

No. 11-385

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

SANTIAGO VALDEZ

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

18 U.S.C. 2250(a) imposes criminal penalties on a sex offender who is required to register under the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. 16901 *et seq.*, travels in interstate commerce, and knowingly fails to register. The question presented is whether SORNA's registration requirements apply of their own force to persons convicted of qualifying sex offenses before SORNA's effective date.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App., *infra*, 1a-2a) is not published in the *Federal Reporter* but is available at 2011 WL 2180356.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 2011. A petition for rehearing was denied on July 1, 2011 (App., *infra*, 3a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATUTORY AND REGULATORY
PROVISIONS INVOLVED**

The relevant statutory and regulatory provisions are reprinted in an appendix to this petition. App., *infra*, 4a-15a.

STATEMENT

Following a jury trial in the United States District Court for the District of Montana, respondent was convicted of failing to register and to update his registration as a convicted sex offender, in violation of 18 U.S.C. 2250(a). He was sentenced to 41 months of imprisonment, to be followed by 20 years of supervised release. The court of appeals reversed and remanded. App., *infra*, 1a-2a; Judgment 1-3 (July 6, 2009).

1. a. Since at least 1996, all 50 States and the District of Columbia have had sex-offender-registration laws. See *Smith v. Doe*, 538 U.S. 84, 90 (2003). On July 27, 2006, Congress enacted the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. 16901 *et seq.*, which “establishe[d] a comprehensive national system for the registration of [sex] offenders.” 42 U.S.C. 16901.

SORNA requires, as a matter of federal law, every sex offender to “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.” 42 U.S.C. 16913(a). SORNA defines a “sex offender” as “an individual who was convicted of a sex offense” that falls within the statute’s defined offenses. 42 U.S.C. 16911(1) and (5)-(7). SORNA provides that a sex offender “shall initially register” either “before completing a sentence of imprisonment with respect to the offense giving rise to the regis-

tration requirement” or, “if the sex offender is not sentenced to a term of imprisonment,” “not later than 3 business days after being sentenced for that offense.” 42 U.S.C. 16913(b). SORNA also directs that, “not later than 3 business days after each change of name, residence, employment, or student status,” a sex offender “shall * * * appear in person in at least 1 jurisdiction involved pursuant to subsection (a) [*i.e.*, where the sex offender resides, is an employee, or is a student] and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.” 42 U.S.C. 16913(c).

To enforce SORNA’s registration requirements, Congress also created a federal criminal offense penalizing nonregistration. Under 18 U.S.C. 2250(a), a convicted sex offender who “is required to register under [SORNA],” “travels in interstate or foreign commerce,” and then “knowingly fails to register or update a registration as required by [SORNA]” may be punished by up to ten years of imprisonment. *Carr v. United States*, 130 S. Ct. 2229, 2234-2235 (2010) (quoting 18 U.S.C. 2250(a)).

b. SORNA delegates to the Attorney General the permissive authority to promulgate regulations in certain situations:

Initial registration of sex offenders unable to comply with subsection (b)

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).

42 U.S.C. 16913(d).

On February 28, 2007, the Attorney General issued an interim rule, effective on that date, specifying that “[t]he requirements of [SORNA] apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.” 28 C.F.R. 72.3. In the preamble to the rule, the Attorney General explained that “[c]onsidered facially, SORNA requires all sex offenders who were convicted of sex offenses in its registration categories to register in relevant jurisdictions, with no exception for sex offenders whose convictions predate the enactment of SORNA.” Office of the Att’y Gen., U.S. Dep’t of Justice, *Applicability of the Sex Offender Registration and Notification Act*, 72 Fed. Reg. 8894, 8896 (2007). The interim rule, however, served the purpose of “confirming SORNA’s applicability” to “sex offenders with predicate convictions predating SORNA.” *Ibid.*

In promulgating the interim rule, the Attorney General explained that “[t]he immediate effectiveness of this rule is necessary” because postponing the rule’s implementation could impede the effective registration of “virtually the entire existing sex offender population” and would thereby risk “the commission of additional sexual assaults and child sexual abuse or exploitation offenses * * * that could have been prevented had local authorities and the community been aware of [the] presence” of unregistered sex offenders. 72 Fed. Reg. at 8896-8897. The Attorney General found that this “would thwart the legislative objective of ‘protect[ing] the public from sex offenders and offenders against children’ by establishing ‘a comprehensive national system

for the registration of those offenders,” *id.* at 8897 (brackets in original) (quoting 42 U.S.C. 16901), because “a substantial class of sex offenders could evade the Act’s registration requirements and enforcement mechanisms during the pendency of a proposed rule and delay in the effectiveness of a final rule,” *ibid.* The Attorney General therefore determined that it would be “contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).” *Ibid.*¹

2. In 1993, respondent was convicted in Indiana state court of rape. App., *infra*, 2a; Presentence Investigation Report (PSR) ¶ 27. Before his release from prison in September 2006, respondent acknowledged his obligation to comply with all state and federal sex offender registration laws and agreed to comply with those laws. *Ibid.*; C.A. E.R. 20-22 (Tr. 123-125). Respondent initially registered as a sex offender in Indiana. PSR ¶¶ 10, 27. In or around May 2007, respondent moved to Montana and failed to register as a sex offender there or update his registration in Indiana. PSR ¶ 11; Indictment 1-2.

A federal grand jury in the District of Montana returned an indictment charging respondent with one count of failing to register and update a registration as a convicted sex offender as required by SORNA, in violation of 18 U.S.C. 2250(a). The indictment alleged that

¹ On December 29, 2010, the Federal Register published an Attorney General order finalizing the interim rule, with one clarifying change in an example to avoid any inconsistency with this Court’s decision in *Carr, supra*. See Office of the Att’y Gen., U.S. Dep’t of Justice, *Applicability of the Sex Offender Registration and Notification Act*, 75 Fed. Reg. 81,849 (2010) (to be codified at 28 C.F.R. 72.3 (2011)).

respondent's interstate travel and failure to register occurred between May 2007 and July 17, 2007. Indictment 1-2. Respondent moved to dismiss the indictment on several grounds. He did not, however, argue that SORNA's registration requirements were inapplicable to him at the time of his interstate travel. See Resp. C.A. Citation of Suppl. Auth. (Jan. 7, 2011) (acknowledging he did not raise that claim in the district court). The district court denied respondent's motion to dismiss and, after a jury trial, respondent was convicted of the charged offense. See 1:07-cr-00104 Docket entry Nos. 218, 219 (Feb. 11, 2009). The district court sentenced respondent to 41 months of imprisonment, to be followed by 20 years of supervised release. Judgment 1-3 (July 6, 2009).

3. The court of appeals reversed and remanded. App., *infra*, 1a-2a.

On appeal, respondent again failed to argue that SORNA's registration requirements were inapplicable to him at the time of his interstate travel. See Resp. C.A. Citation of Suppl. Auth. (Jan. 7, 2011) (acknowledging he did not raise that claim on appeal). After briefing was complete, the Ninth Circuit decided *United States v. Valverde*, 628 F.3d 1159 (2010), petition for cert. pending, No. 11-40 (filed July 8, 2011). In *Valverde*, the court of appeals concluded that "SORNA did not specify whether it applied to individuals convicted of a sex offense before the statute's July 2006 enactment, but instead delegated that determination to the Attorney General." *Id.* at 1163 (citing *United States v. Juvenile Male*, 590 F.3d 924, 929 (9th Cir. 2010), vacated, 131 S. Ct. 2860 (2011) (per curiam)). The court also concluded that the Attorney General's February 28, 2007, interim rule confirming that SORNA's requirements apply to all sex

offenders, including preenactment offenders, was invalid because the Attorney General did not have “good cause” for dispensing with the Administrative Procedure Act’s (APA) notice, comment, and publication requirements, 5 U.S.C. 553(b), (c) and (d). *Valverde*, 628 F.3d at 1164-1169. The *Valverde* court ultimately determined that SORNA’s requirements became applicable to preenactment sex offenders on August 1, 2008—30 days after publication of the final SORNA guidelines, issued after notice and comment, reaffirming that SORNA applies to such offenders. *Id.* at 1160, 1169.

Respondent filed a supplemental letter relying on *Valverde*, see Resp. C.A. Citation of Suppl. Auth. (Jan. 7, 2011), and the court of appeals allowed him to belatedly raise that claim. Because respondent was convicted of a sex offense in 1993 (before SORNA was enacted), and was charged based on conduct that occurred between May and July 2007 (before issuance of the final SORNA guidelines), the court of appeals applied the holding in *Valverde* and reversed respondent’s conviction. App., *infra*, 2a.

4. The government petitioned for panel rehearing and asked the court of appeals to stay the petition pending this Court’s decision in *Reynolds v. United States*, cert. granted in part, No. 10-6549 (oral argument scheduled for Oct. 3, 2011). The court denied the petition and declined to stay its ruling. App., *infra*, 3a. On remand, the district court entered a judgment of acquittal. Judgment 1-2 (Aug. 3, 2011).

REASONS FOR GRANTING THE PETITION

The question whether SORNA’s registration requirements apply of their own force to persons convicted of sex offenses before SORNA’s effective date is currently

before the Court in *Reynolds v. United States*, cert. granted in part, No. 10-6549 (oral argument scheduled for Oct. 3, 2011).² If the Court concludes that SORNA applies of its own force to this class of sex offenders, then respondent was properly convicted under Section 2250(a) and the decision below should be reversed and his conviction reinstated. If, however, the Court concludes that SORNA does not apply of its own force to persons convicted of sex offenses before SORNA's effective date, then SORNA imposed no duty on them to register before the February 28, 2007, promulgation of the Attorney General's interim rule confirming that SORNA's registration requirements apply to all sex offenders. See 28 C.F.R. 72.3. Contrary to the court of appeals' decision that controlled the panel here, the government believes that the Attorney General did not violate the APA in issuing the interim rule and that respondent therefore was still properly convicted of violating Section 2250(a), because he traveled in interstate commerce and thereafter failed to register between May and July 2007—several months after that rule issued. Although the circuits are divided on that issue, see Gov't Br. at 46 n.21, *Reynolds, supra* (No. 10-6549), the APA issue in the present context is of limited and diminishing importance, see Br. in Opp. at 13-15, *Johnson v. United*

² Although the question on which the Court granted certiorari in *Reynolds* asks whether the petitioner has standing to challenge the Attorney General's interim rule, the decision under review in that case found that standing was lacking because SORNA applies of its own force to sex offenders (like the petitioner there) who had already registered, by virtue of pre-SORNA convictions, as sex offenders under state law. See *United States v. Reynolds*, 380 Fed. Appx. 125, 126 (3d Cir. 2010), cert. granted in part, No. 10-6549 (oral argument scheduled for Oct. 3, 2011).

States, petition for cert. pending, No. 10-10330 (filed May 3, 2011). Accordingly, plenary review on that question is not warranted. The Court should instead hold this petition pending its decision in *Reynolds* and then dispose of the petition as appropriate in light of that decision.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's decision in *Reynolds*, and disposed of as appropriate in light of that decision.

Respectfully submitted.

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SEPTEMBER 2011

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-30261

D.C. No. 1:07-cr-00104-MRH

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

SANTIAGO VALDEZ, DEFENDANT-APPELLANT

[Filed: June 2, 2011]

Appeal from the United States District Court
for the District of Montana
Michael R. Hogan, District Judge, Presiding

Argued and Submitted May 11, 2011
Seattle, Washington

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: GRABER and M. SMITH, Circuit Judges, and BENITEZ,^{**} District Judge.

Santiago Valdez was convicted of failing to register as a sex offender in violation of 18 U.S.C. § 2250, upon traveling from Indiana to Montana in June 2007. The Supreme Court has held that § 2250 does not apply to offenders whose interstate travel occurred prior to the effective date of SORNA. *Carr v. United States*, __ U.S. __, 130 S. Ct. 2229, 2232–33 (2010). *United States v. Valverde*, 628 F.3d 1159, 1169 (9th Cir. 2010), held that SORNA’s registration requirements became effective on August 1, 2008 for persons convicted of sex offenses prior to the statute’s enactment. Valdez falls into this category because he was convicted of rape in Indiana in 1993.

Valdez’s interstate travel as an unregistered sex offender took place in 2007. Because we are bound by our *Valverde* decision concluding that SORNA registration requirements were not in effect during 2007, we reverse his conviction. *Carr*, 130 S. Ct. at 2233.

REVERSED AND REMANDED.

^{**} The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-30261

D.C. No. 1:07-cr-00104-MRH-1

District of Montana, Billings

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

SANTIAGO VALDEZ, DEFENDANT-APPELLANT

[Filed: July 1, 2011]

ORDER

Before: GRABER and M. SMITH, Circuit Judges, and
BENITEZ,* District Judge.

Appellee's petition for panel rehearing is DENIED.

Appellee's request for stay of proceedings pending the Supreme Court's decision in *United States v. Reynolds*, 380 F. App'x 125 (3d Cir. 2010) (unpublished decision), *cert. granted*, 131 S. Ct. 1043 (2011), is DENIED.

Appellant's motion to issue the mandate is DENIED.
The mandate shall issue in due course.

* The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

APPENDIX C

1. 5 U.S.C. 553 provides in pertinent part:

Rule making

* * * * *

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to partici-

pate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy;
or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

* * * * *

2. 18 U.S.C. 2250 provides in pertinent part:

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 (in-

cluding 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.

* * * * *

3. 42 U.S.C. 16901 provides in pertinent part:

Declaration of purpose

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed

below, Congress in this chapter establishes a comprehensive national system for the registration of those offenders:

* * * * *

4. 42 U.S.C. 16911 provides:

Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators

In this subchapter the following definitions apply:

(1) Sex offender

The term “sex offender” means an individual who was convicted of a sex offense.

(2) Tier I sex offender

The term “tier I sex offender” means a sex offender other than a tier II or tier III sex offender.

(3) Tier II sex offender

The term “tier II sex offender” means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:

(i) sex trafficking (as described in section 1591 of title 18);

(ii) coercion and enticement (as described in section 2422(b) of title 18);

(iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a))* of title 18;

(iv) abusive sexual contact (as described in section 2244 of title 18);

(B) involves—

(i) use of a minor in a sexual performance;

(ii) solicitation of a minor to practice prostitution; or

(iii) production or distribution of child pornography; or

(C) occurs after the offender becomes a tier I sex offender.

(4) Tier III sex offender

The term “tier III sex offender” means a sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18); or

(ii) abusive sexual contact (as described in section 2244 of Title 18) against a minor who has not attained the age of 13 years;

* So in original. The second closing parenthesis probably should follow “18”.

(B) involves kidnapping of a minor (unless committed by a parent or guardian); or

(C) occurs after the offender becomes a tier II sex offender.

(5) Amie Zyla expansion of sex offense definition

(A) Generally

Except as limited by subparagraph (B) or (C), 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;

(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18;

(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or

(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) Foreign convictions

A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 16912 of this title.

(C) Offenses involving consensual sexual conduct

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense

The term “criminal offense” means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of “specified offense against a minor” to include all offenses by child predators

The term “specified offense against a minor” means an offense against a minor that involves any of the following:

(A) An offense (unless committed by a parent or guardian) involving kidnapping.

(B) An offense (unless committed by a parent or guardian) involving false imprisonment.

(C) Solicitation to engage in sexual conduct.

(D) Use in a sexual performance.

(E) Solicitation to practice prostitution.

(F) Video voyeurism as described in section 1801 of title 18.

(G) Possession, production, or distribution of child pornography.

(H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.

(I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications

The term “convicted” or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry

The term “sex offender registry” means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction

The term “jurisdiction” means any of the following:

- (A) A State.
- (B) The District of Columbia.
- (C) The Commonwealth of Puerto Rico.
- (D) Guam.
- (E) American Samoa.
- (F) The Northern Mariana Islands.

(G) The United States Virgin Islands.

(H) To the extent provided and subject to the requirements of section 16927 of this title, a federally recognized Indian tribe.

(11) Student

The term “student” means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee

The term “employee” includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides

The term “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives.

(14) Minor

The term “minor” means an individual who has not attained the age of 18 years.

5. 42 U.S.C. 16913 provides:

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) 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)

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).

(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.

6. 28 C.F.R. 72.3 provides:

Applicability of the Sex Offender Registration and Notification Act.

The requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.

Example 1. A sex offender is federally convicted of aggravated sexual abuse under 18 U.S.C. 2241 in 1990 and is released following imprisonment in 2007. The sex offender is subject to the requirements of the Sex Offender Registration and Notification Act and could be held criminally liable under 18 U.S.C. 2250 for failing to register or keep the registration current in any jurisdiction in which the sex offender resides, is an employee, or is a student.

Example 2. A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required, but disappears after a couple of years and does not register in any other jurisdiction. Following the enactment of the Sex Offender Registration and Notification Act, the sex offender is found to be living in another state and is arrested there. The

sex offender has violated the requirement under the Sex Offender Registration and Notification Act to register in each state in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

7. 28 C.F.R. 72.3 (as promulgated by 75 Fed. Reg. 81,849 (2010)) provides in pertinent part:

Applicability of the Sex Offender Registration and Notification Act.

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Example 2. A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required, but relocates to another state in 2009 and fails to register in the new state of residence. The sex offender has violated the requirement under the Sex Offender Registration and Notification Act to register in each state in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.