

**Sex Offender Registration Law Update #32**  
**March 16, 2010**

**1. U.S. v. Dodge, 2010 U.S. App. LEXIS 4790 (11<sup>th</sup> Cir. March 5, 2010)**

- **Unlisted Federal Offense under SORNA**
- **Registerable**

Dodge was convicted of a violation of 18 U.S.C. §1470 (transferring obscene material to a minor). That particular federal offense is not listed in the federal offenses designated by SORNA for registration in 42 U.S.C. §16911(5)(A)(iii). The Eleventh Circuit looked at the underlying facts of Dodge's conviction (relying on the Byun case) and decided that Dodge's conviction fell under SORNA's definition of a "specified offense against a minor" and, therefore, he was properly ordered register as a sex offender.

**2. U.S. v. Utesch, 2010 U.S. App. LEXIS 4263 (6<sup>th</sup> Cir. March 2, 2010)**

- **18 U.S.C. §2250**
- **Retroactivity**
- **Limited to after effective date of SORNA Final Guidelines**

Utesch was arrested for a violation of 18 U.S.C. §2250 on November 28, 2007. Building on the decision in Cain, the Sixth Circuit held that "SORNA became effective against offenders convicted before its enactment thirty days after the final SMART guidelines were published: that is, on August 1, 2008."

**3. State v. Henry, 2010 Ariz. App. LEXIS 26 (Ariz. Ct. App. Feb. 23, 2010)**

- ***Ex Post Facto***

Henry was convicted of a sex offense requiring registration in 1974. He argued that Arizona's sex offender registration and notification statutes should not apply to him. Although Arizona has had some sort of sex offender registration statute on the book since 1951, the specific laws at issue in this case were passed in 2001. The Court decided that it was bound by precedent and held that Arizona's registration scheme was not punitive under the *Mendoza-Martinez* test and, therefore, there was no *ex post facto* violation.

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4. **U.S. v. DeJarnette, 2010 U.S. Dist. LEXIS 10181 (N.D. Cal. Feb. 6, 2010)**

- **Pre-SORNA Plea Agreement**
- **Binding post-SORNA**

DeJarnette was convicted of a violation of 18 U.S.C. §2423 by way of a plea agreement in 2001. As part of that plea agreement, he was ordered to register as a sex offender only “if required by the state to which the defendant is released from custody.” He was released in 2006 and a few months later was notified that he was required to register under California law. The Court held that, based on the plea colloquy, DeJarnette could reasonably believe that he would not be subject to federal sex offender registration requirements based on his conviction—and that the current prosecution was so fundamentally unfair that the indictment should be dismissed.

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