U.S. Department of Justice

Office of the Solicitor General

The Solicitor General *Washington, D.C. 20530*

October 2, 2026

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *John Doe* v. *U.S. Department of Justice*, No. 22-cv-855 (C.D. Cal. Apr. 9, 2026)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to appeal in the above-referenced case. A copy of the opinion of the U.S. District Court for the Central District of California is enclosed.

This case involves a challenge to a final rule specifying registration requirements under the Sex Offender Registration and Notification Act (SORNA). See 86 Fed. Reg. 69,856 (Dec. 8, 2021) (2021 Rule); 28 C.F.R. 72. Under SORNA, it is a federal crime for a sex offender who committed a federal offense or travels in interstate commerce to "knowingly fail[] to register or update a registration as required by" SORNA. 18 U.S.C. 2250(a). SORNA establishes an affirmative defense where "(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." 18 U.S.C. 2250(c). The 2021 Rule clarified that SORNA applies to sex offenders "regardless of whether a jurisdiction in which registration is required has substantially implemented that Act's requirements or has implemented any particular requirement of that Act." 28 C.F.R. 72.3. Where an offender is unable to comply with SORNA's requirements in conformity with federal rules, the offender "must comply with the requirement in conformity with any applicable time and manner specifications of a jurisdiction in which the offender is required to register." 28 C.F.R. 72.7(g)(1). But in a prosecution under 18 U.S.C. 2250 for failing to register, the offender still must establish the affirmative defense that he was unable to comply with SORNA because of uncontrollable circumstances, as provided in 18 U.S.C. 2250(c). 28 C.F.R. 72.7(g)(2).

The plaintiffs are John Does, individuals convicted of sex offenses who reside in California, and the Alliance for Constitutional Sex Offense Laws. D. Ct. Doc. 169, at 4-6 (Apr. 9, 2026) (Op.). "It is undisputed" that the individual plaintiffs "cannot register because the state of California will no longer accept their registrations." Op. 20. But the plaintiffs claimed, among other things, that the 2021 Rule and 18 U.S.C. 2250 "together presume that defendants voluntarily failed to register until they prove otherwise," in violation of due process. *Ibid.*

As relevant here, the district court granted plaintiffs' motion for summary judgment on plaintiffs' due-process claim. The court reasoned that "the *actus reus* [in 18 U.S.C. 2250(a)] * * * is the failure to register 'as required,' and the *mens rea* is the knowledge of the requirement to register." Op. 21. The court accepted the plaintiffs' argument that the statute's affirmative defense "shifts the burden of proving an essential element of the offense to a defendant." Op. 23. In other words, "where a Plaintiff by operation of state law—not some hypothetical, individualized 'uncontrollable circumstance'—cannot register, there has been no *actus reus*, no affirmative choice, for example, not to register." *Ibid.* As for a remedy, the district court found that "the terms of the preliminary injunction" that it had previously issued "are the proper terms of a permanent injunction." Op. 26. Thus, the federal government is prohibited "from prosecuting any California resident under 18 U.S.C. 2250" without first seeking and obtaining "certification from the State of California that the individual was required to register under California law"; or, if the prosecution was based on the offender's "failure to provide specific information," that "California law allows the individual to furnish that information to state authorities." *Ibid.*; see D. Ct. Doc. 55, at 55 (Jan. 13, 2023).

The Department of Justice does not agree with the district court's decision. In the Department's view, the court erred in holding that the allocation of burdens as reflected in the statute and the 2021 Rule violates due process. The Department has determined, however, that the particular circumstances of this case do not merit appeal. In particular, the Department believes that there may be other, better vehicles for pressing our position that the statutory allocation of burdens is consistent with due process, including in similar challenges that are not intertwined with a challenge to an administrative rule or in other challenges to similarly worded statutes. Moreover, the district court's decision is not precedential, and its effects are limited to California. Finally, the practical consequences of the district court's decision do not warrant appeal in the Department's view. The Department did not appeal the district court's January 2023 preliminary injunction, which consisted of the same terms as the court's permanent injunction. See Op. 26; D. Ct. Doc. 55, at 55. Thus, for more than three years, the government has been operating under the terms of the current injunction, which, to date, have not imposed significant burdens on the government in its SORNA prosecutions. The Department has concluded that, under these circumstances, further litigation about whether 18 U.S.C. 2250 and the 2021 Rule violate due process is not warranted.

The Department of Justice filed a protective notice of appeal on June 8, 2026, but dismissed the appeal on September 30, 2026, before filing an opening brief. Please let me know if I can be of further assistance in this matter.

Sincerely,

D. John Sauer

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Solicitor General

Enclosure