IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CR-06-291-M
	)	
DARRELL L. TEMPLETON,	)	
	)	
Defendant.	)	

MOTION TO DISMISS INDICTMENT
AND BRIEF IN SUPPORT

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TABLE OF CONTENTS

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES CITED

STATUTES

RULES

GUIDELINES

None

OTHER AUTHORITIES

MOTION TO DISMISS

Darrell L. Templeton moves this Court to dismiss the indictment filed December 6, 2006. Mr. Templeton presents six arguments in support of this motion. First, Mr. Templeton contends the indictment is insufficient in that it fails to state the subsection Mr. Templeton's 1989 Arizona sexual abuse conviction allegedly meets. Second, he contends the there is no federal subject matter jurisdiction for this prosecution because the federal failure to register as a sex offender statute violates the Commerce Clause of the Constitution. Third, he argues that he was no longer required to register as a sex offender pursuant Arizona law and not required to register federally. Fourth, Mr. Templeton's 1989 Arizona sexual abuse conviction occurred at a time that is not covered by the Sex Offender Registration Notification Act and the federal failure to register as a sex offender statute. Fifth, the Sex Offender Registration and Notification Act and the federal failure to register as a sex offender statute violate the *Ex Post Facto* Clause. Lastly, Mr. Templeton posits that the Sex Offender Registration and Notification Act and the federal failure to register as a sex offender statute violate Due Process. In support of this motion to dismiss, Mr. Templeton presents the following background and arguments.

THE INDICTMENT

The one count indictment filed December 6, 2006, alleges:

> From in or about August of 2006 to in or about October of 2006, within the Western District of Oklahoma, and elsewhere, - - - - - - - - - - - - - - - DARRELL LYNN TEMPLETON, - - - - - - - - - - - who was convicted of a sexual offense in the State of Arizona and initially registered as a sex offender, he traveled thereafter in interstate commerce to Oklahoma, and knowingly failed to register as a sex offender in the State of Oklahoma where he resided, as required by the Sex Offender Registration and Notification Act.
>
> All in violation of Title 18, United States Code, Section 2250(a).

THE FEDERAL OFFENSE OF FAILURE TO REGISTER

The Adam Walsh Act created a new criminal offense at Title 18, United States Code, § 2250 which in subsection (a) makes it a crime punishable by not more than ten years for a person who "is required to register under the Sex Offender Registration and Notification Act" to "knowingly fail[] to register or update a registration as required by the Sex Offender Registration and Notification Act," if certain federal jurisdiction requirements are met. Subsection (b) sets out an Affirmative Defense.

The federal failure to register offense is as follows:

(a) In general.--Whoever–

(1) is required to register under the Sex Offender Registration and Notification Act; [and]

(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 (including 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.

Title 18, United States Code, §§ 2250(a) and (b).

ELEMENTS OF THE BASIC OFFENSE

An essential element is that the defendant "is required to register under the Sex Offender Registration and Notification Act." Thus, the person must (1) stand

(validly) convicted (2) of a "sex offense" as defined in the Sex Offender Registration and Notification Act (3) that occurred at a time (legally) covered by Sex Offender Registration and Notification Act. Further, the accused must travel in interstate or foreign commerce, or enter or leave, or reside in, Indian country; and must knowingly fail to register or update a registration as required by the Sex Offender Registration and Notification Act.

WHO IS A "SEX OFFENDER" SUBJECT TO THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT?

A person is a "sex offender" under the Sex Offender Registration and Notification Act if s/he "was convicted of a sex offense," (Title 42, United States Code, § 16911(1)), which is:

> a state, local, tribal, foreign (but not if it was obtained without sufficient fundamental fairness and due process under guidelines or regulations established by the Attorney General), or military (as specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. No. 105-119) (Title 10, United States Code, § 951 note)) "criminal offense" or "other criminal offense," including attempt or conspiracy, *see* Title 42, United States Code, § 16911(5)(A)(v), (5)(B), (6), that:
>
> > has an "element involving a sexual act or sexual contact with another," *see* Title 42, United States Code, § 16911(5)(A)(I),
> >
> > > is a "specified offense against a minor," which is an offense against a minor (*i.e.*, under 18), *see* Title 42, United States Code, § 16911(5)(A)(ii), (14):

"involving kidnapping" (unless committed by a parent or guardian);

"involving false imprisonment" (unless committed by a parent or guardian);

solicitation to engage in sexual conduct;

use in a sexual performance;

solicitation to practice prostitution;

video voyeurism as described in Title 18, United States Code, § 1801;

possession, production, or distribution of child pornography;

criminal sexual conduct involving a minor;

use of the Internet to facilitate or attempt criminal sexual conduct involving a minor;

"[a]ny conduct that by its nature is a sex offense against a minor," *see* Title 42, United States Code, § 16911(7);

is a Federal offense (including an offense prosecuted under the Major Crimes Act, 18 U.S.C. §§ 1152-53) under Title 18, United States Code, § 1591, or chapter 109A, 110 (but not §§ 2257, 2257A or 2258) or 117, *see* Title 42, United States Code, § 16911(5)(A)(iii);

is 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), *i.e.*, "sex offenses" as defined in the Sex Offender Registration and Notification Act "and such other conduct as the Secretary deems appropriate." *See* 42 U.S.C. § 16911(5)(A)(iv).

> a person adjudicated delinquent, *but only if* s/he was at least 14 years old at the time of the offense *and* the offense was comparable to or more severe than aggravated sexual abuse (as described in Title 18, United States Code, § 2241) or attempt or conspiracy to commit aggravated sexual abuse. *See* Title 42, United States Code, § 16911(8).;
>
> *But not* "consensual sexual conduct" if:
>
> > the victim was an adult and not under the offender's "custodial authority";
> >
> > the victim was at least 13 years old and the offender was not more than 4 years older. *See* Title 42, United States Code, § 16911(5)(c).

BACKGROUND

In July 1988, Mr. Templeton was informed he might be charged with a criminal offense which occurred in Pima County, Arizona in May 1988. Mr. Templeton was on probation at the time. After consultation with an attorney and others, Mr. Templeton became scared, panicked and left Arizona. On August 3, 1988, Mr. Templeton was charged with a Petition to Revoke Probation. He was arrested February 24, 1989 in Miami, Florida and returned subsequently to Tucson, Arizona.

On March 24, 1989, Darrell Lynn Templeton was charged in an eleven count indictment in the Superior Court of the State Arizona, in and for the County of Pima.

The indictment charged various offenses of kidnapping, sexual assault, attempted sexual assault and sexual abuse.[1]

On August 3, 1989, Mr. Templeton entered into a Plea Agreement with the State of Arizona. Mr. Templeton agreed to plead guilty to one count of Sexual Abuse.[2] The State of Arizona agreed to dismiss all other charges, except the Petition to Revoke Probation. In the plea agreement, Mr. Templeton acknowledged that he understood he was pleading guilty to a Chapter 14 Offense of the Criminal Code,

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[1] Count 1 charged Kidnapping, a Class Two Felony, in violation of ARIZ. REV. STAT., §§ 13-1304(A)(3) and (B), 13-701, 13-702, 13-801, 13-804 and 13-812. Counts 2, 4, 6, 7, 8 and 9 charged Sexual Assault, a Class Two Felony, in violation of ARIZ. REV. STAT. §§ 13-1406, 13-701, 13-702, 13-801, 13-804 and 13-812. Count 3 charged Attempted Sexual Assault, a Class Three Felony, in violation of ARIZ. REV. STAT. §§ 13-1001, 13-1406, 13-701, 13- 702, 13-801, 13-804 and 13-812. Counts 5, 10 and 11 charged Sexual Abuse, a Class Five Felony, in violation of ARIZ. REV. STAT. §§ 13-1404, 13-701, 13-702, 13-801, 13-804 and 13-812. The victim was an adult.

[2] ARIZ. REV. STAT. §13-1404 (Laws 1985, Ch. 364, § 17, eff. May 16, 1985), in effect in 1988-89 provided:

§ 13-1404. Sexual Abuse; classifications

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

Title 13, ARIZONA REVISED STATUTES, and would be required to register as a sex offender in the county of his residence pursuant ARIZ. REV. STAT. , § 13-3821.[3]

The Court sentenced Mr. Templeton to a term of imprisonment of two years (with credit for 168 days served prior to sentencing) to be served concurrently with a 3.75 years term of imprisonment ordered for the revocation of probation.

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[3] ARIZ. REV. STAT. §13-3821 (Laws 1985, Ch. 364, § 17, eff. May 16, 1985) in effect in 1988-1993 provided:

§ 13-3821. Persons required to register; procedure

A. A person who has been convicted of a violation of chapter 14 or 35.1 of this title or who has been convicted of an offense committed in another state which if committed in this state would be a violation of chapter 14 or 35.1 of this title shall, within thirty days after the conviction or within thirty days after entering any county of this state for the purpose of residing or setting up a temporary domicile for thirty days or more, register with the sheriff of the county in which he resides or sets up temporary domicile.

B. At the time of registering, the person shall sign a statement in writing giving such information as required by the director of the department of public safety. The sheriff shall fingerprint and photograph the person and within three days thereafter shall send copies of the statement, fingerprints and photographs to the criminal identification section within the department of public safety and the chief of police, if any, of the place where the person resides.

C. The clerk of the superior court in the county in which a person has been convicted of a violation of chapter 14 or 35.1 of this title shall notify the sheriff in that county of the conviction within thirty days after entry of the judgment.

Mr. Templeton was released from the Arizona Department of Corrections on February 8, 1991, to electronic monitoring and home confinement under the supervision of an Arizona Parole Officer. On March 15, 1991, through the Pima County Sheriffs Department, Mr. Templeton registered as a sex offender with the State of Arizona Department of Public Safety. Mr. Templeton's supervision was transferred to the Arizona Probation Department Office June 21, 1991 and expired without revocation action.

ARGUMENTS

I. THE INDICTMENT FAILS TO STATE THE SUBSECTION MR. TEMPLETON'S CONVICTION ALLEGEDLY MEETS.

Rule 7(c)(1) of the FEDERAL RULES OF CRIMINAL PROCEDURE requires that the indictment be a plain, concise, and definite written statement of the essential facts constituting the offense charged. The indictment in this case fails to comply with Rule 7(c)1) in that it fails to specify which subsection of the Sex Offender Registration And Notification Act Mr. Templeton's conviction allegedly meets. That citation is part and parcel of the essential elements of the charge. The indictment fails to inform Mr. Templeton as to why he is allegedly required to register under the Sex Offender Registration and Notification Act. Without it, it is impossible to defend against that element, or for this Court or a jury to find whether it exists.

II. THERE IS NO FEDERAL SUBJECT MATTER JURISDICTION FOR THIS PROSECUTION.

The federal failure to register as a sex offender statute, Title 18, United States Code, § 2250(a)(2), requires that one of two elements be found to establish federal jurisdiction. The defendant either (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 (including 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." Under (B), the conviction can have been obtained under the law of any jurisdiction, if the person "travels in interstate or foreign commerce." The statute does not even say that such travel must be during the period the person was required to but failed to register. Mr. Templeton contends the statute violates the Commerce Clause of the Constitution and the Indictment must be dismissed.

The federal failure to register as a sex offender statute (section 2250) requires no connection between the travel and any crime or any effect on commerce. Unlike the Travel Act (Title 18, United States Code, § 1952) and the felon-in-possession statute (Title 18, United States Code, § 922(g)(1)) which have withstood Commerce

Clause challenges, the federal failure to register as a sex offender statute can not withstand a constitutional challenge under modern Commerce Clause jurisprudence.

In the last decade, the Supreme Court has signaled a growing discomfort with the expansion of federal criminal statutes into the province of what has traditionally been state police power. *See Jones v. United States*, 529 U.S. 848 (2000); *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). These three Supreme Court cases on the constitutional reach of the Commerce Clause with respect to Congressional regulation of crime, have changed the landscape of federal criminal jurisdiction. In light of *Lopez* and its progeny, the federal failure to register as a sex offender statute does not bear a sufficient nexus with interstate commerce to fall within the carefully enumerated powers of the federal government.

In *Lopez*, the defendant challenged his conviction under the Gun-Free School Zones Act, Title 18, United States Code, § 922(q). That section makes it unlawful for any individual to knowingly possess a firearm at a place that individual knows or has reasonable cause to believe is a school zone. The defendant contended § 922(q) exceeded Congress's power to legislate under the Commerce Clause. The Court agreed and ruled the statute unconstitutional.

The *Lopez* Court's analysis began by setting out three broad categories of activity that Congress may regulate under its commerce power: (1) the use of the

channels of interstate commerce; (2) instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) activities having a substantial relation to interstate commerce.

The Court refused to broaden the commerce power so as to cede to Congress the general police power our system of federalism allotted to the States:

> To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.

514 U.S. at 567; *see also Id.* at 602 (J. Thomas, concurring) ("If we wish to be true to a Constitution that does not cede a police power to the Federal Government, our Commerce Clause's boundaries simply cannot be defined as being commensurate with the national needs . . . . Such a formulation of federal power is not a test at all: It is a blank check.") (citations omitted).

In *Morrison*, the Court continued and expanded *Lopez's* limiting approach to Congress's use of the Commerce Clause as a basis for federal jurisdiction over intrastate violent activity. The *Morrison* Court struck down a portion of the Violence Against Women Act, Title 42, United States Code, § 13981, because the activity

being regulated, gender-motivated violence, was deemed not an activity that substantially affects interstate commerce.

The *Morrison* Court considered four types of showings of the requisite Commerce Clause effects: whether the activity in question was economic, whether the statute at issue contained a jurisdictional element, any legislative findings of interstate nexus, and whether there are other arguments (including 'implicit' legislative findings) establishing that the activity in question may have the requisite effect on interstate commerce. *Id.* at 609-613.

As in *Lopez*, the Court quickly disposed of the first and second considerations: gender-motivated crimes of violence "are not, in any sense of the phrase, economic activity," *id*. at 613; and the statute in question contained no jurisdictional element. *Id*. at 612-614. Even so, the Court's language in discussing the presence or absence of a jurisdictional element is instructive: "such a jurisdictional element would lend support to the argument" that a statute has a requisite interstate nexus. *Id.* at 613-614 (emphasis added).

With regard to the third consideration, and unlike the statute reviewed in *Lopez*, however, the statute at issue in *Morrison* came with "numerous findings" by Congress. *Id*. at 614. The *Morrison* Court, however, deemed the Congressional findings behind § 13981 insufficient to establish interstate nexus:

> But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we stated in *Lopez*, "'[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.'"

529 U.S. 614 (citations omitted). The *Morrison* Court noted first that Congress's findings relied heavily on a "method of reasoning" already rejected in *Lopez*, namely, the set of government arguments concerning national productivity (*e.g.*, the activity affects commerce by deterring travel, business interactions, and resulting in costs such as medical costs then imposed on the greater population). *Id.*

The Court then found, as it did in *Lopez*, that accepting such a method of reasoning would "completely obliterate the Constitution's distinction between national and local authority:"

> The reasoning that petitioners advance seeks to follow the but-for causal chain from the initial occurrence of violent crime (the suppression of which has always been the prime object of the States' police power) to every attenuated effect upon interstate commerce. If accepted, petitioners' reason would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption. **Indeed, if Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part.**

Id. (emphasis added). The Court further noted that the same faulty reasoning would lead to permitting Congress to regulate such traditional areas of state regulation as family law.

The *Morrison* Court concluded its analysis by definitively eschewing an "aggregate effects"methodology:

> We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local. . . . In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States.

Id. at 618.

The Supreme Court applied the principles of *Lopez* and *Morrison* once again in *Jones*. At issue in *Jones* was the constitutionality of the federal arson statute, Title 18, United States Code, § 844(I), when applied to private property not used for any commercial venture. The statute at issue makes it a federal crime to "maliciously damage[] or destroy[] . . . any building . . . used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce." *Jones*, 529 U.S. 848, 849 (2000). The defendant contended that the statute, when applied to the arson of a private residence, exceeded Congress's authority under the Commerce Clause. *Id*. at

851-852. The *Jones* Court posed two questions at the beginning of its inquiry: (1) should the statute be construed not to reach owner-occupied private dwellings; and (2) if the statute is construed to reach private owner-occupied residences, is it constitutional under the Commerce Clause. *Id.* at 852. Heeding its previous decision in *Lopez* as well as "the interpretive rule that constitutionally doubtful constructions should be avoided,"answered the first question in the affirmative and thereby avoided the second question. *Id*. at 851. Once again, as in the *Lopez* decision, the Court reasoned by *reductio ad absurdum* that were it to adopt the government's expansive interpretation of the statute, "hardly a building in the land would fall outside the federal statute's domain." *Id*. at 857.

Lopez, *Morrison* and *Jones* have re-established the basic constitutional proposition that the Founders did not cede to Congress a general police power. Rather, "[t]he regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States." *Morrison*, at 618.

To justify a Congressional attempt to regulate intrastate violence, the activity to be regulated must fall under one of three categories. Typically the first two categories, activities involving the channels and instrumentalities of or commodities moving in interstate commerce, will not be pertinent. Thus, federal regulation

directed at intrastate violence must be regulation of a sort of activity affecting interstate commerce.

Lopez further teaches that despite unclear precedent, the proper test for interstate nexus under the third category is that the activity "'substantially affects' interstate commerce." *Lopez*, 514 U.S. at 559. Thus, previous case law and Congressional enactments relying on the proposition that a minimal nexus or effect on interstate commerce is enough to pass constitutional muster is now overruled.

To determine whether there is a substantial effect, at least four types of considerations can be pertinent to the analysis. First, a court should inquire whether the activity itself is economic in the sense of being part of a larger economic regulatory scheme. *Lopez* and its progeny teach that intrastate violence, including the possession of guns in locations that endanger schoolchildren, the rape of women, and the burning of buildings, are not economic in this sense.

Second, a court should look to whether the statute purporting to regulate activity substantially affecting interstate commerce has a jurisdictional element that requires a particularized showing of interstate nexus. According to *Jones*, if the language of that element uses the term "affecting commerce," then Congress is deemed to have signaled its intention to invoke its full authority under the Commerce Clause. If the statute uses the term "in commerce", then Congress is invoking a more

restricted exercise of its Commerce Clause authority. *Lopez* and its progeny also recognizes that when a jurisdictional element appears in a statute, that element "lends support" to the argument that the statute is sufficiently tied to interstate commerce. *Morrison*, at 611. However, *Lopez* and its progeny hold that "[w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by [the Supreme] Court." *Morrison*, 529 U.S. 614.

Third, a court should look to legislative findings as support for a sufficient interstate nexus. But if Congress's method of reasoning in making such findings constitutes a *reductio ad absurdum* to the untenable conclusion that every activity would be within reach of national regulation, then such findings must be rejected. So, by way of example, if the Violence Against Women Act's (Title 42, United States Code, § 13981) legislative findings that gender-related violence deters travel and business interactions, imposes medical costs on the general population, and more generally detracts from national productivity are sufficient for Commerce Clause jurisdiction, then Congress can regulate every sort of violent crime. 529 U.S. at 615. In the end, "[s]imply because Congress may conclude that a particular activity

substantially affects interstate commerce does not necessarily make it so." *Morrison*, 529 U.S. at614 (quoting *Lopez*, 514 U.S. at 557, n.2).

Fourth, a court can look to any other purported links between the activity to be regulated and commerce. It is not acceptable, however, to argue that the activity, viewed in the aggregate, has a substantial effect on interstate commerce. *Morrison,* 529 U.S. 615. *Lopez* and its progeny reject reasoning about effects in the aggregate because such reasoning leads to unacceptable results. In other words, arson of a private owner-occupied residence does substantially affect commerce when viewed in the aggregate. But what activity does not affect interstate commerce when viewed in the aggregate? Not only would all intrastate violence have the requisite effect on commerce but so would activities such as schooling and marriage. On such reasoning, Congress would have a national police power and that national police power would preempt the police power ceded to the states as one of the fundaments of our federalist system. At that point, "the Constitution's distinction between national and local authority" is completely obliterated. *Morrison*, at 660.

Each state and other designated jurisdiction, other than a federally recognized Indian tribe, is required to enact legislation making it a crime to fail to comply with the Sex Offender Registration and Notifications Act's registration requirements and to make it punishable by a term of imprisonment of more than one year, *i.e.*, a felony.

See Title 42, United States Code, § 16913(e). The Supreme Court empasized in . *Lopez*, *Jones* and *Morrison* that the States have primary authority to define and enforce criminal law. The very fact of this directive is an admission that there is no federal jurisdiction over a failure to register. It seems highly unlikely that Congress has the power to require the states to enact specific criminal legislation with a specific penalty as a condition of avoiding a reduction in federal funds. *See New York v. United States*, 505 U.S. 144, 188 (1992).

Based on the foregoing, Mr. Templeton moves the Court to dismiss the indictment for the reason the Sex Offender Registration and Notification act and the federal failure to register as a sex offender statute (Title 18, United States Code, § 2250) violate the Commerce Clause and there is no federal subject-matter jurisdiction for this prosecution.

III. MR. TEMPLETON WAS NO LONGER REQUIRED TO REGISTER AS A SEX OFFENDER IN ARIZONA.

A. THE ORIGINAL REGISTRATION REQUIREMENT.

The Arizona Legislature enacted sex offender registration requirements in 1983. ARIZ. REV. STAT. §13-3821 (Laws 1983, Ch. 202, § 13, eff. _____ 1983) The Legislature required individuals convicted of any violation of Chapter 14 (sexual offenses) or Chapter 35.1 (sexual exploitation of children) of Title 13 to register as

sex offenders. Under the plain reading of Arizona's Sex Offender Registration Act effective at the time of Mr. Templeton's offense, conviction and release from imprisonment, he was required to register as a sex offender in his county of residence in the State of Arizona. The duty to register as a sex offender arises from statute. *See State v. Garcia*, 156 Ariz. 381, 382, 752 P.2d 34, 35 (App. 1987). Furthermore, the statute was silent regarding the length of time for which one must register.

B. THE 1995 REVISION OF THE ARIZONA SEX OFFENDER REGISTRATION ACT.

In 1995, the Arizona Legislature eliminated the requirement that all persons convicted under Chapter 14 or Chapter 35.1 register and, instead, specified the particular offenses that require registration. The revised statute, in pertinent parts provided:

> A. A person who has been convicted of a violation *or attempted violation* of *any of the following offenses* or who has been convicted of an offense committed in another jurisdiction which if committed in this state would be a violation *or attempted violation* of *any of the following offenses* shall, within *ten* days after the conviction or within *ten* days after entering any county of this state for the purpose of residing or setting up a temporary domicile for *ten* days or more, register with the sheriff of the county in which *the person* resides or sets up temporary domicile*:*
>
> *1. Sexual abuse pursuant to section 13-1404 if the victim is under fifteen years of age.*
>
> * * *

ARIZ. REV. STAT. §13-3821 (Laws 1995, Ch. 257, § 3, eff. April 19, 1995)

Under the revised sex offender registration requirements, if Mr. Templeton was convicted of the same sexual abuse charge that he was convicted of in 1989, after April 19, 1995, he would not meet the sex offender registration criteria.

This issue has never been addressed by an Arizona court directly. It was addressed in a opinion from the Office of the Attorney General of the State of Arizona to the Director of the Arizona Department of Public Safety. Ariz. Op. Atty. Gen. No. I00-030, 2000 WL 33156113 (Ariz.A.G.). Germane to the issue before this Court was the following question presented:

> What are the sex offender registration requirements for individuals convicted and required to register under prior Arizona statutes who, if convicted today, would not meet the sex offender registration criteria?

The Attorney General summary answer was that convicted sex offenders who were required to register under the law in effect at the time of conviction are not required to register if they do not meet the current statutory criteria in ARIZ. REV. STAT. §13-3821. Ariz. Op. Atty. Gen. No. I00-030, at 1.

> Thus, the people currently obligated to register are those convicted of an offense currently listed in statute and any others a judge, in his or her discretion, has ordered to register. Accordingly, those offenders who were previously required to register, but are not required to register under current law, are no longer statutorily required to register.

Id, at 2-3.

In a corresponding footnote, the Attorney General opined that ["t]hose offenders previously required to register but who need not register under current law are also not required to comply with other statutory requirements that apply to people required to register, such as notifying the county sheriff of address changes, and renewing driver's licenses annually. *Id*., at fn. 3.

In candidness with this Court, counsel notes that under Arizona law, the opinions from the Office of the Attorney General of the State of Arizona are advisory only and are not binding on courts of law and are not a legal determination of what the law is at any certain time. *State v. Deddens*, 112 Ariz. 425, 428, 542 P.2d 1124,1127 (1975).

Counsel for Mr. Templeton contends Mr. Templeton was not required to register as a sex offender in Arizona or elsewhere based on the 1989 Sexual Abuse conviction.

IV. THE CONVICTION OCCURRED AT A TIME THAT IS NOT COVERED BY THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

Mr. Templeton's Arizona conviction is not a qualifying conviction because it occurred before July 27, 2006, and the Attorney General has not yet promulgated a regulation "specify[ing] the applicability of this subchapter to sex offenders convicted

before July 27, 2006," Title 42, United States Code, § 16913(d). Therefore, Mr. Templeton is not "required to register under the Sex Offender Registration and Notification Act."

The registration and notification requirements are set forth in Title 42, United States Code, §§ 16911-16929. Those requirements, along with the rest of the Adam Walsh Act, were signed into law on July 27, 2006. However, Congress did not name a precise date upon which the sex offender provisions are to be effective, other than to state a deadline for implementation by all jurisdictions of July 27, 2009. Instead, Congress delegated to the Attorney General "the authority":

1. "to specify the applicability of this subchapter to sex offenders"

   A. who are "convicted before July 27, 2006"

   B. who are "convicted before . . . its implementation in a particular jurisdiction"

2. "to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable [to register] before completing a sentence of imprisonment for the offense giving rise to the registration requirement [or] not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment," and

3. to "prescribe rules for the notification of sex offenders who *cannot* be registered" in the required way, that is, by an "appropriate official" who "shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register – (1)

> inform the sex offender of the duties of a sex offender under this title and explain those duties; (2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and (3) ensure that the sex offender is registered."

See Title 42, United States Code, §§ 16913(b), (d), 16917(a), (b).

As of the dates alleged in the indictment (in or about August 2006 to in or about October of 2006), there were no regulations. The Attorney General has not yet promulgated a regulation "specify[ing] the applicability of this subchapter to sex offenders convicted before July 27, 2006," Title 42, United Sates Code, § 16913(d). Therefore, Mr. Tempelton is not "required to register under the Sex Offender Registration and Notification Act."

By delegating to the Attorney General the authority to specify the Sex Offender Registration and Notification Act's applicability to offenders in category 1(a), Congress recognized that there were *ex post facto* implications, but passed the problem off to the Executive Branch. If the Act is applied to persons who *committed* the offense before the effective date of the Sex Offender Registration and Notification Act (whether that means July 27, 2006, the date the defendant's jurisdiction implements Sex Offender Registration and Notification Act, the date the Attorney General promulgates a regulation saying it applies retroactively to any class of

persons, or July 27, 2009), this violates the *Ex Post Facto* Clause and (if pursuant to a regulation) the non-delegation doctrine.

As to category 1(b), all of the states have sex offender registries now as required by the Wetterling Act, but no "jurisdiction" (which includes both states and jurisdictions other than states, *see* Title 42, United States Code, §§ 16911(9), 16912, 16927) has yet implemented the broader, more detailed and more onerous provisions of the Sex Offender Registration and Notification Act.[4] In consultation with the jurisdictions, the Attorney General is required to develop and support software to enable them to establish and operate uniform sex offender registries and Internet sites, and to make the first edition of this software available by July 27, 2008. *See* Title 42, United States Code, § 16923.

The deadline for implementation of Sex Offender Registration and Notification Act in all jurisdictions is the later of July 27, 2009 or one year after the Attorney General makes the software available. *See* Title 42, United States Code, § 16924. So, it appears, the deadline for implementation in all jurisdictions is July 27, 2009. The date of the repeal of the Wetterling Act is the same date, July 27, 2009. *See* Pub. L.

[4] The Sex Offender Registration and Notification Act and the state sex offender registries under the Wetterling Act are not identical. As compared to many and possibly most states, the Sex Offender Registration and Notification Act will reach more offenders, be more burdensome in its requirements on offenders and jurisdictions, and be more severe in its consequences.

No. 109-248 § 129(b) (Title 42, United States Code, § 14071 note). Categories 2 and 3 may include federal sex offenders who are being released from prison or who are sentenced to probation. Under Title 18, United States Code, § 4042(c) as amended by the Sex Offender Registration and Notification Act, the Bureau of Prisons or the supervising Probation Officer must notify a "sex offender" as defined in the Sex Offender Registration and Notification Act who is released or sentenced to probation of the Sex Offender Registration and Notification Act's requirements as they apply to him, and must provide notice to the authorities in the jurisdiction where the person will reside that he is required to register as required by the Sex Offender Registration and Notification Act. *See* Title 18, United States Code, § 4042(c)(3). But, like everyone else, federal offenders are required to register in the jurisdiction(s) in which they reside, work and/or go to school. *See* Title 42, United States Code, § 16913(a)-(c). Thus, they will not be able to register before completing a sentence, and if sentenced to probation may not be able to register within 3 business days of sentencing.

Further, section 4042 says nothing about the Bureau of Prisons or the supervising probation officer having the person read and sign a form or ensuring that the person is registered, presumably because the person must register in his/her jurisdiction. Categories 2 and 3 may also include "sex offenders entering the United

States." *See* Title 42, United States Code, § 16928. Since the Attorney General has not yet prescribed any rules pursuant to the directives in the Sex Offender Registration and Notification Act, then the Sex Offender Registration and Notification Act does not *yet* apply to "sex offenders" (1) who are "convicted before July 27, 2006," *or* (2) who are "convicted before . . . its implementation in a particular jurisdiction," *or* (3) "for other categories of sex offenders who are unable [to register] before completing a sentence of imprisonment for the offense giving rise to the registration requirement [or] not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment." *See* Title 42, United States Code, § 16913(b), (d). Moreover, there are no rules for notifying sex offenders of their duties under the Sex Offender Registration and Notification Act who cannot be registered shortly before release from custody or immediately after sentencing if not in custody.

But, on the other hand, under the probation and supervised release statutes as amended by the Sex Offender Registration and Notification Act on July 27, 2006, compliance with the Sex Offender Registration and Notification Act is a mandatory condition. *See* Title 18 United States Code, §§ 3563(a)(8), 3583(d). In a case in which the defendant is sentenced to probation or supervised release for a crime of which s/he was convicted before July 27, 2006, or for a crime of which s/he was

convicted before his/her jurisdiction of residence, employment or school implemented the Sex Offender Registration and Notification Act, or who is otherwise not given notice and registered in the relevant jurisdiction(s) in compliance with the Sex Offender Registration and Notification Act, must s/he comply with the Sex Offender Registration and Notification Act? Should s/he comply with the Sex Offender Registration and Notification Act? How can s/he comply with the Sex Offender Registration and Notification Act? The same problem arises for federal prisoners who were convicted before July 27, 2006 and are being released now. The Bureau of Prisons may tell them and their local jurisdiction that they are subject to the Sex Offender Registration and Notification Act, but no regulation says so thus far.

Counsel for Mr. Templeton contends a person cannot be prosecuted or sentenced for the new federal offense of knowingly failing to comply with the Sex Offender Registration and Notification Act's registration requirements unless s/he was in fact required to register under the Sex Offender Registration and Notification Act, and was provided notice in accordance with the Sex Offender Registration and Notification Act. If the person knowingly failed to comply with a state sex offender registry law with which s/he was required to comply based on an offense listed in the Wetterling Act, the federal penalty (assuming there is federal jurisdiction) would be not more than one year, or not more than 10 years for a second or subsequent offense.

See Title 42, United States Code, § 14072(i). Counsel for Mr. Templeton has not found a case in which anyone has been prosecuted federally for failing to register under the Wetterling Act. Under the Adam Walsh Act, however, there is a new federal crime of being required to register under federal *or* "other law" *and* committing one of a list of federal offenses against minors, subject to a consecutive 10-year mandatory minimum. However, since the Adam Walsh Act has not been fully implemented, the registration requirements pursuant the Act are not yet in effect and therefore Mr. Templeton cannot be prosecuted pursuant the Act.

V. THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT AND THE FEDERAL FAILURE TO REGISTER AS A SEX OFFENDER STATUTE VIOLATE THE EX POST FACTO CLAUSE.

To violate the *Ex Post Facto* Clause, the law must be punitive. The Alaska sex offender registry law, which applied by its terms to persons convicted before its enactment, was upheld against *ex post facto* challenge by a deeply divided court in *Smith v. Doe*, 538 U.S. 84 (2003). The majority opinion was authored by Justice Rehnquist (now gone) and joined in full only by Justices O'Connor (now gone), Kennedy and Scalia. Justice Thomas joined the opinion but disagreed with some of its reasoning. Justice Souter concurred only in the judgment and substantially disagreed with the majority's conclusions. Justices Stevens, Ginsburg and Breyer dissented.

Given the current knowledge about the effects on sex offenders and society of an indiscriminate public notification system, the re-composition of the Supreme Court, and significant differences between Alaska's sex offender registry law and Sex Offender Registration and Notification Act, Mr. Templeton contends Sex Offender Registration and Notification Act and the federal failure to register as a sex offender statute (Title 18, United States Code, § 2250) violate *ex post facto* clause and can not pass constitutional muster.

The majority in *Smith v. Doe* framed the issue as, first, whether the Alaska legislature intended the law to be punitive or a regulatory scheme that was civil and non-punitive. If punitive, the law would be *ex post facto*. If non-punitive, the question was then whether the law was so punitive in purpose or effect to negate the legislature's intent to deem it civil. *Id*. at 92-93.

The majority first found the Alaska legislature intended to create a civil, non-punitive regulatory scheme. *Id*. at 93-96. First, the legislature stated that its purpose was to protect the public based on legislative findings that sex offenders have a high risk of re-offense and that public disclosure would protect the public. The majority concluded, "an imposition of restrictive measures on sex offenders deemed to be dangerous is a 'legitimate nonpunitive governmental objective.'" *Id*. at 93 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997)). In the Sex Offender Registration

and Notification Act, Congress said that the purpose was 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." Pub. L. 109-248 § 102. It made no finding that sex offenders have a high risk of re-offense or that public notification (without any risk assessment) would promote public safety. In fact, it had substantial evidence before it that sex offenders are amenable to treatment, are less likely to re-offend than non-sex offenders, and that public disclosure without a risk assessment threatens public safety without a corresponding benefit.[5] Congress made no general finding of dangerousness, but required registration and public broadcasting on the Internet mandatory without any individualized finding of dangerousness.

Second, the majority analyzed in what part of Alaska's code the sex offender law was placed, finding that some of it was in the Health, Safety and Housing Code,

[5] What Congress had before it is relevant to show what its purpose was. Congress received substantial factual information from various organizations and individuals demonstrating the dangers of a sex offender registry system that does not take into account future dangerousness. *See* http://www.nacdl.org/public.nsf/legislation/sexoffender. These materials do not appear to be in the congressional record. This law was negotiated in conference behind closed doors, without a hearing, and without floor debate. We have been told that individual congresspeople can decide to make such information part of the record, or consign it to oblivion, and that even files that are "public" may be "not published."

some of it was in the Criminal Code, and some of it was in the Rules of Criminal Procedure. This, then, was deemed "not dispositive." *Id*. at 94. Similarly, the Sex Offender Registration and Notification Act is in both Title 42 (Public Health and Welfare) and Title 18 (Crimes and Criminal Procedure).

Third, the majority's conclusion that the law was non-punitive was strengthened by the fact that, "aside from the duty to register, the statute itself mandates no procedures. Instead, it vests the authority to promulgate implementing regulations with the Alaska Department of Public Safety, . . . an agency charged with enforcement of both criminal *and* civil regulatory laws." *Id*. at 96. The Sex Offender Registration and Notification Act contains some very detailed procedures, and where it does not, it vests the authority to prescribe them in the Attorney General, who is the head of the Department of Justice, the primary federal criminal investigation and enforcement agency, and chief law enforcement officer of the United States, whose primary responsibility is enforcing criminal laws. The responsibility for enforcing purely civil regulatory laws lies with other federal agencies.

The majority then found that the effects of the law did not negate the Alaska legislature's intent to establish a civil, non-punitive regulatory scheme, after looking at the seven factors noted in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). *Id*. at 97-106. First, quite unconvincingly, it found that posting on the Internet was not

akin to shaming punishments from colonial times, so did not operate in a manner traditionally regarded as punitive. *Id*. at 97-99. This position would be hard to maintain in light of growing violence stemming from Internet publication.

Second, the law did not subject sex offenders to an affirmative disability or restraint, because the "act's obligations are less harsh than the sanctions of occupational debarment," it leaves them "free to change jobs or residences," and it was pure "conjecture" that the law led to substantial occupational or housing disadvantages. *Id*. at 99-100. This rationale should be impossible to maintain in light of the Sex Offender Registration and Notification Act's requirements of publication on multiple public websites, community notification program including access by "any organization, company, or individual who requests such notification," and the growing evidence that public notification leads to vigilante justice, homelessness and joblessness, which in turn creates recidivism, makes sex offenders more difficult to supervise, and threatens public safety.

Further, the Court said, the requirement of periodic updates did not impose an affirmative disability because it did not need to be done in person. *Id*. at 101. The Sex Offender Registration and Notification Act requires frequent in person reporting at multiple locations (assuming the person has a home, and a job or goes to school). And though the argument that the registration system was akin to probation or

supervised release had "some force," the majority rejected it because sex offenders are "free to move where they wish and to live and work as other citizens, free from supervision." *Id*. at 101-02. The Sex Offender Registration and Notification Act and the federal failure to register as a sex offender statute impose much harsher disabilities and restraints on sex offenders than the Alaska law. When a person charged federally with failure to register is released pretrial, electronic monitoring is mandatory. It requires a term of imprisonment up to 10 years for failure to register, followed by a possible consecutive mandatory minimum of 5 years, followed by a mandatory minimum of five years supervised release up to life. If there were any doubt that the law is punitive in intent and effect, any person "required by Federal or other law to register as a sex offender" is punished for that status by a consecutive mandatory minimum of 10 years when he or she commits an enumerated felony offense involving a minor.

Third, with a series of *non sequiturs*, the majority rejected the argument that the law promoted the traditional goals of punishment. Though the state conceded the law had a deterrent purpose, deeming it punitive on that basis would undermine the state's ability to engage in effective regulation. *Id*. at 102. While it was true that the law may look retributive because the length of the reporting requirement was based on the extent of wrongdoing (aggravated or non-aggravated) rather than the risk

posed, it was "reasonably related to the danger of recidivism, and this is consistent with the regulatory objective." *Id*. That leaves retribution as the sole apparent purpose.

Fourth, the law had a rational connection to the non-punitive purpose of public safety, which it advanced by alerting the public to the "risk of sex offenders in their community." Even though it was not narrowly drawn to advance that purpose, presumably because like the Sex Offender Registration and Notification Act it was not risk-based but offense-of-conviction based, it was not a sham or mere pretext. *Id*. at 102-03. Given the growing evidence noted above (and that was before Congress) that public notification without any risk assessment threatens rather than advances public safety, the Sex Offender Registration and Notification Act does not bear a rational connection to a non-punitive purpose.

Fifth, the law was not excessive in relation to its public safety purpose even though it applied to all convicted sex offenders without regard to future dangerousness and placed no limit on the breadth of public access to the information. This was because the legislature made a finding that sex offenders had a high rate of recidivism and were dangerous as a class. *Id*. at 103-04. Congress made no such finding in the Sex Offender Registration and Notification Act and such a finding would be inaccurate. Studies, including Department of Justice studies, show that sex

offenders are less likely to re-offend than non-sex offenders, that re-offense rates vary with specific characteristics of the offender and the offense.[6]

Finally, the majority dispatched the final two factors – whether the regulation comes into play only on a finding of *scienter* and whether the behavior to which it applies is already a crime – with a tautology. They were "of little weight" because a crime was a "necessary starting point." *Id*. at 105.

Justice Thomas joined the opinion but wrote separately to say that the effects of Internet publication should play no part in the analysis because the statute itself did not require Internet publication. *Id*. at 106-07. This suggests that Justice Thomas may have disregarded evidence in the record regarding the problems that indiscriminate Internet publication creates. Perhaps he would vote differently on a law like the Sex Offender Registration and Notification Act that requires Internet publication. Justice Souter concurred only in the judgment. *Id*. at 107-110. He found "considerable evidence" pointing to the conclusion that the law was punitive. First, the Alaska legislature did not label the law as "civil," thus distinguishing it from the Court's past cases relying on the legislature's stated label. Second, several of the provisions were placed in the criminal code, which did not force a criminal

[6] CSOM, Office of Justice, Department of Justice, *Myths and Facts About Sex Offenders* (August 2000), http://www.csom.org/pubs/mythsfacts.html; Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* at 2.

characterization, but stood in the way of asserting that the statute's intended character was clearly civil. Third, the fact that the law used past crime as the touchstone and swept in a significant number of people who pose no real threat to the community "serves to feed the suspicion that something more than regulation of safety is going on; when a legislature uses prior convictions to impose burdens that outpace the law's stated civil aims, there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones." *Id*. at 109. Fourth, Internet publication did bear a resemblance to shaming punishments designed to disable offenders from living normally in the community. He cited examples in the record of damage to reputation, exclusion from jobs and housing, harassment and physical harm. *Id*. at 109 & n*. The punitive and civil indicators were in rough equipoise, but what tipped the scale allowing Justice Souter to concur in the judgment, was the presumption of constitutionality of state laws, which gives the state the benefit of the doubt in close cases. *Id*. at 110.

Justice Stevens dissented, finding that the law unquestionably affected a constitutionally protected liberty interest in that it was akin to supervised release or parole, and had a severe stigmatizing effect that resulted in threats, assaults, loss of housing and loss of jobs. The law was punitive because it (1) constituted a severe deprivation of liberty, (2) was imposed on everyone convicted of certain offenses, and

(3) was not imposed on anyone else. The law added punishment based on past crimes to the punishment of persons already tried and convicted of those crimes, and so violated the *Ex Post Facto* Clause. *Id*. at 110-14.

Justices Ginsburg and Breyer also dissented. Like Justice Souter, they recognized that the legislature's intent was unclear and so they would neutrally evaluate the law's purposes and effects. They would hold the law punitive in effect, and therefore in violation of the *Ex Post Facto* Clause, for the reasons identified by Justices Souter and Stevens. The law was excessive in relation to its nonpunitive purpose by applying to all offenders convicted of enumerated crimes without regard to future dangerousness, by keying the duration to whether the offense was aggravated rather than risk of reoffense, by requiring quarterly reporting in perpetuity even if personal information had not changed, and most important, "the Act makes no provision whatever for the possibility of rehabilitation . . . . However plain it may be that a former sex offender currently poses no threat of recidivism, he will remain subject to long-term monitoring and inescapable humiliation." *Id*. at 116-17.

Mr. Templeton contends the Sex Offender Registration and Notification Act and the federal failure to register as a sex offender statute (Title 18, United States Code, § 2250) as applied to his 1989 conviction are punitive and therefore violates the *Ex Post Facto* Clause.

VI. THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT AND THE FEDERAL FAILURE TO REGISTER AS A SEX OFFENDER STATUTE VIOLATE DUE PROCESS.

A person may be subjected to registration and public notification requirements, or prosecuted for failing to register, when he was not in fact convicted (or does not currently stand convicted) of an offense that Congress listed as a qualifying "sex offense" in the Sex Offender Registration and Notification Act. This may occur when a prior conviction is overturned or expunged, the person is pardoned, through clerical or administrative error, or through regulations currently on the books or to be promulgated by the Attorney General adding sex offenses that are not on the list of sex offenses in the Sex Offender Registration and Notification Act. In the present case, the amendment to Arizona's registration statute changed Mr. Templeton's registration requirements. He was no longer required to register. However, he is being prosecuted federally for a failure to register and thus, the federal registration statute violates the Due Process Clause, both procedurally and substantively. *See Branch v. Collier*, 2004 WL 942194 (N.D. Tex. Apr. 30, 2004) (state authorities' subjection of parolee to sex offender registration and public notification requirements when he was never convicted of an enumerated sex offense under state law violated the Due Process Clause); *Coleman v. Dretke*, 409 F.3d 665 (5th Cir. 2005) (same). *See also People v. Bell*, 3 Misc.3d 773, 778 N.Y.S.2d 837 (2003) (application of sex

offender registry act to person who was not convicted of a sex offense violated the Due Process Clause and the Equal Protection Clause of both the state and federal constitutions); *Doe v. State*, 92 P.3d 398, 404-12 (Alaska 2004) (Alaska law requiring person to submit to sex offender registration and notification requirements after conviction was set aside violated the due process clause of the state constitution).

CONCLUSION

For all of the reasons stated herein, Darrell Lynn Templeton, respectfully requests this Court dismiss the Grand Jury Indictment returned and filed December 6, 2006.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

__X__ I hereby certify that on Tuesday, January 9, 2007, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Randal Sengel
Assistant United States Attorney

_____I hereby certify that on _____, I served the attached document by _____ on the following, who are not registered participants of the ECF System:

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PAUL ANTONIO LACY