

**Sex Offender Registration Law Update #30**  
**November 16, 2009**

**1. State v. Dipiazza, 2009 Mich. App. LEXIS 2288 (Nov. 3, 2009)**

DePiazza, who was 18 at the time of the offense, was convicted of having consensual sex with a 14 year-old girl. He was given a deferred disposition, was required to register as a sex offender, completed a term of probation, and his case was later dismissed. The court found that requiring him to continue to register as a sex offender amounted to Cruel and Unusual Punishment under the Michigan Constitution, and removed his requirement to register.

**2. U.S. v. Cain, 2009 U.S. App. LEXIS 22436 (6<sup>th</sup> Cir., Oct. 13, 2009)**

- **18 U.S.C. §2250**
- **Retroactivity Regulation enacted in violation of APA**

Cain was convicted of his underlying sex offense prior to the enactment of SORNA. SORNA unambiguously delegated to the Attorney General (in 42 U.S.C. § 16913(d)) the authority to determine whether or not SORNA applied to him. Because the retroactivity regulation was not issued in compliance with the notice and comment and publication requirements of the APA as required, his indictment must be dismissed.

**3. In re: Shaquille O’Neal B., 2009 S.C. LEXIS 502 (Oct. 12, 2009)**

- **Juvenile registration**
- **Offenses not sufficiently similar**

The juvenile in this case was convicted of a misdemeanor offense of “indecent liberties between children” in North Carolina, and subsequently moved to South Carolina. South Carolina sought to register him as a sex offender. However, his offense of conviction was not sufficiently similar to the most comparable South Carolina offense (lewd act upon a child under sixteen) so as to require registration.

**4. U.S. v. King, 2009 U.S. Dist. LEXIS 94582 (W.D. Okla. Oct. 9, 2009)**

- **Federal Requirement to Register**
- **State Residency Restrictions**

King was a homeless sex offender that contended he could not find a residence in a permissible area, and thus did not register as a sex offender, because of a residency restriction law in Oklahoma. He argued that Oklahoma’s 2,000 foot radius ban conflicts significantly with SORNA and violated the supremacy clause of the U.S. Constitution. The court rejected his

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arguments, holding that the “mere fact it is extremely difficult to comply with both laws...does not render it impossible to comply with both laws.”

**5. U.S. v. Arms, 2009 U.S. App. LEXIS 22037 (5<sup>th</sup> Cir. Oct. 7, 2009)**

- **Federal Court determination of state requirement to register**

Arms was on probation for federal drug offenses, and the court modified his probation terms to require registration as a sex offender based on two state convictions for indecent exposure, both occurring on December 4, 2002. The court assumed that Arms was not required to register by SORNA, yet interpreted Texas authority (statutory and case law) and concluded he would be required to register. This determination was one appropriately made, as a federal court “has the power to add a state law requirement to a federal defendant’s terms of probation.”

**6. Commonwealth v. Baker, 2009 Ky. LEXIS 233 (Oct. 1, 2009)**

- **Residency Restrictions**
- **Can not be applied retroactively**

Applying the *Mendoza-Martinez* factors, the court held that Kentucky’s statewide residency restriction law was punitive, not civil, and may not be applied to any person who committed their crimes prior to the effective date of the law.

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