

Sex Offender Registration Law Update #29
October 8, 2009

1. U.S. v. Moran, 573 F.3d 1132 (11th Cir. 2009)

- **Non-sex-offense conviction**
- **Ordered to register as probation condition**

Moran had been convicted of a state-level sex offense against a 4 year-old girl in 1994. He was convicted of being a felon in possession of a firearm, and properly ordered to register as a sex offender as a condition of supervised release.

2. U.S. v. Pendleton, 2009 U.S. Dist. LEXIS 85347 (D. Del. Sept. 18, 2009)

- **Foreign conviction**
- **“Residence” for SORNA purposes**

Pendleton was convicted of two sex offenses: one in New Jersey in 1992, and one in Germany in 2006. He was deported to the United States as a result of his conviction in Germany and transferred his probation supervision to the State of Delaware, where he listed a particular ‘mail drop’ address as his resident address. He did not live at that address. With an interesting discussion of the authority of the SORNA final guidelines, the court held that “where a defendant uses an address as a mail drop and repeatedly holds that address out as his legal address, the defendant ‘resides’ at that address for the purposes of 42 U.S.C. §16913(a).”

3. Ex Parte Harbin, 2009 Tex. Crim. App. LEXIS 1206 (Sept. 16, 2009)

- **Out-of-State Convictions**

Harbin was convicted of four sex offenses in California, in 1988, 1994, 1995 and 1996. The Texas court held his two convictions for annoying or molesting a child (1994 & 1996) do not require registration in Texas. His other two convictions (lewd and lascivious acts with a child and sexual battery) will require registration.

4. U.S. v. Juvenile Male, 2009 U.S. App. LEXIS 20164 (9th Cir. 2009)

- **Federal Juvenile Adjudication**
- **Ex Post Facto Violation**

Prior to SORNA’s enactment, J.M. was adjudicated delinquent in federal court of a violation of 18 U.S.C. §2241(c). As part of a violation of supervised release disposition in 2007, he was ordered to register as a sex offender. In a thorough opinion the 9th Circuit held that SORNA’s registration provisions—as applied to those juveniles adjudicated delinquent—was

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punitive, and could not apply to those adjudicated delinquent prior to SORNA's enactment. There was no discussion of the SORNA final guidelines' exclusion of 18 U.S.C. §2241(c) adjudications.

5. **U.S. v. Molina, 2009 CCA LEXIS 346 (C.G. CCA Sept. 9, 2009)**

- **Mutual Misunderstanding of Registration Requirement**
- **Military & State Registration Requirements**

An integral part of Molina's plea agreement was the understanding that he would not be required to register as a sex offender as a result of his conviction for indecent exposure under a Conduct Unbecoming charge pursuant to 10 U.S.C. §134. This offense was not listed in the Department of Defense Instruction regarding sex offender registration (DoD Instruction 1325.7) and all counsel agreed that he would not be required to register in California, where he planned on residing post-conviction. In fact, California did end up requiring registration. Based on the mutual misunderstanding of counsel regarding a material term of the plea agreement (though the registration issue was not formally mentioned in the agreement itself), the conviction for indecent exposure was set aside.

6. **Kansas v. Coman, 2009 Kan. App. LEXIS 823 (Aug. 28, 2009)**

- **Bestiality**
- **Catch-All Registration Requirement**

Even though bestiality was not an offense specifically listed as requiring registration, it was properly captured under Kansas' catch-all provision as a "sexually motivated" offense requiring registration.

7. **People v. Luansing, 176 Cal. App. 4th 676 (Aug. 11, 2009)**

- **Conviction for Oral Copulation with a minor**
- **Equal Protection Violation**

Where Luansing was convicted of oral copulation with a minor, it was a denial of equal protection to mandate sex offender registration, based on the decision in *People v. Hofsheier*, 129 P.3d 29 (2006).

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8. People v. Nichols, 176 Cal. App. 4th 428 (2009)

- **28 years to Life sentence not Cruel and Unusual (3 strikes)**

Nichols was required to register as a sex offender and failed to update his resident address information, absconded from parole supervision, and his whereabouts were unknown for 8 months. He was appropriately sentenced to a three-strikes sentence, and it did not violate the 8th Amendment of the U.S. Constitution.

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