is traveling in Interstate Commerce. The dissent in US V. Vasquez, 611 F.3d 325 (7TH CIR. 2010) examined the United Staes Supreme Court opinion in Carr v. United States, 130 S.Ct. 2229 (2010), which overturned the 7th Circuit interpretetation of 18 U.S.C 2250 in United States v. Dixon, 551 F.3d 578 (7th Cir.2008) and srongly suggested that the jurisdictional clause of interstate commerece can only be invoked when there is proof that the travel was with a specific criminal intent or purpose. Here, the goverment did not present any evidence that Mr. Cruz-Rivera's travel into the State of Indiana was with the criminal intent of avoiding SORNA registration duties, and the District Court did not state how or when Mr. Cruz-Rivera affected interstate commerce. Therefore it was plain error for the court to deny Mr. Cruz-Rivera's motion to dismiss for lack of jurisdiction. The judgement and conviction should be reversed.

IT WAS PLAIN ERROR FOR THE DISTRICT COURT TO NOT APPLY "SCIENTER" MENS REA TO EACH ELEMENT OF THE CRIME CHARGED

Here the Court is directed to Flores-Figueroa v. United States, 556 U.S. 646, 650, 129 S.Ct. 1886, 173 L.Ed.2d 853 (2009) where the United States Supreme Court noted that it reads "a phrase that introduces the elements of a crime with the word 'knowingly' as applying to each element" of the crime. Furthermore it is a well established standard, *as a matter of law*, that the "Scienter" requirement is applicable to cases where the potential penalty is ten years or more in prison, which the United States Supreme Court considered "harsh." see Rehaif v. US, 139 S.Ct. 2191 (2019)("whether a criminal statute requires the goverment to prove that the defendant acted knowingly is a question of congressional intent" *citing Staples v. United States*, 510 U.S. 600

[1994).

Therefore the interpretation of "knowingly" in Flores-Figueroa v. United States, 556 U.S. 646, 650, 129 S.Ct. 1886, 173 L.Ed.2d 853 (2009) by the seventh circuit in US v. Vasquez, *supra*, would be manifest error of law and manifest error of constitutional law in this case due to the maximum penalty involved, and the resolved requirement of Scienter that neither the government nor the Court applied to every element of the crime charged. United States v. X-Citement Video, inc. 513 U.S. 64, 72, 115 S.Ct. 464 (1994).

IT WAS PLAIN ERROR FOR THE DISTRICT COURT TO DENY THE APPELLANT'S MOTION FOR NEW TRIAL UNDER FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 33

A post-judgement motion that demonstrates constitutional or statutory error may be brought under Federal Rules of Criminal Procedure, Rule 33, See United States v. O'Malley, 833 F.3d. 810 (7th Cir. 2016).

1. It was constitutional error for the Court to deny without explanation (Dkt.104) a motion that granted a request for subpoenas by Magistrate Judge Doris L. Pryor (Dkt.76) after Mr.Cruz-Rivera, per the advise of assigned stand-by counsel Dominic David Martin, mailed the Subpoenas to Court seeking for them to be served pursuant to Federal Rules of Criminal Procedure, Rule 17 (Dkt.96).

2. It was also consitutional error for the court to deny the request for a "handwriting expert to verify the authenticity of Mr.Cruz-Rivera's handwriting" (Dkt.76) and refusing to review the legitimacy of the handwriting of government's exhibit #10 at trial after Mr.Cruz-Rivera testified that he did not complete the document, nor signed the document (i.e. change of address form) which contained an illegible signature.

3. Goverment Witness Joyce Williams testified that the document introduced as government

exhibit #10 could only be requested by someone with appropriate credentials, and identified those credentials as an identification card or liscence.

4. The document in question bore the name "ROBERT RIVERA" and had the date of birth of February 5, 1981, which were both incorrect identification marks in Mr. Cruz-Rivera's New York State Identification Card or Indiana State Identification Card, and according to Joyce Williams no one except the person named in the Identification could request the Change of Address form (i.e. Document #10) after his identity is verified as the individual whose information would be used on the form.

5. The government did not prove that Mr. Cruz-Rivera was the individual that requested the form, and Joyce Williams was not present when the form was created nor had direct knowledge of who submitted the form for processing, therefore sufficient reasonable doubt was created as to the legitimacy of the form without which Mr. Cruz-Rivera would not be found guilty of offense charged in the instant case.

6. Resonable Doubt was also established when government witness Christopher Jaussaud testified that on September 14, 2017, he was called in the middle of the night and informed that Mr. Cruz-Rivera was "in custody" where he allegedly encountered Mr. Cruz-Rivera, but admitted that there was no video footage of the encounter because he turned his body camera off after "not understanding" what Mr.Cruz-Rivera said and becoming "confused."

7. Here, in arguing against the Motion summarily denied at docket 167, the government claimed that Christopher Jaussaud turned his body camera off when Mr. Cruz-Rivera allegedly invoked his right to Counsel, but this *"New" testimony* (emphasis added) is contradicted by IMPD Police Report #PD17093268 where it shows that Mr. Cruz-Rivera was arrested for Receiving "Stolen Auto Parts" on September 14, 2017 at 10:40pm, and was re-arrested by IMPD officer Gregory Shue (Officer #20042) on September 15, 2017, at 1:11am "In the back parking lot of the Motor 8 Inn," as reported under "Field Arrest # 17AR-IMPD06002" and reviewed by Sergeant B. Heffner #6189, making highly questionable Christopher Jaussaud encounter with Mr. Cruz-Rivera on September 14,

2017. See Appendix, Exhibit A.

8. Christopher Jaussaud did filed criminal charges against Mr.Cruz-Rivera on September 15, 2017, at 4:12pm, which were later dismissed by Judge Helen Marchal without any instructions or notification for further action or requirement by Mr. Cruz-Rivera. See Appendix, Exhibit H; Compare 34 U.S.C 20913, 20919.

9. Christopher Jaussaud testified that when he met Cruz-Rivera he was "in custody" for the August 19, 2017, auto theft case, and an NCIC check showed positive results for his case in New York, but the Marion County Jail booking record does not support his testimony (See Appendix, Exhibit B).

10. The Marion County Probation Department Chronological Case History of Mr. Cruz-Rivera shows that Christopher Jaussaud did emailed Probation Officer Geena Fleener on March 11, 2020, seeking to make contact with Mr. Cruz-Rivera, and informed her that he learned about Mr. Cruz-Rivera from an "NCIC hit" several years earlier where Mr. Cruz-Rivera played the "I dont know anything game." See Appendix, Exhibit C at page 8.

11. The testimony of Geena Fleener on September 22, 2021, as corroborated by her sworn statement on March 17, 2020, shows that Mr. Cruz-Rivera was in the State of Michigan on March 11, 2020, when he was being sought by Christopher Jaussaud, and that information did not changed when she spoke with him on March 12, 2020. See Appendix, Exhibit D.

12. The testimony of Tyra Stephens as corroborated by her sworn statement on October 19, 2021, also shows that Mr. Cruz-Rivera was in the State of Michigan on March 11, 2020, when he was being sought by Christopher Jaussaud, and that information did not changed when she spoke with him on March 12, 2020. See Appendix, Exhibit E.

13. Mr. Cruz-Rivera never returned to the State of Indiana, and this was acknowledged by Judge Helen Marchal when she transferred case no. 49G15-1808-F6-027408 to Judge Williams J. Nelson.

One of the essential due process safeguards that attends the accused at his trial is the benefit of the presumption of innocence. see Sinclair v. United States, 279 U.S. 263 (1929). This presumption of innocence is given concrete substance by the due process requirement that imposes upon the prosecution the burden of proving the guilt of the accused beyond a reasonable doubt. In re Winship, 397 U.S 358, 363 (1974). Here the evidence shows that Mr. Cruz-Rivera never met Christopher Jaussaud on September 14, 2017, and that he was not in the State of Indiana when he was being sought to report to Christopher Jaussaud between March 11, 2020, and July 6, 2020. The evidence further shows that Christopher Jaussaud presented perjured testimony to the Court, and that Mr.Cruz-Rivera's conviction was uncostitutionally obtained. Therefore no trier of fact would have found Mr. Cruz-Rivera guilty beyond a reasonable doubt, and the judgement of the Court should be reversed.

THE SUBSTANTIVE RIGHTS OF THE APPELLANT UNDER THE U.S. CONSTITUTION WERE DENIED WHEN THE DISTRICT COURT DENIED APPELLANT'S MOTION FOR JUDGEMENT OF ACQUITTAL UNDER RULE 29 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

A verdict based on conjecture camouflaged as evidence is without merit and warrants dismissal pursuant to Federal Rules of Criminal Procedure, Rule 29. See Piaskowiski v. Bett, 256 F.3d 687 (7th Cir. 2001). Where evidence fall short of proof beyond reasonable doubt the appropriate remedy is dismissal of the case. see United States v. Garcia, 919 F.3d 489 (7th Cir. 2019). A motion for judgement of acquittal under rule 29 does not need to state the grounds upon which it is made because the very nature of such motions is to question the sufficiency of the evidence to support of conviction. C.f. United States v. Viayra, 365 F.3d 790, 793 (9th Cir. 2004).

1. Inssuficient evidence in this case was shown by the testimony of Travis Micheler in which he did not recall speaking with Mr. Cruz-Rivera, nor recalled witnessing Mr. Cruz-

Rivera sign the registration form he prepared, and did not present any justification for the lack of Mr.Cruz-Rivera's initials on each page of the form or Mr. Cruz-Rivera's printed name on the form where page 6 was inexcusably missing making his testimony go against any ultimate fact that Mr.Cruz-Rivera knew his duties.

2. As stated above the testimony of Tyra Stephens, the testimony of Geena Fleener, and the testimony of Michelle Sechrist all placed Mr. Cruz-Rivera in the State of Michigan when he was told to report to Marion County Jail in the State of Indiana, and the government did not present any evidence that Mr. Cruz-Rivera returned to the State of Indiana after March 11, 2020.

3. Here Mr. Cruz-Rivera reiterates paragraphs 1 through 13 above (DENIAL OF MOTION FOR NEW TRIAL UNDER RULE 33) as evidence that go against any ultimate fact that Mr.Cruz-Rivera received proper notice, or that he "knowingly" violated 18 U.S.C 2250 (a).

The evidence in this case shows that Mr. Cruz-Rivera never met Christopher Jaussaud on September 14, 2017, and that he was not in the State of Indiana when he was being sought to report to Christopher Jaussaud between March 11, 2020, and July 6, 2020. The evidence further shows that Christopher Jaussaud presented perjured testimony to the Court, and that Mr.Cruz-Rivera's conviction was uncostitutionally obtained. Therefore no trier of fact would have found Mr. Cruz-Rivera guilty beyond a reasonable doubt, and the judgement of the court should be reversed.

IT WAS PLAIN ERROR FOR THE DISTRICT COURT TO PREVENT THE APPELLANT FROM ARGUING THE GOVERMENT'S FAILURE TO COMPLY WITH 34 U.S.C 20919 IN INFORMING HIMS OF HIS DUTIES.

The Sex Offender Registration Notification Act (SORNA) has an elaborate notifiction and registration system that begins with the registration of the offender "before completing a sentence

of imprisonment with respect to the offense giving rise to the registration requirement." See 18 U.S.C. 20913. the "Duty" to inform an offender and ensure that the registration is complete is delegated to the government or "appropriate official." See 34 U.S.C 20919; see also Gundy v. United States, 139 S.Ct. 2116 (2019). Thus the delegation of responsibility to inform the offender of his duties is constitutional and falls within the Due Process requirement in Lambert v. California, 355 U.S. 225 (1957), which is fully applicable to the Appellant's Due Process claim "that he would have to know about the duty before he is held accountable." *Quoting the Dissent* in United States v. Vazquez, 611 F.3d at 338 (7th Cir. 2010)(Justice Manion, Dissenting).

The Appellant in this case was sentenced for an offense covered under SORNA in the States of New York where the Courts have an obligation to ensure that sex offenders understand their duties. New York Correction Law, Article 6-c, Section 168-d(1)(a) states in part that "Upon conviction... the Court shall certify that the person is a sex offender and shall include the certification in the order of commitment." The statute requires that the sentencing court "shall also advise the sex offender of his or her duties." see N.Y. Correction Law, Article 6-c, Section 168-d. Here the government failed to present evidence of the sentencing court certification or notification, and the testimony of government witness Travis Micheler sufficiently established that no duties were explained to the Appellant. c.f People v. Gravino, 14 N.Y.3d 546 (2010).

The Congressional intent of 18 U.S.C 2250(a) was "subject to federal prosecution sex offenders who elude SORNA's registration requirements by traveling in interstate commerce." Quoting Carr v. U.S., 560 U.S. 438 (2010). Here at the Appellant's trial the Court prevented the Appellant from arguing the goverment's failure to comply with 34 U.S.C 20919 in informing the Appellant of his duties essentially depriving him of the ability to raise a viable defense, and of the right to a fair trial. The Appellant was deprived of his substantive right to due process and equal protection of the laws when "appropriate personnel" failed to inform him of his duties, which created the risk of unknowingly and unwillingly violating 18 U.S.C 2250(a). Government witness Christopher Jaussaud testified Indiana State requires for sex offenders to complete a sex offender registration and notification form, but he did not present the Appellant with a Sex Offender Notification and Registration form when he allegedly meet him on September 14, 2017. Therefore it was plain error and abuse of discretion for the District Court to preclude any argument that the government did not adhered to the provisions of 34 U.S.C 20919, and the

verdict should be reversed.

THE APPELLANT WAS DEPRIVED OF HIS SUBSTANTIVE RIGHT TO DUE PROCESS

"Notice" is the quintessential requirement of Due Process within the scope of the fourteenth amendment in cases involving registration laws. See In Lambert v. California, 355 U.S. 225, (1957) (Engrained in our Concept of Due Process is the requirement of Notice. Notice is sometimes essential so that the citizen has the chance to defend against charges..."). Title 34, United States Code, Section 20919 encompass such Notification, and the goverment did not prove beyond a reasonable doubt that the said notification requirement was met, nor that Mr. Cruz-Rivera traveled in Interstate Commerce to evade or avoid the registration requirement under SORNA.

The Substantive fundamental constitutional right of Due Process as established by the fourteenth amendment of the United States Constitution guarantees that the government cannot deprive citizens from the basic rights to life, liberty, or property without due process of law. Here Due Process of Law required proper notice, which in essence would have imposed constructive knowledge of legal duties upon Mr. Cruz-Rivera, and set a standard against criminalizing otherwise criminal conduct. See Lambert v. California, 355 U.S. 225 (1957); C.f. 34 U.S.C 20919. No reasonable inference can be drawn that being charged with failure to register is sufficient notice under Lambert v. California, 355 U.S. 225 (1957). The government did not present the Court with any evidence that Mr.Cruz-Rivera received proper notice by the State of Indiana or by the State of New York, and the verdict should be reversed.

CONCLUSION

writ of certiorary should be granted and the case heard based on the Petition.

For the foregoing reasons as well as those set forth in the and those deemed just and proper by the Court, the District Court judgement should be reversed and the case dismissed with prejudice.

I declare pursuant to title 28, United States Code, Section 1746 under the penalty of Perjury

of the laws of the United States of America that the foregoing is true and correct.

Executed On: December 13, 2021 / Revised on March 16, 2020

x Robert Cruz-Rivera

Robert Cruz-Rivera, Pro Se
Marion County Jail
40 South Alabama Street
Indianapolis, Indiana 46204

Currently at:
Oldham County Jail
3405 West Highway 146
LaGrange, Kentucky 40031

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:21-cr-00160-TWP-DLP
	)	
ROBERTO CRUZ-RIVERA	)	
a/k/a ROBERT RIVERA	)	
a/k/a ROBERTO CARLOS CRUZ RIVERA,	)	-01
	)	
Defendant.	)	

CLERK'S NOTICE OF APPEAL

Pursuant to Fed. R. Crim. P. 32(j)(2) and at the request of Defendant made in open court at the conclusion of the sentencing hearing, the Clerk hereby files this notice of appeal on behalf of Defendant.

IT IS SO ORDERED.

Date: 2/24/2022

Roger A.G. Sharpe, Clerk

BY: _____

Deputy Clerk, U.S. District Court

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611 F.3d 325 (2010)

UNITED STATES of America, Plaintiff-Appellee,

v.

Isaac VASQUEZ, Defendant-Appellant.

No. 09-2411.

United States Court of Appeals, Seventh Circuit.

Argued January 13, 2010.
Decided July 1, 2010.
Rehearing and Rehearing En Banc Denied August 20, 2010.

326 *326 Jennifer J. Clark (argued), Department of Justice Office of the Solicitor General, Washington, DC, for Plaintiff-Appellee.

Gabriel B. Plotkin (argued), Attorney, Miller, Shakman & Beem, Chicago, IL, for Defendant-Appellant.

Before BAUER, MANION and TINDER, Circuit Judges.

BAUER, Circuit Judge.

Isaac Vasquez appeals his conviction for knowingly failing to register as a sex offender after traveling in interstate commerce, in violation of the Sex Offender Registration and Notification Act (SORNA), 18 U.S.C. § 2250(a). We affirm.

I. BACKGROUND

In October 1998, Isaac Vasquez pleaded guilty to Predatory Criminal Sexual Assault, Victim Under the Age of 13 in the Circuit Court of Cook County, Illinois and was sentenced to six years' imprisonment in the Illinois Department of Corrections (IDOC). This conviction required him to register as a sex offender under the Illinois Sex Offender Registration Act.

After initially registering under the Illinois law, he moved within Chicago but failed to report this change of address as required under Illinois law. After being charged, Vasquez pleaded guilty to Failure to Report a Change of Address and was sentenced to one year of imprisonment. Thereafter, Vasquez signed a notification form acknowledging that he had been advised of his duty to register as a sex offender under the Illinois Sex Offender Registration Act, that he understood this duty, and that his failure to register would constitute a criminal offense under Illinois law.

After being released on parole on March 15, 2005, Vasquez disappeared from where he was placed by Illinois authorities and never returned to the parole office or any other Illinois law enforcement agency as required by the conditions of his parole. On or about March 17, 2005, Illinois issued a warrant for his arrest.

327 *327 On April 11, 2007, Vasquez was present in Illinois. On July 3, 2007, Vasquez was found in Los Angeles County, California, where he was taken into custody by the United States Marshals Service. After his release from IDOC custody on parole and until the time of his arrest in Los Angeles, California on July 3, 2007, Vasquez failed to register as a sex offender in Illinois, California, or any other state.

Thereafter, Vasquez was indicted for knowingly failing to register as a sex offender under SORNA. After the district court denied Vasquez's motion to dismiss the indictment, the case proceeded to a bench trial on stipulated facts. Vasquez stipulated that his prior sex conviction required him to register under SORNA. After denying Vasquez's motion for acquittal, the district court convicted and sentenced him to a prison term of twenty-seven months, a supervised release term of three years, and a $100 special assessment. Vasquez timely appealed.

II. DISCUSSION

Congress enacted SORNA in 2006, which imposes a registration requirement on sex offenders, 42 U.S.C. § 16913, and a criminal penalty for failure to comply with the registration requirement, 18 U.S.C. § 2250(a). A "sex offender" is defined as any individual who is convicted of a sex offense under either state or federal law. 42 U.S.C. § 16911(1). Pursuant to SORNA, "[a] sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides." 42 U.S.C. § 16913(a). A sex offender must update his registration within three business days of a "change of name, residence, employment, or student status." 42 U.S.C. § 16913(c). A sex offender who does not comply with SORNA's obligations faces criminal punishment: "Whoever ... is required to register under the [Act]"; who "travels in interstate or foreign commerce"; and "knowingly fails to register or update a registration as required by the [Act]; shall be fined under this title or imprisoned not more than 10 years, or both." 18 U.S.C. § 2250(a).

On appeal, Vasquez does not dispute that more than three days had elapsed from the date he had most recently changed his address, requiring him to reregister. Further, Vasquez is not arguing a lack of notice of the statute; *United States v. Dixon* made clear that SORNA does not violate due process of law, even when there is no personal notice of the enactment or its requirements. 551 F.3d 578, 584 (7th Cir.2008), *rev'd on other grounds sub nom. Carr v. United States*, ___ U.S. ___, 130 S.Ct. 2229, 2233, ___ L.Ed.2d ___ (2010). Finally, Vasquez cannot contend that he traveled in interstate commerce prior to SORNA's effective date. *See Carr*, ___ U.S. ___, 130 S.Ct. 2229, 2232, ___ L.Ed.2d ___. But Vasquez contends that his conviction should be reversed because the government presented no evidence that he "knowingly" violated SORNA when he failed to register. In addition, Vasquez challenges the constitutionality of SORNA and argues that it violates the Commerce Clause because it impermissibly regulates purely local, non-economic activity and because it does not require any nexus between a defendant's travel in interstate commerce and a defendant's failure to register. We review both the denial of a judgment of acquittal and the constitutional challenges under the Commerce Clause de novo. *United States v. Moses*, 513 F.3d 727, 733 (7th Cir.2008); *United States v. Klinzing*, 315 F.3d 803, 806 (7th Cir.2003).

A. "Knowingly" Failing to Register

328 Vasquez argues that SORNA requires proof that a defendant had specific *328 knowledge that he was required to register under SORNA. Relying upon *Flores-Figueroa v. United States*, ___ U.S. ___, ___, 129 S.Ct. 1886, 1890, 173 L.Ed.2d 853 (2009), Vasquez maintains that as a matter of ordinary English grammar, the word "knowingly" in a statute applies to every subsequently listed element of the crime. In *Flores-Figueroa*, the Supreme Court held that, in order to convict a defendant of aggravated identity theft for "knowingly transfer[ring], possess[ing], or us[ing], without lawful authority, a means of identification of another person," the government must prove that defendant *knew* that the "means of identification" he or she unlawfully transferred, possessed, or used did, in fact, belong to another person. 129 S.Ct. at 1893 (emphasis added). Accordingly, Vasquez asserts that the government cannot convict him, absent proof that he *knew* that SORNA required him to register. And Vasquez maintains that the stipulated facts contain no such proof.

This court has not previously addressed whether SORNA requires a defendant to have specific knowledge of his federal obligation to register. However, at least four of our sister circuits have faced this issue, and all have held that knowledge of the federal obligation under SORNA is not required. *See United States v. Gould*, 568 F.3d 459, 468 (4th Cir.2009); *United States v. Whaley*, 577 F.3d 254, 262 (5th Cir. 2009); *United States v. Baccam*, 562 F.3d 1197, 1199-1200 (8th Cir.2009); *United States v. Griffey*, 589 F.3d 1363, 1367 (11th Cir.2009). Specifically, the Eighth Circuit rejected the defendant's argument that he could not knowingly violate SORNA because he was not told of his specific registration obligations under the law. *Baccam*, 562 F.3d at 1199-1200. And the Eleventh Circuit affirmed a defendant's conviction, holding that SORNA did not require that a defendant specifically know that he was violating the statute, only that he "knowingly" violated a legal registration requirement upon relocating. *Griffey*, 589 F.3d at 1367.

We recently declined to extend the knowledge requirement to the age element in 18 U.S.C. § 2423(a), which prohibits "knowingly transport[ing] an individual who has not attained the age of 18 years in interstate or foreign commerce, ... with intent that the individual engage in prostitution" *United States v. Cox*, 577 F.3d 833, 836 (7th Cir.2009). *Cox* held that despite the grammatical arguments, the most natural reading of § 2423(a) is that the adverb "knowingly" modifies only the verb "transports" and does not extend to the victim's minor status. *Id.* Accordingly, while the victim's age is an element of the offense (i.e., the government must prove the victim is under eighteen), the defendant need not have knowledge of the victim's age. *Cox* noted a departure from *Flores-Figueroa* is appropriate in interpreting § 2423(a) to not require knowledge of the victim's age. *Cox*, 577 F.3d at 838 (citing *Flores-Figueroa*, 129 S.Ct. at 1895-96 (Alito, J., concurring)).

Today we join the Fourth, Fifth, Eighth, and Eleventh Circuits, (and echo our reasoning in *Cox*), and hold that SORNA merely requires that a defendant have knowledge that he was required by law to register as a sex offender. The government need not prove that, in addition to being required to register under state law, a defendant must also know that registration is mandated by a federal statute. In this Court's view, *Flores-Figueroa* did not overrule the long line of cases that have defined the term "knowingly," when used in a criminal statute, to mean "that the defendant realized what he/she was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident." *See* Fed.Crim. Jury Inst. of the
329 Seventh Circuit 4.06 (1999). *329 *See also Cox*, 577 F.3d at 838. To that end, a defendant can be convicted under SORNA if the government can prove that he knew he was required to register as a sex offender. To the extent that SORNA's registration requirements differ from state law requirements, we need not decide today whether a defendant would be in violation of SORNA if he complied with his state law registration obligations but not his federal registration obligations, when he had not been made aware of additional obligations under the federal statute.

Here, Vasquez stipulated that he was required to register as a sex offender, had previously faced jail time for failing to register, and had even signed a notification form acknowledging that he was required to register under state law. Vasquez would have known that his failure to register as a sex offender was in violation of state law. In short, we find beyond a reasonable doubt that Vasquez knowingly failed to register or update a registration, in violation of 18 U.S.C. § 2250(a).

B. Commerce Clause

Alternatively, Vasquez argues that Congress exceeded its authority under the Commerce Clause in enacting SORNA. First, he contends that 42 U.S.C. § 16913, SORNA's registration provision which requires every sex offender to register regardless of whether the offender traveled across state lines, is unconstitutional because Congress does not have the power to impose registration requirements on individual citizens convicted of purely intrastate offenses. Second, Vasquez contends that 18 U.S.C. § 2250(a), SORNA's criminal penalty for failing to register, is unconstitutional because the statute makes it a federal offense for an individual sex offender who travels in interstate commerce to knowingly fail to register, even when the interstate travel has no connection to the failure to register.

Congress' Commerce Clause power is derived from Article I, § 8 of the United States Constitution, which provides that Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. Congressional power under the Commerce Clause "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *United States v. Schaffner*, 258 F.3d 675, 678 (7th Cir.2001) (citing *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 196, 6 L.Ed. 23 (1824)). We need only ask whether Congress could have had a rational basis to support the exercise of its commerce power and whether the regulatory means chosen were reasonably adapted to the end permitted by the Constitution. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964). Nevertheless, a court will not inevitably rubber stamp all congressional statutes as it is still the province of the courts to determine whether Congress has exceeded its enumerated powers. *United States v. Black*, 125 F.3d 454, 459 (7th Cir.1997) (internal citations omitted).

There are three broad areas of activity that Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "those activities having a substantial relation to interstate commerce." *See United States v. Lopez*, 514 U.S. 549, 558-59, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) (internal citations
330 omitted). In addition, Congress also has the ability "[t]o make all *330 Laws which shall be necessary and proper" for the accomplishment of its Commerce Clause power. U.S. Const. art. I, § 8, cl. 18.

While this Court has not previously addressed Vasquez's arguments, our sister circuits have held the registration provisions and the penalty for failure to register do not exceed Congress' power under the Commerce Clause. *United States v. Guzman*, 591 F.3d 83, 90 (2d Cir.2010); *Whaley*, 577 F.3d at 261; *United States v. Howell*, 552 F.3d 709, 717 (8th Cir.2009); *United States v. Ambert*, 561 F.3d 1202, 1210 (11th Cir.2009). Specifically, *Ambert* concluded that because § 2250 makes it a federal crime to fail to register as required under § 16913, only where the offender "travels in interstate or foreign commerce," or was convicted of a federal sex offense, the use of the channels and instrumentalities of interstate commerce is necessarily part of the commission of the targeted offense. 561 F.3d at 1211. *Ambert* reasoned that "channels" are the interstate transportation routes through which persons and goods move and that "instrumentalities" are the people and things themselves moving in commerce. 561 F.3d at 1210-11. Further, in concluding that § 16913 is an appropriate aid to the accomplishment of tracking the interstate movement, *Howell* stated:

> A narrow discussion which only analyzes § 16913 under the three categories of *Lopez* casts doubt on the constitutionality of § 16913 ... because [o]n its face, § 16913 does not have a jurisdictional "hook" to fit under the first two prongs of *Lopez*, and there is little evidence in this record to show intrastate sex offender registration substantially affects interstate commerce.... However, an analysis of § 16913 under the broad authority granted to Congress through both the commerce clause and the enabling necessary and proper clause reveals the statute is constitutionality authorized.

552 F.3d at 715.

We find no reason to disagree with our sister circuits.

Here, the statutory aim of SORNA is to prevent a convicted sex offender from circumventing registration by leaving the state in which he is registered. Section 2250 only criminalizes a knowing failure to register when the sex offender is either required to register under federal law or "travels in interstate or foreign commerce." Thus, a sequential reading of the statute "helps to assure a nexus between a defendant's interstate travel and his failure to register as a sex offender." *Carr,* at 2234.

Interstate travel inherently involves use of channels of interstate commerce and is properly subject to congressional regulation under the Commerce Clause. Moreover, *Lopez* explicitly acknowledges Congress' power to regulate persons traveling in interstate commerce. 514 U.S. at 558, 115 S.Ct. 1624. Accordingly, section 2250 is a permissible exercise of congressional power under the Commerce Clause because the use of the channels and instrumentalities of interstate commerce is necessarily a part of the commission of the targeted offense. Vasquez, who had failed to register as a sex offender in Illinois, was undeniably a "person ... in interstate commerce" when he moved from Illinois to California, and traveled to California via the "channels of interstate commerce."

Section 2250(a)'s failure to require a connection between the jurisdictional element of travel and the criminal act of failing to register is not fatal, as the Supreme Court determined the jurisdictional element of "In or affecting commerce" was satisfied
331 by proof that a possessed firearm previously traveled at some time in interstate *331 commerce. *Scarborough v. United States*, 431 U.S. 563, 577, 97 S.Ct. 1963, 52 L.Ed.2d 582 (1977). In so doing, the Court rejected the defendant's assertion that the interstate travel of the firearm must be contemporaneous with the defendant's possession of it. *Id.* at 568-69, 97 S.Ct. 1963. Similar to *Scarborough,* "[t]he act of travel" is sufficient to bring a defendant's subsequent failure to register within Congress' power to regulate. *Carr,* at 2239.

We conclude a rational basis existed under the Commerce Clause for Congress to enact § 2250.

And § 16913 is a logical way to help ensure that the government will more effectively be able to track sex offenders when they do cross state lines. To the extent that § 16913 regulates solely intrastate activity, the regulatory means chosen are "reasonably adapted" to the attainment of a legitimate end under the commerce power.

III. CONCLUSION

For the reasons stated above, we AFFIRM the ruling of the district court.

MANION, Circuit Judge, dissenting.

In reading the court's opinion and the recent Supreme Court case *Carr v. United States,* this fact cannot be lost: there are seemingly two statutes at issue here. There is § 2250 as we interpreted it in *United States v. Dixon,* and as the court continues to interpret it, and then there is § 2250 as the Supreme Court interpreted it in *Carr.* That being said, I have two principal disagreements with the court's opinion. The first is that it gives *Carr* too limited a reading; the second is that its interpretation of § 2250 renders the statute constitutionally defective.

I.

After this case was argued, the Supreme Court handed down *Carr v. United States,* ___ U.S. ___, 130 S.Ct. 2229, ___ L.Ed.2d ___ (2010). In it, the Court overturned our previous interpretation of § 2250 in *United States v. Dixon*, 551 F.3d 578, 581 (7th Cir.2008), *rev. sub nom. Carr v. United States,* ___ U.S. ___, 130 S.Ct. 2229, ___ L.Ed.2d ___ (2010). In that case, the defendant was convicted in Alabama of rape. In 2005, he moved to Indiana but didn't register as a sex offender, and he

stayed under the radar until 2008, when he was arrested in a bar fight. After his arrest, the authorities learned he was a sex offender and wasn't registered in Indiana as required under SORNA, which was enacted in 2006.

He was charged with and convicted of violating § 2250. On appeal he challenged his conviction on various grounds, including the fact that using his pre-SORNA travel to convict him violated the *ex post facto* clause. Looking to the statute's text, we rejected his argument and read § 2250 to apply to a defendant's travel regardless of when it took place: "the statute does not require that the defendant's travel postdate the Act, any more than it requires that the conviction of the sex offense that triggers the registration requirement postdate it." *Id.* at 582.

The Supreme Court disagreed. It noted that § 2250 has to be read sequentially, meaning the defendant has to have a duty to register under SORNA; he then has to travel; and his violation has to "culminat[e] in a post-SORNA failure to register." *Carr, supra* at 2233. Ultimately, it avoided the *ex post facto* argument and held that § 2250 doesn't apply to pre-enactment
332 travel. *Id.* at 2242. But it didn't stop there. The Court also gave some additional commentary on § 2250 in the *332 form of "considered dicta." *United States v. Bloom*, 149 F.3d 649, 653 (7th Cir.1998).

In *Dixon* we noted that "[t]he evil at which [§ 2250] is aimed is that convicted sex offenders registered in one state might move to another state, fail to register there, and thus leave the public unprotected." *Dixon*, 551 F.3d at 582. We also analogized § 2250 to the felon-in-possession statute, noting it doesn't matter when the firearm passed state lines, the firearm's travel is not part of the harm; it is simply a jurisdictional hook. *Id.*

Again, the Supreme Court viewed § 2250 differently: "the proper analogy is not, as the Seventh Circuit suggested, between the travel of a sex offender and the movement of a firearm; it is between the sex offender who `travels' and the convicted felon who `possesses.'" *Carr, supra* at 2240. It also disagreed with our position about the defendant's travel: the travel is not just "a jurisdictional predicate for § 2250, but it is also, like the act of possession, the very conduct at which Congress took aim." *Id.* In that way, it is not enough that a defendant has traveled; he has to travel with a specific purpose because Congress has "subjected such offenders to federal criminal liability only when, after SORNA's enactment, they use the channels of interstate commerce in evading a State's reach." *Id.* at 2239. Of course, if criminal liability *only* attaches when the travel is for such a purpose, then the showing of purpose and intent that the government must make is pivotal to the prosecution. The Supreme Court rested this reading of § 2250 on both SORNA's purpose and its structure: "Taking account of SORNA's overall structure, we have little reason to doubt that Congress intended § 2250 to do exactly what it says: to subject to federal prosecution sex offenders who elude SORNA's registration requirements by traveling in interstate commerce." *Id.* at 2241.

To be clear, no circuit court applying § 2250 has required the prosecution to prove the purpose of the defendant's interstate travel. This is probably because as it is written, the statute does not have any language to that effect. But the Supreme Court and the dissent saw eye-to-eye on this point: "I agree with the Court that there is a good argument that § 2250(a) should not be read to apply to such a case, where there is little if any connection between the offender's prior interstate movement and his subsequent failure to register." *Id.* at 2248 (Alito, J., dissenting). It is clear that as far as the Supreme Court is concerned, under § 2250 the defendant's travel is not just a jurisdictional hook but part of the behavior Congress is regulating. And as an inferior court, we have to abide by it.

With that in mind, I have two points of disagreement with the court's application of *Carr*. First, even if *Carr* is limited to its basic holding, the facts we have here do not satisfy the statute. Second, if we give due deference to *Carr*'s "considered dicta," the facts we have here do not satisfy the statute because there is nothing in the record about why he traveled.

A.

The court and I agree that under *Carr* § 2250 has to be read sequentially. We just disagree on what that means. I think *Carr*'s sequential requirement means that the defendant has to have a duty to register under SORNA; he then has to travel; and his violation has to "culminat[e] in a post-SORNA failure to register." *Carr, supra* at 2235. *Carr*'s sequential reading is not just a checklist for courts. It has a purpose: it assures that there is "a nexus between a defendant's interstate travel and
333 his failure to register as a sex offender." *333 *Id.* at 2235. Thus, "[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.* at 2235 (emphasis added).

That is not what happened here. From the stipulated record, Vasquez's only duty to register as a sex offender arose in Illinois, which he failed to do. He didn't have a duty to register in California — under the sparse stipulated facts, we don't know how long he was there or that he had changed his residence or any status that would compel him to register in California. 42 U.S.C. § 16913(c). So, his interstate travel did not culminate in his failure to register, nor was it in any way connected to his failure to register. Thus, it was not part of the harm that Congress was addressing, but a mere jurisdictional hook for making this a federal crime.

B.

I also disagree with the court's treatment of *Carr*. From the discussion above, it should be clear that the Supreme Court views § 2250 as requiring that some purpose to avoid, evade or elude registering attach to the defendant's travel; it is not enough that the defendant travels across state lines to run an errand or visit a friend. Here there is nothing in the record about why Vasquez traveled; all we know is that he did. Thus, without any proof concerning why Vasquez traveled to California, his conviction should be overturned.

II

This leads to my second principal disagreement with the court: interpreting the statute the way we did in *Dixon* and the way the court does here, without § 2250 regulating the defendant's travel, it is unconstitutional. Granted, that is a significant statement, in light of the fact that our sister circuits have applied the same analysis as the court and found that § 2250 is a legitimate exercise of the Commerce Clause. But against the backdrop of the traditional boundaries that have marked Congress's power under the Commerce Clause and our interpretation of *Lopez*, it is clear that § 2250 is not a legitimate exercise of congressional power. And in an effort to uphold it, the court endorses a significant expansion of congressional power.

The plain language of § 2250, without applying *Carr*'s considered dicta, establishes that the statute only requires that a defendant have traveled interstate at some time. And limiting *Carr* only to its narrow holding, the time for the travel merely has to be after the statute was enacted. Under either application, the defendant's travel is not connected to him evading his duty to register under SORNA, and it is not what Congress is regulating.

While the distinction between a person who travels to evade registering and a person who travels and fails to register is semantically slight, it is constitutionally significant. To appreciate the significance of this distinction and understand the error in the court's Commerce Clause analysis, it is necessary to sketch the traditional limits of Congress's commerce power. For the past fifteen years, courts have based much of their understanding of the commerce power on the three categories articulated in *United States v. Lopez*, 514 U.S. 549, 558-59, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995):

> First, Congress may regulate the use of the channels of interstate commerce. *See, e.g., Darby*, 312 U.S. at 114, 61 S.Ct. 451; *Heart of Atlanta Motel, supra*, at 256, 85 S.Ct. 348 ("'[T]he authority of Congress to keep
> 334 the channels of interstate *334 commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.'" (quoting *Caminetti v. United States*, 242 U.S. 470, 491, 37 S.Ct. 192, 61 L.Ed. 442 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. *See, e.g., Shreveport Rate Cases*, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *Southern R. Co. v. United States*, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72 (1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez, supra*, at 150, 91 S.Ct. 1357 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or ... thefts from interstate shipments (18 U.S.C. § 659)").

We have interpreted each category with reference to the citations used. *United States v. Wilson*, 73 F.3d 675, 686-87 (7th Cir.1995).

A.

Bacon 542 F.3d 1197, 1199 (7th Cir. 2008)

In support of the first *Lopez* category that "Congress may regulate the use of the channels of interstate commerce," *Lopez* cites three cases: *United States v. Darby*, 312 U.S. 100, 113-15, 61 S.Ct. 451, 85 L.Ed. 609 (1941); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964); *Caminetti v. United States*, 242 U.S. 470, 491, 37 S.Ct. 192, 61 L.Ed. 442 (1917). The pertinent discussion in each case cited focuses on Congress's ability to regulate the misuse of the channels of interstate commerce. In *Darby,* it was the power to ban goods produced without minimum labor standards from traveling on the channels of interstate commerce. 312 U.S. at 113-15, 61 S.Ct. 451. In *Heart of Atlanta,* the cited portion concerned Congress's power to keep the channels of interstate commerce "free from immoral or injurious uses." 379 U.S. at 256, 85 S.Ct. 348 (quoting *Caminetti,* 242 U.S. at 491, 37 S.Ct. 192). And in *Caminetti,* the Court upheld the Mann Act, which "seeks to reach and punish the *movement in interstate commerce* of women and girls with a *view to the accomplishment of the unlawful purposes prohibited.*" 242 U.S. at 491, 37 S.Ct. 192 (emphasis added). These cites illustrate Congress's traditional power to keep the channels of interstate commerce free from misuse. In effect, when Congress does this, it is "exclud[ing] from commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare." *Darby,* 312 U.S. at 114, 61 S.Ct. 451.

Consistent with this understanding of Congress's power, we have noted that under the first *Lopez* category, it can proscribe shipments of stolen goods, kidnaped persons, and prostitutes from traveling on the channels. *Wilson,* 73 F.3d at 680 n. 5. And we have upheld a child pornography statute because "Congress ha[d] set out to prohibit the interstate movement of a commodity through the channels of interstate commerce." *United States v. Schaffner,* 258 F.3d 675, 680-81 (7th Cir.2001) (citing *Lopez,* 514 U.S. at 559, 115 S.Ct. 1624); *see also United States v. Kenney,* 91 F.3d 884, 889 (7th Cir.1996). These regulations focus on the movement across state lines with an illicit purpose. *Hoke v. United States,* 227 U.S. 308, 322, 33 S.Ct. 281, 57 L.Ed. 523 (1913). That is, the crime is complete once the offending person or good has moved interstate. *Caminetti,* 242 U.S. at 491, 37 S.Ct. 192.

It is not, as the court interprets *Lopez,* a matter of the defendant having traveled for some innocent purpose and then later
335 committing the crime. *See Mortensen v.* *335 *United States,* 322 U.S. 369, 374, 64 S.Ct. 1037, 88 L.Ed. 1331 (1944) ("To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities."). A person's mere travel across state lines does not give Congress authority to later regulate all of his future conduct — or in this case, make his previous failure to register in Illinois a federal crime. The Tenth Circuit made this same point in *United States v. Patton,* where it observed that the first *Lopez* "category is confined to statutes that regulate interstate transportation itself, not manufacture before shipment or use after shipment." 451 F.3d 615, 621 (10th Cir.2006) (McConnell, J.).

In contrast to the statutes that properly regulate a person's travel across the channels of interstate commerce, under § 2250 the court separates the defendant's travel from the crime of failing to register. And that renders it constitutionally problematic. The Supreme Court may have tacitly recognized this in *Carr* when it noted that under § 2250 Congress "subjected such offenders to federal criminal liability only when, after SORNA's enactment, *they use the channels of interstate commerce in evading a State's reach.*" *Carr, supra* at 2238. Under *Carr* the focus is, as it should be, on the sex offender's misuse of the channels of interstate commerce: using them to evade registration. And unless we interpret the statute as *Carr* did, § 2250 is not a permissible use of congressional power over the channels of interstate commerce.[1]

B.

The opinion goes beyond the first *Lopez* category and also upholds § 2250 under the second category, noting that Vasquez "was undeniably `a person ... in interstate commerce' when he moved from Illinois to California, and traveled to California via the `channels of interstate commerce.'" Op. at 330. Under that category, "Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *Lopez,* 514 U.S. at 558, 115 S.Ct. 1624. The court interprets this category to mean that because a person travels across state lines, he is "a person in interstate commerce" and Congress can regulate him thereafter.

But that literal and expansive interpretation of the second *Lopez* category is contrary to our circuit's precedent. There are two parts to that category: "instrumentalities of interstate commerce" and "persons or things in interstate commerce, even though the threat may come only from intrastate activities." The first part is selfexplanatory.[2] It is the second part concerning "persons or things" that is problematic for courts.

336 *336 In the midst of this rather arcane area of the law, it is important to remember that *Lopez* doesn't stand for a radical enlargement of Congress's power under the first two categories, but rather an enforcement of limits under the third — the activities that substantially affect interstate commerce. And its three categories should be interpreted as a convenient rhetorical formulation for summarizing Congress's traditional power over commerce. *See* United States v. Rybar, 103 F.3d 273, 286-89 (3d Cir.1996) (Alito, J., dissenting).

In defining that clause previously, we noted that the "inclusion of the language `persons and things' was likely based on precedent — not happenstance." *Wilson*, 73 F.3d at 687. And the key to understanding that language is the Supreme Court's citation to *Perez v. United States;* the pertinent language in *Perez* is where the Court notes: "The commerce clause reaches .... protection of the instrumentalities of interstate commerce, as for example, the destruction of an aircraft (18 U.S.C. § 32), or persons or things in commerce, as, for example, thefts from interstate shipments (18 U.S.C. § 659)." 402 U.S. 146, 150, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971). *Lopez* cites to these same statutes. 514 U.S. at 558, 115 S.Ct. 1624 (citing *Perez,* 402 U.S. at 150, 91 S.Ct. 1357 (citing 18 U.S.C. §§ 32, 659)). Essentially, what *Lopez* did was define this power by looking to the explication given in *Perez.* Understood in this way, the phrase "persons or things in interstate commerce" clearly refers to and must be defined by the laws that Congress can pass to protect the persons or things that the instrumentalities are moving. *Wilson*, 73 F.3d at 687.

With that understanding, we have expressed reservation that videotape cassettes that have moved across state lines are "things in interstate commerce." *United States v. Angle*, 234 F.3d 326, 337 n. 12 (7th Cir.2000). We have also avoided using the second category to uphold legislation that criminalized interfering with an abortion facility simply because the pregnant women have traveled there. In doing so, we noted that "[h]olding that the Access Act qualifies as a regulation of an instrumentality of interstate commerce based on a literal reading of one sentence in *Lopez* ... is unnecessary without further guidance from the Supreme Court." *Wilson*, 73 F.3d at 687 n. 12. This makes sense because the second *Lopez* category involves "things actually being moved in interstate commerce, not all people and things that have ever moved across state lines." *Patton,* 451 F.3d at 622. Thus, it is wholly inconsistent with our precedent to uphold the constitutionality of § 2250 as regulating sex-offenders as a "person ... in interstate commerce."

C.

Unlike the other circuits to address this question, the court also cites *Scarborough v. United States*, 431 U.S. 563, 577, 97 S.Ct. 1963, 52 L.Ed.2d 582 (1977) and the "minimal nexus" reasoning as a basis to uphold § 2250 under the Commerce Clause.[3] Notably, none of the other circuits has directly relied on *Scarborough* and its minimal nexus test to uphold § 2250 as it applies to persons who have traveled interstate. In doing so, the court is recognizing a power Congress never had, and doing so without giving deference to the reasoning in *Carr.*

337 *337 *Scarborough* created the legal fiction that once a gun has crossed state lines it is forever "in or affecting" commerce and Congress can prohibit felons from possessing them — this is described as "a minimal nexus." 431 U.S. at 575, 97 S.Ct. 1963. We have also used the logic of a "minimal nexus" or "limited nexus" to uphold the constitutionality of the car-jacking statute. *United States v. Taylor*, 226 F.3d 593, 600 (7th Cir.2000). Although this test seems to work when applied to things, such as guns and cars, there are four problems with extending the minimal or limited nexus rationale to persons.

First, while *Scarborough* is still good law as far as its reasoning goes in felon-inpossession cases, it has been implicitly criticized by the Supreme Court in the commercial arson context in *Jones v. United States*, 529 U.S. 848, 857, 120 S.Ct. 1904, 146 L.Ed.2d 902 (2000). We have recognized that criticism and refused to extend the minimal nexus test to materials. *United States v. Craft*, 484 F.3d 922, 927 (7th Cir.2007). And other courts and scholars have noted the problems inherent in *Scarborough*'s reasoning and extending it to other circumstances. *United States v. Bishop*, 66 F.3d 569, 593-600 & n. 13 (3d Cir.1995) (Becker, J., concurring in part and dissenting in part); *see also* Dean A. Strang, *Felons, Guns, and the Limits of Federal Power,* 39 J. Marshall L.Rev. 385 (2006); *United States v. Chesney*, 86 F.3d 564, 577-82 (6th Cir.1996) (Batchelder, J., concurring).

Second, there is a logical distinction between guns and persons that can't be lost in applying *Scarborough* here. The cases endorsing the "minimal nexus" test concerned things — commodities that were included in the actual makeup of commerce. But persons are different: we are not inherently commercial; we cannot be bought or sold; and our participation in commerce is limited to our decision to engage in it. Consistent with this distinction, in the felon-in-possession context it is

the gun that has crossed state lines; it is not enough that the felon has crossed state lines and subsequently possesses a gun that has remained intrastate. *See United States v. Travisano*, 724 F.2d 341, 347-48 (2d Cir. 1983).

Third, the Supreme Court in *Carr* looked at *Scarborough* and the minimal nexus rubric and noted that § 2250 is distinguishable: "Understanding the act of travel as an aspect of the harm Congress sought to punish serves to distinguish § 2250 from the felon-in-possession statute to which the Seventh Circuit analogized." *Carr, supra* at 2239. Indeed, the Court went on to note that analogizing this to *Scarborough* is inappropriate: "In this case, the proper analogy is not, as the Seventh Circuit suggested, between the travel of a sex offender and the movement of a firearm; it is between the sex offender who `travels' and the convicted felon who `possesses.'" *Id.*

Fourth, expanding *Scarborough* will obliterate the limits between what is local and what is national. In striking down the Violence Against Women Act in *United States v. Morrison,* the Supreme Court observed that if the "aggregated impact" rationale under the third *Lopez* category were adopted, it would allow Congress to "regulate murder or any other type of violence" and even reach issues including "family law and other areas of traditional state regulation." 529 U.S. 598, 616, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). While Congress could not regulate those areas under its broadest power in *Morrison,* it could under the court's rationale here. By applying the minimal nexus to a person's travel, Congress could take over the states' ability to punish domestic crimes.

338 For instance, under 18 U.S.C. § 2262 (interstate violation of a protective order), *338 the government would no longer have to prove the defendant traveled in interstate commerce with the intent to violate a protective order. It would only have to show that the defendant had at some time traveled across state lines, regardless of his purpose, and that at some time later he violated a protective order. If this were true, Congress could effectively take over the monitoring and control of local, domestic crime, by making an element of the crime that the person has traveled interstate at some time. That, however, stands in complete contradiction to *Morrison.* As the Supreme Court aptly noted: "The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States." 529 U.S. at 618-19, 120 S.Ct. 1740 (citation omitted).

Thus, I believe that consistent with a government of limited powers and in light of the Supreme Court's precedent in this area, we should not extend *Scarborough*'s "minimal nexus" beyond firearms to reach persons in an effort to find that this statute comes under the Commerce Clause.

D.

When § 2250 is applied in the way it was in *Dixon* and by the court here, it emphasizes the need to apply *Carr*'s considered dicta to the statute and require a showing that the defendant's travel was with an illicit intent to evade, elude, or avoid registering. The alternative is an unconstitutional statute.

III.

This leads to my final point of disagreement: this is a specific-intent crime. That is true applying the statute either as we did in *Dixon* or as the Supreme Court did in *Carr.* If we follow *Carr*'s reasoning and the purpose of the travel is vital to the statute that naturally forces the government to prove that the defendant had an elevated intent. It is not enough to travel and negligently or through ignorance fail to register.

To address the court's position on this point, interpreting the statute apart from *Carr* this is a specific-intent crime. The court looks to *United States v. Cox*, 577 F.3d 833, 836 (7th Cir.2009), and its reasoning in support of interpreting § 2250 as a general-intent crime. In *Cox* the statute at issue proscribed conduct that was already unlawful: transporting someone across state lines to become a prostitute. But it added the element that the person be under 18. We held that under the statute the government doesn't have to prove that the defendant knew he was transporting a minor, which makes sense, given the strict liability that normally attaches to sexual acts with minors.

But the statute at issue here does not proscribe inherently unlawful conduct; rather, it requires that the defendant must register. He has an affirmative, administrative duty — one that he must perform or be imprisoned. Thus, it is reasonable that he would have to know about the duty before he is held accountable. Nothing suggests that Congress intended to hold someone responsible for knowingly failing to do something without any evidence that he knew what he was supposed to do.

Moreover, the court's position that we can transfer knowledge betwe[illegible] a state-imposed duty and a federal duty is difficult to reconcile with the basic concepts of justice and our precedent. *See* [illegible] *ted States v. Pulungan*, 569 F.3d 326, 331 (7th Cir.2009). Nothing in the statute defines the § 2250 obligation with r[illegible]rence to th[illegible]ois obligation. They are distinct. And there is no reason to think that Vasquez's known legal duty under Illi[illegible] is law [illegible]uld transfer to his federal obligation. In
339 short, just because Vasquez knew about his state [illegible]uty to register we cannot uphold *339 his conviction because we assume he was aware of his federal duty to register.

IV.

In sum, there are two statutes here: § 2250 as it is written and as we have interpreted it pre-*Carr,* and as the Supreme Court has interpreted it in *Carr.* Taking § 2250 as it is written, the statute is unconstitutional because it does not require interstate travel with the intent to avoid or evade registration under SORNA. Under the Supreme Court's reasoning in *Carr,* however, the statute passes muster constitutionally because it regulates the defendant's travel, by attaching criminal liability to sex offenders who travel interstate to evade registration. And applying the reasoning in *Carr,* we would have to overturn Vasquez's conviction because there is no proof of why he traveled. I also believe that both the grammatical structure of § 2250 and its context counsel reading this as a specific-intent crime. For these reasons, I must respectfully dissent.

[1] In effect, the Supreme Court's opinion in *Carr* verifies the defect I've identified in § 2250 by incorporating this additional requirement into the statute and placing the statute's focus beyond its text and onto the defendant's travel on the channels of interstate commerce.

[2] In support of the second category, *Lopez* cited three cases, one of which, *Perez,* cited two statutes. The first two cases concerned railroads, which are actual instrumentalities of interstate commerce. *Houston, E. & W. Tex. Ry. v. United States (Shreveport Rate Cases),* 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *Southern Ry. Co. v. United States,* 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72 (1911). Specifically, they concerned Congress's ability to set rates and standards for railroads. *Shreveport Rate Co.,* 234 U.S. at 351-53, 34 S.Ct. 833; *see also Southern Ry. Co.,* 222 U.S. at 26, 32 S.Ct. 2.

[3] The opinion does not suggest that § 2250 can be upheld under the third *Lopez* category, which only comes into play with economic activity that substantially affects interstate commerce. That is not at issue here.