
Nos. 25-1413 / 25-1414

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARY DOE; JOHN DOE A; JOHN DOE B; JOHN DOE C; JOHN DOE
D; JOHN DOE E; JOHN DOE G; JOHN DOE H; MARY ROE,

Plaintiffs-Appellants Cross-Appellees,

v.

GRETCHEN WHITMER, Governor of the State of Michigan; JAMES
GRADY, II, Colonel,

Defendants-Appellees Cross-Appellants.

Appeal from the United States District Court
Eastern District of Michigan, Southern Division
Honorable Mark A. Goldsmith

**DEFENDANTS-APPELLEES AND CROSS-APPELLANTS
REPLY BRIEF – FOURTH BRIEF**

Eric Jamison
Assistant Attorney General
Counsel of Record
Attorney for Defendants -
Appellees and Cross Appellants
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573

Dated: January 12, 2026

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	ii
Table of Authorities.....	iii
Introduction.....	1
Argument.....	5
I. 2021 SORA does not violate the ex post facto clause.....	5
A. SORNA and SORA are the same.....	6
B. The 2021 SORA removed the unconstitutional provisions identified by this Court in <i>Does #1-5</i>	7
C. The <i>Mendoza</i> factors weigh in favor of a finding that SORA 2021 is not punishment.....	9
II. Sex offenders with non-Michigan convictions are not entitled to a separate judicial hearing as a matter of course before having to register in Michigan.....	10
Conclusion and Relief Requested.....	13
Certificate of Compliance.....	14
Certificate of Service	15
Designation of Relevant District Court Documents.....	16

TABLE OF AUTHORITIES

Page

Cases

<i>Conn. Dep't of Pub. Safety,</i> 538 U.S. 1 (2003)	11
<i>Doe v. Lee,</i> 102 F.4th 330 (6th Cir. 2024)	5, 8
<i>Doe v. Snyder,</i> 606 F.Supp.3d 608 (E.D. Mich., 2021)	9
<i>Does #1-5 v. Snyder,</i> 834 F.3d 696 (6th Cir. 2016)	4, 7, 8
<i>Does v. Whitmer,</i> 69 F.4th 300 (6th Cir. 2023)	9
<i>Does v. Whitmer,</i> 751 F. Supp. 3d 761 (E.D. Mich. 2024)	6, 11
<i>In re Harder,</i> No. 368645, 2025 WL 825907 (Mich. Ct. App. Mar. 14, 2025)	12
<i>Meza v. Livingston,</i> 607 F.3d 392 (5th Cir. 2010)	11
<i>People v. Kardasz,</i> __ N.W.3d __, No. 165008, 2025 WL 3691966 (Mich. Dec. 19, 2025)	9
<i>Smith v. Doe,</i> 538 U.S. 84 (2003)	10
<i>Willman v. Attorney General of United States,</i> 972 F.3d 819 (6th Cir. 2020)	6, 7

Statutes

M.C. L. § 28.725(2)(a)	7
M.C. L. § 28.728(3)(e)	7
M.C.L. § 28.721a	1
M.C.L. § 28.722(r)(xi), (t)(xii), (v)(x)	10
M.C.L. § 28.723(1)(a)-(c), (e)	10
M.C.L. § 28.723(1)(d)	10
M.C.L. § 28.725(2)	8
M.C.L. § 28.733-736	7
M.C.L. § 600.631	12

Constitutional Provision

Mich. Const. of 1963, art. VI § 28	12
--	----

INTRODUCTION

Plaintiffs are asking the Court to decide in their favor based on a distorted factual record, which is largely beside the point.

Plaintiffs continue to focus on arbitrary determinations of “risk” based *recidivism* data – whether someone gets caught and *convicted* of another sex offense – rather than the purpose of the Michigan statute – to protect “against the *commission* of future criminal sexual acts by convicted sex offenders” and to allow residents to “monitor those persons who pose such a *potential* danger.” M.C.L. § 28.721a (emphasis added); (Pl’s Br., Doc. 74, pp. 17–19¹; Def’s response to Pl’s facts, R. 129-2, Page ID ## 7557–61.)

It is undisputed that actual sexual reoffense rates are very difficult to determine, and it is undisputed that nearly all sexual offenses do not lead to a conviction – which means that any conclusions or “risk” calculations based solely on *reconviction* data – is based on a tiny sliver of the actual offenses committed. What is more, Plaintiffs continue to use recidivism and reoffense interchangeably, when they

¹ Defendants note that the pagination in their references to the record are from the Sixth Circuit’s pagination imprinted on the top of each page, rather than the pagination at the bottom of each page.

are not, which distorts the facts. (Pl’s Br., Doc. 74, p. 17; Def’s response to Pl’s facts, R. 129-2, Page ID # 7558.)

Surprisingly, Plaintiffs continue to fixate on the speculative notion that between 17,000 and 19,000 registered sex offenders are no more likely to commit another sex offense than someone who is not on the registry. (Pl’s Br., Doc. 74, p. 36.) One only needs to review the objective facts underlying most of the crimes that led to someone being included on the registry to discard the notion that an adult that sexually assaults a child over a period of years, and then spends years in prison, has the same likelihood as any other member of the public to commit another sex offense. (Def’s response to Pl’s facts, R. 129-2, Page ID ## 7297–7301, 7315–17.)

Plaintiffs interlace facts that are not relevant and are based on the old law – SORA subjects “registrants to police sweeps at home/work.” (*Id.* at 18.) *First*, SORA itself does not require police sweeps. If law enforcement agencies exercise their discretion to conduct compliance checks, that falls within their discretionary policing powers. *Second*, there is no information in the record to support the suggestion that registrants have been subject to police sweeps under the 2021

SORA. In fact, the record demonstrates that no sweeps were conducted by MSP under the 2021 SORA, which is markedly different than the old 2011 SORA that had geographic exclusions zones that are no longer present in the new law. (Def's response to Pl's facts, R. 129-2, Page ID ## 7382–84.)

Plaintiffs continue to point to *Does #1-5* as the proper legal framework and stress that the law must be looked at as a whole, but the emphasis on *Does #1-5* is incomplete for two reasons. *First*, the analysis in *Does #1-5* examined the old 2011 law, which despite Plaintiffs' invitation to ignore this Court's subsequent opinions that clarified the scope of what was decided in *Does #1-5*, the new law is different. And the new law removed the provisions that this Court found to be unconstitutional. As Plaintiffs point out, it must be looked at as a whole, but it's the *new* law that must be looked at as a whole. *Second*, Plaintiffs seem to disregard this Court's other analysis in *Does #1-5* that remains relevant in examining the new law. "[S]tates are free to pass retroactive sex-offender registry laws," and annual/quarterly registration, updating personal characteristics, notifying authorities when a registrant moves or buys a new car, maintaining a public

website with names, addresses, photos, license numbers, places of employment, dates of birth, crimes of conviction, length of sentences and compliance information do not offend the ex post facto clause. *Does #1-5 v. Snyder*, 834 F.3d 696, 700, 705 (6th Cir. 2016).

Finally, Plaintiffs suggest that part of the reason the new 2021 SORA is unconstitutional is because there is no “possibility of removal *ever*.” (emphasis in original). (Pl’s Br., Doc. 74, p. 12.) Not so. The statute provides approximately 12% of registrants the opportunity to seek removal from the registry if they meet the statutory requirements. (Def’s response to Pl’s facts, R. 129-2, Page ID # 7470.) What is more, many of the lead plaintiffs have obtained relief through the judicial process – they are no longer on the public registry. (*Id.* at ## 7241, 7245, 7247.)

Despite the factual gymnastics presented by Plaintiffs, it does not change the outcome – the Michigan Legislature has the authority to make line-drawing decisions about who belongs on its sex-offender registry, and for what duration. This authority is supported by *Smith*, *Does #1-5*, and *Willman*.

ARGUMENT

I. 2021 SORA does not violate the ex post facto clause.

Plaintiffs want it both ways. They want this Court to rely on the reasoning in *Does #1-5* related to finding certain provisions of the old 2011 SORA unconstitutional, but they also want this Court to review the new 2021 SORA as a whole. (Pl's Br., Doc.74, pp. 16, 20–21.) The new 2021 SORA should be examined as a whole and in any event, the 2021 SORA removes the provisions that this Court found unconstitutional in *Does #1-5* – the exclusionary zones and in-person reporting for minor changes to information. *Doe v. Lee*, 102 F.4th 330, 337 (6th Cir. 2024).

This Court has already essentially reviewed SORA as a whole in *Willman* and concluded that SORNA, which is the same law as the Michigan SORA in all material respects, is not an ex post facto violation. (Comparison graphic, R. 41-2, Page ID ## 1385–89; Comparison chart, R. 173-2, Page ID ## 9231–9291.)

Curiously, Plaintiffs suggest that Defendants have waived their appeal on Count II. (Pl's Br., Doc. 74, p. 48.) They are splitting hairs. Both Count I and Count II are ex post facto challenges, and defendants clearly argued why the 2021 SORA was not an ex post facto violation.

Defendants addressed the claims together, just as the district court addressed them together in its opinion and grant of relief in the final amended judgment. The claims rise and fall together. *Does v. Whitmer*, 751 F. Supp. 3d 761, 784–795 (E.D. Mich. 2024); Am. J., R. 177, Page ID # 9379) (“Counts I and II – Ex Post Facto Challenges”); Def’s Br., Doc. 70, pp. 26-53.

A. SORNA and SORA are the same.

This Court found that SORNA, the federal law after which the Michigan SORA is modeled, is not an ex post facto violation. *Willman v. Attorney General of United States*, 972 F.3d 819, 824 (6th Cir. 2020).

Michigan’s SORA is undistinguishable from SORNA. Plaintiffs unconvincingly suggest that some granular differences in the two laws mean that *Willman* should be discarded. (Pl’s Br., Doc. 74, pp. 39–42.) Not so. The core components of the two laws are the same.

- Both laws are retroactive, including lifetime registration for more serious sexual offenders, i.e., Tier III offenders;
- Both laws require reporting nearly identical information;
- Both laws require in-person reporting, including reporting changes to certain kinds of personal information;

- Both laws require regular reporting at the same frequency (quarterly, bi-annually, or annually); and
- Both laws impose criminal penalties for failing to register.

(Comparison graphic, R. 41-2, Page ID # 1385–89; Comparison chart, R. 173-2, Page ID # 9231–9291.)

There is no daylight between the two laws, and *Willman* is controlling.

B. The 2021 SORA removed the unconstitutional provisions identified by this Court in *Does #1-5*.

In *Does #1-5*, this Court found that the exclusionary zones and the in-person reporting requirements for minor changes in personal information violated the ex post facto clause. *Does #1-5*, 834 F.3d at 706. It did not discuss the retroactive extension of reporting requirements at all. (*Id.*)

The 2021 SORA repealed the exclusionary zones; removed the in-person reporting requirements for vehicle information, email addresses, internet identifiers, and telephone numbers; removed the registration requirement for the vast majority of juvenile offenders; removed the requirement for the remaining juvenile offenders to be listed on the

public registry; and eliminated the public posting of tier information. 2020 P.A. 295; M.C.L. § 28.733-736; § 28.725(2)(a); and § 28.728(3)(e).

Under the 2011 SORA, registrants had “to appear in person before law enforcement to report even minor changes to their information.”

Does #1-5, 834 F.3d at 705. 2021 SORA allows registrants to report minor changes to personal information by mail. M.C.L. § 28.725(2).²

Despite some uncertainty in the district courts regarding the scope of the holding in *Does #1-5*, this Court recently explained that the *Does #1-5* opinion only enjoined enforcement of two amendments to 2011 SORA – the exclusionary zones and the requirement that “all registrants to appear in-person ‘immediately’ to update information such as new vehicles or ‘internet identifiers’ (e.g., a new email account).” *Lee*, 102 F.4th at 337. There is no dispute that those minor updates can now be made by mail.

The Michigan Legislature amended SORA to address the provisions that courts found unconstitutional. “The new SORA became

² See Michigan State Police, Forms, Sex Offender Registry, RI-004A – Michigan Sex Offender Registry Mail-In Update, <https://www.michigan.gov/msp/forms-stats/forms> (last accessed Jamaury 9, 2026).

effective March 24, 2021, and *all parties acknowledge that the new SORA removes or modifies all provisions that this court found to be unconstitutional* in its February 14, 202[0] opinion in *Does II*.” *Doe v. Snyder*, 606 F.Supp.3d 608, 613 (E.D. Mich., 2021) (emphasis added). This Court recently noted that 2021 SORA “removed or modified the provisions that *Does II* had declared unconstitutional.” *Does v. Whitmer*, 69 F.4th 300, 303 (6th Cir. 2023).

C. The *Mendoza* factors weigh in favor of a finding that SORA 2021 is not punishment.

Defendants provided a detailed analysis of the *Mendoza* factors in their earlier brief and do not rehash their arguments here. (Def’s Br., Doc. 70, pp 34–53). Contrary to Plaintiffs’ assertions, this analysis is equally applicable to both Counts I and II and explains why Michigan’s 2021 SORA does not violate the ex post facto clause.³ Given that

³ The Michigan Supreme Court recently applied the *Mendoza* factors to SORA 2021 in the context of a cruel or unusual punishment challenge and found that it was punishment. *People v. Kardasz*, __ N.W.3d __, No. 165008, 2025 WL 3691966, at *1 (Mich. Dec. 19, 2025). However, the court made clear that it was not ruling on an ex post facto challenge to SORA 2021. (*Id.* at *1 n. 2) (“Therefore, the case before us today does not include, and we do not decide, an ex post facto challenge to the 2021 SORA.”)

Michigan’s 2021 SORA is not punishment and thus may apply retroactively, any requirement to register for life would also not violate the ex post facto clause, just as for the Alaska registry in *Smith v. Doe*. See 538 U.S. 84, 90 (2003) (“If he was convicted of an aggravated sex offense or of two or more sex offenses, he must register for life and verify the information quarterly. §§ 12.63.010(d)(2), 12.63.020(a)(1).”).

II. Sex offenders with non-Michigan convictions are not entitled to a separate judicial hearing as a matter of course before having to register in Michigan.

Sex offenders with non-Michigan convictions must register in Michigan under either M.C.L. § 28.723(1)(d), and/or under M.C.L. § 28.723(1)(a)-(c), (e) if the out-of-state conviction is “substantially similar” to a Michigan offense. M.C.L. § 28.722(r)(xi), (t)(xii), (v)(x). These provisions provide independent basis for registration. Even if there is no “substantially similar” offense under Michigan law, a person with a non-Michigan conviction must still register in Michigan based on the conviction from the non-Michigan jurisdiction.

Plaintiffs claim this violates due process but failed to explain why the process they were afforded when they were originally convicted is

insufficient, or why the process provided under the Michigan constitution and by statute are insufficient. (Pl’s Br., Doc. 74, pp 55–60.) They did not do so because the processes are sufficient.

“When an individual is convicted of a sex offense, no further process is due before imposing sex offender conditions.” *Meza v. Livingston*, 607 F.3d 392, 401 (5th Cir. 2010); *see also Conn. Dep’t of Pub. Safety*, 538 U.S. 1, 7–8 (2003). Indeed, an “individual ‘convicted of a sex crime in a prior adversarial setting, whether as the result of a bench trial, jury trial, or plea agreement, has received the minimum protections required by due process.’” *Meza*, 607 F.3d at 401 (quoting *Neal v. Shimoda*, 131 F.3d 818, 831 (9th Cir. 1997)). In contrast, an individual who has never been convicted of a sex crime, and who has neither stipulated nor judicially admitted to such facts of an offense is owed procedural due process before sex offender conditions may attach. *Meza*, 607 F.3d at 401–02.

SORA tasks MSP with determining the registration obligations of individuals who reside, work, or attend school in Michigan with convictions from non-Michigan jurisdictions. *Does*, 751 F. Supp. 3d at 818. After making that determination, MSP sends the sex offender a

letter identifying what tier of registrant they will be in Michigan. The letter includes an Explanation of Duties form that explains what and how often they have to report to law enforcement to verify their information. (Morris Dep, R. 126-8, Page ID # 6028; n. 4.)

Under the Michigan Constitution and by statute, individuals have the right to seek judicial review of agency decisions. *See Mich. Const. of 1963, art. VI § 28* (“All final decision, findings, ruling and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law”); and *see M.C.L. § 600.631* (providing for an appeal from agency decisions.) Registrants have brought challenges to their registration obligations, including many of the lead Plaintiffs in this lawsuit who are no longer listed on the public registry and others in state court proceedings. *See, e.g., In re Harder*, No. 368645, 2025 WL 825907 (Mich. Ct. App. Mar. 14, 2025).

Plaintiffs already have a process available to them to review MSP’s determinations regarding their obligations in Michigan based on convictions from other jurisdictions.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above and in their earlier brief, Appellees-Defendants they respectfully request that this Court affirm the district court decisions related to the claims for individualized review in Count III, the claims regarding rights to petition for removal in Count IV, and the vagueness claims in Count VIII.

As Cross Appellants-Defendants they respectfully request that this Court reverse the district court decisions related to the ex post facto claims in Counts I & II and claim regarding sex offenders with non-Michigan convictions in Count XI.

Respectfully submitted,

/s/ Eric Jamison

Assistant Attorney General

Counsel of Record

Attorney for Defendants -

Appellees and Cross Appellants

State Operations Division

P.O. Box 30754

Lansing, MI 48909

(517) 335-7573

jamisone@michigan.gov

Dated: January 12, 2026

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because, excluding the part of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains no more than 6,500 words. This document contains 2,483 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word 2013 in 14-point Century Schoolbook.

/s/ Eric Jamison

Assistant Attorney General

Counsel of Record

Attorney for Defendants -

Appellees and Cross Appellants

State Operations Division

P.O. Box 30754

Lansing, MI 48909

(517) 335-7573

jamisone@michigan.gov

CERTIFICATE OF SERVICE

I certify that on January 12, 2026, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record (designated below).

/s/ Eric Jamison
Assistant Attorney General
Counsel of Record
Attorney for Defendants -
Appellees and Cross Appellants
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
jamisone@michigan.gov

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Defendants-Appellees and Cross Appellants, per Sixth Circuit

Rule 28(a), 28(a)(1)-(2), 30(b), hereby designated the following portions
of the record on appeal:

Description of Entry	Date	Record Entry No.	Page ID No. Range
Amended Judgment	04/22/2025	R. 177	9377–92
Comparison Graphic	05/31/2022	R. 41-2	1385–89
Comparison Chart	04/11/2025	R. 173-2	9231–91
SORA update form	10/02/2023	R. 126-18	6210–12
Jegla Affidavit	11/21/2023	R. 129-14	7691-93
John Doe G Dep Transcript	10/02/2023	R. 125-9	5182-5203
John Doe F Dep Transcript	10/02/2023	R. 125-8	5158-81
John Doe D Dep Transcript	10/02/2023	R. 125-7	5140-57
Mary Doe Dep Transcript	10/02/2023	R. 125-10	5204-27
Mary Roe Dep Transcript	10/02/2023	R. 125-11	5228-49
Starkey Declaration	10/02/2023	R. 128-23	7104-05
Dare Affidavit	11/21/2023	R. 129-4	7570-74
Bennetts Declaration	11/21/2023	R. 129-5	7575-82
Dr. Goodman Report	10/02/2023	R. 128-20	7012-50

Dr. Hanson Dep Transcript	10/02/2023	R. 125-3	5017-78
Dr. Turner Report	10/02/2023	R. 128-22	7079-7103
Dr. Salter Report	10/02/2023	R. 128-21	7051-58
Morris Dep Transcript	10/02/2023	R. 126-8	6000-66
Def's Statement of Material Facts	11/21/2023	R. 129-1	7205-29
M.R. Dep Transcript	10/02/2023	R. 125-15	5336-56
M.R. Affidavit and Plea	11/21/2023	R. 129-11	7649-72
Summary of various offenses	11/21/2023	R. 129-10	7601-48
Def's Response to Pl's Statement of Material Facts	11/21/2023	R. 129-2	7230-7568
Seldon Declaration	11/21/2023	R. 129-18	7752-7755
Prout Declaration	11/21/2023	R. 129-15	7694-7711
Dr. Lovell Report	11/21/2023	R. 128-19	6982-7011

2022-0341402-B