IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2013

Misc. No. 1

DEPT. OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,
Appellant

v.

JOHN DOE,
Appellee

On Certification from the Court of Special Appeals of Maryland

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BRIEF OF APPELLEE

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STATEMENT OF THE CASE

On June 19, 2006, Appellee, John Doe, pled guilty before the Honorable John H. McDowell in the Circuit Court of Washington County, to a single count of child sexual abuse based on conduct that occurred in 1984 when Mr. Doe taught at a junior high school. On September 6, 2006, Mr. Doe was sentenced to ten years' incarceration with all but four and one-half years suspended and three years of probation upon release. The court ordered Mr. Doe to register as a "child sexual offender" and pay a fine of $500. On October 6, 2006, Mr. Doe filed a Motion to Correct an Illegal Sentence alleging that the court lacked authority to order him to register as a child sexual offender.[1] On November 1, 2006, Judge McDowell entered an Order striking the illegal condition that Mr. Doe register as a child sexual offender.

Mr. Doe was released from prison in 2008. After a change in the sex offender registry laws that went into effect on October 1, 2009, Mr. Doe was ordered to register as

[1] At the time of his sentencing, the law provided that registry was required for those whose offenses were committed prior to October 1, 1995 and who were under the custody or supervision of a supervising authority on October 1, 2001. Md. Ann. Code, Crim. Pro. Article, §11-702.1(b) (2005). Mr. Doe was not under custody or supervision on October 1, 2001.

a child sexual offender for a period of ten years. On October 23, 2009, Mr. Doe filed a Complaint for Declaratory Judgment which was heard on July 23, 2010 in the Circuit Court for Washington County, the Honorable John McDowell presiding. A Memorandum and Order denying the complaint for declaratory judgment relief was filed by Judge McDowell on the same date. Mr. Doe filed a timely appeal to the Court of Special Appeals who, in an unreported opinion filed on November 15, 2011, *Doe v. Department of Public Safety and Correctional Services*, No. 1326, Court of Special Appeals, September Term, 2010, affirmed the judgment of the lower court. This Court granted Mr. Doe's Petition for Writ of Certiorari on March 16, 2012.

After hearing argument, this Court issued its opinion on March 4, 2013 reversing the decision of the Court of Special Appeals. In its opinion, the Court addressed Mr. Doe's position that he was forced to register as a sex offender in contravention of the Maryland Declaration of Rights, Article 17 prohibition against *ex post facto* laws. The Court, in a plurality opinion, held that "[b]ased on principles of fundamental fairness and the right to fair warning within the meaning of Article 17, retrospective application of the sex offender registration statute to Petitioner is unconstitutional." *Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535, 553 (2013) (hereinafter *Doe I*). Three judges in the plurality held that "[w]e reaffirm that Article 17's prohibition extends broadly to any law passed after the commission of an offense which ... in relation to that offense, *or its consequences*, alters the situation of a party to his disadvantage." *Id.* at 560 (emphasis in original). The registry requirements and restrictions, these three judges held, have the same

practical effect as placing Mr. Doe on probation or parole. *Id*. at 563. Finally, these three judges rejected Appellant's claim that Maryland's sex offender registry laws were merely civil and regulatory in nature thus excluding application of the ex *post facto* prohibition. "Examining the sex offender registration statute now and in the context of the *ex post facto* prohibition, we conclude, as the Court in *Young* predicted, that the dissemination of information about registrants imposes many negative consequences. The result is that the dissemination of information about registrants, like Petitioner, is the equivalent of shaming them, and is, therefore, punitive for *ex post facto* purposes." *Id.* at 564.

Two members of the plurality held that "the cumulative effect of 2009 and 2010 amendments of the State's sex offender registration law took that law across the line from civil regulation to an element of the punishment of offenders," and thus, "in light of both Article 17 of the Declaration of Rights and Article I, § 10 of the federal Constitution, like other new laws affecting punishment for offenses, those amendments may not be applied retroactively." *Id.* at 578. As a result, five judges from the Court clearly found that the Maryland sex offender registry laws are punitive and violate the prohibition against *ex post facto* laws and that Mr. Doe could not be required to register. This Court ordered the Court of Special Appeals "to reverse the judgment of the Circuit Court for Washington County and [directed] the circuit court to enter a declaratory judgment consistent with this opinion." (E. 181).

Pursuant to the Court's direction, Judge McDowell, on April 23, 2013, entered an Order requiring:

> That the judgment of this court denying Doe's Complaint for Declaratory Judgment is reversed and the Complaint is hereby granted;
>
> That Appellant of Public Safety and Correctional Services is ordered to remove any and all information regarding Doe from the Maryland Sex Offender Registry website;
>
> That Appellant of Public Safety and Correctional Services is ordered to remove or cause to be removed any and all information regarding Doe's sex offender registration from state and local law enforcement databases within the state of Maryland;
>
> Appellant of Public Safety and Correctional Services is ordered to remove Doe's sex offender registration information from all federal databases including the NCIC;
>
> That Appellant of Public Safety and Correctional Services is directed to comply with this Order immediately; and
>
> That Appellant of Public Safety and Correctional Services shall provide, within 10 days of the date of this Order, documentation to the court and to the plaintiff certifying compliance with this Order.

(E. 202-203). On May 3, 2013, in response to Judge McDowell's Order, Appellant filed a Motion to Alter or Amend stating in its motion,

> ...Appellant would have opposed the relief required by the Plaintiff – an order directing that his name and related information be removed from the Maryland Sex Offender Registry – on the basis that Plaintiff is not entitled to such relief. Although, as noted above, the Court of Appeals elected not to consider Plaintiff s obligations under SORNA, that statute precludes this Court from issuing an order exempting him from the obligation to register as sex offenders in Maryland . ...Doe clearly falls within the definition of sex offender [under SORNA] and is thus required to register under SORNA, irrespective of whether he can be obligated to register under Maryland law.

(E. 191). Mr. Doe filed a response to the Motion to Alter or Amend Order and, on May 15, 2013, Judge McDowell entered a judgment denying Appellant's motion. (E. 204).

Notwithstanding Judge McDowell's Order, Appellant refused to remove Mr. Doe from the registry for a period of 27 days after the issuance of Judge McDowell's Order. Mr. Doe filed a petition on May 20, 2013 seeking to have Appellant held in contempt of court. (App. 1). On May 24, 2013, Judge McDowell issued a show cause order for Appellant to explain why it should not be held in contempt and set a hearing date of September 25, 2013. (App. 9). The hearing was ultimately cancelled when Appellant removed Mr. Doe from the registry. On June 14, 2013, Appellant entered a Notice of Appeal to the Court of Special Appeals who, on August 7, 2013, pursuant to Md. Rule 8-204, certified the action to this Court on the following question:

> Where federal law requires the State of Maryland to create a system for sex offender registration including a requirement that it be applied retroactively, and where the retroactive requirement is determined to violate the Maryland Declaration of Rights, can the circuit court require the State of Maryland to remove sex offender registration information from all federal databases?

(E. 208). On October 18, 2013, this Court granted the request for certification "limited to the question" whether "circuit courts have the authority to order the State to remove sex offender registration information from 'federal databases.'" (E. 211).

QUESTION PRESENTED

When Mr. Doe's obligation to register as a sex offender arose solely under that portion of the Maryland Sex Offender Registry Act that this Court declared to be unconstitutional as applied to him, did the circuit court thereafter have the authority and obligation to order the removal of Mr. Doe's sex offender registration information from all lists containing names of registered sex offenders, including the federal

databases that Appellant was required, under Maryland law, to notify of Mr. Doe's status as a registered sex offender?

STATEMENT OF FACTS

On June 19, 2006, Mr. Doe pled guilty in the Circuit Court for Washington County to one count of sexual abuse of a minor pursuant to Maryland Code Art. 27, §35A (1984). (E.15). That provision prohibited "any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility or supervision of a child." *Id.* at §35A(a)(4)(i). The offense occurred during the 1983-84 school year when Mr. Doe was a public school teacher in Boonsboro, Maryland. Allegations had been made to school officials that Mr. Doe inappropriately touched one or more students. (E-9-23). The Washington County Board of Education conducted an administrative investigation, after which Mr. Doe was removed from the school. Shortly thereafter, Mr. Doe resigned his position and joined the United States Air Force where he remained until 1991 when he was honorably discharged. (E. 108). During that time he served as the Commander of the Presidential Honor Guard at the Pentagon. (E. 108). After his Air Force career, Mr. Doe embarked on a fifteen year successful career as a financial adviser. (E. 108). In September of 2005, one of Mr. Doe's former students contacted law enforcement authorities and reported that she had been touched inappropriately by Mr. Doe when he was a public school teacher. (E. 17-21).

Pursuant to a binding plea agreement, Mr. Doe agreed to plead guilty to a single count of sexual child abuse and receive a sentence of no more than five years, in exchange for the state dismissing all other charges. (E. 9-11). At no point during the hearing on the

plea was the issue of sex offender registration discussed or mentioned. (E. 9-53). In fact, at a subsequent hearing, Mr. Doe testified that during consultations with his attorneys regarding the plea agreement, he was told "that there was absolutely no registration required under the statute." (E. 111). On September 6, 2006, the court sentenced Mr. Doe to ten years with all but four and one-half years suspended, and three years of probation upon release. (E. 52-53). As a basis for his sentencing, the judge stated:

> [Mr. Doe] some of what your attorney has said, Mr. Salvatore has said, during the course of his closing remarks and also what is contained in this sentencing Memorandum are very true, that I am impressed with the life that you have lived since being relieved of your responsibilities as a teacher with the Washington County Board of Education. I'm also impressed by some of the difficulties that you've experienced in your life and the responsibility that you showed to your family and the responsibility that you've shown to others even since that time. So the court is certainly taking into consideration all of the things that you have done of a positive nature since the time of this incident back in the 1980s. And what has been also said is true that rehabilitation is one of the factors that the Court must look at, and you appear to have rehabilitated yourself significantly since the time of this incident.

(E. 50-51). The court specifically noted that although deterrence is important in any sentence "to prevent you from committing an act such as this again, which I don't think will occur." (E. 51). The court further ordered that Mr. Doe register as a child sex offender as a condition of probation. (E. 53). Shortly after sentencing, Mr. Doe filed a Motion to Correct an Illegal Sentence arguing that registration as a sex offender was not part of the plea agreement, and, in any event, could not be imposed because the registry laws did not exist at the time of the offense in 1983 and the law in existence at the date of sentencing was retroactive only if the crime was committed before 1995 and Mr. Doe was either in

custody or under the supervision of a supervising authority on October 1, 2001. (E. 55-57). Mr. Doe was not under the supervision of a supervising authority on October 1, 2001. (E. 56). The court agreed and ordered that the requirement that Mr. Doe register as a sex offender be "stricken from the sentence imposed in this matter." (E. 58).

Shortly after Mr. Doe's release from prison on December 31, 2008,[2] the General Assembly passed a new law that went into effect on October 1, 2009. The new law required retroactive application of sex offender registration requirements to those who committed offenses prior to 1995 but were not convicted until after 1995. The new law thus required Mr. Doe to register as a child sex offender which he did in early October, 2009. (E. 60).

On October 23, 2009, a Complaint for Declaratory Judgment was filed in Anne Arundel Circuit Court challenging the applicability and constitutionality of the newly enacted law. (E. 59-65). After a hearing on July 23, 2010, the court issued its Memorandum Opinion rejecting Mr. Doe's arguments and ordering him to remain on the sex offender registry. (E. 138-147). A timely appeal was filed and, on November 15, 2011, the Court of Special Appeals issued its unreported opinion affirming the decision of the trial court. (E. 148-180). This Court granted certiorari and, after hearing argument, issued its opinion concluding that application of these amendments to Mr. Doe violated the *ex post facto* prohibition of Article 17 of the Maryland Declaration of Rights.

ARGUMENT

BECAUSE MR. DOE'S PURPORTED OBLIGATION TO REGISTER AS A SEX OFFENDER AROSE SOLELY AS A

[2] Mr. Doe served a total of two years and four months before being released for good behavior.

RESULT OF A STATE CONVICTION AND THE MARYLAND SEX OFFENDER REGISTRY ACT WHICH WAS DECLARED UNCONSTITUTIONAL BY THIS COURT AS APPLIED TO HIM, AND BECAUSE THERE IS NO INDEPENDENT FEDERAL OBLIGATION TO REGISTER UNDER SORNA, THE CIRCUIT COURT PROPERLY ORDERED MR. DOE'S REMOVAL FROM ALL LISTS CONTAINING NAMES OF REGISTERED SEX OFFENDERS.

Initially, it bears pointing out that Appellant's assertion that the standard of review here is "whether the declaratory judgment was correct as a matter of law," (Brief at 12), misstates the appropriate standard. Indeed, this Court has already ruled that, as a matter of law, Mr. Doe ***was*** entitled to declaratory judgment relief. *Doe I, supra*. Rather, this case comes to this Court from the denial by the circuit court of Appellant's Motion to Alter or Amend filed pursuant to Md. Rule 2-534. Thus, as this Court recently explained in *Miller v. Mathias*, 428 Md. 419, 438, 52 A.3d 53 (2012):

> "In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673, 994 A.2d 430, 451 (2010) (quoting *Wilson–X v. Dep't of Human Res.*, 403 Md. 667, 674–75, 944 A.2d 509, 514 (2008)). We have also noted that, when reviewing a trial judge's discretionary rulings, "[t]his Court has recognized that trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Id.* at 675, 944 A.2d at 515. ... In summation, "[t]he relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Wilson–X*, 403 Md. at 675–76, 944 A.2d at 514.

As has been stated on numerous occasions, an abuse of discretion occurs:

> 'where no reasonable person would take the view adopted by the [trial] court [ ]'... or when the court acts 'without reference to any

> guiding principles.' An abuse of discretion may also be found where the ruling under consideration is 'clearly against the logic and effect of facts and inferences before the court [ ]'... or when the ruling is 'violative of fact and logic.'
>
> Questions within the discretion of the trial court are 'much better decided by the trial judges than by appellate courts, and the decisions of such judges should be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.' In sum, to be reversed '[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.' *Aventis Pasteur, Inc. v. Skevofilax,* 396 Md. 405, 418–19, 914 A.2d 113 (2007) …An abuse of discretion, therefore, "'should only be found in the extraordinary, exceptional, or most egregious case.' " *Id.* at 419, 914 A.2d 113 (quoting *Wilson*, 385 Md. at 199, 867 A.2d 1077). Given that the abuse of discretion standard makes "generous allowances for the trial court's reasoning," *Das v. Das*, 133 Md.App. 1, 15, 754 A.2d 441 (2000), we grant great deference to that court's conclusion and uphold it unless it is apparent a serious error has occurred.

Central Truck Center, Inc. v. Central GMC, Inc., 194 Md. App. 375, 398, 4 A.3d 515 (2010). There was no such serious error here and the circuit court properly exercised its discretion in denying Appellant's motion to alter or amend.

There is no dispute in this case that Mr. Doe's purported obligation to register as a sex offender resulted solely from his conviction in 2006 of a crime that took place in the state of Maryland more than ten years before the legislature created the state registry. There are absolutely no federal charges involved in this case. There is also no dispute that at the time of his conviction, Mr. Doe could not be required to register because the registry law applied only to "offenses . . . committed after the effective date of [the] Act," which was October 1, 1995. It was not until the Maryland General Assembly passed amendments to

the registry law in 2009 and 2010 that mandated retroactive registration for those considered child sex offenders convicted on or after October 1, 1995 of offenses committed prior to October 1, 1995, that Mr. Doe was ordered, by his probation agent, to register. (E. 60). Md. Ann. Code, Crim. Proc. §11-702.1(c) (ii) (2008, 2009 Supp.). The registration period was for life. Md. Ann. Code, Crim. Proc. §§11-701(q)(1)(ii); 11-707(a)(2)(i) and (4)(iii) (2008, 2010 Supp.). Thus, his registration on the Maryland registry was the function of a conviction for a Maryland crime committed in the state of Maryland. However, Mr. Doe is not subject to the Maryland registry laws as this Court in *Doe I* held that retroactive application of the 2009-2010 amendments to Mr. Doe violated Article 17 of the Maryland Declaration of Rights. This Court held:

> When Petitioner committed his sex crime during the 1983–84 school year he did not face registration under the statute as a consequence for his crime. Registration was imposed, over twenty years later in 2009, under the sex offender registration statute as a direct consequence of Petitioner's commission and conviction for his sex crime. The application of the statute has essentially the same effect upon Petitioner's life as placing him on probation and imposing the punishment of shaming for life, and is, thus, tantamount to imposing an additional sanction for Petitioner's crime. Therefore, we conclude that the imposition of the registration requirement upon Petitioner, as the result of amendments passed 25 years after Petitioner's crime, to a statute passed over a decade after Petitioner's commission of a crime is in violation of the *ex post facto* prohibition contained in Article 17 of the Maryland Declaration of Rights.

Doe I, 430 Md. at 568.

1. The certified question.

Just as it resisted removing Mr. Doe's information from the Maryland sex offender registry until threatened with contempt of court, Appellant devotes numerous pages of its

brief raising new arguments not previously considered, yet it artfully avoids directly responding to the[LN1] only issue this Court ordered Appellant and Mr. Doe to address. Instead, of answering this Court's very direct question of "whether circuit courts have the authority to order the State to remove sex offender registration information from 'federal databases,'" Appellant devotes its entire brief to arguing that there is an independent federal obligation under the Sex Offender Registration and Notification Act, ("SORNA"), for Mr. Doe to register as a sex offender and that Maryland is threatened with the loss of federal funding if it does not comply with SORNA. In the interest of completeness, later in this brief Mr. Doe will address these irrelevant and inaccurate claims; however, to begin, Mr. Doe will directly address this Court's certified question and explain precisely why circuit courts have the authority, and indeed the obligation, to order the removal of sex offender registration information regarding those wrongfully registered from ***all*** lists containing the names of registered sex offenders like Mr. Doe. Further, as an important point of clarification, circuit courts would not be directly ordering federal authorities to do anything. Rather, the circuit court's order is directed at Appellant as the agency responsible for providing accurate information to the Federal Bureau of Investigation for inclusion in its databases, including the National Crime Information Center (NCIC).

Reaching the answer to this Court's question requires an explanation of various databases, how information makes its way into those databases, and who is responsible for maintaining the accuracy of the information in those databases. In Maryland, once an offender is designated a Tier I, Tier II, or Tier III registrant pursuant to Md. Ann. Code, Criminal Procedure Article, §11-701 (2010), he has three days from the date of his release

from imprisonment or his sentencing if no incarceration was ordered, to report to his supervising authority. *Id*. at §11-705. The supervising authority, depending on the registrant's particular circumstances, can be the Secretary of the Department of Public Safety and Correctional Services, Appellant, the court that sentenced him, the Department of Mental Health and Hygiene, the local law enforcement unit, the Department of Parole and Probation, the administrator of the detention facility if the registrant is released from there, or the administrator of Patuxent if he is released from there. *Id.* at 11-701(n). The registrant is also required to register with the local law enforcement unit where he will reside. *Id*. at §11-705. The registration statement received by the supervising authority is then sent, within three days of receipt, to the local law enforcement unit where the registrant lives. *Id*. at §11-708. The supervising authority also sends the registration statement to the institution of higher learning where the registrant either is enrolled or employed. *Id.* Within three days of receipt of the registration statement, the supervising authority must also send a copy to Appellant. *Id.*

The local law enforcement unit to whom the registrant regularly reports must then send a copy of each statement to Appellant, any child care centers, child recreation facilities, faith institutions, family day care providers and any "other organizations that serve children and other individuals vulnerable to sex offenders who victimize children." *Id*. at §11-709(f). Appellant is required to:

> [A]s soon as possible but not later than 3 working days ***after receiving the conviction data and fingerprints of a registrant, shall transmit the data and fingerprints to the Federal Bureau of Investigation if the Bureau does not have that information;***

> (2) shall keep a central registry of registrants and a listing of juvenile sex offenders;
>
> (3) shall weekly transmit the central registry of registrants to the State Department of Education in a format that can be used by the State Superintendent to cross-reference with the database of licensed child care centers, registered family child care homes, and approved Child Care Subsidy Program informal providers.

Id. at §11-713 (emphasis added). Appellant is also directly responsible for posting the registrant's information on the internet. *Id.* at §11-717. The unit within Appellant's agency that is responsible for complying with the statutes is the Sex Offender Registry Unit. COMAR 12.06.01.08. (2014). Pursuant to Appellant's regulations,

> A. The ***Sex Offender Registry Unit shall***:
>
> (1) ***Maintain a central registry***:
>
> (a) Initiated by receipt of registration statements; and
>
> (b) ***Updated by receipt of periodic registration documentation*** and notice of changes of registrant's address or other status;
>
> * * *
>
> (4) ***Authorize termination of registration***.
>
> B. [***T]he Sex Offender Registry Unit shall establish procedures and timeframes for the timely***:
>
> (1) ***Exchange of information, including notification of registrant status,*** among:
>
> (a) Local law enforcement units;
>
> (b) Supervising authorities;
>
> (c) Sex offender registries and law enforcement units in other states; and

(d) ***Federal agencies***

Id. (emphasis added). Thus, it is clear that Appellant is directly responsible for providing information about a registrant, updating information about a registrant and exchanging information about a registrant with necessary federal agencies.

The Federal Bureau of Investigation website explains its role:

> Our Crimes Against Children Unit at FBI Headquarters coordinated the development of the National Sex Offenders Registry (NSOR), which is currently managed by the FBI's Criminal Justice Information Services Division. The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (Lychner Act) required the Attorney General to establish a national database at the FBI to track the whereabouts and movements of certain convicted sex offenders under Title 42 of the United States Code Section 14072. The National Crime Information Center (NCIC) run by the FBI enables the NSOR to retain the offender's current registered address and dates of registration, conviction, and residence.

http://www.fbi.gov/scams-safety/registry/background_nsor. The NCIC database and the NSOR is available to law enforcement only. *Id*. "The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry…" http://www.fbi.gov/about-us/cjis/ncic. The NSOR file contains "[r]ecords on individuals who are ***required to register in a jurisdiction's sex offender registry***." http://www.fbi.gov/about-us/cjis/ncic/ncic_files (emphasis added).

> The FBI provides a host computer and telecommunication lines to a single point of contact in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, as well as federal criminal justice agencies. Those

> jurisdictions, in turn, operate their own computer systems, providing access to nearly all local criminal justice agencies and authorized non-criminal justice agencies nationwide. ***The entry, modification, and removal of records are the responsibility of the agency that entered them.*** The CJIS Division serves as the custodian of NCIC records.

Id. (emphasis added). "To further ascertain and verify the accuracy and integrity of the data, ***each agency must periodically validate its records***." *Id.* As the unit responsible for managing the NSOR, the F.B.I.'s Criminal Justice Information Services Division, uses what is called Law Enforcement National Data Exchange, (N-DEx), to store all received data.

> The N-DEx will contain data from state, local, and tribal or federal criminal incident, offense, and/or case reports. These incident, offense, and/or case reports contain personally identifiable information (names, addresses, etc.), as well as non-identifying descriptive data (type of weapon involved, location of offense, etc.), about crime incidents and criminal investigations…. The N-DEx system's law enforcement sensitive outputs will be available for use by local, state, tribal, and federal law enforcement agencies. An authorized user of the N-DEx will be an employee of a law enforcement agency, designated by the agency head. The users identified by the agency head will use the system as an investigative tool to search, link, analyze, and share criminal justice information.

http://www.fbi.gov/about-us/cjis/n-dex/piandex. Maryland contributes data to this system. *Id.* "The N-DEx, through the CJIS Division's Advisory Process, has established a policy that ***each data contributor will have an obligation to maintain "system discipline." That is, it must maintain, timely, accurate, and complete information in the N-DEx.*** In an effort to maintain system discipline, contributors shall submit data, ***including any updates or changes to the original submission, on at least a monthly basis."*** *Id.* (emphasis added).

Finally, there also exists a National Sex Offender Public Website (NSOPW). This website is managed by the office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, (SMART), and is nothing more than a platform for reaching the registry of individual states, including Maryland. http://www.nsopr.gov/en-US/Home/Faq#answer-03. Appellant concedes that "NSOPW works much like a search engine: each jurisdiction's public sex offender registry website connects to NSOPW, enabling NSOPW to conduct queries against the jurisdiction's websites." (Brief at 22).

What all of this demonstrates is that the information in the federal NCIC database, the federal NSOPW, and the federal NSOR is provided by Appellant who is solely responsible for its accuracy, updating and removal. Appellant is directly responsible for seeing that Mr. Doe's information is removed from these databases since the only reason he is on them is because a statute that has been declared unconstitutional as applied to Mr. Doe, so required it. It is not the responsibility of the federal government and thus, a circuit court judge complying with *Doe I* has both the legal authority as well as an obligation[LN2] to order Appellant to correct the information it provides to these databases. Indeed, even the federal agencies overseeing the databases require Appellant to provide only accurate and updated information.

2. Standing

Undeterred, Appellant switches gears and now claims that notwithstanding the unconstitutionality of the application of the amendments to Mr. Doe, the federal Sex Offender Registration and Notification Act, ("SORNA"), "is separate and distinct from a state's own sex offender registration requirements," and Mr. Doe is required to register

pursuant to SORNA. (Brief at 15).[3] Putting aside for the moment the lack of merit to this argument, the first stumbling block for Appellant is its lack of standing to claim, on behalf of the federal government, that Mr. Doe must register pursuant to SORNA. It has long been recognized in Maryland that "an individual or an organization 'has no standing in court unless he has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public.' " *Evans v. State*, 396 Md. 256, 328, 914 A.2d 25 (2006). Appellant fails to specify what special damage it has suffered as a result of the circuit court judge's signing of an Order enforcing the decision of this Court to grant declaratory relief and remove Mr. Doe, a fully rehabilitated and law abiding citizen as recognized by this Court, from Maryland's sex offender registry and all lists containing names of registered sex offenders that the state or law enforcement agencies in Maryland had caused him to be included in.[4] Nor does Appellant claim it has, in fact lost funding.

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[3] At the hearing on Mr. Doe's Complaint for Declaratory Judgment, counsel for Appellant specifically argued that Mr. Doe's registration was required solely and directly as a result of Maryland law. Indeed, counsel argued that "subsequent to 1995, the General Assembly has enacted a number of changes to the Maryland sex offender registration law including the retroactivity provision. And the one at issue in this case is a 2009 change which, quite frankly, if one looks at the legislative history of this case and some of the testimony and statements of members of the General Assembly, this case was one of the cases that was cited as to why the change in this statute was needed because the General Assembly felt that there were certain, what they called loopholes in registration for people's [sic] whose conviction happened after October 1st, 1995, but for whose offense occurred prior to that date." (E. 101-102). At no time during the hearing did Appellant ever cite SORNA as a basis for Mr. Doe's registration requirement.

[4] Any claim that the special harm is the loss of 10% of the state's Byrne Grant monies falters under its own weight. The Justice Policy Institute has concluded that "in all 50 states, the first-year costs of implementing SORNA outweigh the cost of losing 10 percent of the state's Byrne Grant. Most of the resources available to states would be devoted to the administrative maintenance of the registry and notification, rather than targeting known serious offenders. Registries and notification have not been proven to protect communities from sexual offenses, and may even distract from more effective approaches." Justice Policy Institute, What will it cost states to implement Sex Offender Registration and Notification Act", available at http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf. And, the National Conference of State Legislatures has calculated Maryland's funding loss in 2012, should it not substantially implement SORNA, at $622,500. *See* NCSL, SORNA Noncompliance Penalties, available at http://www.ncsl.org/Portals/1/documents/cj/jagstatedollars.pdf. At the same time, when the 2009 amendments were passed, applying registry laws retroactively, Appellant calculated the overall

Nor does Appellant have any authority to invoke federal laws against Mr. Doe merely because the state receives federal grants for substantial implementation of SORNA. The Supreme Court has recognized that "[g]rants of federal funds generally do not ... serve to convert the acts of the recipient from private acts to governmental acts absent extensive, detailed, and virtually day-to-day supervision." *Forsham v. Harris,*445 U.S. 169, 180, 100 S.Ct. 977, 63 L.Ed.2d 293 (1980); *see also id.*, at 180, n. 11 ("Before characterizing an entity as 'federal' for some purpose, this Court has required a threshold showing of substantial federal supervision of the private activities, and not just the exercise of regulatory authority necessary to assure compliance with the goals of the federal grant"); *see also, United States v. Orleans*, 425 U.S. 807, 96 S.Ct. 1971, 48 L.Ed.2d 390 (1976). Merely receiving federal funds does not deputize Appellant, or indeed, the state of Maryland to act on behalf of the United States. *City of Garden Grove v. Superior Court*, 68 Cal. Rptr.3d 656 (Cal.App. 2007) serves as a useful analogy.

In *Garden Grove*, the city seized about one-third of an ounce of marijuana from a man who was lawfully stopped by the police. *Id*. at 362. Because the man had a doctor's approval to use the marijuana for medicinal purposes, the prosecutor refused to bring charges. *Id.* The issue in the case was whether or not the local police had to return the

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cost of registering and monitoring those offenders to be roughly $1,600 per offender and $50,000 in salary per new agent. Fiscal Note to S.B. 425 (Revised), 426th Gen. Assemb., Reg. Sess (Md. 2009), at 3-4 (S.B. 245 was later enacted as 2009 Md. Laws, ch. 541). As Appellant claims in the Petition for Writ of Certiorari it filed in *John Roe v. Gary Maynard*, at 9, No. 0058 (Md. Ct. Spec. App. Sept. 18, 2013), *appeal docketed*, No. 405, (Sept. Term, 2013), there are potentially "thousands" of offenders who fall within this retroactive category. Using Appellant's own figures, the cost of monitoring 2,000 offenders at $1,600 per offender comes to $3.2 million. This does not even include the salary cost of hiring needed agents to do the monitoring. Thus, the loss of less than $1 million for failing to implement SORNA is insignificant when compared to the cost of its implementation. This is why as of February 2014, only 17 states, three territories, and 62 Indian tribes have substantially implemented SORNA. *See* Jurisdictions that have substantially implemented SORNA, available at http://www.smart.gov/newsroom_jurisdictions_sorna.htm

seized marijuana. Although the drug was lawfully possessed in California, the city police invoked the federal statute prohibiting possession of marijuana for any purpose as a basis for not returning it. *Id.* In other words, the city police were acting on behalf of the federal government to enforce its law. The man filed a motion seeking the return of the marijuana which the city police opposed. After a hearing, the superior court ordered the return of the marijuana. *Id.* at 363. The court on appeal first addressed the question of the standing of the police.

> As a general rule, [t]o have standing to seek a writ of mandate, a party must be beneficially interested Code Civ. Proc., § 1086, *i.e.*, have some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large… This standard ... is equivalent to the federal injury in fact test, which requires a party to prove by a preponderance of the evidence that it has suffered an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. (*Associated Builders Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361–362, 87 Cal.Rptr.2d 654, 981 P.2d 499.).

Id. at 365-366. Using this test, the court concluded "there is little danger the City or its officers would be perceived as aiding and abetting, or could be held responsible for, any possible violation of federal law if they returned Kha's marijuana to him. Simply put, it does not appear the City would be adversely affected if its officers carried out the trial courts order in this case." *Id.* at 369. While finding no standing, the court nonetheless agreed to address the issues given their importance. *Id.*

Similar to Appellant's argument here, the city in *Garden Grove* claimed that even if the state law permitted possession of specified amounts of marijuana, federal law

prohibited all possession. *Id*. at 377. Ruling against the city on this issue, the appellate court held:

> Notwithstanding the legality of Kha's arrest, the question remains whether in this state proceeding, the City can invoke and rely solely on federal law to justify a particular sanction (*i.e.*, the destruction of Kha's property) when Kha's conduct was consistent with, and indeed sanctioned under, state law. Amici for the City point out that state courts generally have the authority to "render binding judicial decisions that rest on their own interpretation of federal law." (*ASARCO, Inc. v. Kadish* (1989) 490 U.S. 605, 617, 109 S.Ct. 2037, 104 L.Ed.2d 696.) But saying state judges may *interpret* federal law is a far cry from saying they may *invoke* it to punish conduct that is legally permissible under state law. Applying the reasons of *Tilehkooh*, we think judicial enforcement of federal drug policy is precluded in this case because the act in question—possession of medical marijuana—does not constitute an offense against the laws of both the state and the federal government. Because the act is strictly a federal offense, the state has "no power to punish ... [it] ... *as such.*" (*People v. Tilehkooh, supra,* 113 Cal.App.4th at p. 1445, 7 Cal.Rptr.3d 226, quoting *People v. Kelly, supra,* 38 Cal. at p. 150.) Indeed, we, and all the trial courts in the state, would be astonished if prosecutors began filing federal charges in state courts.
>
> Given the restrictions on state courts' enforcement of federal laws, section 11473.5 cannot be read as requiring the destruction of a controlled substance based solely on the fact that possession of the substance is prohibited under federal law. Unless the substance's possession is also prohibited under state law, the state has no authority to invoke the sanction of destruction set forth in the statute. In other words, the question of whether a substance is lawfully possessed for purposes of section 11473.5 turns on state, not federal law. If, as here, the defendant's possession of a controlled substance is lawful under California law, then the substance is "lawfully possessed" for purposes of that section.

Id. at 380. The same outcome applies here. Mr. Doe is not subject to registration under Maryland law and Appellant has no authority to invoke federal law in an effort to

circumvent the orders of this court and subject him to registration. Even if Appellant had the authority to invoke federal law, it is prevented from doing so here.

3. Federalism principles and the Tenth Amendment.

> ***"The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional."*** [5]

Appellant is prevented from applying SORNA to Mr. Doe under principles of federalism as declared in the Tenth Amendment to the United States Constitution: "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

> If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress.

New York v. United States, 505 U.S. 144, 156 (1992). The most fundamental power reserved to the states is the police power.

> One of the legitimate and most important functions of civil government is acknowledged to be that of providing for the welfare of the people by making and enforcing laws to preserve and promote the public health, the public morals, and the public safety. Civil society cannot exist without such laws, and they are therefore justified by necessity and sanctioned by the right of self-preservation. The power to enact and enforce them is lodged by the people with the government of the state, qualified only by such conditions as to the manner of its exercise as are necessary to secure the individual citizen from unjust and arbitrary interference. With respect to its internal police, the authority of each of the states is supreme and exclusive. Whilst by

[5] Chief Justice John Marshall, A Friend of the Constitution No. V, Alexandria Gazette, July 5, 1819, in John Marshall's Defense of *McCulloch v. Maryland* 190–191 (G. Gunther ed. 1969).

> the federal Constitution the separate and independent states surrendered or transferred to the general government which they established such powers as were deemed to be necessary to enable it to provide for the common defense and to promote the general welfare of the people of the United States, the states themselves reserved complete and sovereign control over their own internal affairs.

State v. Hyman, 98 Md. 596, 57 A. 6, 8 (1904); *see also, United States v. Morrison*, 529 U.S. 598, 617 (2000), ("[W]e can think of no better example of the police power, which the [Framers] denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims"); *United States v. Lopez*, 514 U.S. 549, 561, n. 3 (1995),("'[T]he States possess primary authority for defining and enforcing the criminal law' " (quoting *Brecht v. Abrahamson,* 507 U.S. 619, 635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)).[6]

More recently, the United States Supreme Court had occasion to address the authority of Congress to mandate that individuals purchase health insurance and to give funds to states that provide a specified level of health care coverage to specified individuals as a part of the Patient Protection and Affordable Care Act. Before analyzing these two provisions of the Act, the Court explained the limits of federal power.

> The Federal Government "is acknowledged by all to be one of enumerated powers." [*McCulloch v. Maryland,* 4 Wheat. 316, 405, 4 L.Ed. 579 (1819)]. That is, rather than granting general

[6] Lest Mr. Doe be faulted for citing to "police powers" in terms of criminal law when his case concerns a civil matter, Justice Kennedy cited the same cases in *Comstock v. United States*, 560 U.S. 126 (2010), a case involving the authority of the federal government to civilly commit a sexually violent predator who has served his full sentence. Justice Kennedy said, "the powers reserved to the States are so broad that they remain undefined. Residual power, sometimes referred to (perhaps imperfectly) as the police power, belongs to the States and the States alone." *Id.* at 155.

> authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government's powers. Congress may, for example, "coin Money," "establish Post Offices," and "raise and support Armies." Art. I, § 8, cls. 5, 7, 12. The enumeration of powers is also a limitation of powers, because "[t]he enumeration presupposes something not enumerated." *Gibbons v. Ogden,* 9 Wheat. 1, 195, 6 L.Ed. 23 (1824). The Constitution's express conferral of some powers makes clear that it does not grant others. And the Federal Government "can exercise only the powers granted to it." *McCulloch, supra,* at 405. . . . And when the Bill of Rights was ratified, it made express what the enumeration of powers necessarily implied: "The powers not delegated to the United States by the Constitution ... are reserved to the States respectively, or to the people." U.S. Const., Amdt. 10.

National Federation of Independent Business v. Sebelius, 132 S.Ct. 2566, 2577-2578 (2012). As the Court further explained, states do not require constitutional authorization to govern. *Id.*

> Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed. The Framers thus ensured that powers which "in the ordinary course of affairs, concern the lives, liberties, and properties of the people" were held by governments more local and more accountable than a distant federal bureaucracy. The Federalist No. 45, at 293 (J. Madison). The independent power of the States also serves as a check on the power of the Federal Government: "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power."*Bond v. United States,* 564 U.S. ——, ——, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011).

Id. at 2578. The state of Maryland, under the authority of its police powers, enacted the 2009 and 2010 amendments retroactively applying Maryland registration laws to Mr. Doe and others similarly situated. As the proper exercise of its authority, however, this Court

struck down those amendments under the state constitution. *See, O'Brien v. Baltimore County Commissioners*, 51 Md. 15, 22 (1879) ("The power to declare an Act of Assembly unconstitutional and void, can only be exercised by a regularly constituted judicial tribunal, and is one of the most delicate and important powers confided to a Court of justice."). The Tenth Amendment prevents Congress from encroaching on the police power of the state, yet this is precisely what Appellant is advocating here by insisting that SORNA imposes an independent obligation on states to make certain that sex offenders who fall within the definitions outlined in SORNA, even if they do not come within their own state's definition, register. Decisions from other states analyzing the extent to which SORNA authorizes state actors to require registration of offenders when the state constitution otherwise prohibits such a requirement have held SORNA does not provide an end-run around the state constitution in the manner Appellant advocates - even when the state has implemented SORNA legislatively. *See, e.g., State v. Hough*, 978 N.E.2d 505, 510-11 (Ind. App. 2012) ; *Andrews v. State*, 978 N.E.2d 494, 498-503 (Ind. App. 2012); *In re CP*, 967 N.E.2d 729, 750 (Ohio 2012) (despite SORNA lifetime registration requirement for juveniles, state officials requiring the same violated state constitution); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009) (state constitution barred prosecution for failure to register even though required under SORNA).

Appellant argues that SORNA is a "mandate to the states to implement certain registration standards." (Brief at 17). But, again, Congress has absolutely no authority to impose such a mandate on states. "Congress may not simply "commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal

regulatory program." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S. 264, 288, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981)." *New York v. United States*, 505 U.S. at 161. The United States Supreme Court has been adamant that "the Federal Government may not compel the States to enact or administer a federal regulatory program." *Printz v. United States*, 521 U.S. 898, 925 (1997).[7] This is most particularly true when the state's highest court has found the regulatory program to be unconstitutional.

> When we were at last confronted squarely with a federal statute that unambiguously required the States to enact or administer a federal regulatory program, our decision should have come as no surprise. At issue in *New York v. United States,* 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), were the so-called 'take title' provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which required States either to enact legislation providing for the disposal of radioactive waste generated within their borders, or to take title to, and possession of, the waste-effectively requiring the States either to legislate pursuant to Congress's directions, or to implement an administrative solution. *Id.,* at 175-176, 112 S.Ct., at 2428. We concluded that Congress could constitutionally require the States to do neither. *Id.,* at 176, 112 S.Ct., at 2428. "***The Federal Government," we held, "may not compel the States to enact or administer a Federal regulatory program.***" *Id.* at 188, 112 S. Ct. at 2435.

Id at 926 (emphasis added). Yet, Appellant maintains that the state of Maryland has an unassailable obligation to enforce the federal regulatory program that is SORNA.[8] "While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon

[7] Mr. Doe adheres to the position that the registry laws, as five judges of this Court found in *Doe I*, are punitive and not regulatory.

[8] Again, Mr. Doe does not concede that SORNA is a mere regulatory program but, rather, constitutes punishment.

Congress the ability to require the States to govern according to Congress' instructions." *New York, supra* at 162. It is of no moment that Appellant does not object to enforcing SORNA because a state cannot confer on Congress authority that it simply does not have under the Constitution. *See New York, supra* at 182 ("[w]here Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials.")

Appellant notes, without actually arguing in support, that "[f]ederal courts have upheld Congress's authority to enact SORNA under the Necessary and Proper Clause and the Commerce Clause…" and cites nine federal cases.[9] At another juncture in its brief Appellant notes that "SORNA was enacted under authority of Congress's spending power." (Brief at 20). Upon close examination, however, none of these enumerated powers of Congress support the interpretation of SORNA as a mandate to states.

4. As Interpreted by Appellant, SORNA is Not a Valid Exercise of Congress's Spending Power Under the Spending Clause, U.S. Const. art. I, § 8, cl. 1.

Under its spending authority, Congress is given the authority to expend funds for the "general welfare" of the country. The Spending Clause provides that "[t]he Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." U.S. Const., art. I, § 8. The Spending Clause authority allows, essentially, Congress to do indirectly that which it cannot do directly by attaching conditions to federal grant funds

[9] Two of those cases, *United States v. DiTomasso*, 621 F.3d 17 (1 Cir. 2010) and *United States v. May*, 535 F.3d 912 (8th Cir. 2008) have since been abrogated by the Supreme Court's decision in *Reynolds v. United States*, 132 S.Ct. 975 (2012). More to the point, however, is that every one of these cases involve offenders who have traveled in interstate commerce thereby providing a jurisdictional hook for application of SORNA. *See infra.*

given to states. *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 686 (1999) (By attaching conditions to federal funds, Congress may induce the States to "tak[e] certain actions that Congress could not require them to take."). Upon review of all of the provisions of SORNA it becomes clear that the provisions deal with the minimum requirements a jurisdiction must follow in order to substantially comply with SORNA and thus, in order to receive federal funding. The provisions do not impose an independent duty or obligation on Mr. Doe. Indeed, 42 U.S.C. §16925(d) expressly states that "[t]he provisions of this subchapter that are cast as directions to jurisdictions or their officials constitute, in relation to states, ***only conditions required to avoid the reduction of Federal funding under this section.***" Furthermore, according to the SMART office, "[o]ver the last two decades Congress has enacted various measures setting 'minimum standards' for jurisdictions to implement in their sex offender registration or notification systems….If a State, Tribe or Territory ***chooses to refrain from substantially implementing SORNA's standards, the jurisdiction risks losing 10 percent of its Edward R. Byrne Justice Assistance Grant (Byrne JAG) funds***." U.S. Department of Justice, *Sex Offender Registration and Notification in the United States: Current Case Law and Issues* at 1, (July 2012), ojp.gov/smart/caselaw/handbook_july2012, (emphasis added). A state's choice to substantially implement recommended SORNA provisions will allow it to receive federal funds that it otherwise would not receive.

As a check on Congress's spending authority however, the Court has been clear:

> . . ., our cases have long held that the power to attach conditions to grants to the States has limits. See, *e.g.*, [*South Dakota v. Dole*, 483 U.S. 203]… at 207. . .(spending power is "subject to

> several general restrictions articulated in our cases"). For one thing, any such conditions must be unambiguous so that a State at least knows what it is getting into. See [*Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1 (1981)] at 17. Conditions must also be related "to the federal interest in particular national projects or programs," *Massachusetts v. United States,* 435 U.S. 444, 461, 98 S.Ct. 1153, 55 L.Ed.2d 403 (1978), and the conditional grant of federal funds may not "induce the States to engage in activities that would themselves be unconstitutional," *Dole, supra,* at 210, 107 S.Ct. 2793; see *Lawrence County v. Lead–Deadwood School Dist. No. 40–1,* 469 U.S. 256, 269–270, 105 S.Ct. 695, 83 L.Ed.2d 635 (1985). Finally, while Congress may seek to induce States to accept conditional grants, Congress may not cross the "point at which pressure turns into compulsion, and ceases to be inducement." *Steward Machine,* 301 U.S., at 590, 57 S.Ct. 883.

Nat'l Federation, supra at 2659. Any effort to force Maryland to comply with and regulate according to SORNA, as Appellant would like, runs afoul of three of the limitations on Congress's spending authority. First, reading SORNA as Appellant does – mandating its implementation in every state and mandating its application even to those who, like Mr. Doe, have not traveled in interstate commerce or committed a federal offense– is unrelated to the stated federal interest of tracking missing sex offenders who move from state to state. Appellant concedes that the purpose of SORNA is to provide the federal government with a "practical means of tracking sex offenders who cross state lines to avoid registration requirements." (Brief at 17). As such, Appellant's broad reading of SORNA that would require all sex offenders, even those who do not travel in interstate commerce, to register is contrary to the purpose of SORNA.

Secondly, Appellant's interpretation of SORNA would exceed Congress's Spending Clause authority because it would require Maryland to engage in activities that

are themselves unconstitutional, *i.e.*, registering offenders in contravention of the state's own constitutional prohibition against *ex post facto* laws. This is why, no doubt, the Department of Justice itself, through the SMART office, has made it clear that "a jurisdiction will not register an offender unless ***that jurisdiction's laws*** require that the offender be registered." (emphasis in original). Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, *Sex Offender Registration and Notification in the United States: Current Case Law and Issues* at 6, *(August 2013), at ojp.gov/smart/caselaw/handbook_august2013.pdf.* Moreover, in *United States v. Kebodeaux*, 133 S.Ct. 2496, 2504 (2013), the Court stated, "SORNA … used Spending Clause grants to encourage States to adopt its uniform definitions and requirements. ***It did not insist that the States do so.***" (emphasis added). This is because Congress has no authority to so insist. SORNA is nothing more than an agreement between a state and the federal government to maintain minimum standards in a state's sex offender registry in exchange for federal funding. The SORNA statute explicitly recognizes this fact. 42 USC § 16925 states:

> **Failure of jurisdiction to comply**
> (a) In general. For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).
>
> (b) State constitutionality (1) In general. When evaluating whether a jurisdiction has substantially implemented this title, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this title because of a demonstrated

> inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court. (2) Efforts. If the circumstances arise under paragraph (1), then ***the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this title and to reconcile any conflicts between this title and the jurisdiction's constitution***. ***In considering whether compliance with the requirements of this title would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court.***
>
> (3) Alternative procedures. If the jurisdiction is unable to substantially implement this title because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this Act if the jurisdiction has made, or is in the process of implementing reasonable alternative procedures or accommodations, which are consistent with the purposes of this Act.
>
> (4) Funding reduction. If a jurisdiction does not comply with paragraph (3), then the jurisdiction shall be subject to a funding reduction as specified in subsection (a).

(emphasis added). Appellant maintains that this provision of SORNA is "directed to the states' compliance with SORNA's mandate…to implement certain registration standards, and whether federal funds will be withheld from the State, not to a sex offender's obligation to register." (Brief at 16-17). But the most recent guidelines from SMART indicate otherwise. "…[T]he SORNA ***requirements relating to sex offender registration*** and notification ***are, in relation to the states, only partial funding eligibility conditions…"*** See SMART, *Sex Offender Registration and Notification in the United States: Current Case Law and Issues (August 2013), at 6; ojp.gov/smart/caselaw/handbook_august2013.pdf.*

The funding is inextricably tied to the registration requirement. Furthermore, the fallacy in this argument becomes obvious by asking a simple question: if a state chooses not to have any sex offender registry at all, where and with whom is the purported sex offender required to register in order not to be charged with failing to register under SORNA?

Further undercutting Appellant's claim are SMART's own guidelines which state:

> Moreover, the specific provisions of the guidelines relating to "retroactivity" incorporate some features that may limit their effect on sex offenders with older convictions. ***While SORNA's requirements apply to all sex offenders, regardless of when they were convicted, see 28 CFR 72.3, the guidelines do not require jurisdictions to identify and register every such sex offender.*** Rather, as stated in the guidelines, a jurisdiction will be considered to have substantially implemented SORNA if it applies SORNA's requirements to sex offenders who remain in the system as prisoners, supervisees, or registrants, or reenter the system through subsequent convictions. ***So the guidelines do not require a jurisdiction to register in conformity with SORNA sex offenders who have fully left the system and merged into the general population at the time the jurisdiction implements SORNA, if they do not reoffend.***

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, *Sex Offender Registration and Notification in the United States: Current Case Law and Issues (August 2013), at 74; ojp.gov/smart/caselaw/handbook_august2013.pdf.* (emphasis added). This guideline, as written, strongly supports Mr. Doe's contention in that, were Appellant's interpretation of SORNA correct, the above highlighted language would be superfluous. In other words, if there truly were an independent obligation to register under SORNA regardless of a state's own registry requirements, there would be no reason for the guidelines to point out that

states do not have to register offenders, like Mr. Doe, because SORNA would require them to register.

Third and finally with regard to Spending Clause limitations, legitimate Spending Clause legislation "presents a state with a choice: the state can either comply with certain congressionally mandated conditions in exchange for federal funds, or not comply and decline the funds." *Litman v. George Mason Univ*. 186 F.3d 544, 552 (4th Cir. 1999). As noted by Chief Justice Roberts in *National Federation*, Congress "may not cross the point at which pressure turns into compulsion, and ceases to be inducement." *National Federation, supra* at 2659. Interpreting SORNA as Appellant does crosses the line from inducement to compulsion because even if a state wishes not to have a sex offender registry it would be required to maintain one for those sex offenders who live, work or go to school there because that is what SORNA mandates according to Appellant.

The bottom line is that Appellant is grasping for ways to frustrate this Court's holding in *Doe I.* Launching yet another obstacle, they claim that this Court's ruling will jeopardize federal funds. It says as much in its brief at 20 where it asserts that removing Mr. Doe from the registry "[t]hreatens the State's [a]bility to…[e]nsure [r]eceipt of [f]ederal [f]unding." Yet, Appellant provides absolutely no proof that Maryland has lost federal funding as a result of *Doe I* which was reported on March 4, 2013, over a year ago. Surely if this Court's decision in *Doe I* has cost Maryland funds, it would have been apparent by now; but Appellant does not offer any proof that.

Appellant then claims that "'once a state elects to participate' in [SORNA], 'it must abide by all federal requirements and standards as set forth in the [statute].'" *Id.* The case

Appellant cites for this proposition, *Collins v. Hamilton*, 349 F.3d 371 (7th Cir. 2003), involved Indiana's acceptance of federal Medicaid funding while refusing to implement one of the important pieces of the federal regulation. Indiana interpreted the regulation in a way contrary to the intent of Congress in passing the legislation. It had nothing to do with the state's highest court finding that the regulation was unconstitutional and ***incapable*** of enforcement.[10] More to the point is *North Carolina ex rel. Morrow v. Califano*, 445 F.Supp. 532 (D.C.N.C. 1977), *aff'd* 435 U.S. 962 (1978). There, North Carolina brought suit against the Secretary of Health, Education, and Welfare challenging the constitutionality of provisions of the National Health Planning and Resources Development Act of 1974. One of the provisions of the Act required administration of a state certificate of need program for new institutional health services. The state challenged the Act because in *In Re Certificate of Need for Aston Park Hosp. Inc.*, 193 S.E.2d 729, 733 (1973), the North Carolina Supreme Court had held that a certificate of need requirement "is in excess of the constitutional power of the Legislature." Thus, this decision prevented North Carolina from receiving federal funds due to its inability to comply with the Act's requirements.

In rejecting North Carolina's claim that the certificate requirement was an unconstitutional exercise of Congress's authority, the state Supreme Court held:

> As a result of that ruling North Carolina is threatened with a future loss of federal aid under some forty-two federal health assistance programs, a loss which can only be avoided by a constitutional

[10] Interestingly, Appellant relies on a case from Indiana for the proposition that once a state elects to participate in SORNA it must abide by all SORNA regulations. The Indiana Supreme Court in *Wallace v. State*, 905 N.E.2d 371 (2009), held that the retroactivity portion of Indiana's SORNA-equivalent law was unconstitutional under the Indiana Constitutional provision prohibiting *ex post facto* laws.

> amendment. When a legislative condition operates that drastically upon a State, the plaintiff contends, it becomes "coercive," and not simply inducement. It is unfortunate that its Constitution, as presently phrased and interpreted, might prevent compliance by North Carolina with the federally established condition. Simply because one State, by some oddity of its Constitution may be prohibited from compliance is not sufficient ground, though, to invalidate a condition which is legitimately related to a national interest sought to be achieved by a federal appropriation and which does not operate adversely to the rights of the other States to comply. Were this not so, any State, dissatisfied by some valid federal condition on a federal grant could thwart the congressional purpose by the expedient of amending its Constitution or by securing a decision of its own Supreme Court. The validity of the power of the federal government under the Constitution to impose a condition on federal grants made under a proper Constitutional power does not exist at the mercy of the State Constitutions or decisions of State Courts.

North Carolina ex. rel Morrow, supra at 535, fn. omitted. The state Supreme Court did not hold that North Carolina, by accepting to participate in the federal program was forced to comply with the certificate of need regulation in contravention of its own constitution. Rather, it had to forfeit the federal funding. As noted in *Salem College & Academy, Inc. v. Employment Division*, 695 P.2d 25, 30, 34 (Or. 1985):

> If a state's program fails to meet federal standards, ordinarily this failure neither violates federal law nor invalidates the state's law; it forfeits the federal benefit.
>
> Examination of the state's law includes the state's constitution. Again, if federal law imposes a binding obligation on a state, its constitution cannot obstruct that obligation; but a legislature cannot violate the state's constitution in order to qualify for a benefit that Congress leaves optional.

There is no question that SORNA does ***not*** impose a binding obligation on Maryland to adopt and enforce SORNA. See SMART, *Sex Offender Registration and Notification in*

the United States: Current Case Law and Issues (August 2013), at 6; ojp.gov/smart/caselaw/handbook_august2013.pdf. ("Since the SORNA requirements relating to sex offender registration and notification are, in relation to the states, ***only partial funding eligibility conditions***, creation of these requirements is within the constitutional authority of the federal government.") (emphasis added).[11] It therefore follows that, sometimes, a state agency, like Appellant, is unable to consent to or comply with Spending Clause legislation because of a provision in the state's own constitution making it unlawful for the state to implement the condition in the federal law. The answer to this dilemma is forfeiture of the funding; it is not forcing the state to violate its own constitution.

5. As interpreted by Appellant, SORNA is not a valid exercise of Congress's power under the Commerce Clause.

Under Art. I, §8, cl.3, Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Supreme Court addressed the contours of the Commerce Clause in *Gonzales v. Raich*, 541 U.S. 1, 16-17 (2005), as follows:

> [There are] three general categories of regulation in which Congress is authorized to engage under its commerce power.

[11] The Department of Justice published proposed guidelines for comment in the Federal register on May 30, 2007. See 72 FR 30209 (May 30, 2007). Those comments were addressed by the Department of Justice on July 2, 2008. AG Order No. 2978-2008. Some of the comments suggested that the provisions of SORNA operated as a ceiling on the types of laws states could pass. In response to this, the Department devoted three full pages explaining that the provisions of SORNA operated as a floor and not a ceiling to the laws states could pass. In explaining this, the Department discussed principles of pre-emption and noted, "[p]reemption may also be inferred if "the Act of Congress…touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."…There is, however, no such predominant federal interest with respect to sex offender registration and notification. The interest of the individual states…in the protection of their people from sex offenders through appropriate regulatory measures…falls within an area of traditional state power and responsibility." *Sex Offender Registration and Notification in the United States: Current Case Law and Issues* (August 2013), at 70-71 Appendix A*; ojp.gov/smart/caselaw/handbook_august2013.pdf.* Id. at 70-71.

> First, Congress can regulate the channels of interstate commerce. *Perez v. United States*, 402 U.S. 146, 150, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971). Second, Congress has authority to regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce. *Ibid.* Third, Congress has the power to regulate activities that substantially affect interstate commerce. *Ibid.*; *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37, 57 S.Ct. 615, 81 L.Ed. 893 (1937). Our case law firmly establishes Congress' power to regulate purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce. See, *e.g., Perez*, 402 U.S., at 151, 91 S.Ct. 1357; *Wickard v. Filburn*, 317 U.S. 111, 128-129, 63 S.Ct. 82, 87 L.Ed. 122 (1942). As we stated in *Wickard*, "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." *Id.*, at 125, 63 S.Ct. 82.

It is clear that Congress has broad powers under the Commerce Clause, however, the Court in *National Federation* noted, "[c]onstruing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority." *National Federation, supra* at 2587. SORNA has nothing to do with commerce. Chief Justice Roberts held that Congress's authority under the Commerce Clause presupposes the existence of some preexisting activity. *Id.* at 2587 ("As expansive as our cases construing the scope of the commerce power have been, they all have one thing in common: They uniformly describe the power as reaching 'activity.'"). Drawing a distinction between regulating activity vs. inactivity ensures that Congress cannot regulate everyday lives of citizens.

> Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply

> fail to do it. Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could potentially make within the scope of federal regulation, and-under the Government's theory-empower Congress to make those decisions for him.

Id. Importantly, the Chief Justice also rejected any suggestion that, through the Commerce Clause, Congress could regulate future activity of individuals.

> The proposition that Congress may dictate the conduct of an individual today because of prophesied future activity finds no support in our precedent. We have said that Congress can anticipate the effects on commerce of an economic activity. But we have never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce. Each one of our cases ... involved preexisting economic activity.

Id. at 2590 (citations omitted). Thus, because the Act at issue in *National Federation* compelled individuals to become a part of commerce by forcing them to purchase health care insurance, the Chief Justice held that this portion of the Act violated the Commerce Clause. *See also, National Federation, supra* at 2648, (Scalia, Thomas, Kennedy, J. dissenting) ("[b]ut if every person comes within the Commerce Clause power of Congress to regulate by the simple reason that he will one day engage in commerce, the idea of a limited Government power is at an end.").

Like the individual mandate in *National Federation*, SORNA does not come within Congress's powers under the Commerce Clause because it does not involve or affect commerce; it does not affect activities that have a substantial impact on interstate commerce; and it attempts to regulate potential future conduct.

6. Even if SORNA imposes an independent obligation to register, it applies only to those convicted of a federal offense or those who travel in interstate commerce, for without

either of these requirements, the federal government lacks jurisdiction to enforce SORNA.

Assuming *arguendo* that Appellant is correct in claiming that SORNA imposes an "independent federal registration obligation for sex offenders," that federal obligation can only apply if the offender has committed a federal offense or traveled in interstate commerce. Absent either of these, the federal government has absolutely no jurisdictional hook to require the offender to do anything. And, as stated earlier in this brief, SORNA cannot deputize the state to do its bidding. This point was succinctly stated by the court in *U.S. v. Vardaro*, 575 F. Supp. 1179 (2008):

> SORNA's criminal provision at 18 U.S.C. § 2250 contains an appropriate jurisdictional element which expressly limits SORNA prosecutions to those individuals who have traveled in interstate commerce. This Court agrees with the finding of *United States v. Shenandoah*, 572 F.Supp.2d at 575, 2008 WL 3854454, at 4 that such an express limitation evidences that Congress was acutely aware of the breadth of its power under the Commerce Clause when it enacted SORNA. *See David*, 2008 WL 2045830, at *8-9 (discussing Congress's "unmistakable awareness" of the limits of its power under the Commerce Clause); *Mason*, 510 F.Supp.2d at 931-32 (finding that SORNA satisfied the second prong because it contained "a jurisdictional nexus"); *Howell*, 2008 WL 313200, at *8 ("It is clear that Congress was aware of the limits of its power in its passage of SORNA because it specifically included the jurisdictional element of interstate travel."); *United States v. Adkins*, No. 07-0059, 2007 WL 4335457, at *6-7 (N.D.Ind. Dec. 7, 2007)("Congress was aware of the limits of its power, however, and included the jurisdictional element of interstate travel."); *see also Pitts*, 2007 WL 3353423, at *5-6; *Muzio*, 2007 WL 1629836, at *4. Because federal prosecution under § 2250 does not reach the purely intrastate movement of sex offenders who fail to comply with registration requirements, the Court finds that SORNA does not contravene the Commerce Clause.

Id. at 1186. And, given Chief Justice Roberts' concurrence in *United States v. Kebodeaux*, 133 S.Ct. 2496 (2013), it is not even clear that SORNA would apply to every sex offender who has a federal conviction but whose conduct does not involve interstate travel. *Id.* at 2507 (Roberts, C.J., concurring) ("It makes no difference that the Federal Government would be policing people previously convicted of a federal crime—even a federal sex crime. The fact of a prior federal conviction, by itself, does not give Congress a freestanding, independent, and perpetual interest in protecting the public from the convict's purely intrastate conduct.").

Appellant places great reliance on *United States v. Gould*, 568 F.3d 472 (4th Cir. 2009). (Brief at 15-16). But Gould came within the reach of SORNA because he traveled in interstate commerce before becoming a Maryland resident. In fact, every case, except one, cited by Appellant in support of its argument that SORNA imposes a separate obligation on sex offenders over and above the state's obligations, involve defendants who either traveled in interstate commerce or had federal convictions. *See, Carr v. United States*, 560 U.S. 438 (2012) (travel in interstate commerce); *Reynolds v. United States*, 132 S.Ct. 975 (2012) (travel in interstate commerce); *United States v. Amber*, 561 F.3d. 1202 (11th Cir. 2009) (same); *United States v. Begay*, 622 F.3d 1187 (9th Cir. 2010) (moving from one location in Arizona to Navajo Nation); *United States v. Brown*, 586 F.3d 1342 (10th Cir. 2011) (traveled in interstate commerce); *United States v. Carel*, 668 F.3d 1211 (10th Cir. 2011) (convicted of a federal sex offense); *United States v. DiTomasso*, 621 F.3d 17 (1st Cir. 2010) (traveled in interstate commerce); *United States v. Felts*, 674 F.3d 599 (6th Cir. 2012) (traveled in interstate commerce); *United States v. George*, 625 F.3d 1124

(9th Cir. 2010) (convicted of a federal offense); *United States v. Gould*, 568 F.3d 459 (4th Cir. 2009) (traveled in interstate commerce); *United States v. Guzman*, 591 F.3d 83 (2d Cir. 2010) (same); *United States v. Lawrance*, 548 F.3d 1329 (10th Cir. 2008) (same); *United States v. May*, 535 F.3d 912 (8th Cir. 2008) (same); *United States v. Pendleton*, 658 F.3d 299 (3rd Cir. 2011) (same); *United States v. Yelloweagle*, 643 F.3d 1275 (10th Cir. 2011) (convicted of federal sex offense); *United States v. Young*, 585 F.3d 199 (5th Cir. 2009) (traveled in interstate commerce); *Doe I v. Keathley*, 290 S.W.3d 719 (Mo. 2009) (all but two of the eleven defendants traveled in interstate commerce or were convicted of federal offenses). In short, these cases do not advance Appellant's argument that those like Mr. Doe who have neither traveled in interstate commerce nor been convicted of a federal offense have an obligation to comply with SORNA. In fact, the Supreme Court made this point crystal clear in *Carr*, *supra*, where the Court held that the intent in enacting the federal statute providing for prosecution should one fail to register, 18 U.S.C. §2250, was simply "to subject to federal prosecution sex offenders who elude SORNA's registration requirements by traveling in interstate commerce." *Carr v. United States*, *supra* at 456. Carr was prosecuted federally for failing to register based on interstate travel taken before SORNA's effective date. The Supreme Court struck down the conviction holding that "preenactment travel falls outside the statute's compass" and noted:

> Had Congress intended to subject any unregistered state sex offender who has ever traveled in interstate commerce to federal prosecution under §2250, it easily could have adopted language to that effect. That it declined to do so indicates that Congress instead chose to handle federal and state sex offenders differently…To the contrary, it is entirely reasonable for Congress to have assigned the Federal Government a special role

> in ensuring compliance with SORNA's registration requirements by ***federal sex offenders – persons who typically would have spent time under federal criminal supervision***. It is similarly reasonable for Congress to have given the States primary responsibility for supervising and ensuring compliance among state sex offenders ***and to have 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 450, (emphasis added). The Court explained further that "[t]aking 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 (emphasis added). The Court further noted "Section 2250 imposes criminal liability on ***two categories*** of persons who fail to adhere to SORNA's registration requirements: any person who is a sex offender "by reason of a conviction under Federal law ..., the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States," § 2250(a)(2)(A), and any other person required to register under SORNA who "travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country," § 2250(a)(2)(B)." *Id.* at 451 (emphasis added). Thus, through its ability to regulate interstate commerce, the federal government can enact legislation that ***encourages*** the registration of sex offenders but, in the absence of interstate travel, it has no authority to prosecute an offender for failing to register nor to require states to enforce its regulatory programs as made clear in *Printz, supra.*

Appellant does cite the single case in the country that supports its position, *Doe I v. Keathley, supra.* Two of the eleven defendants in the case had neither traveled in interstate

commerce nor been convicted of a federal offense. The following constitutes the entirety of the court's "analysis":

> ***ANALYSIS***
>
> Article I, section 13 of the Missouri Constitution provides:
>
> > That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted.
> >
> > Respondents assert that section 589.400.1(7) violates article I, section 13 because the statute requires registration based on convictions that occurred prior to the effective date of the statute. This argument focuses on the "retrospective in its operation" clause of article I, section 13. Prior to assessing whether a law operates retrospectively, however, there must first be state law that is "enacted." Therefore, respondents first must establish that the registration requirement arises from the enactment of a state law.
> >
> > In this case, respondents are subject to the independent, federally mandated registration requirements under the Sexual Offenders Registration and Notification Act (SORNA). SORNA provides, *inter alia*, that "[a] sex offender shall register ... in each jurisdiction where the offender resides." 42 U.S.C. section 16913. A "sex offender" is "an individual who was convicted of a sex offense." 42 U.S.C. section 16911(1). A "sex offense" includes a "criminal offense that has an element involving a sexual act or sexual contact with another." 42 U.S.C. section 16911(6). SORNA applies to individuals who committed a sex offense prior to July 20, 2006. 42 U.S.C. section 16913(d); 28 C.F.R., section 72.3. Therefore, SORNA imposes an independent obligation requiring respondents to register as sex offenders in Missouri. The independent registration requirement under SORNA operates irrespective of any allegedly retrospective state law that has been enacted and may be subject to the article I, section 13 ban on the enactment of retrospective state laws. Consequently, the circuit court erred in concluding that respondents are exempt from registration by virtue of article I, section 13 of the Missouri Constitution. The judgment is reversed.
> >
> > **All concur.**

Id. at 720-721. Despite the caption, there is obviously no 'analysis' in this opinion as to why the court reached its conclusion. Thus, this decision should hold no weight. The weight of authority around the country, as cited above, is that SORNA applies only to those convicted of a federal offense and those who travel in interstate commerce, neither of which apply to Mr. Doe.

7. Appellant's claim that Maryland will become a "sanctuary state" for child sex offenders attempting to escape the federal statute's registration requirements is hyperbole.

Appellant makes the dramatic claim that removal of Mr. Doe from the sex offender registry "creates a situation where Maryland will become a 'sanctuary state' for child sex offenders attempting to escape the federal statute's registration requirements." (Brief at 18). Invoking the specter of a haven state full of child sex offenders is disingenuous at best. The only "sanctuary" Maryland, as a state, would provide would be for those Maryland residents who were unconstitutionally required to register by Appellant in violation of Article 17 of the Declaration of Rights. Any other child sex offenders who Appellant fears will flock to the state of Maryland will, of course, have traveled in interstate commerce and thus, will be subject to federal prosecution pursuant to §2250 of SORNA if they fail to register.

8. Under its inherent authority, this Court has the obligation to order that Appellant remove Mr. Doe from all databases he was illegally placed on.

> The concept of inherent authority, thus, is grounded in the understanding that courts must possess certain powers in order to function as courts. Similarly, inherent authority is necessary to protect the role of the judiciary within the constitutional separation of powers. Inherent authority provides courts the

> means both to employ the power and fulfill the functions granted expressly to the judiciary by the Maryland Constitution as well as to resist encroachments by the legislative and executive branches.

Wynn v. State, 388 Md. 423, 433, 879 A.2d 1097 (2005). As the Court stated in *Thompson v. State*, 395 Md. 240, 258, 909 A.2d 1035 (2006), "[c]ourts have inherent judicial power to impose sanctions for violations of court orders." It has been over a year since this Court issued its decision in *Doe I* and Appellant continues to resist applying *Doe I* to those offenders similarly situated and forces each of them to go through litigation to be removed. As a matter of this Court's inherent power to "function as [a] court[]" this Court has the authority to see that its orders and opinions are followed.

CONCLUSION

For the foregoing reasons, Mr. Doe respectfully requests that this Court affirm the denial of Appellant's Motion to Alter or Amend.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 2014, a copy of the foregoing Brief of Appellee in Doe v. Department of Public Safety and Correctional Services was mailed to Michael Doyle, Assistant Attorney General, 115 Sudbrook Lane, Suite A, Pikesville, Maryland 21208.

_____

Nancy S. Forster

PERTINENT PROVISIONS

Md. Ann. Code, Criminal Procedure Article, § 11-701

In general

(a) In this subtitle the following words have the meanings indicated.

Board

(b) "Board" means the Sexual Offender Advisory Board.

Employment

(c) "Employment" means an occupation, job, or vocation that is full time or part time for a period exceeding 14 days or for an aggregate period exceeding 30 days during a calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

Habitually lives

(d)(1) "Habitually lives" means any place where a person lives, sleeps, or visits with any regularity, including where a homeless person is stationed during the day or sleeps at night.

(2) "Habitually lives" includes any place where a person visits for longer than 5 hours per visit more than 5 times within a 30-day period.

Homeless

(e) "Homeless" means having no fixed residence.

Imprisonment

(f) "Imprisonment" means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence.

Jurisdiction

(g) "Jurisdiction" means a state or a Native American tribe that elects to function as a registration jurisdiction under federal law.

Local law enforcement unit

(h) "Local law enforcement unit" means the law enforcement unit in a county that has been designated by resolution of the county governing body as the primary law enforcement unit in the county.

Release

(i)(1) Except as otherwise provided in this subsection, "release" means any type of release from the custody of a supervising authority.

(2) "Release" means:

(i) release on parole;

(ii) mandatory supervision release;

(iii) release from a correctional facility with no required period of supervision;

(iv) work release;

(v) placement on home detention; and

(vi) the first instance of entry into the community that is part of a supervising authority's graduated release program.

(3) "Release" does not include:

(i) an escape; or

(ii) leave that is granted on an emergency basis.

Sexually violent offense

(j) "Sexually violent offense" means:

(1) a violation of §§ 3-303 through 3-307 or §§ 3-309 through 3-312 of the Criminal Law Article;

(2) assault with intent to commit rape in the first or second degree or a sexual offense in the first or second degree as prohibited on or before September 30, 1996, under former Article 27, § 12 of the Code; or
(3) a crime committed in another jurisdiction, federal or military court, or foreign country that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection.

Sexually violent predator

(k) "Sexually violent predator" means a person who:
(1) is convicted of a sexually violent offense; and
(2) has been determined in accordance with this subtitle to be at risk of committing another sexually violent offense.

Sex offender

(l) "Sex offender" means a person who has been convicted of:
(1) an offense that would require the person to be classified as a tier I sex offender, tier II sex offender, or tier III sex offender;
(2) an offense committed in another state or in a federal, military, or tribal jurisdiction that, if committed in this State, would require the person to be classified as a tier I sex offender, tier II sex offender, or tier III sex offender; or
(3) an offense in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if committed in this State, would require the person to be classified as a tier I sex offender, tier II sex offender, or tier III sex offender.

Student

(m) "Student" means an individual who is enrolled in or attends an education institution, including a public or private secondary school, trade or professional school, or an institution of higher education.

Supervising authority

(n) "Supervising authority" means an agency or person that is responsible for collecting the information for the initial registration of a sex offender and is:
(1) the Secretary, if the registrant is in the custody of a correctional facility operated by the Department;
(2) the administrator of a local correctional facility, if the registrant, including a participant in a home detention program, is in the custody of the local correctional facility;
(3) the court that granted the probation or suspended sentence, except as provided in item (9) of this subsection, if the registrant is granted probation before judgment, probation after judgment, or a suspended sentence;
(4) the Director of the Patuxent Institution, if the registrant is in the custody of the Patuxent Institution;
(5) the Secretary of Health and Mental Hygiene, if the registrant is in the custody of a facility operated by the Department of Health and Mental Hygiene;

(6) the court in which the registrant was convicted, if the registrant's sentence does not include a term of imprisonment or if the sentence is modified to time served;

(7) the Secretary, if the registrant is in the State under terms and conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;
(8) the local law enforcement unit where the sex offender is a resident, is a transient, or habitually lives on moving from another jurisdiction or foreign country that requires registration if the sex offender is not under the supervision, custody, or control of another supervising authority;
(9) the Director of Parole and Probation, if the registrant is under the supervision of the Division of Parole and Probation; or
(10) the Secretary of Juvenile Services, if the registrant was a minor at the time the act was committed for which registration is required.

Tier I sex offender

(o) "Tier I sex offender" means a person who has been convicted of:
(1) conspiring to commit, attempting to commit, or committing a violation of § 3-308 of the Criminal Law Article;
(2) conspiring to commit, attempting to commit, or committing a violation of § 3-902 or § 11-208 of the Criminal Law Article, if the victim is a minor;
(3) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection;
(4) any of the following federal offenses:
(i) misleading domain names on the Internet under 18 U.S.C. § 2252B;
(ii) misleading words or digital images on the Internet under 18 U.S.C. § 2252C;
(iii) engaging in illicit conduct in foreign places under 18 U.S.C. § 2423(c);
(iv) failure to file a factual statement about an alien individual under 18 U.S.C. § 2424;
(v) transmitting information about a minor to further criminal sexual conduct under 18 U.S.C. § 2425;
(vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; or
(vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);
(5) any military offense specified by the Secretary of Defense under Section 115(A)(8)(C)(i) of Public Law 105-119(codified at 10 U.S.C. § 951 Note) that is similar to those offenses listed in item (4) of this subsection; or
(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (5) of this subsection.

Tier II sex offender

(p) "Tier II sex offender" means a person who has been convicted of:
(1) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(4) or (5), § 3-324, § 11-207, or § 11-209 of the Criminal Law Article;
(2) conspiring to commit, attempting to commit, or committing a violation of § 11-303, § 11-305, or § 11-306 of the Criminal Law Article, if the intended prostitute or victim is a minor;

(3) conspiring to commit, attempting to commit, or committing a violation of § 3-314 or § 3-603 of the Criminal Law Article, if the victim is a minor who is at least 14 years old;

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;
(5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; or
(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.

Tier III sex offender

(q) "Tier III sex offender" means a person who has been convicted of:
(1) conspiring to commit, attempting to commit, or committing a violation of:
(i) § 2-201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;
(ii) § 3-303, § 3-304, § 3-305, § 3-306, § 3-307(a)(1) or (2), § 3-309, § 3-310, § 3-311, § 3-312, § 3-315, § 3-323, or § 3-602 of the Criminal Law Article;
(iii) § 3-502 of the Criminal Law Article, if the victim is a minor;
(iv) § 3-502 of the Criminal Law Article, if the victim is an adult, and the person has been ordered by the court to register under this subtitle; or
(v) the common law offense of sodomy or § 3-322 of the Criminal Law Article if the offense was committed with force or threat of force;
(2) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(3), § 3-314, § 3-503, or § 3-603 of the Criminal Law Article, if the victim is under the age of 14 years;
(3) conspiring to commit, attempting to commit, or committing the common law offense of false imprisonment, if the victim is a minor;
(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;
(5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; or
(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.

Transient

(r) "Transient" means a nonresident registrant who enters a county of this State with the intent to be in the State or is in the State for a period exceeding 14 days or for an aggregate period exceeding 30 days during a calendar year for a purpose other than employment or to attend an educational institution.

Md. Ann. Code, Criminal Procedure Article, §11-702.1

Retroactive application of subtitle

In general

(a) Notwithstanding any other provision of law to the contrary, this subtitle shall be applied retroactively to include a person who:

(1) is under the custody or supervision of a supervising authority on October 1, 2010;

(2) was subject to registration under this subtitle on September 30, 2010;

(3) is convicted of any felony on or after October 1, 2010, and has a prior conviction for an offense for which registration as a sex offender is required under this subtitle; or

(4) was convicted on or after October 1, 2010, of a violation of § 3-324 of the Criminal Law Article, regardless of whether the victim was a minor.

Calculation of registration term

(b) The term of registration for a sex offender registered under subsection (a) of this section shall be calculated from the date of release.

Md. Ann. Code, Criminal Procedure Article, §11-705

Deadline for registration and other registration requirements

Resident defined

(a) In this section, "resident" means a person who has a home or other place where the person habitually lives located in this State when the person:

(1) is released;

(2) is granted probation;

(3) is granted a suspended sentence;

(4) receives a sentence that does not include a term of imprisonment; or

(5) is released from the juvenile court's jurisdiction under § 3-8A-07 of the Courts Article, if the person was a minor who lived in the State at the time the act was committed for which registration is required.

Registrants required to register with supervising authority in State

(b) A registrant shall register with the appropriate supervising authority in the State:

(1) if the registrant was sentenced to a term of imprisonment before the date that the registrant is released; or

(2) within 3 days of the date that the registrant:

(i) is granted probation before judgment;

(ii) is granted probation after judgment;

(iii) is granted a suspended sentence; or

(iv) receives a sentence that does not include a term of imprisonment;

(3) if the registrant was a resident who was a minor at the time the act was committed for which registration is required, within 3 days after the juvenile court's jurisdiction over the person terminates under § 3-8A-07 of the Courts Article;

(4) if the registrant moves into the State, within 3 days after the earlier of the date that the registrant:

(i) establishes a temporary or permanent residence in the State;

(ii) begins to habitually live in the State; or

(iii) applies for a driver's license in the State; or

(5) if the registrant is not a resident, within 3 days after the registrant:

(i) begins employment in the State;
(ii) registers as a student in the State; or
(iii) enters the State as a transient.

Registration in person with local law enforcement units

(c)(1) A sex offender shall also register in person with the local law enforcement unit of each county where the sex offender resides within 3 days of:
(i) release from any period of imprisonment or arrest; or
(ii) registering with the supervising authority, if the registrant is moving into this State and the local law enforcement unit is not the supervising authority.
(2) A sex offender may be required to give to the local law enforcement unit more information than required under § 11-706 of this subtitle.

Homeless registrants

(d)(1) A homeless registrant also shall register in person with the local law enforcement unit in each county where the registrant habitually lives:
(i) within 3 days after the earlier of the date of release or after registering with the supervising authority; and
(ii) within 3 days after entering and remaining in a county.
(2) After initially registering with a local law enforcement unit under this subsection, a homeless registrant shall register once a week in person during the time the homeless registrant habitually lives in the county.
(3) The registration requirements under this subsection are in addition to any other requirements the homeless registrant is subject to according to the registrant's classification as a tier I sex offender, tier II sex offender, tier III sex offender, or sexually violent predator.
(4) If a registrant who was homeless obtains a fixed address, the registrant shall register with the appropriate supervising authority and local law enforcement unit within 3 days after obtaining a fixed address.

Changes in residence, vehicle or license plate information, email or internet identifiers, phone numbers, or employment

(e) Within 3 days of any change, a registrant shall notify the local law enforcement unit where the registrant most recently registered and each local law enforcement unit where the registrant will reside or habitually live of changes in:
(1) residence;
(2) the county in which the registrant habitually lives;
(3) vehicle or license plate information;
(4) electronic mail or Internet identifiers;
(5) home or cell phone numbers; or
(6) employment.

Commencement or termination as student at institution of higher education

(f)(1) A registrant who commences or terminates enrollment as a full-time or part-time student at an institution of higher education in the State shall provide notice in person to the local law enforcement unit where the institution of higher education is located within 3 days after the commencement or termination of enrollment.
(2) A registrant who commences or terminates carrying on employment at an institution of higher education in the State shall provide notice in person to the local law enforcement unit where the

institution of higher education is located within 3 days after the commencement or termination of employment.

Legal name changes

(g) A registrant who is granted a legal change of name by a court shall send written notice of the change to each local law enforcement unit where the registrant resides or habitually lives within 3 days after the change is granted.

Leaving United States to commence residence, employment, or education in foreign country

(h) A registrant shall notify each local law enforcement unit where the registrant resides or habitually lives at least 3 days prior to leaving the United States to commence residence or employment or attend school in a foreign country.

Temporary residences or alterations to location where registrant resides or habitually lives

(i)(1) A registrant shall notify each local law enforcement unit where the registrant resides or habitually lives when the registrant obtains a temporary residence or alters the location where the registrant resides or habitually lives for more than 5 days or when the registrant will be absent from the registrant's residence or location where the registrant resides or habitually lives for more than 7 days.
(2) Notification under this subsection shall:
(i) be made in writing or in person prior to obtaining a temporary residence, commencing the period of absence, or temporarily altering a location where the registrant resides or habitually lives;
(ii) include the temporary address or detailed description of the temporary location where the registrant will reside or habitually live; and
(iii) contain the anticipated dates that the temporary residence or location will be used by the registrant and the anticipated dates that the registrant will be absent from the registrant's permanent residence or locations where the registrant regularly resides or habitually lives.

Electronic mail addresses, computer log-ins, and screen names or identities

(j) A registrant who establishes a new electronic mail address, computer log-in or screen name or identity, instant-message identity, or electronic chat room identity shall send written notice of the new information to the State registry within 3 days after the electronic mail address, computer log-in or screen name or identity, instant-message identity, or electronic chat room identity is established.

Md. Ann. Code, Criminal Procedure Article, §11-708

Duties of supervising authority

Notice to registrant of duties and requirements of subtitle and obtainment of registration statement

(a) When a registrant registers, the supervising authority shall:
(1) give written notice to the registrant of the requirements of this subtitle;
(2) explain the requirements of this subtitle to the registrant, including:
(i) the duties of a registrant when the registrant changes residence address in this State or changes the county in which the registrant habitually lives;

(ii) the duties of a registrant under § 11-705 of this subtitle;
(iii) the requirement for a sex offender to register in person with the local law enforcement unit of each county where the sex offender will reside or habitually live or where the sex offender who is not a resident of this State is a transient or will work or attend school; and
(iv) the requirement that if the registrant changes residence address, employment, or school enrollment to another state that has a registration requirement, the registrant shall register with the designated law enforcement unit or sex offender registration unit of that state within 3 days after the change; and
(3) obtain a statement signed by the registrant acknowledging that the supervising authority explained the requirements of this subtitle and gave written notice of the requirements to the registrant.

Updated digital images, fingerprints, and palm prints of registrant

(b)(1) The supervising authority shall obtain an updated digital image, fingerprints, and palm prints of the registrant and forward the updated digital image, fingerprints, and palm prints to the Department.

(2) For a registrant who has not submitted a DNA sample, as defined in § 2-501 of the Public Safety Article, for inclusion in the statewide DNA database system of the Department of State Police Crime Laboratory, the supervising authority shall:
(i) obtain a DNA sample from the registrant at the registrant's initial registration; and
(ii) provide the sample to the statewide DNA database system of the Department of State Police Crime Laboratory.

Registration statements sent to local law enforcement units

(c)(1) Within 3 days after obtaining a registration statement, the supervising authority shall send a copy of the registration statement with the attached fingerprints, palm prints, and updated digital image of the registrant to the local law enforcement unit in each county where the registrant will reside or habitually live or where a registrant who is not a resident is a transient or will work or attend school.
(2)(i) If the registrant is enrolled in or carries on employment at, or is expecting to enroll in or carry on employment at, an institution of higher education in the State, within 3 days after obtaining a registration statement, the supervising authority shall send a copy of the registration statement with the attached fingerprints, palm prints, and updated digital image of the registrant to the campus police agency of the institution of higher education.
(ii) If an institution of higher education does not have a campus police agency, the copy of the registration statement with the attached fingerprints, palm prints, and updated digital image of the registrant shall be provided to the local law enforcement agency having primary jurisdiction for the campus.

Registration statements sent to Department

(d) As soon as possible but not later than 3 working days after the registration is complete, a supervising authority that is not a unit of the Department shall send the registration statement to the Department.

Md. Ann. Code, Criminal Procedure Article, §11-709

Notice requirements of local law enforcement units and police departments

Notice of sex offender and sexually violent predator registration

(a)(1)(i) Within 3 days after a tier III sex offender or a sexually violent predator completes the registration requirements of § 11-707(a) of this subtitle, a local law enforcement unit shall send notice of the tier III sex offender's or sexually violent predator's quarterly registration to the Department.

(ii) Every 6 months within 3 days after a tier I sex offender or a tier II sex offender completes the registration requirements of § 11-707(a) of this subtitle, a local law enforcement unit shall send notice of the tier I sex offender's or tier II sex offender's biannual registration to the Department.

(2) Every 6 months, a local law enforcement unit shall send a tier III sex offender's and sexually violent predator's updated digital image to the Department within 6 days after the digital image is submitted.

Notice of change of address or change of county of sex offender

(b)(1) As soon as possible but not later than 3 working days after receiving a registration statement of a sex offender, notice of a change of address of a sex offender, or change in a county in which a homeless sex offender habitually lives, a local law enforcement unit shall send written notice of the registration statement, change of address, or change of county to the county superintendent, as defined in § 1-101 of the Education Article, and all nonpublic primary and secondary schools in the county within 1 mile of where the sex offender is to reside or habitually live or where a sex offender who is not a resident of the State is a transient or will work or attend school.

(2) As soon as possible but not later than 10 working days after receiving notice from the local law enforcement unit under paragraph (1) of this subsection, the county superintendent shall send written notice of the registration statement to principals of the schools under the superintendent's supervision that the superintendent considers necessary to protect the students of a school from a sex offender.

Notice to police department of municipal corporations

(c) A local law enforcement unit that receives a notice from a supervising authority under this subtitle shall send a copy of the notice to the police department, if any, of a municipal corporation if the registrant:

(1) is to reside or habitually live in the municipal corporation after release;

(2) escapes from a facility but resided or habitually lived in the municipal corporation before being committed to the custody of a supervising authority; or

(3) is to change addresses to another place of residence within the municipal corporation.

Notice by police department of municipal corporation to local police precinct or district

(d) As soon as possible but not later than 3 working days after receiving notice from a local law enforcement unit under this section, a police department of a municipal corporation shall send a copy of the notice to the commander of each local police precinct or district in which the sex offender is to reside or habitually live or where a sex offender who is not a resident of the State will work or attend school.

Notice by local law enforcement units to district or area commanders

(e) As soon as possible but not later than 3 working days after receiving a notice from a supervising authority under this subtitle, a local law enforcement unit shall send a copy of the notice to the commander of the law enforcement unit in each district or area in which the sex offender is to reside or habitually live or where a sex offender who is not a resident of the State will work or attend school.

Notice by local law enforcement units to day care homes, child care centers, child recreation facilities, or faith institutions

(f) A local law enforcement unit may notify the following entities that are located within the community in which a sex offender is to reside or habitually live or where a sex offender who is not a resident of the State will work or attend school of the filing of a registration statement or notice of change of address or county where the registrant will habitually live by the sex offender:
(1) family child care homes or child care centers registered, licensed, or issued a letter of compliance under Title 5, Subtitle 5 of the Family Law Article;
(2) child recreation facilities;
(3) faith institutions; and
(4) other organizations that serve children and other individuals vulnerable to sex offenders who victimize children.

Change of residence or county in which registrant habitually lives

(g) As soon as possible, but not later than 3 working days after receipt of a registrant's change of residence or change in the county in which the registrant habitually lives, the local law enforcement unit shall notify the Department of the change.

Notice given by local law enforcement unit to Department

(h) As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(e) of this subtitle, the local law enforcement unit shall give notice to the Department of the registrant's intent to change residence, a county in which the registrant habitually lives, vehicle or license plate information, electronic mail or Internet identifiers, or landline or cellular phone numbers.

Name changes

(i) As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(g) of this subtitle, the local law enforcement unit shall give notice to the Department of the change of name.

Intent to leave United States

(j) As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(h) of this subtitle, the local law enforcement unit shall give notice to the Department of the registrant's intent to leave the United States.

Intent to obtain temporary lodging or be absent from residence

(k) As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(i) of this subtitle, the local law enforcement unit shall give notice to the Department of the registrant's intent to obtain temporary lodging or to be absent from the registrant's permanent residence or locations where the registrant habitually lives.

Md. Ann. Code, Criminal Procedure Article, §11-710

Notice of registrant's change of address or change of name

Notice to federal units, local law enforcement or sex offender registration units, and other jurisdictions

(a) As soon as possible but not later than 3 working days after receipt of notice of a registrant's change of address, a county in which a registrant habitually lives, vehicle or license plate information, electronic mail or Internet identifiers, or landline or cellular phone numbers, the Department shall give notice of the change:
(1) if the registration is premised on a conviction under federal, military, or Native American tribal law, to the designated federal unit;
(2) to any other jurisdiction or foreign country where the sex offender is required to register; and
(3)(i) to each local law enforcement unit in whose county the new residence is located or where the registrant intends to habitually live; or
(ii) if the new residence or location where the registrant will habitually live is in a different state that has a registration requirement, to the designated law enforcement unit or sex offender registration unit in that state.

Notice to campus police agencies at institutes of higher education

(b)(1)(i) As soon as possible but not later than 3 working days after receipt of notice under § 11-705(f) of this subtitle, the Department shall give notice to the campus police agency of the institution of higher education where the registrant is commencing or terminating enrollment or employment.
(ii) If an institution of higher education does not have a campus police agency, the notice required under this section shall be provided to the local law enforcement unit having primary law enforcement authority for the campus.
(2) Institutions of higher education currently required to disclose campus security policy and campus crime statistics data shall advise the campus community where law enforcement agency information provided by a state concerning registered sex offenders may be obtained.
(3) An institution of higher education is not prohibited from disclosing information provided to the institution under this subtitle concerning registered sex offenders.

Notice of name change of registrant

(c) As soon as possible but not later than 3 working days after receipt of notice under § 11-705(g) of this subtitle, the Department shall give notice of the change of name:
(1) if the registration is due to a conviction under federal, military, or Native American tribal law, to the designated federal unit;
(2) to each local law enforcement unit in whose county the registrant resides or habitually lives or where a registrant who is not a resident of the State will work or attend school; and
(3) if the registrant is enrolled in or employed at an institution of higher education in the State, to:
(i) the campus police agency of the institution of higher education; or
(ii) if the institution does not have a campus police agency, the local law enforcement unit having primary jurisdiction for the campus.

Md. Ann. Code, Criminal Procedure Article, §11-713

Duties of Department

The Department:
(1) as soon as possible but not later than 3 working days after receiving the conviction data and fingerprints of a registrant, shall transmit the data and fingerprints to the Federal Bureau of Investigation if the Bureau does not have that information;
(2) shall keep a central registry of registrants and a listing of juvenile sex offenders;
(3) shall weekly transmit the central registry of registrants to the State Department of Education in a format that can be used by the State Superintendent to cross-reference with the database of licensed child care centers, registered family child care homes, and approved Child Care Subsidy Program informal providers;
(4) shall reimburse local law enforcement units for the cost of processing the registration statements of registrants, including the cost of taking fingerprints, palm prints, and digital images;
(5) shall reimburse local law enforcement units for the reasonable costs of implementing community notification procedures;
(6) shall be responsible for receiving and distributing all intrastate, federal, and foreign government communications relating to the registration of sex offenders; and
(7) shall notify all jurisdictions where the registrant will reside, carry on employment, or attend school within 3 days of changes in the registrant's registration.

42 U.S.C. §16913

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) of this section 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) of this section

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter 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) of this section.
(e) State penalty for failure to comply
Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

42 U.S.C. §16925

Failure of jurisdiction to comply

(a) In general
For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this subchapter shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under part A of subchapter V of chapter 46 of this title [42 U.S.C. 3750 et seq.].
(b) State constitutionality
(1) In general

When evaluating whether a jurisdiction has substantially implemented this subchapter, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this subchapter because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.
(2) Efforts
If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this subchapter and to reconcile any conflicts between this subchapter and the jurisdiction's constitution. In considering whether compliance with the requirements of this subchapter would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court.
(3) Alternative procedures
If the jurisdiction is unable to substantially implement this subchapter because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this chapter if the jurisdiction has made, or is in the process of implementing reasonable alternative procedures or accommodations, which are consistent with the purposes of this chapter.

(4) Funding reduction

If a jurisdiction does not comply with paragraph (3), then the jurisdiction shall be subject to a funding reduction as specified in subsection (a) of this section.
(c) Reallocation
Amounts not allocated under a program referred to in this section to a jurisdiction for failure to substantially implement this subchapter shall be reallocated under that program to jurisdictions that have not failed to substantially implement this subchapter or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this subchapter.
(d) Rule of construction
The provisions of this subchapter that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section.

18 U.S.C. 2250

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.

(b) Affirmative defense.--In a prosecution for a violation under subsection (a), it is an affirmative defense that--
(1) uncontrollable circumstances prevented the individual from complying;
(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and
(3) the individual complied as soon as such circumstances ceased to exist.

(c) Crime of violence.--
(1) In general.--An individual described in subsection (a) who commits a crime of violence 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 shall be imprisoned for not less than 5 years and not more than 30 years.
(2) Additional punishment.--The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a).

U.S.C.A. Const. Art. I § 8, cl. 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article 17, Declaration of Rights

That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required.

COMAR 12.06.01.08

Registration Responsibilities-Sex Offender Registry Unit.

A. The Sex Offender Registry Unit shall:
(1) Maintain a central registry:
(a) Initiated by receipt of registration statements; and
(b) Updated by receipt of periodic registration documentation and notice of changes of registrant's address or other status;
(2) Determine if a registrant should be placed in an under investigation or absconder status;
(3) Calculate terms of registration; and
(4) Authorize termination of registration.
B. The Sex Offender Registry Unit shall transmit a registrant's conviction and fingerprint data to the Federal Bureau of Investigation as soon as possible, but not later than 5 business days after receiving a registration statement.
C. The Sex Offender Registry Unit shall supply the forms required by supervising authorities and local law enforcement units to perform their respective duties under Criminal Procedure Article, §§11-701-11-721, Annotated Code of Maryland.
D. In order to carry out the provisions of Criminal Procedure Article, §11-701-11-721, Annotated Code of Maryland, the Sex Offender Registry Unit shall establish procedures and timeframes for the timely:
(1) Exchange of information, including notification of registrant status, among:
(a) Local law enforcement units;
(b) Supervising authorities;
(c) Sex offender registries and law enforcement units in other states; and
(d) Federal agencies; and
(2) Receipt and exchange of information concerning registrants, and the coordination of investigations among the Unit, local law enforcement units, and the Division of Parole and Probation.