

FILED

**UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO**

AO 91 (Rev. 01/09) Criminal Complaint

UNITED STATES DISTRICT COURT APR 23 2010
for the
District of New Mexico

United States of America
v.
Benjamin Hot

Defendant

MATTHEW J. DYKMAN

CLERK

Case No.

10-MJ-1183

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

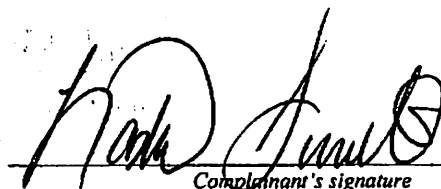
On or about the date of 10/16/2009 in the county of San Juan in the _____ District of New Mexico, the defendant violated 18 U. S. C. § 2250, an offense described as follows:

Failure to register as a sex offender.

This criminal complaint is based on these facts:

Benjamin Hot, an individual required to register under Sex Offender Registration and Notification Act (SORNA); who was previously convicted under Federal law; knowingly failed to update registration as required by SORNA

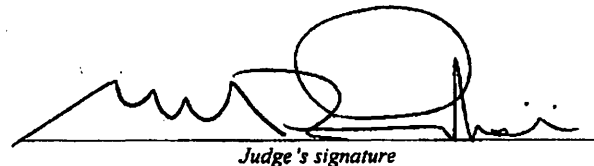
Continued on the attached sheet.


Complainant's signature

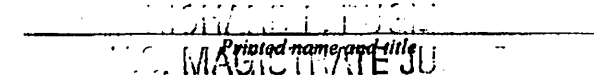
Lasha Smith, Deputy U.S. Marshal
Printed name and title

Sworn to before me and signed in my presence.

Date: 4/23/2010


Judge's signature

City and state: Albuquerque, NM


Printed name and title
MAGISTRATE JU

STATUTORY AUTHORITY

This investigation concerns alleged violations of Title 18, United States Code, Section 2250- certain activities relating to failing to register under the Sex Offender Registration and Notification Act. 18 U.S.C. § 2250 states:

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 SORNA by reason of a conviction under Federal law
(B) . . .travels in interstate or foreign commerce . . .
- (3) Knowingly fails to register or update registration as required by the Sex Offender Registration and Notification Act.

The Section 113 of the Adam Walsh Act defines who is required to register under the Act:

(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.

(2) Keeping Registration Current – A sex offender shall, not later than 3 business days after each change of name, residence, employment or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry . . .

Section 111 of the Adam Walsh Act defines Sex Offender as:

(1) Sex Offender – The term “sex offender” means an individual who was convicted of a sex crime.

The Act further defines “sex offense as:

..... (5) (A) Generally - . . . the term “sex offense” means –

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

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

...(6) The term Criminal Offense means a State, local, tribal, foreign, or military offense.....

STATEMENT OF FACTS


AFFIDAVIT

I, Lasha Smith, being duly sworn, do hereby declare and state the following:

1. I, Lasha Smith, a Deputy U.S. Marshal assigned to the District of New Mexico, have been with the U.S. Marshals Service for over six (6) years. I am currently assigned to the Enforcement Division. One of my responsibilities is to investigate crimes involving individuals who are convicted sex offenders, that have failed to register as required by 18 U.S.C. § 2250, also known as the Adam Walsh Child Protection and Safety Act of 2006. As a Deputy U.S. Marshal, I am authorized under 28 U.S.C. Section 564 to enforce the laws of the United States, including violations of the Sex Offender Registration and Notification Act ("SORNA"), 42 U.S.C. § 16901, and the new federal failure to register offense, pursuant to 18 U.S.C. § 2250.
2. This affidavit is made in support of a criminal complaint charging Benjamin Hot with failure to register as a sex offender, in violation of 18 U.S.C. § 2250.
3. Criminal records indicate that on or about November 18, 2003, Benjamin Hot pled guilty and was convicted of 18 U.S.C. § 2241(c) and 1153, Aggravated Sexual Abuse (Crime on an Indian Reservation) in the United States District Court of Arizona. Benjamin Hot was sentenced to serve 78 months in the custody of the Bureau of Prisons. Records indicate that Benjamin Hot first registered as a sex offender with the State of New Mexico on June 12, 2009, at the San Juan County Sheriff's Office as a lifetime registrant.
4. On or about July 17, 2009, Benjamin Hot was registered as a quarterly sex offender, every 90 days. The sex offender registration tracking sheet states in part: (1) A sex offender who changes his residence to New Mexico, when that person has been convicted of a sex offense in another state pursuant to state, federal or military law or who is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, or military law, but who is employed in New Mexico or attends school in New Mexico; shall register with the county sheriff where that sex offender resides, is employed, or is attending school no later than ten (10) days after establishing residence. On or about July 17, 2009, Hot signed and dated the sex offender registration tracking sheet. Benjamin Hot was also informed verbally and in writing by the San Juan County Sheriff's Office that he was required to report to update his registration in October 2009.
5. On or about February 12, 2004, U.S. District Court Chief Judge Stephen M. McNamee, in the District of Arizona, signed the judgment and supervised release conditions for Benjamin Hot, which included, "You shall register with the state sex offender agency in any state where you reside, are employed, carry on a vocation, or are a student, as directed by the probation officer", Hot received and signed the acknowledgement of conditions on May 29, 2009. Benjamin Hot was also informed by U.S. Probation Officer Jennifer Chance, of his conditions and duty to register as a sex offender every 90 days.
6. Benjamin Hot is also in violation of his federal supervised release and currently has an outstanding federal warrant issued on October 1, 2009, by the U.S. District Court of Arizona, for Violating his Conditions of Supervised Release.

7. Benjamin Hot has been out of compliance with New Mexico SORNA and the Adam Walsh Act since October 2009, and has failed to update his registration in San Juan County, or any other county, his current whereabouts are unknown.


8. Based on the aforementioned facts, your Affiant respectfully submits that probable cause exist to charge, Benjamin Hot, with violation of 18 U.S.C. § 2250, also know as the Adam Walsh Protection and Safety Act of 2006, for failure to register as a sex offender in the State of New Mexico and having been convicted in the U.S. District Court of Arizona, for Aggravated Sexual Abuse.


Complainant's signature
Lasha Smith, DUSM
Printed name and title

Sworn to before me and signed in my presence.

Date: 4/23/2010

City and state: Albuquerque, NM


Judge's signature

Printed name and title
RICHARD L. UCHI
M. MAGISTRATE JUDGE