APPENDIX INDEX

The following appendix is designed to remain lean. The opening brief, the Government's brief, Petitioner's reply, and the 88-page appellate Appendix A are part of the court-of-appeals record and are cited in the petition, but are not duplicated in the printed Supreme Court appendix.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Andrew Valles,

Plaintiff,

-against-

Attorney General of the United States et al.,

Defendants.

25-cv-2215 (AS)

OPINION AND ORDER

ARUN SUBRAMANIAN, United States District Judge:

Plaintiff Andrew Valles raises both facial and as-applied constitutional challenges to the Sex Offender Registration and Notification Act (SORNA). For the following reasons, the Court GRANTS defendants' motion to dismiss Valles's complaint.

BACKGROUND

On October 12, 2004, Valles pled guilty in Utah state court to two counts of lewdness involving a child and two counts of attempted dealing in harmful material to a minor. *United States v. Valles,* 2023 WL 4420288, at *1 (S.D.N.Y. July 10, 2023). When he was released in July 2006, he was required to register as a sex offender under Utah law. *Id.* As of August 1, 2008, he was required to register in any jurisdiction where he resides, anywhere in the country, under the federal SORNA. *Id.*; *see also* 34 U.S.C. § 20913(a).

Valles registered as required in Utah upon his release but failed to register once he moved to New York in 2016. *United States v. Valles,* 2023 WL 4420288, at *1. He was charged with, and later pled guilty to, a SORNA offense in this district. *Id.* On December 20, 2019, he was sentenced to nine months in prison, followed by five years of supervised release. *Id.* at *2.

On September 23, 2020, Valles moved to vacate his conviction pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel. *Id.* Among other things, Valles argued that his counsel should have argued that SORNA was unconstitutional, citing Justice Gorsuch's dissent in *Gundy v. United States*, 588 U.S. 128 (2019). *United States v. Valles,* 2023 WL 4420288, at *4. Valles's motion was denied on July 10, 2023, and no certificate of appealability was issued. *Id.* at *8. His subsequent motion for reconsideration was also denied. *United States v. Valles*, 2024 WL 1433708, at *5 (S.D.N.Y. Apr. 3, 2024).

Valles filed the complaint in this case *pro se* on March 18, 2025, against the Attorney General of the United States, along with the Attorneys General of California, New York, and Utah. Dkt. 1. His complaint states that he was released from prison the prior day. *Id.* at 10. He challenges the constitutionality of SORNA, both facially and as applied to him. *Id.* at 11–12.

LEGAL STANDARDS

To survive a motion to dismiss for failure to state a claim, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Melendez v. Sirius XM Radio, Inc.*, 50 F.4th 294, 298–99 (2d Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim is plausible on its face 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* at 299 (quoting *Iqbal*, 556 U.S. at 678). When evaluating whether a complaint clears this bar, the Court must "accept[] all factual allegations in the complaint as true[] and draw[] all reasonable inferences in the plaintiff's favor." *Vaughn v. Phoenix House N.Y. Inc.*, 957 F.3d 141, 145 (2d Cir. 2020) (quoting *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002)).

Courts construe a *pro se* complaint "liberally" and consider "the strongest arguments" the complaint suggests. *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013) (quoting *Pabon v. Wright*, 459 F.3d 241, 248 (2d Cir. 2006)). "Nonetheless, a *pro se* complaint must state a plausible claim for relief." *Id.*

DISCUSSION

I. The Court construes Valles's complaint as seeking a declaratory judgment

Valles's complaint argues that SORNA is unconstitutional under both a separation-of-powers/nondelegation doctrine theory and under the Free Speech Clause of the First Amendment. Dkt. 1 at 11. The complaint does not, however, cite any explicit cause of action.

Valles's complaint does not sound in habeas or coram nobis. He is not challenging his Utah conviction nor his federal conviction. Rather, he is challenging the fact that SORNA requires him to register with jurisdictions he moves to going forward. Thus, the Court concludes that Valles seeks a declaratory judgment. *See* 28 U.S.C. § 2201(a).

II. The Court dismisses the state Attorneys General

In addition to suing the Attorney General of the United States, Valles listed the Attorneys General of California, New York, and Utah as defendants. None has filed an appearance, and it appears there has been no attempt to serve the Attorneys General of California or Utah.

The Court orders the state Attorneys General dismissed from this case *sua sponte*. Although SORNA requires registration with state and local authorities, it is ultimately a federal mandate that is enforced by the federal government. As a case in point, Valles's prior SORNA violation was prosecuted by federal prosecutors in federal court. And as Valles himself notes, New York's Board of Examiners of Sex Offenders notified him that *state* law did not require him to register in New York on account of his Utah conviction. Dkt. 33 at 13. The Court therefore concludes that the state Attorneys General are not proper defendants for the declaratory judgment action, as they are not involved in SORNA's enforcement. The Court thus proceeds with the Attorney General of the United States as the sole defendant.

III. The Court exercises jurisdiction over Valles's separation-of-powers/nondelegation claim, but finds he is not entitled to relief

Valles's first claim is that SORNA is unconstitutional under a separation-of-powers theory and the nondelegation doctrine.[1] While the Court exercises jurisdiction over the claim, the claim must be dismissed under controlling precedent.

A. The Court exercises jurisdiction over the claim

The Declaratory Judgment Act "vests a district court with discretion to exercise jurisdiction over a declaratory action." *Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 411 F.3d 384, 389 (2d Cir. 2005). In deciding whether to exercise jurisdiction over the claim, the Second Circuit has directed district courts to consider "(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; and (2) whether a judgment would finalize the controversy and offer relief from uncertainty." *Id.*

The Attorney General argues that the Court should decline to exercise jurisdiction under this framework. Defendant argues that the claim is "already settled" by Judge Cronan's opinion denying Valles's habeas petition. Dkt. 27 at 4–6. The Attorney General argues that Valles is presenting "the exact legal claims *and* the exact facts that Judge Cronan considered." *Id.* at 6.

The Court disagrees. While the claims are very similar, they are different in a crucial respect. In the earlier claim, Valles sought to argue that his trial counsel was ineffective for failing to raise the constitutional claim. *United States v. Valles*, 2023 WL 4420288, at *4–5. He did not directly challenge the constitutionality of SORNA; instead, he argued that his counsel should have done so. While it is true that Judge Cronan did look to whether a challenge would have been successful as part of that analysis, the legal claim here is distinct since it is a direct challenge to the statute's constitutionality.

The Court looks instead to the factors articulated by the Second Circuit. Here, a declaratory judgment will serve a useful purpose in clarifying Valles's obligations and, if he were to prevail, would foreclose any criminal punishment. Thus, the Court concludes that exercising jurisdiction in this case is warranted.

B. Controlling precedent forecloses Valles's claim

Although the Court exercises jurisdiction over the claim, it concludes that the claim fails. Valles's nondelegation argument is in all relevant respects identical to the claim that the Supreme Court rejected in *Gundy*. 588 U.S. at 136 (plurality op.). Although Valles points to Justice Gorsuch's dissent and Justice Kavanaugh's recusal in that case as suggesting that the Supreme Court

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[1] Although both Valles and the Attorney General refer to the "separation-of-powers clause," see Dkt. 1 at 7, Dkt. 27 at 4, Dkt. 33 at 9, no such clause exists. Instead, the Court understands Valles to be citing the Vesting Clause of Article I (and by implication, the Vesting Clause of Article II). See U.S. Const. Art. I § 1; Art. II § 1. As those clauses are what give rise to the nondelegation doctrine, the Court considers both arguments together.

may overturn *Gundy*, *see* Dkt. 1 at 8; Dkt. 33 at 2, it is for the Supreme Court, and not a lower court, to overrule the Court's precedents. *See, e.g.*, *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) ("[I]t is this Court's prerogative alone to overrule one of its precedents.").

This Court, therefore, concludes that Valles's nondelegation claim must be dismissed. Valles is free to file an appeal to the Second Circuit and ultimately petition the Supreme Court for certiorari should he believe *Gundy* should be overturned.

IV. Valles's First Amendment claim fails

In addition to his separation-of-powers and nondelegation claim, Valles challenges SORNA under the First Amendment. Valles argues that compliance with SORNA is tantamount to compelled speech. Dkt. 1 at 7.

The First Amendment protects not just the right to speak, but also the right to refrain from speaking. *See, e.g.*, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."). The critical question is whether SORNA's registration requirement constitutes "compelled speech."

Although there is no controlling precedent on this question, every decision the Court has found to consider the question has held that registration requirements under SORNA or analogous state laws do not constitute compelled speech. *See, e.g.*, *United States v. Arnold*, 740 F.3d 1032, 1035 (5th Cir. 2014) (federal law); *Medina v. Cuomo*, 2015 WL 13744627, at *9–10 (N.D.N.Y. Nov. 9, 2015), *report and recommendation adopted*, 2016 WL 756539 (N.D.N.Y. Feb. 25, 2016) (New York law). And courts have found that even if heightened scrutiny applies, sex offender registration requirements can survive. *See Does v. Whitmer*, 751 F. Supp. 3d 761, 822–28 (E.D. Mich. 2024) (Michigan law); *United States v. Fox*, 286 F. Supp. 3d 1219, 1222–24 (D. Kan. 2018) (federal law).

The Court agrees with the other courts to reach the issue and concludes that SORNA does not violate the First Amendment. Across contexts, courts have routinely held that mandates to report information to the government do not constitute compelled speech. *See, e.g.*, *United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (holding that an IRS tax form does not constitute compelled speech). As one of the concurring opinions in *Barnette* itself noted, "essential operations of government may require [speaking] for the preservation of an orderly society,—as in the case of compulsion to give evidence in court." *Barnette*, 319 U.S. at 645 (Murphy, J., concurring). As SORNA neither compels speech directed to members of the public—only to the government itself—nor requires Valles to take a stance on "politics, nationalism, religion, or other matters of opinion," *Barnette*, 319 U.S. at 642, the Court concludes that it does not implicate his First Amendment rights. The Court thus grants the Attorney General's motion to dismiss Valles's First Amendment claim.

CONCLUSION

The Attorney General of the United States's motion to dismiss Valles's complaint is GRANTED. The Court *sua sponte* dismisses the remaining defendants, who have not filed an appearance.

The Clerk of Court is respectfully directed to terminate the motion at Dkt. 26, enter judgment for defendants, and close the case.

SO ORDERED.

Dated: February 11, 2026
New York, New York

ARUN SUBRAMANIAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Andrew Valles,

Plaintiff,

-against-

25 **CIVIL** 2215 (AS)

JUDGMENT

Attorney General of the United States et al.,

Defendants.

---X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion & Order dated February 11, 2026, the Attorney General of the United States's motion to dismiss Valles's complaint is GRANTED. The Court *sua sponte* dismisses the remaining defendants, who have not filed an appearance; accordingly, the case is closed.

Dated: New York, New York

February 17, 2026

TAMMI M. HELLWIG

Clerk of Court

BY: Nezam Dulal

Deputy Clerk

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The following provisions are reproduced in pertinent part. Omissions are indicated where only a relevant subsection is included.

U.S. Const. art. I, § 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 2250(a) - Failure to register

(a) In general

Whoever-

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

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

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

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

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

34 U.S.C. § 20911 - Relevant definitions (selected provisions)

(1) Sex offender

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

(2) Tier I sex offender

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

(5) Sex offense

(A) Except as limited by subparagraph (B) or (C), the term "sex offense" means-

(i) a criminal offense that has an element involving a sexual act or sexual contact with another;

(ii) a criminal offense that is a specified offense against a minor;

(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18;

(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or

(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

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

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

34 U.S.C. § 20913 - Registry requirements for sex offenders

(a) In general

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

(b) Initial registration

The sex offender shall initially register-

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

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

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before July 27, 2006 or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

34 U.S.C. § 20914(a) - Information required in registration (selected provisions)

(a) Provided by the offender

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

(1) The name of the sex offender (including any alias used by the individual).

(2) The Social Security number of the sex offender.

(3) The address of each residence at which the sex offender resides or will reside.

(4) The name and address of any place where the sex offender is an employee or will be an employee.

(5) The name and address of any place where the sex offender is a student or will be a student.

(6) The license plate number and a description of any vehicle owned or operated by the sex offender.

(7) Information relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General.

(8) Any other information required by the Attorney General.

(c) Time and manner. A sex offender shall provide and update information required under subsection (a), including information relating to intended travel outside the United States required under paragraph (7) of that subsection, in conformity with any time and manner requirements prescribed by the Attorney General.

34 U.S.C. § 20915 - Duration of registration requirement

(a) Full registration period

A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is-

(1) 15 years, if the offender is a tier I sex offender;

(2) 25 years, if the offender is a tier II sex offender; and

(3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record

(1) Clean record. The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by-

(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;

(B) not being convicted of any sex offense;

(C) successfully completing any periods of supervised release, probation, and parole; and

(D) successfully completing of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

(2) Period. In the case of-

(A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and

(B) a tier III sex offender adjudicated delinquent for the offense which required registration, the period during which the clean record shall be maintained is 25 years.

(3) Reduction. In the case of-

(A) a tier I sex offender, the reduction is 5 years;

(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.

34 U.S.C. § 20920(a) - Public access to sex offender information through the Internet

(a) In general

Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user.

34 U.S.C. § 20921 - National Sex Offender Registry (selected provisions)

(a) Internet

The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding

The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

Board of Examiners of Sex Offenders

KATHY HOCHUL
Governor

MICHELE L. HARRINGTON
Chairperson

TO: **ANDREW VALLES**
104 GOLD STREET
BROOKLYN, NY 11201

DOB: 06/21/1977
FBI #: 343150TB5
NYSID #: OS6067

FROM: NYS Board of Examiners of Sex Offenders

RE: Sex Offender Registration Determination

DATE: June 3, 2025

Please be advised that your case has been identified to the NYS Board of Examiners of Sex Offenders and, after a review, the Board has determined that you are NOT required to register at this time as a sex offender in New York pursuant to NYS Correction Law §§ 168-a and -k for your misdemeanor conviction in Utah for Lewdness Involving a Child, in violation of Utah Code § 76-9-702.5, on January 27, 2005.

cc: New York State Sex Offender Registry
AES Building
80 S. Swan St.
Albany, NY 12210

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80 South Swan St., Room 202, Albany, NY 12210

Additional material from this filing is available in the Clerk's Office.