

Cases Interpreting 18 U.S.C. §2250(a)

Lori McPherson
Policy Advisor
SMART Office/OJP
U.S. Department of Justice
(202) 353-3591
lori.mcpherson@usdoj.gov

1. **U.S. v. Madera, 474 F. Supp. 2d 1357 (M.D. Fla. 2007), *reversed*, U.S. v. Madera, 528 F.3d 852 (11th Cir. 2008).**

Defendant was convicted of failing to register as a sex offender per the provisions of the Adam Walsh Act (“Sex Offender Registration and Notification Act”/SORNA). He was convicted of a misdemeanor State offense in 2005 and failed to re-register when he moved from New York to Florida. He challenged his conviction on multiple grounds.

The Middle District of Florida held as follows:

- a. That SORNA does not violate the non-delegation doctrine of Article I, § 1 of the U.S. Constitution;
- b. That SORNA does not violate the Ex Post Facto clause, per the logic in Smith v. Doe, 538 U.S. 84 (2003), which addressed the Alaska Sex Offender Registry requirements;
- c. That SORNA does not violate procedural due process under the Fifth Amendment per Conn. Dept. of Pub. Safety v. Doe, 538 U.S. 1 (2003);
- d. That SORNA does not violate substantive due process per decisions in various circuits, Doe v. Moore, 410 F.3d 1337 (11th Cir. 2005), Doe v. Tandeske, 361 F.3d 594 (9th Cir. 2004), and Gunderson v. Hyass, 339 F.3d 639 (8th Cir. 2003);
- e. That SORNA does not violate the Commerce Clause, per Gonzales v. Raich, 545 U.S. 1 (2005).

SORNA was held to be both constitutional and retroactive. This was the first case to go to an appellate court addressing these issues re: SORNA.

a. **U.S. v. Madera, F.3d 852 (11th Cir. 2008)**

Reversing the District Court decision, the Eleventh Circuit concluded that “because Madera’s indictment concerns his failure to register during the gap period between SORNA’s enactment [July 27, 2006] and the Attorney General’s retroactivity determination [February 28, 2007], he cannot be prosecuted for violating SORNA during that time.” The 11th Circuit did not reach any of the constitutional issues.

2. U.S. v. Templeton, 2007 U.S. Dist. LEXIS 8930 (W.D. Okla. Feb. 7, 2007)

The court found no violation of the Commerce Clause, Ex Post Facto clause, or due process clause, and concluded that SORNA can be applied retroactively.

3. U.S. v. Manning, 2007 U.S. Dist. LEXIS 12932 (W.D. Ark. February 23, 2007)

Defendant was notified in March of 2004 of his obligation to register as a sex offender under Delaware law. He subsequently moved to Arkansas. Defendant's *ex post facto* challenge failed, with this court citing Madera and Templeton. The court found that there was adequate notice under SORNA, with some interesting language:

“A defendant is required by SORNA to comply with registration obligations as imposed by other laws...a violation of SORNA requires that a defendant knowingly failed to register or update a registration. A defendant can violate the law by failing to register or update a SORNA-imposed registration obligation or a registration obligation imposed by another law...Defendant knew was under an obligation to register and no new duties were given to him...ignorance of the law is generally no excuse to break the law, even in offender registration contexts...”

4. U.S. v. Smith, 481 F. Supp.2d 846 (E.D. Mich. 2007)

Defendant was convicted in New York in 1989 and released in 2004, properly notified of his obligation to register under NY's sex offender registration provisions. He moved to Michigan later in 2004. New York sent him a letter in 2006 'reminding' him of his registration requirement in NY. Defendant did not subsequently register in either Michigan or NY. NY did not request to extradite for state-level prosecution. He was later arrested for a violation of SORNA.

He was charged with a felony violation of 18 U.S.C. §2250. The Eastern District of Michigan dismissed this indictment for two reasons:

- a. The use of the word “travels” in §2250(2)(A) is significant. The language does not say “traveled” and, as such, means that “the law would apply to one who travels in interstate commerce *after July 27, 2006* and thereafter fails to register” as required by SORNA;
- b. The *ex post facto* clause is violated by this application of §2250 as it is not similar to the situation in *Smith v. Doe*, 538 U.S. 84 (2003). The statute is *criminal*—not civil--by its language and a retroactive elevation of punishment from the misdemeanor violation of 42 USC §14072(g) (Jacob Wetterling) is unconstitutional “insofar as the government seeks to apply it to a D who traveled in interstate commerce prior to July 27, 2006” and failed to register as required by SORNA.

5. U.S. v. Markel, 2007 U.S. Dist. LEXIS 27102 (W.D. Ark. April 11, 2007)

Citing Madera, Templeton, and Manning (a case out of this same district) the court held that such a prosecution did not violate *ex post facto* or any notice requirements—and also held that traveling in interstate commerce *after* the enactment of the criminal statute was not required. This is all *contra* the decision in Smith (E.D. Mich.).

6. U.S. v. Hinen, 487 F. Supp.2d 747 (W.D. Va. 2007)

Defendant was required to register as a sex offender in Virginia, and came off of probation in July of 2006. Shortly thereafter he moved to Tennessee and failed to register, and is being prosecuted under SORNA. All of his constitutional challenges were rejected, and the court gave some interesting language about notice under SORNA: “individuals convicted of certain conduct are placed on constructive notice that they may be subjected to future regulation because of the nature of their criminal conduct.”

7. U.S. v. Kapp, 487 F. Supp. 2d 536 (M.D. Pa. 2007)

Because the indictments (for violation of 18 USC 2250(a)) came after the enactment of SORNA but before the Attorney General’s regulations regarding retroactivity, SORNA did not apply to the defendants at the time of indictment. The indictments were dismissed. (They were also charged under the federal misdemeanor Jacob Wetterling failure to register statute, 42 U.S.C. 14072(i), which was not dismissed).

8. U.S. v. Mason, 510 F. Supp.2d 923 (M.D. Fla. 2007)

Defendant’s constitutional challenges to 18 USC 2250(a)—non-delegation, *ex post facto*, due process and commerce clause—were all rejected by the District Court.

9. U.S. v. Muzio, 2007 U.S. Dist. LEXIS 40294 (E.D. Mo. June 4, 2007)

Defendant’s challenges to SORNA’s retroactive application to and constitutional challenges (*ex post facto* and commerce clause) were rejected.

a. U.S. v. Muzio, 2007 U.S. Dist. LEXIS 54330 (E.D. Mo. July 26, 2007)

Dismissed Defendant’s indictment under 18 USC §2250 because SORNA did not apply to him at the time of his travel (late 2006). Like in Heriot, there was no federal obligation to register until February 28, 2007. Here, though, the court found an *ex post facto* violation as well.

10. U.S. v. Lang, No. CR-07-0080-HE (W.D. Okla., June 5, 2007)

Defendant’s *ex post facto* and commerce clause challenges to his prosecution under 18 USC §2250 were denied.

a. **U.S. v. Lang, 2007 U.S. Dist. LEXIS 56655 (W.D. Okla. July 13, 2007)**

A prosecution under 18 USC §2250. A new trial was ordered for the defendant after the court determined that language in the prosecutor's closing argument was error that warranted such a remedy.

11. **U.S. v. Smith, 528 F. Supp.2d 615 (S.D. W.Va. 2007)**

Defendant's indictment under 18 USC 2250(a) was dismissed because SORNA "did not apply to past offenders, from July 27, 2006, the effective date of the statute, until February 28, 2007" (the date the interim rules re: retroactivity were issued). The court also held that defendant could not have been properly notified under SORNA "until the issuance of the [AG's] interim rule" and the new proposed guidelines, issued May 17, 2007, because prior to that there was no "way to notify or register past offenders". Defendant's sex offender registration under his state's law was "not sufficient to notify him of any requirement to comply with SORNA."

12. **U.S. v. Stinson, Case 3:07-cr-00055 (S.D. W.V. June 21, 2007)**

Defendant's challenges were all rejected (the usual ones of due process, ex post facto, non-delegation, etc), but the case is noteworthy in that two new (unsuccessful) arguments were raised: the absence of regulations regarding notice under §16917(b), and a violation of the Administrative Procedure Act. Worth a look to see where the defense arguments are heading.

a. **U.S. v. Stinson, 507 F. Supp.2d 560 (S.D. W.Va. 2007)**

Dismissed defendant's conviction on ex post facto grounds. Defendant was convicted in 1993 in Michigan, paroled and notified of his sex offender registration obligation in 1996 (his registration obligation was for 25 years). In 2005 he relocated to West Virginia and failed to register as a sex offender. He was charged on March 8, 2007, but the indictment date only covered February of 2007. Following Salle, the court found that failure to register as a sex offender was not a continuing offense, and that prosecution of this case would constitute an ex post facto violation.

13. **U.S. v. Husted, No. CR-07-105-T (W.D. Okla., June 29, 2007)**

Defendant's ex post facto challenge was rejected. Even though defendant had registered as required in Oklahoma, and subsequently moved to Missouri (where he was not required to register by that state's laws), he could still be prosecuted for violating 18 USC §2250 because the Jacob Wetterling statutory scheme required (arguably) that he register with the FBI. Defendant also forgot to tell Oklahoma he was moving. The court found a violation of 2250 to be a continuing offense, which is an interesting development as the interpretation of 18 USC §2250(a) evolves.

14. U.S. v. Barnes, 2007 U.S. Dist. LEXIS 53245 (S.D.N.Y. July 23, 2007)

Like Heriot and Muzio, found that defendant's indictment under 18 USC §2250 ought to be dismissed where D traveled prior to the retroactivity guidelines issued on February 28, 2007. Took a different approach to the reasoning, however, finding a Fifth Amendment Due Process violation of defendant's right to adequate notice and fair warning, citing Lambert v. California, 355 U.S. 225 (1958).

15. U.S. v. Heriot, 2007 U.S. Dist. LEXIS 54807 (D. S.C. July 27, 2007)

Granted defendant's motion to dismiss his indictment under 18 USC §2250 because SORNA did not apply to him at the time of his travel (October 10, 2006). There was no federal obligation to register under SORNA until the issuance of the retroactivity guidelines (February 28, 2007).

16. U.S. v. Roberts, 2007 U.S. Dist. LEXIS 54646 (W.D. Va. July 27, 2007)

Defendant's motion to dismiss his indictment under 18 USC §2250 was denied. His challenges to the retroactive application of SORNA, notice, and venue were rejected. Regarding 'notice', some interesting language: "ignorance of the law" is no excuse. There is a brief discussion of proper venue in a prosecution of 18 USC §2250 cases, interpreting 18 USC §3237.

17. U.S. v. Marcantonio, 2007 U.S. Dist. LEXIS 55645 (W.D. Ark. July 31, 2007)

Defendant's multiple challenges to his prosecution under 18 USC §2250 (ex post facto, notice, and retroactivity) were denied.

18. U.S. v. Gonzales, 2007 U.S. Dist. LEXIS 58035 (N.D. Fla. Aug. 9, 2007)

In a fairly detailed opinion, the court rejected defendant's motion to dismiss his indictment on notice, retroactivity, substantive due process (right to travel), commerce clause, ex post facto, procedural due process, and non-delegation grounds. Defendant's requirement to register as a sex offender commenced after SORNA was enacted.

19. U.S. v. Sallee, 2007 U.S. Dist. LEXIS 68350 (W.D. Okla. Aug. 13, 2007)

Defendant's conviction occurred in 1996 in Oregon and his interstate travel took place two years prior to SORNA's enactment. The court held that he was not required to register under SORNA until February 28, 2007, that failure to register as a sex offender is not a continuing offense, and that the prosecution of defendant under these circumstances would violate the ex post facto clause.

20. U.S. v. Sawn, 2007 U.S. Dist. LEXIS 59382 (W.D. Va. Aug. 14, 2007)

Defendant's challenges (due process, commerce clause, non-delegation, ex post facto) to his indictment were denied.

21. U.S. v. Hulen, 2007 U.S. Dist. LEXIS 60113 (W.D. Ark. Aug. 15, 2007)

The court, following precedent out of the district, denied defendant's motion to dismiss the indictment. One unique thing about this case, though, was that the defendant traveled to Arkansas and registered as a sex offender in February of 2006. This case was prosecuted as a failure to update his registration because he moved within Arkansas.

22. U.S. v. Torres, 2007 U.S. Dist. LEXIS 60119 (W.D. Ark. Aug. 15, 2007)

A cut-and-paste (really) of the opinion in Hulen, above, dismissing defendant's motion to dismiss. The facts in this case were more run-of-the mill, defendant moving to Arkansas sometime between August of 2005 and April of 2007.

23. U.S. v. Buxton, 2007 U.S. Dist. LEXIS 76142 (W.D. Okla. Aug. 20, 2007)

Defendant was convicted in Texas, and was required to register as a sex offender. He subsequently moved to Florida, then to Oklahoma, prior to the enactment of SORNA. D's ex post facto, due process, and commerce clause objections were rejected by the court.

24. U.S. v. Kelton, 2007 U.S. Dist. LEXIS 65430 (M.D. Fla. Sept. 5, 2007)

Defendant's non-delegation, commerce clause, ex post facto, and due process challenges were rejected. He traveled in June of 2006 but was not indicted on his 18 USC §2250 charge until July of 2007.

25. U.S. v. Lawrance, 2007 U.S. Dist. LEXIS 75518 (W.D. Okla. Sept. 5, 2007)

Defendant was convicted in Arizona in 2002, and traveled to Colorado prior to the enactment of SORNA. He was arrested in June of 2007 for failure to register under 18 USC §2250. Defendant's ex post facto, commerce clause, and due process challenges were denied. The court found that he had an ongoing duty to register in Oklahoma and failed to do so after the issuance of the interim retroactivity regulations.

26. U.S. v. Mitchell, 2007 U.S. Dist. LEXIS 66114 (Sept. 6, 2007)

Defendant's ex post facto and notice challenges were rejected, following precedent in this district.

27. U.S. v. Cole, 2007 U.S. Dist. LEXIS 68522 (S.D. Ill. Sept. 17, 2007)

Defendant 'traveled' between the enactment of SORNA and the issuance of the AG's retroactivity guidelines. Following the Muzio decision, his indictment was dismissed.

28. U.S. v. Kent, 2007 U.S. Dist. LEXIS 69819 (S.D. Ala. Sept. 20, 2007)

Defendant's pretrial motion challenging his indictment on ex post facto and due process notice grounds was rejected. Take note, though, that the court was unable to resolve the

factual issues (because of the Government's non-cooperation) underlying the ex post facto challenge and in its opinion stated that "if the Government is unable to establish that the defendant traveled in interstate commerce after the enactment of 18 USC §2250, an acquittal would appear to be the proper manner to address the issue.

29. U.S. v. Kent, 2008 U.S. Dist. LEXIS 10044 (S.D. Ala. Feb. 8, 2008)

A thorough opinion concluding that because defendant did not travel post-SORNA enactment, a prosecution under 18 USC §2250 violates the ex post facto clause.

30. U.S. v. Deese, 2007 U.S. Dist. LEXIS 70677 (W.D. Okla. Sept. 21, 2007)

Defendant was required to register based on a Michigan conviction, and moved to Oklahoma in approximately 2004. He was indicted in July 2007 for a violation of 18 USC §2250. The court dismissed defendant's indictment, finding that he was not required to register under SORNA until February 28, 2007, that failure to register is not a continuing offense, and that because his 'travel' took place prior to SORNA's enactment, prosecution would violate the ex post facto clause.

31. U.S. v. Patterson, 2007 U.S. Dist. LEXIS 96312 (D. Neb. Sept. 21, 2007)

Defendant was convicted in New York, moved to Nebraska, and failed to register as required. He moved back and forth between Iowa and Nebraska up until January of 2007. The court found that SORNA did not apply to him until the retroactivity guidelines were issued, and that prosecution under §2250 violated the ex post facto clause.

32. U.S. v. May, 2007 U.S. Dist. LEXIS 70709 (S.D. Iowa Sept. 24, 2007)

The court rejected defendant's retroactivity, ex post facto, non-delegation, due process, and commerce clause challenges.

a. U.S. v. May, 2008 U.S. App. LEXIS 16194 (8th Cir. July 31, 2008)

Affirmed the District Court decision in finding no constitutional violations on retroactivity, ex post facto, or commerce clause grounds.

32. U.S. v. Lovejoy, 516 F. Supp.2d 1032 (D. N.D. 2007)

Defendant's challenges were rejected, even though the only allegation is that he was convicted of a federal offense and failed to update his intrastate registration.

33. U.S. v. Beasley, 2007 U.S. Dist. LEXIS 85793 (N.D. Ga. Oct. 10, 2007)

Defendant was convicted in the mid-1980's, released from prison in 2002 and required to register in Mississippi. He traveled to Georgia in January of 2007 and remained there until March of 2007, and did not register. Held that failure to register was not a

continuing offense but, under the facts of this case, defendant could be prosecuted. Has an extensive discussion of ex post facto concerns and the retroactivity regulation.

34. U.S. v. Ambert, 2007 U.S. Dist. LEXIS 75384 (N.D. Fla. Oct. 10, 2007)

Defendant's challenges to his prosecution under 18 USC §2250 on multiple grounds was denied. Defendant was convicted in 1974 in California, released from prison in 2005 and subject to lifetime registration in California, thereafter moved to Florida (at an unknown time) and failed to register as a sex offender.

35. U.S. v. Gill, 520 F. Supp.2d 1341 (D. Utah 2007)

Defendant was charged with traveling in interstate commerce in September and October of 2006. Because the allegations predate the issuance of the rules regarding retroactivity (Feb. 28, 2007), the criminal penalties of SORNA did not apply to him.

36. Levine v. Pennsylvania State Police, 2007 U.S. Dist. LEXIS 76679 (M.D. Pa. Oct. 16, 2007)

Defendant challenged SORNA civilly on commerce clause grounds. This appears to be the first case that discusses the regulatory scheme of SORNA (albeit only in one sentence) in light of the Commerce Clause. Defendant's challenge was dismissed.

37. U.S. v. Wilson, 2007 U.S. Dist. LEXIS 76722 (D. Utah Oct. 16, 2007)

Defendant traveled in interstate commerce prior to July of 2006. Prosecution under 18 USC §2250 is barred by the ex post facto clause. Also concluded that failure to register as a sex offender is not a continuing offense.

38. U.S. v. Rich, 2007 U.S. Dist. LEXIS 91131 (W.D. Mo. Oct. 31, 2007)

Defendant traveled in interstate commerce prior to February 28, 2007. Found that applying §2250 to this case would violate the ex post facto clause.

a. U.S. v. Rich, 2007 U.S. Dist. LEXIS 91129 (W.D. Mo., Nov. 19, 2007)

On appeal from the magistrate judge's ruling, denied the motion to dismiss because of ex post facto and commerce clause arguments, allowing the trial to proceed.

39. U.S. v. Carr, 2007 U.S. Dist. LEXIS 81700 (N.D. Ind. Nov. 2, 2007)

Defendant traveled pre-enactment and was arrested post-guidelines. His ex post facto claim was rejected.

40. U.S. v. Cardenas, 2007 U.S. Dist. LEXIS 88803 (S.D. Fla. Nov. 5, 2007)

Defendant traveled in the ‘gap’ and failed to register. All of his constitutional arguments were rejected. The ex post facto ruling infers that ‘travel’ post-enactment (July 27, 2006) is required for a conviction.

a. U.S. v. Cardenas, 2008 U.S. Dist. LEXIS 31340 (S.D. Fla. Mar. 28, 2008)

Again rejected all of defendant’s constitutional arguments as listed above.

41. U.S. v. Pitts, 2007 U.S. Dist. LEXIS 82632 (M.D. La. Nov. 7, 2007)

Defendant traveled pre-SORNA enactment and failed to register until his arrest post-guidelines. His ex post facto, commerce clause, due process and other constitutional claims were rejected.

b. U.S. v. Pitts, 2008 U.S. Dist. LEXIS 11071 (M.D. La. Feb. 14, 2008)

Defendant was convicted in 1992, released in 1994, and traveled to Louisiana by February of 2001. Without any detailed discussion, the court held that the “interstate travel” element of §2250 was a “jurisdictional element” and, therefore, travel prior to the enactment of SORNA did not raise any ex post facto issues. Also rejected his ‘notice’ challenge.

42. U.S. v. Adkins, 2007 U.S. Dist. LEXIS 90737 (N.D. Ind. Dec. 7, 2007)

Defendant traveled in the ‘gap’ and failed to register until his arrest post-guidelines. His ex post facto, commerce clause, and due process claims were rejected.

43. U.S. v. Elliott, 2007 U.S. Dist. LEXIS 91665 (S.D. Fla. Dec. 13, 2007)

Defendant traveled in the ‘gap’ between SORNA’s enactment and the issuance of the retroactivity guidelines. Rejected defendant’s commerce clause, ex post facto, non-delegation and due process arguments.

44. U.S. v. Bonner, 2007 U.S. Dist. LEXIS 92248 (S.D. Ala. Dec. 12, 2007)

Ex post facto analysis of pre-SORNA conviction and travel. Because the government did not prove post-July 27, 2006 interstate travel, the defendant’s conviction was overturned.

45. U.S. v. Brown, 2007 U.S. Dist. ELXIS 91328 (S.D. N.Y. Dec. 12, 2007)

A decision under Jacob Wetterling’s criminal failure to register statute (42 USC §14072), but notable because it is one of the very few—if any—published decisions addressing constitutional issues regarding that statute. The conviction was affirmed. (Defendant had originally been charged with a violation of 18 USC §2250 but there were ex post facto concerns).

46. U.S. v. Gould, 526 F. Supp.2d 538 (D. Md. 2007)

Defendant was convicted in 1985, required to register, and ‘traveled’ after the retroactivity guidelines were issued. Defendant argued that 18 USC §2250 could not be prosecuted because SORNA has not been implemented in the state where he presently resides. The court rejected his argument, along with other constitutional issues—in particular, it held that §2250 could only apply to persons who failed to register after February 28, 2007.

47. U.S. v. Dumont, 2007 U.S. Dist. LEXIS 91998 (S.D. Fla. Dec. 14, 2007)

Non-precedential opinion presenting a factual scenario sufficient to convict under 18 USC §2250.

48. U.S. v. Dixon, 2007 U.S. Dist. LEXIS 94257 (N.D. Ind. Dec. 18, 2007)

Defendant traveled prior to the enactment of SORNA. The court denied his arguments re: retroactivity, ex post facto (holding that failure to register is a continuing offense), due process, commerce clause, non-delegation, and the APA.

49. U.S. v. Terwilliger, 2008 U.S. Dist. LEXIS 375 (S.D. Cal. Jan. 3, 2008)

Defendant traveled in the ‘gap’ and failed to register post-retroactivity guidelines. The court found an ex post facto violation to the extent the indictment rests on interstate travel before February 28, 2007.

50. U.S. v. Baccam, 2008 U.S. Dist. LEXIS 5451 (W.D. Ark. Jan. 8, 2008)

Defendant traveled and failed to register post-retroactivity guidelines. His conviction was affirmed.

51. U.S. v. LeTourneau, 2008 U.S. Dist. LEXIS 1585 (S.D. Tex. Jan. 9, 2008)

Defendant traveled and failed to register post-retroactivity guidelines. His conviction was affirmed.

52. U.S. v. Mantia, 2008 U.S. Dist. LEXIS 2928 (W.D. La., Jan 15, 2008)

In an opinion with no stated facts, dismissed defendant’s indictment under 18 USC §2250 because of an ex post facto violation.

53. U.S. v. Samuels, 2008 U.S. Dist. LEXIS 3782 (E.D. Ky. Jan. 17, 2008)

Defendant traveled in the ‘gap’ and failed to register until his arrest post-retroactivity guidelines. Defendant’s arguments re: due process notice, retroactivity, and ex post facto were all rejected.

54. U.S. v. Hacker, 2008 U.S. Dist. LEXIS 7793 (D. Neb. Feb. 1, 2008)

Defendant traveled and failed to register post-retroactivity guidelines. His conviction was affirmed.

55. U.S. v. Howell, 2008 U.S. Dist. LEXIS 7810 (N.D. Iowa Feb. 1, 2008)

Defendant traveled and failed to register post-SORNA enactment (July 27, 2006) but before the issuance of the retroactivity guidelines. The court held that a prosecution under §2250 would violate the ex post facto clause. The Magistrate Judge opinion in this case, affirmed in part and overturned in part by this opinion, is at 2007 U.S. Dist. LEXIS 83224 (N.D. Iowa Dec. 8, 2007).

56. U.S. v. Hester, 2008 U.S. Dist. LEXIS 9231 (N.D. N.Y. Feb. 7, 2008)

Defendant traveled and failed to register post-retroactivity guidelines. His conviction was affirmed.

57. U.S. v. Thomas, 534 F. Supp.2d 912 (N.D. Iowa 2008)

Defendant was convicted in 2000, released in 2005, and became homeless around September 2007. He failed to update his sex offender registration information. The court rejected defendant's Commerce Clause challenge.

58. U.S. v. Aldrich, 2008 U.S. Dist. LEXIS 11411 (D. Neb. Feb. 14, 2008)

Defendant was convicted in 2002 (state court) and 2003 (tribal court) of offenses requiring registration. He failed to register from 2003-2007. His registry address (and actual address, next door) was in Indian Country. He was charged with a violation of §2250 based on living in Indian Country. The court held that failure to register is not a continuing offense, and that his violation of §2250 involved "wholly passive conduct", and that the ex post facto clause precluded prosecution. The court also found a due process 'notice' violation, as well.

59. U.S. v. Villagomez, 2008 U.S. Dist. LEXIS 26814 (W.D. Ok. April 2, 2008)

Defendant travelled and failed to register post-retroactivity guidelines. All of his challenges were rejected, per the precedent in the district.

60. U.S. v. Akers, 2008 U.S. Dist. LEXIS 30271 (N.D. Ind. April 3, 2008)

Defendant travelled and failed to register post-retroactivity guidelines. The court rejected his Commerce Clause, Tenth Amendment, Non-Delegation, Due Process, and Ex Post Facto challenges. The court specifically held that SORNA creates a continuing duty to register. Also tried to tackle the argument of SORNA not applying because it has not been implemented by the State in which defendant was required to register, albeit in a cursory manner.

61. U.S. v. Gillette, 2008 U.S. Dist. LEXIS 28775 (D. V.I. April 7, 2008)

Defendant travelled to the Virgin Islands pre-SORNA and failed to register. In a lengthy opinion, the court found that prosecution under 18 USC §2250 violates the ex post facto clause. There is a detailed analysis of Commerce Clause issues; the court also held that Failure to Register is not a continuing offense.

62. U.S. v. Holt, 2008 U.S. Dist. LEXIS 31523 (S.D. Iowa April 14, 2008)

Defendant travelled and failed to register post-retroactivity guidelines. His commerce clause and due process arguments were rejected.

63. U.S. v. Powers, 2008 U.S. Dist. LEXIS 32269 (M.D. Fla. April 18, 2008)

Defendant's Commerce Clause argument was successful (the first one, nationwide, to succeed). The court relied on the third prong of Lopez, and concluded that 18 USC §2250 did not regulate activities that substantially affect interstate commerce. The court did not make any reference to the Tykarsky case, which dealt with 18 USC §2423.

64. U.S. v. Craft, 2008 U.S. Dist. LEXIS 33860 (D. Neb. April 23, 2008)

Defendant travelled and failed to register post-retroactivity guidelines. His arguments regarding due process, the commerce clause and tenth amendment were rejected. He also raised the argument that SORNA has not been implemented by the State in which he is required to register—which the court rejected.

65. U.S. v. Ditomasso, 2008 U.S. Dist. LEXIS 37870 (D. R.I. May 8, 2008)

Defendant travelled and failed to register post-retroactivity guidelines. His arguments regarding due process, ex post facto, the right to travel (due process), separation of powers, APA, the commerce clause and tenth amendment were rejected. He also raised, and the court rejected, the argument that SORNA has not been implemented by the State in which he is required to register. References the Migratory Bird Treaty Act [16 U.S.C. §707(b)] regarding notice issues in the opinion.

66. U.S. v. David, 2008 U.S. Dist. LEXIS 38613 (W.D. N.C. May 12, 2008)

Raised the issue about SORNA not being implemented in the registration state. The court held that there was sufficient notice to satisfy due process and that there was no commerce clause violation.

67. U.S. v. Sanchez, 527 F.3d 463 (5th Cir. 2008)

Sentencing guidelines case which found that the trial court's failure to use the proposed (now final) sentencing guidelines for 18 USC §2250 warranted a remand for resentencing.

68. U.S. v. Tong, 2008 U.S. Dist. LEXIS 41589 (E.D. Okla. May 23, 2008)

Rejected the defendant's multiple constitutional challenges, including ex post facto, commerce clause, non-delegation, APA, and 10th Amendment attacks.

69. U.S. v. Cochran, 2008 U.S. Dist. LEXIS 41588 (E.D. Okla., May 23, 2008)

Much like the previous case, the court rejected defendant's multiple constitutional challenges.

70. U.S. v. Clements, No. CR 08-00303-TUC-DCB [CRP] (D. Ariz. June 5, 2008)

This is a Magistrate's report and recommendation which is notable in its recommendation to dismiss defendant's indictment for 18 U.S.C. §2250. The magistrate found a lack of authority in the Interim Retroactivity Regulation issued by the Attorney General (along with a violation of the APA)—finding the Interim Regulation a “nullity”; also found an ex post facto and due process violation because SORNA will not apply to the defendant until the “relevant state establishes a SORNA sex offender registry and advises [defendant] of the new requirements of SORNA”.

a. R&R Rejected by District Court: Mr. Clements was convicted of Failure to Register as a Sex Offender on August 5, 2008. See the DOJ press release at: [http://www.usdoj.gov/usao/az/press_releases/2008/2008-199\(Clements\).pdf](http://www.usdoj.gov/usao/az/press_releases/2008/2008-199(Clements).pdf).

71. U.S. v. Waybright, CR 8-16-M-DWM (D. Mont. June 11, 2008)

Concluded that the statute which the Government argued required registration, 42 U.S.C. §19613, was not a valid exercise of Congress' Commerce Clause authority.

72. U.S. v. Fuller, 2008 U.S. Dist. LEXIS 46950 (N.D. N.Y. June 13, 2008)

The court rejected the defendant's argument that he could not be prosecuted because the state in which he failed to register had not yet implemented SORNA. Also rejected his ex post facto and due process arguments.

73. U.S. v. Shira, 2008 U.S. App. LEXIS 14920 (11th Cir. July 11, 2008)

Defendant was indicted prior to the issuance of the sentencing guidelines in §2A3.5, but sentenced afterwards. Because the sentencing court stated that it would have imposed the same sentence regardless of the guidelines calculation, the 15 month sentence was not unreasonable.

74. U.S. v. Van Buren, 2008 U.S. Dist. LEXIS 61765 (N.D. N.Y. August 8, 2008)

Defendant was convicted of a federal child pornography offense. In a lengthy opinion, the court found that 42 U.S.C. §16913 was a constitutional exercise of Congress' power

under the Necessary and Proper Clause to attain legitimate ends under the Commerce Clause.

75. U.S. v. Trent, 2008 U.S. Dist. LEXIS 56968 (S.D. Ohio July 24, 2008)

Defendant's multiple constitutional challenges were rejected, including a challenge to the constitutionality of the registration requirement in 42 U.S.C. §16913.

76. U.S. v. Gagnon, 2008 U.S. Dist. LEXIS 61458 (D. Me. Aug. 11, 2008)

Defendant's 'lack of implementation', retroactivity, notice, ex post facto, commerce clause, and tenth amendment challenges were rejected.

77. U.S. v. Torres, 2008 U.S. Dist. LEXIS 71136 (W.D. Tex. Aug. 21, 2008)

Defendant was convicted of two offenses under the UCMJ and required to register as a sex offender in Texas, thereafter working in New Mexico without registering as required. In a detailed opinion, the court rejected him multiple constitutional challenges.

78. U.S. v. Vardaro, CR-08-04-BLG-RFC (D. Mont. Sept. 5, 2008)

Contra the decision in Waybright, Vardaro held that there was no violation of the commerce clause, due process, or the tenth amendment in requiring the defendant to register under 42 U.S.C. §16913.

79. U.S. v. Robinson, 2008 U.S. Dist. LEXIS 65024 (E.D. Va. Aug. 19, 2008)

Defendant multiple constitutional challenges were rejected. He was sentenced after SORNA's implementation and travelled post-guidelines.

80. U.S. v. Shenandoah, 2008 U.S. Dist. LEXIS 64622 (M.D. Pa. Aug. 20, 2008)

The defendants' multiple constitutional challenges were rejected. The court spent a good deal of time addressing the 'not implemented yet' argument and also taking up a Tenth Amendment challenge.

81. U.S. v. Brown, 2008 U.S. Dist. LEXIS 66285 (Aug. 28, 2008)

Defendants' multiple constitutional challenges were rejected, including his "not implemented yet" argument.