

Man NOT on sex offender registry in any state could be convicted by Feds for not keeping registration current

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By [Jacob Sullum](#) . . . Twenty-six years ago, when he was 23, a California man was convicted of a crime involving sexual contact with a 16-year-old girl. The federal government says he therefore must register with the state as a sex offender. But California says he can't, because the state subsequently expunged his record and issued a "certificate of rehabilitation," meaning he is no longer covered by California's registration requirements. For failing to do the impossible, he faces the risk of federal prosecution, which could send him to prison for up to 10 years.

According to a [federal lawsuit](#) that the Pacific Legal Foundation (PLF) filed this week, that Kafkaesque conundrum, the result of new Justice Department regulations that took effect in January, violates the separation of powers, which

prohibits executive-branch agencies from writing the laws they enforce. The [complaint](#), which identifies the main plaintiff as “John Doe,” also argues that the department’s regulations violate the right to due process, since they hold him criminally responsible for something he cannot control, and the First Amendment, since they require him to report his internet usernames, which would prevent him from engaging in anonymous online speech—including commentary about the maddening situation in which he finds himself.

Doe joined the U.S. Marines when he was 17. Six years later, he committed the crime that the Justice Department says requires him to stay on California’s sex offender registry even though he no longer qualifies for it under state law. The lawsuit describes the incident as “a consensual but inappropriate encounter” that “did not involve sexual intercourse.” But since the teenager was two years younger than California’s [age of consent](#), that encounter resulted in criminal charges. Doe pleaded no contest to a misdemeanor count of sexual battery, which required him to register as a sex offender.

“Since then,” the complaint says, “Mr. Doe has dedicated himself to making amends and becoming a model citizen. He expressed sincere remorse for his crime and voluntarily underwent psychological treatment. And equipped with a healthier perspective, he pursued higher education and has had a rewarding and productive career, became a loving husband and father, and became an active participant in his church. He has done everything one is supposed to do following a criminal conviction.”

State courts officially recognized Doe’s rehabilitation, clearing his 1996 conviction in 2002 and issuing a certificate recommending an unconditional pardon in 2012. He therefore “is no longer a convicted criminal and has not registered as a sex offender for more than a decade.”

In the meantime, however, Congress approved the Sex Offender Registration and Notification Act (SORNA). That 2006 law made a sex offender's failure to follow state registration requirements, already a crime under state law, a federal felony. Initially, that was not a problem for Doe, since by 2012 California had removed him from the state registry. But last December, the Justice Department published [SORNA regulations](#) that required Doe, despite his expungement, to re-register with California, even though the state will not let him do that. The new rules said "only pardons on the grounds of innocence terminate registration obligations under SORNA."

Even if Doe were able to register in California, the complaint notes, it "would mean that [he] would have to turn the clock back on the past decade and threaten his stable and productive life." Doe "would face restrictions on everyday activities like picking his children up from school," along with "ostracization and harassment from his community," which would "put his hard-earned career success at risk."

[Read the remainder of the piece here at reason.com.](#)