

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

MATTHEW J. DYKMAN

CLERK

United States of America
v.
Nelson Mitchell

Case No.

10-MJ-1182

Defendant

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 10/04/2009 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:

Nelson Mitchell, 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

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 Nelson Mitchell with failure to register as a sex offender, in violation of 18 U.S.C. § 2250.
3. Criminal records indicate that on or about September 13, 2000, Nelson Mitchell pled guilty and was convicted of 18 U.S.C. § 2244(a)(1), 2246(3), 1153: Abusive Sexual Contact (Crime on an Indian Reservation) in the United States District Court of New Mexico. Nelson Mitchell was sentenced to serve twelve (12) months and one (1) day in the custody of the Bureau of Prisons. Records indicate that Mitchell first registered as a sex offender with the State of New Mexico on November 6, 2001, as a twenty (20) year registrant, required to register annually.
4. On or about December 4, 2002, Nelson Mitchell received sex offender registration guidelines which states in part; (1) Sex offender must register once every calendar year; (2) Sex offender must make notice if there is a change of residence within ten (10) days, even if you move out of state; (3) Sex offender must give accurate information; (4) Sex offender must make notice if employment changes. Nelson Mitchell signed and dated the above listed guidelines on or about December 4, 2002.
5. On or about September 4, 2008, Nelson Mitchell reported to the San Juan County Sheriff's Office, located in the state of New Mexico, for his annual renewal, at that time Mitchell was notified of his next annual registration date, September 4, 2009. The annual renewal sex offender registration documentation states in part; (1) A sex offender who is a resident of New Mexico convicted of a sex offense in New Mexico; (2) 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, tribal, or military law; (3) A sex offender who does not have an established residence in New Mexico, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico and who has been convicted of a sex offense in New Mexico or any other state pursuant to state, federal, tribal or military law; (4) Shall register with county Sheriff where the sex offender resides, is employed, or is attending school no later than ten (10) days after establishing residence. Nelson Mitchell signed and dated his name on September 8, 2008, acknowledging the above listed requirements.
6. Nelson Mitchell has been out of compliance with New Mexico SORNA and the Adam Walsh Act since September 4, 2009, he has failed to update his registration in San Juan County, or any other county, and his current whereabouts are unknown.

7. Based on the aforementioned facts, your Affiant respectfully submits that probable cause exist to charge, Nelson Mitchell, 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 previously convicted federally in the U.S. District Court of New Mexico, for Aggravated Sexual Abuse of a Child.


Complainant's signature
Lasha Smith, DUSM
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

RICHARD L. FUGLE
Printed name and title
U.S. MAGISTRATE JUDGE