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NO EXCEPTION FOR THE SEXUAL OFFENDER

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NO EXCEPTION FOR THE SEXUAL OFFENDER

A Master Thesis

Submitted to the Faculty

of

American Public University

by

Debra Ann Hall

In Partial Fulfillment of the

Requirements for the Degree

of

Master of Arts

April 2017

American Public University

Charles Town, WV
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DEDICATION

I dedicate this work to my family. To both my parents who passed from this life during my academic endeavors without your love, encouragement, example and strength I would not be the person I am today in striving for higher goals in life through advanced study and education. To my husband I dedicate this thesis. Through my studies you have pushed me to excel in all that I do and to strive for greater and better. Without your undying love, support and confidence in me none of this work would have been attainable. To both my children I dedicate this study. Much precious time was spent over the years in my pursuit of a college education, and both of you stood by me every step of the way with love, patience, endurance and understanding. To my children it is my hope with the completion of this thesis I set an example to you through hard work, honesty and steadfastness you too can achieve your highest dreams and goals in life. To Maggie, my faithful friend, companion and canine and I dedicate this research. Thank you for listening to me and giving me many hours of laughs, hugs and company. Without you none of this would have been possible.
ABSTRACT OF THE THESIS

NO EXCEPTION FOR THE SEXUAL OFFENDER

by

Debra Ann Hall

American Public University System, April 17, 2017

Charles Town, West Virginia

Professor James Barney, Thesis Professor

Congress created the Sex Offender Registration and Notification Act (SORNA) to unify sex offender registration and notification. *Nichols v. United States*, 136 S. Ct. 1113 (2016) revealed flaws with interpretation of SORNA and jurisdictional issues with the law. The examination looks at issues between federal and state with SORNA and along with an example of Nichols. The research considers and reveals the importance of the continuance of sex offender registration and notification with law enforcement. The investigation is a comparison of federal and state statutes involving sex offender registration and notification in relation to *Nichols v. United States* and other case law. The study revealed federal and state courts have determined an Act of Congress differently with SORNA regulation. The examination showed Congress should reassess the law and funding for SORNA to initiate further state compliance. The future of compliance and cooperation will be imperative between federal and state as U.S. registered sex offenders have traveled abroad unaware prompting the creation of International Megan’s Law (IML) involving notification with the international community. Congress is urged to strengthen SORNA protecting citizens from sexual predators and sex crimes against children.
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I. Introduction

“[The Sex Offender Registration and Notification Act (SORNA)] seeks to realize an effective and comprehensive national system of sex offender registration through the cooperative effort of each of the fifty states…, [United States] territories and Indian tribal governments…”1 However, ambiguities and discrepancies prevalent in SORNA should be revisited by Congress to: (1) narrow the division between federal and state use and meaning of the law to strengthen SORNA; (2) prompt further oversight between federal and state ensuring each have systems in place to mitigate assistance to law enforcement to track sexual offenders; (3) induce further federal mandate insuring state compliance of SORNA in order to advance SORNA requirements and specifications for sex offender registration. SORNA should be amended by the Congressional with a nationwide directive for all states to be fully compliant with SORNA regulations. At the present time, only seventeen U.S. states are fully complaint with SORNA.2 States are provided incentives by the government to try and get states to take part in SORNA, but states choose to lose funding providing that it is too expensive to implement the program. Although SORNA warrants states to implement legislation to commit to specified set of criteria with registration of sexual offenders as well as needed community notification systems, there is lack of direction of how specifications with SORNA are to be structured or enforced.3 SORNA needs to be made where states have to implement the federal regulation or possibly face penalty from the government of not complying with the federal mandate. At the same time, the government can provide funding to offset state costs for SORNA implementation, but there

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should be a directive given by the government making sure the full force of the law will be carried out by states. Congress in providing states a directive implemented by the U.S. government should bring together the best attributes and law given within each Act regarding sexual offenders. Gaps should be assessed in the law between SORNA statutes and constitutional issues. For example, in Nichols v. United States, 136 S. Ct. 1113 (2016) a statute within SORNA 42 U.S.C.S. § 16913(a) through the U.S. Supreme Court’s decision would cause a split between two lower courts due to the interpretation of the statute. Both the Court’s decision and the decision in United States v. Lunsford, 725 F. 3d 859 (2013) came to the conclusion that 42 U.S.C.S. § 16913 did not require Nichols to bring up to date his registration while in Kansas before leaving for the Philippines. On the other hand, in United States v. Nichols, 775 F. 3d 1225 (2014) the Court decided through 18 U.S.C. § 2250 (a) and 42 U.S.C.S. § 16913 that Nichols was required to update registration prior to travel in a foreign commerce. Constitutional issues with SORNA and permitting debilitation of SORNA has allowed sex offenders to go against the law on grounds involving statutory irrelevancy, Ex Post Facto challenges, the Commerce Clause, and substantive and procedural due process conflict etc. Thus, there should be a Congressional directive for implementation of SORNA within all fifty U.S. states and territories which should be enforced, but with further clarification with statutory law. A Congressional directive involving SORNA to be provided by the U.S. government to states is an imperative measure if law enforcement programs are to be successful in identifying and maintaining a more thorough sex offender registry system. A Congressional mandate to states of SORNA by the U.S. government to uphold federal regulation should be implemented to not only

assist state law enforcement officials, but to be able to assist U.S. law enforcement divisions who
have to uphold federal law in protecting U.S. borders from dangerous recidivist sexual predators
willing to cross channels to commit sex crimes against children.⁸

The research will explore and address the main issues in law between federal and state in
the interpretation of SORNA rules and regulations. The work will examine statutes within
SORNA as well as those analyzed by the Court in Nichols v. United States will be researched.
Additionally, this paper will delve into authority provided to the Attorney General through the
Congressional with SORNA, misinterpretation between federal and state involving SORNA’s
retroactive requirement, and how retroactivity established within SORNA assists law
enforcement in tracking sexual offenders and deterrence with sexual offender recidivism. With
ambiguities with SORNA there is an argument that Congress should revise and amend SORNA
doing away with equivocation in the law, and to do away with states opting out of federally
implemented regulation such as SORNA. Therefore, to strengthen federal mandate and registries
concerning sexual offenders, and to assist law enforcement with a more thorough means of
tracking sexual offenders, Congress should make SORNA mandatory to all fifty U.S. states and
its territories.

II. Background

   A. SORNA’s Genesis

   Congressional intent of creating a federal law establishing a sex offender registry is not
only to fight against enlarged nonconformity issues between sex offenders and their registration
requirements, but to divert recidivism amongst sexual offenders and child molesters who had

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4, 2017).
been convicted in order to defend society from violence involving sex crimes. In 1989, Jacob Wetterling, an eleven year old boy, was kidnapped at gunpoint, attacked by a sexual predator and was shot and killed where the Federal Bureau of Investigation (FBI) recovered Jacob’s remains on September 2016 thirty miles from where he was taken. After Jacob was taken, Patty Wetterling, Jacob’s mother, urged Congress to pass a law assisting law enforcement to maintain a registration of sexual offenders and provide public notice of sexual predators in communities.

Therefore, Congress implemented the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act known as the Wetterling Act. The Wetterling Act urged states to establish laws involving sexual offenders, but per the Wetterling Act, states were not obligated to do so.

Nonetheless, five years after Jacob Wetterling’s murder by a sexual predator in Minnesota, in New Jersey, seven year old Megan Kanka was “…struck in the head and face, raped and sodomized…, and was [strangled]” until dead by a prior convicted sexual offender. The Kanka family had no fair warning or knowledge of three convicted sex offenders living across the street. As a result of Megan’s death the Kanka family urged New Jersey to invoke legislation protecting children from sexual predators and recidivism. Megan’s Law was enacted requiring sex offenders to register upon being released from prison, and communities would be made aware of the registered sex offender living in their vicinity. However, legislators allowed

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9 Id. at 280-282; Kame Newburn, The Prospect of an International Sex Offender Registry: Why an International System Modeled after United States Sex Offender Laws is not an Effective Solution to Stop Child Sexual Abuse, 28 Wis. Int'l L.J. 547, 551-552 (2010).
10 Monica Davey, Resolution of Jacob Wetterling Case Also Closes Chapter for a Reporter, N.Y. Times, Sept. 21, 2016, at A1.
11 Id.
13 Id. at 552-553.
15 Id.
16 Id.
17 Id.
for a registered sex offender to be able to discontinue registration if they could illustrate no further offenses in a fifteen year time period of their release, and show not to be a danger to society.\textsuperscript{18} In addition to noncompliance issues regarding sex offender registration there remained problems regarding sex offenders and interstate travel.\textsuperscript{19} Therefore, Congress established the Adam Walsh Child Protection and Safety Act (AWA) which was signed by President Bush as law in 2006.\textsuperscript{20} Within the AWA under Title I is SORNA, and SORNA expands the AWA in regards to furtherance of jurisdictions obligated in upholding a sex offender registry including: tribal territories, extending to combat other offenses such as child pornography, other criminal acts involving sexual assault as well as attempting, soliciting or conspiring to commit sexual offense or assault.\textsuperscript{21} Although the AWA is formed around the Wetterling Act, SORNA rescinded the Act and previous equivalent executed legislation to the Act.\textsuperscript{22} Although Congressional implementation of sex offender registration law is in response as a voice of the people to fight against crimes committed against the public by sexual offenders, and to divert recidivism amongst sexual offenders and child molesters who had been convicted in order to defend society from violence involving sex crimes, it is lack of cohesion and directive by the Congressional to states which weakens sex offender registry law with state compliance.

\textbf{B. Unbalance and Backlash with SORNA}

Although SORNA is meant to narrow possible rifts and complicity with previous federal law and is meant to fortify such programs there remains misinterpretation of SORNA between federal and state as well as a divide with SORNA regulation and compliance.\textsuperscript{23} SORNA was

\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Id.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{23} Wang, supra note 1, at 688-689.
signed into law as part of the AWA. Through Congressional action with SORNA it was mandated nationally that there is to be an establishment of a sex offender registration and public notice system. Additionally, the rudimental intent of SORNA is to (1) restrain recidivism and; (2) assist law enforcement in maintaining vestige of sexual offenders. SORNA provides minute registration and notification criteria for states to follow that allows states to meet federal requirements of SORNA, but the minimal implementation of SORNA also permits states to set the standards, requirements and even the choice of whether or not a state will participate with SORNA at all. Not to mention, allowing an undermining of SORNA alerts past and present convicted sexual offenders, as illustrated in Nichols v. United States, who are required by law under SORNA to register that the law of SORNA is defective.

The scourge against SORNA by non-compliance of states as well as only setting baseline standards for states with SORNA allows defacement and weakness in the system. The distortion of SORNA and states not willing to bend to federally mandated law or amend state law to comply with federal legislation provides convicted sexual offenders a doorway to manipulate SORNA’s intent. The intention of SORNA as pointed out by the U.S. Supreme Court in Nichols v. United States is to produce a more cohesive federal and state registration system without the pitfalls of prior federal and state registration networks. At the same time, the discontinuity of SORNA, states not fully complying and sex offenders taking advantage of rifts in federal law produces a disadvantage for states willing to conform to the full extent of the law. For example, the state of Kansas in Nichols v. United States, the U.S. Supreme Court recognized under Kan.

25 Id.
27 Id.
28 Id.
Stat. Ann. § 22-4905(g) Nichols dereliction in bringing up to date his registration went against state law.\textsuperscript{29} Yet, the U.S. Supreme Court’s decision was not in the government’s favor regarding Kan. Stat. Ann. § 22-4905(g) but rather on federal law 42 U.S.C.S. § 16913 which can have misinterpretation of meaning. Thus, there are ambiguities with SORNA concerning federal and state use and meaning of the law which should be revisited by Congress to mitigate discrepancies in order to strengthen SORNA law and meaning, establish further oversight between federal and state ensuring SORNA is utilized to provide additional assistance to law enforcement and induce further federal mandate against entities non-complaint of SORNA.

C. A Brief of Nichols v. United States: Issue of Registration and Notification

In Nichols v. United States, the Petitioner, Lester Ray Nichols, is a convicted sex offender who was charged in 2003 for committing unlawful sexual acts with a minor going against 18 U.S.C. § 2423(b). Under 18 U.S.C. § 2423(b) travel with the intent of taking part in illicit sexual conduct provides that one who commutes to interstate commerce or travels in the U.S., or one who is a citizen of the U.S. or foreigner permitted for continuous residence in the U.S. who migrates in a foreign commerce for the intention of taking part in any unlawful sexual conduct with another individual will be fined through the statute or put in prison “…not more than 30 years, or both.”\textsuperscript{30} In 2007, the Attorney General with authority through 42 U.S.C.S. § 16913 along with the Department of Justice (DOJ) finalized in 2011 a regulation where subsequent convictions of sex offenders fell under SORNA rules and regulations and were required to register.\textsuperscript{31} Upon the Petitioner being released from imprisonment after serving a term of 120 years.

\textsuperscript{29}*Id.*


months he was put under federal oversight by the District of Kansas.32 The Petitioner in *Nichols v. United States* adhered to SORNA’s requirements for registration, but in 2012 the Petitioner did not attend a mandated sex offender treatment and instead left the U.S. for the Philippines.33 Nichols not attending the mandated treatment prompted a warrant for his arrest where his regulated release was also rescinded.34 After a month, Nichols would be arrested by law enforcement officials in the Philippines and sent back to the U.S. where he was charged through 18 U.S.C. § 2250(a) for failing to maintain his registration as a sexual offender as delegated by SORNA.35

Nichols, through the District Court for the District of Kansas, attempted to get the charges against him dropped providing that he was not obligated to register through SORNA while being in the Philippines because it was not a U.S. jurisdiction he resided in.36 Additionally, the Petitioner through the District Court also held the Attorney General’s legation through SORNA of the retroactive requirement for registration as being unconstitutional.37 The District Court decided using *United States v. Murphy*, 664 F. 3d 798 (2011) that Nichols went against SORNA requirements because Nichols did not maintain his registration in Kansas before going to the Philippines.38 The District Court interpreted through SORNA that a permanent relinquishment of a residence establishes change of residence despite if there has been another gained.39 The District Court found even though Nichols could not enact a recent registration in the Philippines, through SORNA he was required to provide a notification for the state of

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32 Id.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id.
38 Id.
39 Id.
Kansas. The District Court interpreted SORNA as a requirement of Nichols to notify Kansas as “...[a] statutory construction [aligned] with legislative intent, because Congress's goal in enacting SORNA was to ensure that sex offenders could not avoid registration requirements by moving out of state.” The District Court decided SORNA is constitutional and Nichols’ motions for dismissal were denied. In 2014, the U.S. Court of Appeals for the Tenth Circuit would affirm the District Court’s judgment providing that through interpretation of SORNA, Nichols vacated his residence where under SORNA it prompted a registration requirement in Kansas and that Nichols failed to maintain registration under 18 U.S.C. § 2250(a) as well as holding that SORNA is constitutional. However, the U.S. Supreme Court would reverse the U.S. Court of Appeals judgment viewing SORNA 42 U.S.C.S. § 16901 as Nichols not being obligated to bring up to date his Kansas registration per the Court’s interpretation of SORNA prior or after leaving the state. The Court provided that neither Kansas nor the Philippines was a jurisdiction once Nichols left the state as well as the U.S.

D. Changes with SORNA since Nichols: Issues Remain

Nichols v. United States questioned Congressional wording of SORNA and its meaning, but also queried jurisdictional issues involving SORNA. Therefore, after certiorari of United States v. Nichols and during the process leading up to Nichols v. United States, in February 2016, Congress passed and President Obama signed as law the International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes through Advanced Notification of Traveling Sex

40 Id.
41 Id.
42 Id.
43 Id.
44 Id.
45 Id.
46 Id.
Offenders also known as International Megan’s Law (IML).\textsuperscript{47} The IML modified SORNA requiring registered sex offenders provide information of intended travel abroad to their registry, it revised 18 U.S.C.S. 2250 criminalizing the failure of registered sex offenders not providing prior notice of intent to travel abroad.\textsuperscript{48} Additionally, with the IML no passport is issued to a “…covered sex offender…” not unless the passport contains a special identifier.\textsuperscript{49} On the other hand, IML has already faced discrepancies of state non-compliance and constitutional challenges. Thus, there remains ambiguity in SORNA and interpretation of the law from federal and state level. At the same time, there is lack of support by states to implement SORNA, and lack of federal influence, rule and incentive to make SORNA attractive for state fulfillment of SORNA to abide by federal regulation. Thus, the Congressional should tackle issues regarding SORNA statutes and regulations with a directive to bring states to implement federal mandate and bring about a more cooperative effort between federal and state to insure a more productive system in tracking sexual offenders.

III. Literature Review

A. Issues with SORNA between Federal and State

In Christopher King’s article titled \textit{Sex Offender Registration and Notification Laws at Home and Abroad: Is an International Megan’s Law Good Policy}, the article discusses sex offender registration and notification laws that have been ratified throughout the world in various nations.\textsuperscript{50} King’s article goes into a discussion of the retroactive application of SORNA as implemented in the U.S. and illustrates a examination into a comparison between nations around the world and whether or not like the U.S. have taken on “…registration, community

\textsuperscript{47} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Christopher King, \textit{Sex Offender Registration and Notification Laws at Home and Abroad: Is an International Megan’s Law Good Policy}, 15 CUNY L. Rev. 117, 127-129 (2011).
notification, retroactive application…[and] international travel reporting” as the U.S. has with sex offender registration and notification. 51 King discovered that even though the U.S. is strict with its retroactive requirement with sex offender registration and notification through the Adam Walsh Act that sex offender registration and notification laws in Canada and the United Kingdom apply the retroactive standard as well dating back to 1997 and 2001. 52 However, King provides that unlike the U.S., community notification is not a standard throughout the world. 53 On the other hand, nations outside the U.S. are shifting towards a more stricter application of sex offender registration and notification like the U.S. 54 However, the European Union as well as New Zealand and Singapore show attentiveness in wanting to implement sex offender registration and notification registries, but according to King have failed at doing so. 55 At the same time, King provides that nations outside the U.S. do not provide uniformity in information sharing concerning sex offender registration and notification. 56 In comparison, to showing lack of uniformity abroad with sex offender registration and notification, King points out in regards to the U.S. that by September 2010, the DOJ determined there were only six jurisdictions to have complied with SORNA and its provisions and these states were: “…South Dakota; Ohio; Delaware; Florida; the Confederated Tribes of the Umatilla Indian Reservation; and the Confederated Tribes and Bands of the Yakima Nation.” 57 King provides that even when the three year deadline was extended where states were to be in full compliance of the Adam Walsh Act with SORNA after its implementation, states in the U.S. were still not fully compliant by 2010.

51 Id. at 118.
52 Id.
53 Id. at 130.
54 Id. at 131.
55 Id. at 129.
56 Id.
57 Id.
with a July 27, 2011 deadline. In comparison to King’s discussion of states not being fully compliant by the federal government’s deadline, as of 2017 there still remains lack of uniformity with state compliance with SORNA as there are to date only seventeen U.S. states, 108 Indian Tribes and three U.S. territories that are the only entities to have extensively enforced SORNA requirements. In conjunction to King’s discussion, Jennifer N. Wang illustrates in her article titled Paying the Piper: The Cost of Compliance with the Federal Sex Offender Registration and Notification Act, SORNA only implements a standard requirement, therefore, jurisdictions which uphold more stringent laws may not have to change their laws to be in agreement with SORNA requirements. On the other hand, Wang points out if there are further unvarying state laws in regards to SORNA as well as a consolidated national database it would facilitate law enforcement to maintain a more structured organization to prevent sexual predators from escaping the system. Additionally, Wang provides that the infrastructure of SORNA and its success is dependent on complete cooperation and unity, and if a state or jurisdiction is willing to reject SORNA then the federal registration system will ultimately fail.

Alternatively, Stephanie Buntin discusses in her article titled The High Price of Misguided Legislation: Nevada’s Need for Practical Sex Offender Laws provides that in 2009 when Ohio was one of the first states to be in full compliance with SORNA, SORNA regulations such as its retroactive requirement went against Ohio citizen’s constitutional rights. As a matter of fact, Buntin provides that council which argued to the Ohio Supreme Court about a Senate Bill to comply with SORNA regulations involving its retroactive requirement “...[violated] the

58 Neal P. Goswami, Deadline Extended for Offender Registry, Bennington Banner, June 4, 2009; Id.
59 Id.
60 Id. at 694-695.
61 Id. at 692-693.
62 Id.
constitutional rights of 26,000…” Ohio residents. Additionally, Buntin discusses how the state of Nevada has faced challenges to be in compliance of SORNA such as with state costs to apply SORNA, significant changes with existent state laws, disputes over SORNA’s classification system and costly legal disputes. However, as of 2017, Nevada is one of the seventeen U.S. states to have significantly applied SORNA requirements. Regardless, the challenges of states to meet compliance of SORNA specifications current state law and costs need more than baseline standards provided by Congress, but at the same time, the Congressional should revise SORNA law to further state participation with sex offender registration.

Moreover, the lack of uniformity with SORNA and a need for uniformity can be seen in looking at the split decision between the cases of United States v. Nichols, United States v. Lunsford and United States v. Murphy, and the Court’s decision in Nichols v. United States. Discrepancy can be found with interpretation of an Act of Congress such as SORNA between federal and state of concluding an understanding of an Act in clarifying law. For example, Lori L. Outzs discusses in her article titled A Principled use of Congressional Floor Speeches in Statutory Interpretation, that when the legislative sanctions statutes those statutes have been created by authoritative action. Outzs discusses that the true genesis of a statute is established by the consideration behind the statute’s preamble as well as compliance with it. Also, Outzs contends since statutory law has displaced common law more readily the interpretation of statutes has become a paramount involving the legal discipline, but since statutory law has

64 Id.
65 Id. at 778-779.
66 Id.
67 Id.
69 Id.
supplanted common law it has bred new judiciary problems through interpretation of the law. For example, Outzs provides that from a study conducted by Judge Wald from 1988 to 1989 the U.S. Supreme Court in the past presented “…133 signed opinions in the term, and relied upon legislative history in a substantive way in 53 of these cases.” On the other hand, more recently, according to Outzs the Court has taken part in a manner of interpreting statutes which eludes to the Court’s belief that it no longer has to inclusively use legislative history in statutory interpretation. Outzs presents that from 1981 to 1988 the U.S. Supreme Court conducted considerable legislative history application seventy-five to one hundred percent each time. Alternatively, from 1992 onward, when it concerned the U.S. Supreme Court dealing with cases involving interpretation of statutory law utilizing legislative history according to Outzs this was only done eighteen percent of the time. Thus, Congress should address statutory law more fully if statutory law has displaced common law more readily, or ensure the courts utilize legislative history more productively in interpreting an Act of Congress such as with SORNA regulation to provide further uniformity. Regardless, there remain issues with interpreting statutory law provided with an Act of Congress which should be addressed by the Congressional more effectively to insure consistency. Nonetheless, Outzs discusses how legislative history utilized by the Court allows clarification for obscure expression in a statute and furnishes the position of understanding complex language in statutes. On the other hand, Outzs illustrates that to provide more clarification and uniformity in determining law as provided by Judge Learned Hand that one needs to look further past the wording of a statute: “…statutes always have some purpose or

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70 Id. at 297-298.
71 Id. at 304-305.
72 Id. at 305-306.
73 Id.
74 Id. at 306-307.
75 Id.
object to accomplish…”76 For example, the purpose of 42 U.S.C.S. § 16901 is to defend the public against sexual offenders or those that may commit offence against children, and it is a Congressional response to the victims listed under the system in creating a statewide comprehensive system for sex offender registration.77 Alternatively, it would be beneficial if Congress would address 42 U.S.C.S. § 16901 to narrow the division between federal and state use and meaning of the law to strengthen SORNA.

B. Uniformity to Mitigate Assistance to Law Enforcement

Congressional oversight and directive should be implemented with SORNA between federal and state ensuring uniformity to mitigate assistance to law enforcement to track sexual offenders. Lisa Sacco discusses in her article titled *Federal Involvement in Sex Offender Registration and Notification: Overview and Issues for Congress, In Brief*, Congress has made efforts to conform law regarding sex offender registration and notification by implementation of legislation such as SORNA.78 However, Sacco provides that each state has their own sex offender registration and notification systems in place and states contend that their registration and notification network is better than legislation implemented by Congress such as SORNA.79 On the other hand, Sacco presents that state sex offender registration and notification systems are not consistent in gathering information concerning sex offenders.80 Additionally, Sacco discusses that states are not cohesive in the process to which they categorize sex offenders, or the manner of sex offender the state requires in registering (i.e. juveniles).81 Sacco illustrates that states refuse to comply with SORNA requisites for such reasons as cost, registering juveniles, and

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76 Id. at 312-313.
77 Id.
79 Id. at 11.
80 Id. at 1.
81 Id.
believing their systems surpass SORNA regulation.\textsuperscript{82} Sacco provides that the divide between federal and state in following Congressional legislation harms mitigation of law enforcement efforts in tracking sexual offenders. For example, Sacco discusses how the federal government is part of the capacity involving oversight of sexual predators.\textsuperscript{83} According to Sacco, the federal government’s role concerning law enforcement and management of sex offenders is it upholds federal law in dealing with “…sexual abuse, online predatory offenses, or other related federal crimes.”\textsuperscript{84} However, Sacco illustrates that part of the effort for the federal government to be able to uphold federal law is state’s cooperation and compliance of sex offender registration and notification requirements through legislation implemented by Congress such as SORNA. In other words, as Sacco provides that if there is not a corroborative effort between federal and state with sex offender registration and notification then there remains a divide in the system which Congress should provide further oversight and directive to establish uniformity to mitigate law enforcement efforts in tracking sexual predators. However, Sacco suggests that when it comes to investigations with sex offences and control of sex offenders it is mainly a state and local criminal justice matter, it is the federal government that provides a major part in sex offender management as well as registration and notification.\textsuperscript{85} Not to mention, and as Sacco discusses, since SORNA’s implementation in 2006, as of February 8, 2016, the IML has been passed expanding sex offender registration and notification obligations to the DOJ, but also to Department of Homeland Security (DHS) and its Immigration and Customs Enforcement (ICE). Therefore, with President Obama signing into law the IML, and issues with non-compliance of SORNA by states, Congress should consider oversight of federal and state to mitigate law

\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id. at 6.
enforcement efforts with sex offender registration and notification is an urgent matter going to an international level with DHS and ICE.

Danielle Viera in her article titled *Try As They Might, Just Can’t Get It Right: Shortcomings of the International Megan’s Law of 2010*, provides that for IML to work nations will have to cooperate to guarantee uniformity concerning sex offender registration and notification because “…local sex offender laws vary across the international community… different international states have different criminal law systems and different definitions of terms like ‘sexual offense’ or ‘sex offender.’”86 Viera points out there are still international states which do not carry national sex offender registries at all such as Italy.87 In going along with Viera’s discussion, SORNA within IML (H.R.515) provides under 42 U.S.C.S. § 16935 (b) there will be uniform notification through the U.S. Marshal’s Service’s National Sex Offender Targeting Center.88 The U.S. Marshal’s Service is to make sure the designated international community is constantly made aware with advanced notice of a registered sex offender under SORNA who has given prior notification of international travel is traveling abroad to their vicinity.89 However, as Viera suggests between SORNA and the IML there still remains inconsistency with registration and notification, which in the U.S., Congress should further address as Viera discusses with the IML: “…[w]ithout significant changes, any future legislation will be similarly flawed,” and this is true of SORNA as well.90 Not to mention, as Sacco discusses agencies within the DOJ and DHS such as the U.S. Marshals, International Criminal Police Organization (INTERPOL), U.S. National Bureau (USNCB), and ICE that are the primary

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87 *Id.*
88 42 U.S.C.S. § 16935 (b) (2016).
89 *Id.*
90 *Id.*
agencies involved with communication of foreign travel are not uniform in sharing information with one another.\textsuperscript{91} Sacco presents that because of lack of communication between DOJ, DHS and ICE, the USNCB and ICE were not capable of notifying the international community about a considerable amount of registered sex offenders that were going abroad from “‘…August to September 2012, and some of the notifications were not as comprehensive as possible.’”\textsuperscript{92}

Another area to consider in providing uniformity to mitigate law enforcement with legislation is the DOD and sex offender registration and notification with U.S. military personnel. Under SORNA, registration is required for all U.S. jurisdictions where one has been convicted of a sexual offense, and this includes U.S. military personnel convicted of a sex offense under the Uniform Code of Military Justice (UCMJ).\textsuperscript{93} As Richard Lardner and Eileen Sullivan discusses in their article \textit{Child Sex Offenders Bulk up Military Prisons: AP}, inmates convicted of sexual offence involving children the greatest number are found in U.S. military prisons.\textsuperscript{94} Lardner and Eileen present that sixty-one percent of U.S. military personnel out of 1,233 convicted involved sex crimes with children.\textsuperscript{95} However, as Sacco discusses in her article, and Major Andrew D. Flor in his article titled \textit{Sex Offender Registration Laws and the Uniform Code of Military Justice: A Primer}, they provide that when it comes to federal and military justice systems they do not lay down the authority involving registration of sex offenders, but rather it is the individual states that do this.\textsuperscript{96} Sacco suggests as well as Flor, the U.S. military and federal government do not have separate registration and notification systems, but rather

\begin{footnotesize}
\footnotesubscript{91} Id.
\footnotesubscript{92} Id.
\footnotesubscript{95} Id.
\footnotesubscript{96} Andrew D. Flor, Major, \textit{Sex Offender Registration Laws and the Uniform Code of Military Justice: A Primer} 6 (2009).
\end{footnotesize}
military personnel convicted of sex crimes involving children have to register after being released from prison in the current jurisdiction where under SORNA 42 U.S.C.S. § 16913 (a) provides that it is where they reside, work or are attending school.97 Flor’s article written in 2009, and Sacco’s article written in 2015 both still point to the fact that not all states are in compliance with SORNA to make sure that U.S. military personnel convicted of sex crimes are added to state registration systems involving sex offenders.98 Therefore, as Sacco points out when a convicted sex offender is released from prison the federal and military systems have the responsibility of notifying jurisdictions of their release, but as Flor discusses the problem also boils down to state registration laws that “…change frequently and…vary widely in size and scope.”99 Flor provides an example in that at one time Missouri law did not allow the retroactive requirement of SORNA, but it was a U.S. Supreme Court ruling that changed this.100 Flor discusses how at one time the state of Alabama concerning military and sex offender registration was at one point even silent on the issue.101

Sacco’s article in relation to Flor presents that federal and military are obligated to notify jurisdictions of offenders being released, but out of 1,300 cases involving military sex offenders 242 did not register, and in some cases, as discussed earlier with lack of communication between agencies, the military failed to alert jurisdictions of sex offenders that were released.102 Thus, Congress should provide further oversight and directive with SORNA between federal and state ensuring SORNA compliance and furtherance of communication between agencies to mitigate assistance to law enforcement in order to be successful in tracking sexual offenders. Uniformity

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97 Id.
98 Id. at 43.
99 Id. at 40.
100 Id. at 33.
101 Id.
102 Id. at 10.
through SORNA is crucial to law enforcement capabilities. For example, in 2017, the U.S. Border Patrol took into custody “…eight previously deported sex offenders” because while the individuals were being processed the agents were able to check and see that they had prior convictions involving sex offences with minors.\(^\text{103}\) For instance, Yony Alexander Garcia Chavez who in 2009 was convicted to eight years imprisonment for “…aggravated sexual assault on a minor [in the U.S.]…,” and after he was released from prison was deported back to Honduras, but tried to regain re-entry in the U.S. and was taken back into custody.\(^\text{104}\)

In an article provided by the U.S. Department of Defense Inspector General titled *Evaluation of DOD Compliance with the Sex Offender Registration and Notification Act*, shows that the Inspector General believes that it is necessary for the DOD to be provided with further policy in order to further are accountable for registration with sexual predators within the U.S. armed forces.\(^\text{105}\) The Inspector General’s evaluation in the article of the DOD showed there is further need for policy concerning registered sex offenders in the U.S. military not dishonorably discharged that were allowed to remain in service who are deployed or coming back from deployment from foreign states such as with the war in Iraq and Afghanistan, or other foreign travel.\(^\text{106}\) Additionally, the Inspector General’s evaluation showed that when it concerns the DOD and sex offenders being able to gain access to DOD facilities the DOD is inadequate for the accountability of sexual predators.\(^\text{107}\) Therefore, as a whole this is problematic for U.S. armed forces command sponsored families with children who are capable of gaining access to DOD facilities as well. Moreover, as Sacco and Flor indicated in their articles, the Inspector


\(^\text{104}\) Id.


\(^\text{106}\) Id.

\(^\text{107}\) Id.
General has found in evaluating the DOD that it needs to provide further cooperation and corroboration with other federal agencies and counterparts to be able to further keep track of convicted sexual predators. 108 Also, the Inspector General holds in the article that the DOD needs to reinforce procedures concerning convicted sex offenders to provide further productive compliance with SORNA. 109 Thus, the Inspector General urges further policy and directive from Congress regarding the DOD and registration of sex offenders, which as the Inspector General points out the U.S. government needs to provide in furthering sex offender registration law such as SORNA. According to Mark Greenblatt in a news article titled Bill Closing Military Sex Offender Loopholes Head to Obama’s Desk, legislation was passed by the House to be signed into law by President Obama which was signed as law by the President as of June 3, 2015. 110 The law provides that the DOD is required to register sex offenders “…directly with an FBI database available to civilian law enforcement agencies…” as well as with the Dru Sjodin National Sex Offender Public Website before the military sex offender is released from military imprisonment. 111 The law according to Greenblatt is part of an addition to the Justice for Victims of Trafficking Act. 112 Additionally, Greenblatt states that the law also requires the DOD to establish a database of convicted sex offenders in the military, and the database will also “…list employees of the DOD who come into contact with military communities.” 113

On the other hand, as Sacco and Flor suggests the new law enacted by the President for the DOD to register convicted military sex offenders to the FBI which is available to civilian law enforcement as well as establishing a DOD database of sex offenders open to FBI and other law enforcement agencies.

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108 Id.
109 Id.
110 Mark Greenblatt, Bill Closing Military Sex Offender Loopholes Head to Obama’s Desk, TCA News Service Chicago, May 18, 2015.
111 Id.
112 Id.
113 Id.
enforcement to be able to have access will still require states to be in further compliance of SORNA and the IML in order to assist federal entities in keeping account of sex offenders, especially with SORNA’s retroactive requirement by the Attorney General. Not to mention, as Flor discusses the differentiation of state laws and registration and notification requirements in order for any federal database to be accurate and complete will have to comply with federal legislation. Alternatively, as Sacco discusses laws will have to change, or further Congressional oversight and directive should be provided between federal and state involving legislation, or any future legislation will be unsound as is demonstrated in *Nichols v. United States*.

**C. Mandate needed to Advance SORNA between Federal and State**

According to Sarah Hammond in her article titled *Sex Offender Law Strains States*, when SORNA was implemented it was done to increase tracking networks related to sex offenders in order to unite states towards a single nationwide sex offender registry.\(^{114}\) However, Hammond discusses that since SORNA’s implementation, states non-compliance of federal legislation has to do with short funding within the legislation to states in order to assist states comply with multiple conditions within the legislation in providing uniformity.\(^{115}\) Hammond in her article illustrates that the Byrne Justice Assistance Grant and for state non-compliance of SORNA they lose ten percent of funding as discussed earlier within the research, and that the ten percent lost by states in not complying with SORNA is not a one-time deal, but each year states that do not comply end up losing ten percent of funding.\(^{116}\) John L. Worrall in his article titled *Do Federal Law Enforcement Grants Reduce Serious Crime* considers the Byrne Justice Assistance Grant, through federal backing of local law enforcement, is a grant given to states, to be utilized by states and affiliated state governments to enhance their criminal justice initiatives such as


\(^{115}\) *Id.*

\(^{116}\) *Id.*
SORNA. Byrne also provides that in addition to the Byrne Justice Assistance Grant is local law enforcement funding from the Oriented Policing Services (COPS) program. However, according to Worrall, the COPS program is non-existent, but when one looks at the COPS 2016 program it provides that it is “…open to all state, local, and tribal law enforcement agencies with primary law enforcement authority..., [u]p to $137 million is available [and] [e]ach grant is three years…[t]o addresses specific crime and disorder problems” where the grants go directly to law enforcement hiring and funding. On the other hand, Wang in her discussion in *Paying the Piper: The Cost of Compliance with the Federal Sex Offender Registration and Notification Act*, provides as an example such as the state of Texas that it would cost the state approximately $38.7 million if it were to abide by SORNA legislation, and if it decided not to comply with SORNA the ten percent of funds lost would amount to $1.4 million. Therefore, if one thinks about it the penalties for states not complying with SORNA to bring about uniformity are not enough to bring states around to comply with the federal legislation. At the same time, Wang provides in her article that states only have three alternatives available when it comes to answering to SORNA legislation and these are: “…(1) don’t comply; (2) substantially comply; or (3) challenge the Act’s constitutionally and make reasonable changes…”

Corey Friedman in his article titled *Scarlett Letter for Sex Offenders* discusses how South Carolina was already improving the state’s sex offender registry when state legislatures decided to fulfill SORNA requirements and one South Carolina law enforcement official provided that the state in becoming compliant with SORNA “…didn’t require the state to hire more

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117 *Id.*  
118 *Id.*  
119 *Id.*  
120 *Id.*  
121 *Id.*
employees.” According to Friedman’s article the South Carolina legislature provided that to conscientiously work towards the implementation of SORNA the state’s “…current staff took on additional duties…,” therefore, Friedman illustrates in his article that state implementation of SORNA can be done if states are willing to work to do it. Christina Mancini, J. C. Barnes and Daniel P. Mears discuss in their article titled *It Varies From State to State: An Examination of Sex Crime Laws Nationally* all states have laid down registration and notification laws, but as Mancini, Barnes and Mears point out is that states are largely variant to the point in taking on a “…get tough’ stance against sex crime,” and this can be seen in the case of *Nichols v. United States.* In other words, the federal government mandated that states lay down tougher sex crime laws, but according to Mancini, Barnes and Mears article all states only embraced two of the seven laws and policies, and there are no states which implemented all seven. What this means is as Mancini, Barnes and Mears discuss in their work is that some states like Maine and Wyoming have narrowed sex crime laws down to the minutest effort only to “…retain federal funding.” Thus, there should be a review by the Congressional to induce further Congressional mandate with SORNA, and re-evaluate funding and penalties with states not complying with SORNA and federally mandated legal requirements to bring about further effort towards tougher sex crime laws being legislated and urged by the federal government.

Much like variation between states with abiding by federal mandate of providing more unified and tougher laws with sex offender registration and notification with SORNA there are issues with registration and notification between states with juvenile sexual offenders. Tara L.

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123 Id.
125 Id.
126 Id.
Merrill illustrates in her article titled *United States v. Juvenile Male: Evaluation of the Retroactive Application of Sex Offender Registration Laws to Former Juvenile Offenders*, that although sex offences committed by juvenile predators have grown and that an estimate of juvenile predators commit “…one-fifth of all rapes and almost one-half of all cases of child molestation…each year” that the registration and notification requirements of SORNA go against privacy concerns of juvenile offenders and SORNA registration and notification requirements should be assessed case-by-case.\textsuperscript{127} Merrill contends that although there are those who have gone from juveniles who had committed sex crimes to being active law-abiding citizens there is still juveniles who committed sex crimes and have gone into adulthood not being completely reformed. Yet, Merrill believes the retroactive application of SORNA needs altered to determine on a case-by-case basis “…rather than summarily requiring every individual convicted as a juvenile to register.”\textsuperscript{128} Merrill illustrates in her article that SORNA conflicts with both the Federal Juvenile Delinquency Act and *Ex Post Facto*.\textsuperscript{129} According to Merrill, the Federal Juvenile Delinquency Act established in 1938 took into account attributes of juveniles and the fundamental intention of it is to support juveniles to become “…productive members of society.”\textsuperscript{130} Also, Merrill provides that the Act emphasized reform not punishment, and provided conditions regarding juveniles and privacy when it concerned registration and notification of juvenile sex offenders.\textsuperscript{131} At the same time, Merrill provides that courses of action regarding juveniles and sex offender registration and notification tend to not take into account that juveniles involved in sexual offenses when it comes to research vary from adult offenders

\textsuperscript{128} Id.
\textsuperscript{129} Id. at 264.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
when it concerns recidivism and rehabilitation.\textsuperscript{132} Yet, Merrill in discussing the Ninth Circuit’s decision in \textit{United States v. Juvenile Male}, 590 F.3d 924 (2010), points to the fact that the registries such as SORNA are to keep track of adult registered sex offenders, which if one looks at the case of \textit{United States v. Juvenile Male} that the Ninth Circuit would have considered the acts committed by the Defendant-Appellant “…that, had they been committed by an adult, would constitute aggravated sexual abuse.”\textsuperscript{133}

On the other hand, Joanna C. Enstice in her article titled \textit{Remembering the Victims of Sexual Abuse: The Treatment of Juvenile Sex Offenders in In re J.W.}, presents an in-depth discussion about juvenile sex offender registration with SORNA. For example, Enstice discusses how the Illinois Supreme Court in examining both the U.S. Constitution and the Illinois Constitution, and whether or not SORNA violated both concerning the \textit{Ex Post Facto} clause determined that for adult offenders it did not because the registration law did not provide punishment.\textsuperscript{134} At the same time, in regards to juvenile sex offenders, Enstice looks to the case of \textit{In re J.W.}, 787 N.E. 2d 747 (2003). \textit{In re J.W.}, the Illinois Supreme Court was faced with determining whether J.W. was a sex offender under SORNA, and if SORNA went against substantive due process as well as determining a lifetime registration requirement for a juvenile offender.\textsuperscript{135} The Illinois Supreme Court held J.W. as a sex offender and that J.W. was to be accountable for a lifetime registration requirement under SORNA.\textsuperscript{136} Enstice notes that a lifetime registration requirement for a juvenile sex offender results as a harsh penalty.\textsuperscript{137} However, Entice provides that it is because of the pervasiveness of child sexual abuse that “…society benefits

\textsuperscript{132} \textit{Id.} at 265.
\textsuperscript{133} \textit{United States v. Juvenile Male}, 590 F.3d 924 (2010).
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} \textit{Id.} at 983-984.
\textsuperscript{137} \textit{Id.} at 997-998.
more by requiring juvenile offenders to register...”138 Also, Enstice believes that it is beneficial to society for juvenile sexual predators to register because, and Merrill states this as well, that there are “…[j]uvenile offenders [that] may never be rehabilitated enough to cease being a threat to society.”139 However, like Merrill, Enście holds that juveniles should be treated differently, but unlike Merrill in contradiction to the case-by-case scenario, Entice holds that the criminal justice system when it concerns juveniles and handing down harsh penalties such as a lifetime registration requirement under SORNA as a convicted sex offender, or even deeming a criminal act of a juvenile as an adult act, the criminal justice system does not hand down such decisions unless absolutely necessary in seeing the juvenile as a threat to society.140

When it concerns juvenile sex offenders and Ex Post Facto, Charles Doyle in an article titled SORNA: A Legal Analysis of 18 U.S.C. §2250 (Failure to Register as a Sex Offender) takes a more neutral analytical stance. For example, Doyle provides that when it concerns the Ninth Circuit’s discussion of juvenile sex offenders and Ex Post Facto that privacy issues of juvenile proceedings in doing away with confidentiality with the retroactive requirement applied to juveniles with SORNA as the Ninth Circuit decided would be an infringement on Ex Post Facto.141 Doyle illustrates with a discussion of the Ninth Circuit’s decision in United States v. Juvenile Male that when SORNA did not go against privacy involving a juvenile sex offender due to disclosure obligations that is when Ex Post Facto is not violated by the law.142 On the other hand, if a juvenile is determined to commit a sexual offense deemed by the criminal justice system to depart from the Federal Juvenile Delinquency Act then the individual may be tried as

138 *Id.*
139 *Id.*
140 *Id.* at 994-995.
142 *Id.*
an adult at which is determined per jurisdiction. As Doyle points out, however, although the Federal Juvenile Delinquency Act constricts disclosure regarding juvenile proceedings, juvenile sex offenders are not pardoned from complying with SORNA registration obligations. However, once again, as Doyle suggests SORNA institutes minute requirements, and it is the states and other jurisdictional entities that remain autonomous to necessitate registration based on an individual’s conviction.

IV. Analysis

A. Congressional Intent of SORNA 42 U.S.C.S. § 16901

In examining the issues involving SORNA with sex offender registration and notification, one finds Congressional intent with establishing SORNA is to bring together a unified system of sex offender registration and notification. The intent of SORNA is not only to protect the public, but to assist law enforcement in tracking sex offenders to attempt to do away with and possibly thwart recidivism involving sexual predators. 42 U.S.C.S. § 16901 acknowledged the ferocious attacks caused by brutal predators of the victims named in the statute, and Congress within this legislation provided a complete statewide system of registration for sexual predators. Congressional intent of SORNA is to assist in public protection of American citizens, and now with IML the international community. The Court within Nichols v. United States acknowledged that Congress made it a criminal act when a sex offender who deliberately fails to furnish information as obligated by SORNA in relation to predetermined travel to a foreign commerce with the passage of IML. SORNA’s intent is it allocates an extensive fixed baseline standard for

144 Id. at 7.
145 Id. at 8.
146 Id.
states with sex offender registration and notification in the U.S. in order to bring about uniformity with the law.\textsuperscript{147} The intention of SORNA by Congress is to bridge gaps and loopholes which were dominant in prior sex offender and registration law.\textsuperscript{148} SORNA allowed for an increase with the classification of crimes that are qualified for sex offender registration.\textsuperscript{149} SORNA intent provided and still provides an enlarged term and recurrence involving the registration of specified adult and juvenile criminal sex offenders.\textsuperscript{150} The aim and intention within the establishment of SORNA is to unify the data gathered with registration and notification of sexual offenders and bring that information together within a public registry and law enforcement database.\textsuperscript{151} For example, in SORNA42 U.S.C.S. § 16901, according to the Court within \textit{Nichols v. United States}, Congress had shaped SORNA where it is considered a federal criminal act if a sex offender who has met specific requirements in SORNA do not register or maintain their registration.\textsuperscript{152} Additionally, Congress enhanced SORNA within its provisions administering over registration requirements when the sex offender relocated to a different state.\textsuperscript{153} Nichols offence was prior to SORNA enactment, but due to the retroactive application with SORNA by the Attorney General through his authority with SORNA, as a mandatory requirement with Nichols release from prison he had to be registered as a sex offender within the state where he chose to reside, be employed or attended school, for Nichols at this time it was within the state of Kansas.\textsuperscript{154} 

\textsuperscript{147} \textit{Id.}
\textsuperscript{148} \textit{Id.}
\textsuperscript{150} \textit{Id.}
\textsuperscript{151} \textit{Id.}
\textsuperscript{152} \textit{Id.}
\textsuperscript{153} \textit{Id.}
\textsuperscript{154} \textit{Id.}
However, although Congress’s intent with SORNA regulation was to unify the effort between federal and state with sex offender registration and notification as one can see within *Nichols v. United States* there is still remaining a need with uniformity. For example, Kansas officials in *Nichols v. United States* held that Nichols was required to maintain his registration because the state was going by three areas of law in interpreting these requirements with SORNA: (1) 18 U.S.C. § 2250 making it a federal crime not to register or maintain registration; (2) Kan. Stat. Ann. § 22-4905(g) abiding by SORNA with registering in the state and maintaining registration per state law; (3) the Tenth Circuit precedent with Murphy. Thus, the intention of SORNA is to unify sex offender registration and notification requirements, but in between these three listed entities remains un-unification of which Congress should assess in bringing further clarification between federal and state. The intent of SORNA has attributed to a statewide database, and Congress has amended law as issues arise. For example, in regards to jurisdictional issues with Nichols, Congress and President Obama signed into law the IML. However, the intention of SORNA with unification between state compliance issues and the federal government still are not in agreement. Regardless, sexual predators can bring harm and offence to American citizens and children. SORNA and the furtherance of sex offender registration and notification laws assist members of society in trying to deter and prevent further atrocities. At the same time, the intent of SORNA is a remembrance to the victims who have suffered terrifying and great losses with their families. On the other hand, there is further need with Congressional, state and federal entities to push towards a more unified effort with SORNA.
B. Protecting U.S. Citizens from Unregistered Sex Offenders

Although Enstice’s article was written prior to further sex offender registration and notification laws to date, Ensticke brings up a valid point in that society obtains an advantage in requiring sex offenders to register. Individuals such as Nichols and others will always attempt to push the envelope in trying to evade or test the legal system. However, arguments against Congressional legislation may try and attempt to weaken the system, but as Ensticke points out with lifetime registration of a juvenile sex offender or even an adult offender may be considered harsh, but the majority still agree that registration and notification of sexual predators like Nichols is to protect the public as Congress intended and tries to continue to do. Therefore, there is a need to increase sex offender registration and notification and further assist with law enforcement tracking of sexual predators. As Ensticke illustrates regarding the establishment of registration and notification systems Congress mandates such legislation is because “…it is important to remember that registration requirements apply only to perpetrators of some of the most vile and loathsome crimes.” Congress should push for further increase with sex offender registration in order to assist law enforcement tracking unregistered or evasive sexual predators. For example, there are still ways in which sex offenders can go around the system between federal and state entities and remain under the radar as pointed out with Nichols. Sex offenders can fall under the radar because of individuals who fall under conviction with federal entities and individual sex offenders where they can fall under state conviction. In other words, it is the divide between federal and state unity in sex offender registration and notification that offenders can escape through gaps in the system. As discussed by Terra R. Lord in her article titled Closing Loopholes or Creating More? Why a Narrow Application of SORNA Threatens to Defeat the

155 Id.
156 Id.
157 Id. at 1006-1007.
Statute's Purpose, because SORNA is federal law the government has to have federal dominion in order to be able to implicate the offender with SORNA.\footnote{158} For the government to have control of a federal sex offender the offender had to commit the offense on tribal land or through law listed under SORNA regulation.\footnote{159} The means by which the government can obtain control of a state sex offender is through travel within interstate or foreign commerce and not registering or maintaining registration under a federal statute such as SORNA.\footnote{160} Respectively, Lord points out a very important aspect in regards to problems with registration with sexual predators is that like with Nichols and other cases discussed within this research is that “[s]tate sex offenders who travel…make up the vast majority of defendants who challenge the applicability of SORNA to their failures to register.”\footnote{161} If vast numbers of Defendants are challenging SORNA legislation because of travel or other avenues within SORNA and reasons for the offenders failing to register then this is where gaps need tightened with existing sex offender registration and notification requirements to assist with law enforcement tracking along with assessment of current law. However, if current problems are not fixed with current legislation and further legislation is built on top of legislation with gaps in it then only further problems will come to fruition, therefore, the reason behind a further call to the Congressional for assessment of current sex offender registration and notification law. There should be an assessment involving state sex offender registration laws of states not complying with SORNA compared to sex offender registration laws with SORNA compliance.

\footnote{158} Id. at 285.  
\footnote{159} Id.  
\footnote{160} Id.  
\footnote{161} Id. at 286.
C. State Non-Compliance to Federal Law SORNA

The intention of SORNA guidelines and regulations show within cases such as Nichols that there are still wide non-compliance issues and disagreements over the interpretation of law with SORNA statutes. Each state has a sex offender registration and notification system set in place as seen in Nichols, but the problem is the state’s systems that are in place are not consistent. For example, the state of Oregon is a non-compliant state with SORNA regulation and requirements. According to an article titled Thousands of Sex Offenders Out of Compliance, Kept Off Public Database in Oregon, the state of Oregon is considered a sex offender haven because “…more than 98 percent of Oregon’s sex offenders are not listed publicly and thousands…” do not comply with the state’s law.\(^\text{162}\) However, Kansas has fully complied with SORNA regulations and requirements as seen in Nichols v. United States. Kansas deciding to uphold the conviction of Nichols in Nichols v. United States falls with upholding existent state law as recognized by the Court such as Kan. Stat. Ann. § 22-4905(g), which coincided with SORNA regulations. It is apparent with Nichols and the fact that Kansas is a compliant state with SORNA that it upholds a stringent stance with sex offender registration and notification. Non-compliant states with SORNA illustrate the lack of uniformity with sex offender registration law. At the same time, the case of Nichols also presents lack of uniformity with the law in various ways from jurisdictional problems, which only have been recently addressed, to federal and state issues with SORNA regulations. Those states not willing to be compliant with SORNA regulations face challenges of sex offenders seeking out states with limited state sex offender

registration and notification laws, for example, Oregon is listed as having the “…most sex
offenders per capita in the country…” 163

At the same time, the Court decided in Nichols through SORNA, 42 U.S.C.S. § 16913(a)
that it was not a requirement of a convicted sex offender to bring up to date his registration in a
jurisdiction in the U.S. when he had already relocated to a foreign jurisdiction.164 The Court held
that their analysis of SORNA requirements that were at issue in the Nichols case did not allow
for sex offenders to be able to avoid penalty for departing from the U.S. without alerting
authorities in the area where they resided while in the U.S. However, Nichols represents
disconnect between federal and state with implementing a get tough stance with sex offender
registration law. The need for uniformity with SORNA which can be accomplished with
amendments to the law should be addressed by Congress with a mandatory stance with sex
offender registration and notification between states and the federal government. Congress under
Article IV, Section I, has the right to “…pass laws stating the manner in which laws, records, and
the court may be proved and what effects they have upon the states.” 165 Additionally, the
President through Article II, Section III can propose legislation to be passed as necessary as the
President is to “…inform Congress as to the ‘state of the union…’ ask that laws that he thinks are
necessary and needed be passed.”166 Although there are most likely more pressing issues at stake
with the U.S. at the present time it is fact those crimes that go against children such as those
committed by sex offenders registered through SORNA are crimes which are of the most
despicable kind. It will be those children who will one day be adults within society who need to
be taught from right and wrong, and if this requires a Tier III juvenile sex offender spending

163 Id.
164 Id.
166 Id. at 42.
twenty-five years registering to learn the lesson then this needs to be adhered to not lessened with the law.\footnote{Office of Justice Programs: SMART: Juvenile Offenders and SORNA Registration, https://smart.gov/ juvenile_offenders.htm (last visited Apr. 15, 2017).} The same goes for adult offenders where there are complaints from adult offenders of not being able to find employment, or housing because of their registration requirements. An adult would say they should have thought about employment and housing necessities before attacking a child and committing a crime as a sexual predator. Some would also say that one should have compassion for Jeffrey Dahmer.

To go hand in hand with leniency of state non-compliance with SORNA regulation, and although this and various other laws had not been implemented, Jeffery Dahmer in 1987 was convicted for apprehending a thirteen year old boy and molesting him.\footnote{Brian Kates, \textit{Jeffrey Dahmer’s Life and Crimes}, The Daily News, Nov. 29 1994.} The individual who was the prosecutor in the case with Jeffrey Dahmer wanted the sentencing of Dahmer to be a lengthy sentence because the prosecutor wanted Dahmer “…placed in a program for sex offenders, [but] the judge ordered a one-year prison term that let Dahmer go to work and receive outpatient counseling.”\footnote{Id.} After ten months of serving his prison term Dahmer was released the same year and “…[t]he remains of the youth-[a] brother of the boy [Dahmer] molested in 1987-were amid the carnage in Dahmer’s apartment.”\footnote{Id.} Not saying all sexual offenders is Jeffrey Dahmer, but those individuals registered within SORNA of compliant states with the federal law are offenders which have committed heinous acts as sexual predators. The lack of uniformity with state compliance as well as disagreement between federal and state entities with a get tough stance on sex offender registration and notification law should be addressed by Congress to fix state non-compliance to federal law such as SORNA. States such as Oregon that is lenient with sex offender registration and notification law and not implementing federal legislation such as
SORNA are crippling uniformity within the system causing the legislation to fail. At the same time, Nichols illustrated that there are jurisdictional issues with SORNA, but also issues with uniformity in interpretation of law. 42 U.S.C.S. § 16901 is legislation established by Congress to defend the public from sexual offenders as well as those who commit offences against children. The non-compliance problems with SORNA as well as further understanding of SORNA legislation should be addressed by Congress because of further law that has been added such as IML, but as stated, also because the system is not unified.

D. Interpretation of Statutes with SORNA

When SORNA was implemented by Congress states were given a deadline to comply with Congress’s baseline requirements with SORNA, however, as noted in the discussion even with an extended deadline states to this date are not adhering to federal legislation bringing up issues with cost as well as legal issues with the federally mandated statute. For example, in Nichols v. United States the Court’s decision through its interpretation of SORNA, 42 U.S.C.S. § 16901 was that Nichols was not obligated to maintain registration in the state of Kansas preceding departure to the Philippines. According to the Court, Nichols did not have to alert Kansas officials he was departing due to Kansas not being an involved authority as is meant within the term expressed in 42 U.S.C.S. § 16913. The Court’s decision revealed not only a circuit split with United States v. Nichols, United States v. Lunsford and United States v. Murphy, but lack of uniformity in interpretation of SORNA regulations and statutes. For example, in Nichols v. United States, the Court recognized under 18 U.S.C.S. § 2250 that Congress had made it a federal crime where a sex offender who conforms to specific requirements who

172 Id.
173 Id.
purposely fail to register or bring up to date their registration as required by 18 U.S.C.S. § 2250 commits a federal criminal act. However, when the Court decided to reverse judgment involving the Tenth Circuit’s decision the Court reverted to “…SORNA’s plain text…[to] dictate…[the] holding.” Additionally, the Court provided that the holding of the case was the crucial utilization of only present tense with 42 U.S.C.S. § 16913(a). The Tenth Circuit in the discussion of the case with Nichols through 42 U.S.C.S. § 16913(a) applied both present and future tense in regards to application of the statute. The Court in applying the plain text, present tense meaning of 42 U.S.C.S. § 16913(a) determined that even though Nichols was in Kansas as a convicted registered sex offender who then left his apartment in Leavenworth to relocate Philippines that Nichols in forfeiting his residence the application of SORNA 42 U.S.C.S. § 16901 no longer applied to him in bringing up to date his registration prior to or after leaving the state of Kansas. However, under 18 U.S.C. § 2250 (a), when Nichols was registered in the state of Kansas as a sexual offender, but did not bring up to date his registration it was considered a federal crime. 18 U.S.C.S. § 2250 (a) provides individuals defined as a registered sex offender who travels to a foreign commerce and do not register or bring up to date registration are to be “…fined…or imprisoned not more than 10 years.” Nichols traveling to a foreign commerce and not updating registration in Kansas prior to leaving to a foreign commerce provided Kansas officials a reason for authorities to convict Nichols through violation of 18 U.S.C.S. § 2250 (a). Kansas determination of the meaning of 18 U.S.C. § 2250 and one’s determination of significance of an Act of Congress involving present tense as well as future,

175 Id.
176 Id.
177 Id.
178 Id.
179 Id.
180 Id.
182 Id.
Kansas came to a decision that Nichols should have brought up to date registration prior to travel. The state of Kansas was also interpreting SORNA’s intent through law established by Congress is to protect U.S. citizens and children from unlawful acts involving sexual predators and SORNA 42 U.S.C.S. § 16901 acknowledges prior victims suffered from such acts. However, the Court provided that they were “…mindful that SORNA’s purpose was to ‘make more uniform what had remained ‘a patchwork of federal and 50 individual state registration systems,’ with ‘loopholes and deficiencies…’ [resulting] in an estimated 100,000 sex offenders becoming ‘missing’ or ‘lost.’” On the other hand, the Court held that their decision could not subdue the simplicity found within the statute’s text. Alternatively, with examples provided of previous split decisions that have been since corrected there appears to have been un-clarity and lack of uniformity found in determining the meaning to the statute’s text. Not to mention, a variance between federal and state’s determination of the text’s meaning when it comes to states being able to take the baseline requirements of SORNA and apply it to existing state law, which as seen with Nichols provided lack of unity between federal and state entities.

Regardless, Nichols shed light concerning the split decisions revealed between the Eighth and Tenth circuit courts with discrepancy and lack of uniformity in interpretation of SORNA. The issue at hand here is the interpretation of an Act of Congress as well as state law that has been applied involving SORNA. For example, the Tenth Circuit applied both present and future tense in interpreting an Act of Congress because the Tenth Circuit provides that the: “…U.S. Supreme Court's decision in Carr v. United States… looked to the plain language of § 2250 and concluded Congress's use of present tense verbs ‘strongly supports a forward-looking

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183 Id.
184 Id.
185 Id.
186 Id.
construction.’”187 Additionally, in United States v. Murphy both past and future tense are applied with interpreting sex offender registration and notification law. For example, the Defendant in United States v. Murphy provided the same argument Nichols provided in United States v. Nichols as well as in Nichols v. United States that he was not required to provide an up to date registration as a convicted sex offender in the state of Utah after he had been “…paroled from state prison to a community correction center…[and] fled the correction center [to relocate] to Belize.”188 However, the Tenth Circuit interpreted the Defendant as going against SORNA requirements and regulation because the court of appeals held that as with the Defendant knowingly leaving Utah and being a registered resident sex offender in the state to depart a correction center he was released on parole to as far as Utah was concerned the Defendant went against not only state law but federal as well because the Defendant being a convicted registered offender had an obligation to the state being released on parole.189 This is the same concept in United States v. Nichols that the Tenth Circuit viewed Nichols as knowingly leaving Kansas for the Philippines. One can see discontinuity and lack of uniformity in determining an Act of Congress when the Tenth Circuit viewed Nichols upon his release from prison had to register as a convicted sex offender, therefore, the state of Kansas per SORNA 18 U.S.C. § 2250 adhered to the fact that Congress made it a federal crime if Nichols did not update his registration or notify authorities.190

In the interpretation of 42 U.S.C.S. § 16913(a) as illustrated in Nichols there is a tendency to view the statute with both present and future tense in that 42 U.S.C.S. § 16913(a) jurisdiction means all states, territories and American Indian reservations within the U.S., but no

187 Id.
188 United States v. Murphy, 664 F. 3d 798 (2011).
189 Id.
190 Id.
nations abroad. ¹⁹¹ For example, the Tenth Circuit interpreted the residence portion under 42 U.S.C.S. § 16913(a) that it is one’s “…home or other place where the individual habitually lives…” ¹⁹² Additionally, both present and future tense application of 42 U.S.C.S. § 16913 has been made in that a sex offender has to supply to the registry “…[t]he address of each residence at which the sex offender resides or will reside…” keeping the registration up to date “…not later than 3 business days after each change of…residence…” coming in person to the jurisdiction that is associated with the registration and notification of the convicted offender. ¹⁹³ On the other hand, when one looks at the application of SORNA within the cases of Nichols v. United States and United States v. Lunsford the interpretation of law is based solely on present tense. For example, in Nichols v. United States the Court had to examine when a convicted registered sex offender leaves a state if that state still remains an associated jurisdiction with the registered offender by the meaning determined under 42 U.S.C.S. § 16913. ¹⁹⁴ In interpreting the meaning behind 42 U.S.C.S. § 16913 the Court in using present tense only used the application of 42 U.S.C.S. § 16913 as Nichols present residence with him having left the state of Kansas for the Philippines and determined that “[a] person who moves from Leavenworth to Manilla no longer ‘resides’ (present tense) in Kansas…” ¹⁹⁵ The slogan of law enforcement entities is to protect and serve, and the foundation of sex offender and registration laws is to assist law enforcement to protect and serve society in aiding them to produce a statewide and eventually assist with a global wide network listing of sexual predators so that law enforcement if needed

¹⁹¹ Id.
¹⁹² Id.
¹⁹³ Id.
¹⁹⁴ Id.
¹⁹⁵ Id.
can serve and protect by means of inquiry and possible capture of sexual predators if needed involving sex crimes against children.\textsuperscript{196}

E. Congress Should Conform a Standard Directive for Federal and State Involving SORNA

Congress should conform a standard directive for federal and state involving SORNA in order to implement the most effective sex offender registration law and classification system. For example, states have their sex offender registration and notification systems in place as discussed, but the systems as pointed out by the Congressional are not uniform in their efforts in sex offender registration and notification. Also, Congress has passed numerous legislation involving baseline initiatives in trying to provide guidance to states in trying to implement a more cohesive effort with sex offender registration and notification, and continue to provide further signed law on top of law that has already existent issues. This also includes difficulties which have arisen between SORNA and the Federal Juvenile Delinquency Act with juvenile sex offender registration with non-compliant states. There are at least ten Congressional Acts that deal with baseline standards implemented to states involving administering to post-conviction sex offenders as well as states deciding their own sex offender registration and notification laws are best compared to those baseline standards provided by the Congressional. Congress should assess the Acts passed by the Congressional and assess the best implemented systems by the state to come up with an effective sex offender registration law and classification system. To provide a tougher stance on sex crime as the government has been trying to push towards there should be further cooperative effort between both federal and state entities to provide a more beneficial federal mandate for states going above baseline standards. This is imperative because now the global spotlight has been placed on how well the U.S. government handles the

\textsuperscript{196} Id.
registration, notification and tracking of its sexual predators with furtherance of legislation going towards the IML that has been recently signed into law.

Moreover, Congress should reassess the furtherance of assisting states to meet standardized requirements with SORNA. In order to do this, Congress, as keepers of the purse, need to re-evaluate programs and grants already set into place to see what can be done about providing better incentives to states willing to work above and beyond in complying with the full extent of federal legislation. Again, this is urgent because as it stands currently over half of U.S. states are not compliant with federal legislation in regards to sex offender registration and notification. As researched there are states that have went the extra mile to take every effort in order to implement SORNA, but at the same time, additional workloads had to be piled on top of the shoulders of individuals in an already overloaded system with employees. Therefore, grants, federal funding and law enforcement initiatives to states in regards to sex offender registration and notification systems need to be revisited by the Congressional to provide better means for states to fully become compliant with congressionally mandated law. One does not provide a more unified effort with further confusion and chaos. Uniformity is brought on through simplification of putting to use the most beneficial aspects that work to bring about a get tough stance involving sex crimes. If Congress in turn re-assesses and amends SORNA as well as auditing the grants and funding system for sex offender registration and notification, Congress also needs to review the penalties for states not compliant with the newly reviewed law. It is obvious with at least fifty percent of U.S. states not complying with federal legislation and losing ten percent of funding as a choice to not be compliant then stricter penalties need imposed. At the same time, states are only doing the bare minimum just to obtain federal funding. It could be
better to provide that if states do not meet federal regulation then states should be exempted from funding all together, then maybe something would be done.

Nichols illustrated the gaps in the system both within the law itself as well as the need for the furtherance of boosting law enforcement capabilities because as a registered sex offender he was able to leave the country without any sort of warning or notification. It was not until the date he was due to re-register that this alerted the authorities. The sex offender registration and notification system needs to be re-evaluated both with the law and financial means behind it. Re-assessing sex offender registration and notification and bringing about a directive in the long run after reviewing the Acts along with issues that have arose with case law as well as the funding behind it would provide the knowledge that Congress should put together a system for both federal and state that will close the divide to strengthen federal legislation. Additionally, Congress in taking the time to re-address sex offender registration and notification systems in the U.S. would elicit further oversight of systems in place in assisting both federal and state law enforcement. Also, review of the system with sex offender registration and notification will promote federal mandate bringing to Congress’s attention states not adhering or complying with law in order to advance sex offender registration and notification systems that are going to be further needed with IML.

F. The Future of SORNA with IML

As discussed in the previous section, Congress should take a more in-depth look at SORNA as well as other sex offender registration and notification law in order for more stability to occur between federal and state involving sex offender registration and notification. Further corroboration will be needed down the road between the DOJ, DHS, ICE as well as federal and state entities, and this is the reason Congress should take every consideration and pre-caution
necessary in re-assessing SORNA and other Acts with sex offender registration and notification in the U.S. The IML of which was signed into law just recently by President Obama after there had been several cases such as Nichols with sex offenders not updating registration and fleeing abroad to areas such as the Philippines prompted further action on part of Congress and the Executive branches. However, the IML is law which has been piled on top of other sex offender registration and notification Acts that in turn is producing further issues. For example, already there are constitutional challenges being raised against IML regarding the Secretary of State supplying a special identifier to passports as discussed.\textsuperscript{197} In California, a faction of convicted sex offenders have requested that a federal judge prevent a measure allowing for a unique marker in passports of sex offenders that have committed crimes against children.\textsuperscript{198} The Plaintiffs in the lawsuit hold that the law goes against the Constitution’s First Amendment in that the First Amendment provides limitations of what the U.S. government can compel an individual to disclose.\textsuperscript{199} The Plaintiffs in the lawsuit believe the law goes against the Constitution by coercing individuals that have been convicted of sex offenses to display a commensurate to a “…proverbial Scarlett Letter” on their passports.” Whereas, advocates for the law believe it will assist nations with little resources to be able to track sexual predators against children more effectively and urge foreign nations to exchange information when sexual predators form their nation attempt to enter or re-enter the U.S.\textsuperscript{200} Opponents of the law, and the attorney representing the Plaintiffs compares it to the Nazis taking passports belonging to the Jews and marking them with the letter “J.”\textsuperscript{201} On the other hand, as an advocate for the bill Republican Chris Smith (R.}

\textsuperscript{197} Id.
\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
N.J.) points out is that if one looks at the causes of individuals not being able to obtain a passport where “…U.S. laws denies passports to delinquent tax payers, deadbeat parents and drug smugglers…” the IML does not go to this extreme.\textsuperscript{202} Regardless, in looking further into the lawsuit one finds a federal judge in California denied blocking the measure of a unique identifier in the passports of six convicted sex offenders in the suit because the Plaintiff’s legal challenge is premature in that “…officials haven’t developed plans for the markings yet.”\textsuperscript{203} Nonetheless, Congress believes there needs to be furtherance in IML with the international community to promote the law as well as SORNA.\textsuperscript{204} However, if there are already issues with sex offender registration and notification law enacted then it would be advantageous for Congress to take into account a further analysis of the law and its programs with further cooperation looming in the future between the U.S. and the international community. Thus, Congress in establishing such Acts as SORNA want to produce a unified comprehensive sex offender registration and notification system leading into assisting the worldwide network of sex offender registration and notification. However, cases which have come to shed light on problems with sex offender registration and notification such as Nichols shows ambiguities and discrepancies which need revisited by Congress. Congress should examine U.S. sex offender registration and notification legislation to strengthen the sex offender registration and notification system in the U.S. as well as provide further oversight and generate further federal mandate and directive in order to protect U.S. citizens and soon the international community from sexual predators and sex crimes against children.

\textsuperscript{202} Id.

\textsuperscript{203} Bob Egelko, Judge Tosses Out Challenge to Sex Offender Passport Law, The San Fransisco Gate, April 13, 2016.

\textsuperscript{204} Id.
V. Conclusion

SORNA 42 U.S.C.S. § 16901 is federal legislation that Congress implemented to bring a more cohesive effort with sex offender registration and notification. As representatives of the people, Congress established SORNA to protect U.S. citizens as well as remembering victims that had fallen to sexual predators unaware of the life threatening circumstances that lay before them. The intent with SORNA is to merge gaps and loopholes which were a major part of prior U.S. sex offender registration and notification legislation, but also to fix state sex offender registration and notification laws that are still to date inconsistent. At the same time, with Congress’s intent of protecting U.S. citizens from sexual predators there remain to date a large majority of unregistered sex offenders. The discrepancy of unregistered offenders lies between federal and state convictions and registration and notification requirements between those two entities. Both the Executive branch of government and the legislative branch have an obligation to U.S. citizens as their elected officials to bring about a uniform sex offender registration and notification system. When sex offenders are registered it provides favorable position for society to be able to protect the innocent. Sex offenders like Nichols will always upset the composure of law to try and out maneuver or go around the system as Nichols had by evading further registration as a sex offender in the U.S. by relocating to the Philippines. However, with the passing of IML this will hopefully assist with discouraging like actions of sex offenders attempting to relocate abroad to evade sex offender registration and notification requirements.

On the other hand, the areas showing un-unification with SORNA as well as newly discovered gaps and loopholes in the system such as with jurisdictional issues raised by the Nichols case or with issues in interpretation of SORNA statutes, a preemptive measure should be taken with SORNA, especially with the passage of further law with SORNA to attempt to deter
further lack of uniformity. Regardless, at this time, with only seventeen U.S. states being compliant with SORNA regulation this allows convicted sexual predators an upper hand in not registering as the law requires. Sex offenders seek out lose ends with states having lenient sex offender registration and notification laws with such states as Oregon. Also, like Nichols relocating abroad, convicted sex offenders will look for nations to escape from having to maintain any further registration requirements. SORNA not being fully implemented by states deters against the government’s requirements of wanting to establish a get tough stance with sex offender registration and notification. With both federal and state issues with unifying SORNA this presents further problems of newer laws being established and being tied with SORNA such as IML. The cases of Nichols v. United States, United States v. Nichols and United States v. Lunsford shed light that there are issues with uniformity of interpreting statutes contained in SORNA. The Court decided Nichols did not have to maintain registration with the state of Kansas prior to his leaving for the Philippines. However, the case of Nichols and other case law gleaned from the fact that the courts interpreted the statutes within SORNA in two different ways which resulted in a circuit split. The case law has since been corrected, but lack of uniformity in clarification of the law still remains, which Congress should address. At the same time, as viewed with the state of Kansas being a SORNA compliant state, SORNA provided the state with baseline requirements, but as seen with the case of Nichols, Kansas was able to adhere to SORNA requirements with its state’s laws, but the state determined one meaning of the law, whereas, the Court determined another. Therefore, there should be more clarification to SORNA for further federal and state implementation of the law to bring more cohesiveness within the system.
Corroboration with federal and state with pursuing furtherance of sex offender registration and notification would benefit with a review of prior Acts of Congress in order to glean effective sex offender registration law to establish a unified directive for federal and state entities. Congress recognizes states have their own sex offender registration and notification laws, but in establishing SORNA, Congress also recognized that state’s systems are not uniform with efforts regarding sex offender registration and notification as seen with non-compliant states. This same lack of uniformity also applies to juvenile offenders compared to issues with non-compliant states with SORNA and the Federal Juvenile Delinquency Act. At the same time, with SORNA being presented to an international standard as Congress wishes to do with IML, a re-evaluation of funding programs would provide better incentive for states, but also allow the government to be further aware of states not complying. Unification of SORNA with federal and state involves an in-depth evaluation with there coming into existence a more cooperative effort between DOJ, DHS and ICE with IML. The Nichols case prompted for further legislation to be initiated with convicted sex offenders in the U.S. relocating abroad. Congress believes IML is important as well as SORNA with the international community. Both SORNA and IML are a realized future with sex offender registration and notification requirements. However, the fact remains, the ambiguities and discrepancies with SORNA allowing for lack of uniformity with the law should be revisited by Congress to narrow the divide that remains with SORNA to strengthen the law. A nationwide directive for both federal and state entities with SORNA allows for further oversight and state compliance initiatives. Also, further implementation of SORNA once amendments are established will only further assist law enforcement efforts in tracking sexual predators. Sex crimes against children do not only affect U.S. borders, but transcends all boundaries. Congress, in furthering sex offender registration and notification laws such as
SORNA and IML push towards a unified effort. However, sex offenders, like Nichols, present an uphill battle in establishing a unified system, but also reveal weakness in it. Amending the law as issues arise is only a temporary improvement. To keep the innocent safe from sexual predators both in the U.S. and soon the international community will require further examination of SORNA to strengthen law to safeguard citizens from convicted sexual predators that have committed crimes against the innocent, against the nation’s children.
References


42 U.S.C.S. § 16935 (b) (2016).


United States v. Murphy, 664 F. 3d 798 (2011).


Andrew D. Flor, Major, Sex Offender Registration Laws and the Uniform Code of Military Justice: A Primer (2009).

Bob Egelko, Judge Tosses Out Challenge to Sex Offender Passport Law, The San Francisco Gate, April 13, 2016.


Christopher King, Sex Offender Registration and Notification Laws at Home and Abroad: Is an International Megan’s Law Good Policy, 15 CUNY L. Rev. 117 (2011).

Corey Friedman, Scarlett Letter for Sex Offenders (2012).

Corey Rayburn Yung, One of These Laws is not Like the Others: Why the Federal Sex Offender Registration and Notification Act Raises New Constitutional Questions, 46 Harv. J. on Legis. 369 (2009).


Sarah Hammond, Sex Offender Law Strains States, State Legislatures, June 2010.


