

CASE NOTE
UNITED STATES V. JUVENILE MALE: EVALUATION OF THE
RETROACTIVE APPLICATION OF SEX OFFENDER REGISTRATION
LAWS TO FORMER JUVENILE OFFENDERS

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INTRODUCTION

Six-year-old Amanda Wengert was kidnapped from her family's home, sexually assaulted and murdered by her nineteen-year-old neighbor and family friend, Kevin Aquino.¹ When Kevin was 17, and still a juvenile under New Jersey law, he admitted to sexually molesting three young children and was sentenced to a year's probation and counseling.² Like most juvenile court cases, the proceedings were private, and only Kevin's family knew about his past offenses.³ This horrific event left everyone thinking that something had to change.⁴

For over a decade, every state in the United States has maintained some form of sex offender registration and notification law.⁵ The primary goal of sex offender registries is to track convicted sex offenders and make their personal information available to the public in order to prevent further victimization.⁶ Originally, juvenile sex offenders were subject to registration and notification requirements only if they were transferred out of the juvenile justice system and convicted as an adult.

More recently, however, there has been a movement to place all juveniles convicted of a sex offense on sex offender registries. At least thirty-two states have registration laws for juveniles under the age of eighteen.⁷ Twenty-two of those

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¹ Erik Eckholm, *The Nation*; *When Does a Young Offender Lose the Right to Privacy?*, N.Y. TIMES, Mar. 27, 1994, § 4, at 4, available at <http://www.nytimes.com/1994/03/27/weekinreview/the-nation-when-does-a-young-offender-lose-the-right-to-privacy.html?scp=2&sq=when%20does%20a%20young%20offender&st=cse>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Smith v. Doe*, 538 U.S. 84, 89-90 (2003); see also *People v. Ross*, 646 N.Y.S.2d 249, 250 n.1 (N.Y. Sup. Ct. 1996) (listing sex offender registration statutes in all fifty states and dates of enactment).

⁶ See, e.g., Adam Walsh Protection and Safety Act, 42 U.S.C. § 16901 (2006).

⁷ National Center on Sexual Behavior of Youth, *Sex Offender Registration Laws*, <http://www.ncsby.org/pages/registry.htm> (last visited Oct. 9, 2009).

states have community notification requirements for juveniles, and many allow for removal from the registry if the juvenile can demonstrate successful rehabilitation.⁸

With the passage of the Adam Walsh Child Protection and Safety Act (AWA) in 2006, federal law now mandates that certain juvenile sex offenders be included with adult offenders in a national sex offender registry. The Sex Offender Registration and Notification Act (SORNA), a provision of the AWA, mandates that juveniles age fourteen or older adjudicated for certain sex-based offenses in juvenile court must register for a period of twenty-five years to life with a national sex offender registry.⁹ States that fail to comply with AWA, including the juvenile registration requirements, will forfeit federal funding.¹⁰ There was considerable debate in the Senate regarding whether SORNA should apply to juveniles at all, and if so, to what extent.¹¹ The result appears to be a compromise.¹²

Many sex offender registration laws, including SORNA, require retroactive registration by adults and juveniles who were convicted before the statute's effective date. Retroactive registration requirements have been challenged as violating the United States Constitution's Ex Post Facto Clause; however, as of 2003, the United States Supreme Court has held that laws requiring retroactive registration are constitutional.¹³ While the Court did not distinguish between adult and juvenile sex offenders, the statute was challenged by adults, and many of the justifications for the constitutionality of the statute included factors that are applicable to the adult criminal justice system. Recently, in a case of first impression, the Ninth Circuit held that retroactive application of SORNA's juvenile registration provision was punitive, and thus violated the Ex Post Facto Clause.¹⁴

The objective of this note is to analyze *United States v. Juvenile Male*, the recent Ninth Circuit case, and the constitutionality of retroactive application of sex offender registry laws covering individuals who were adjudicated as juveniles. Part II of this note identifies unique aspects of the juvenile adjudication system, including the federal statutory framework governing juvenile proceedings. Part III examines juvenile registration requirements under SORNA. Next, Part IV evaluates the United States Supreme Court jurisprudence on Ex Post Facto

⁸ Amanda Petteruti & Nastassia Walsh, *Registering Harm: How Sex Offense Registries Fail Youth Communities*, Justice Policy Institute 3 (2008), <http://www.justicepolicy.org/content-hmID=1811&smID=1581&ssmID=80.htm> (follow "Registering Harm: How Sex Offense Registries Fail Youth Communities" hyperlink) (last visited Oct. 20, 2009).

⁹ 42 U.S.C. §16911(8) (2008) (stating that juveniles are only included in the registry "if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse . . .").

¹⁰ Petteruti & Walsh, *supra* note 8, at 9 (history of sex offender registration laws).

¹¹ *United States v. Juvenile Male*, 581 F.3d 977, 991 (9th Cir. 2009) (citing 152 CONG. REC. S8012-02, S8027 (daily ed. July 20, 2006) (statement of Sen. Leahy)).

¹² *Id.*

¹³ *Smith v. Doe*, 538 U.S. 84, 106 (2003).

¹⁴ *Juvenile Male*, 581 F.3d at 979.

violations. Part V discusses *United States v. Juvenile Male* and the constitutional implications of SORNA. Finally, Part VI summarizes practical solutions by proposing a case-by-case approach.

I. THE ROLE OF THE JUVENILE COURT SYSTEM

The United States legal system historically has had two distinctive systems of justice; one for adults and another for juveniles.¹⁵ The criminal justice system that applies to adults is public in nature. As the Supreme Court has explained, “[t]ransparency is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused.”¹⁶ In contrast, the juvenile system has historically taken place behind closed doors.¹⁷ Private proceedings fit with the juvenile court philosophy that juveniles who have committed criminal acts should not be punished, but rather treated and rehabilitated.¹⁸ The Tenth Circuit has stated that the juvenile system is designed “to remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.”¹⁹

Juveniles are treated differently than adults for a myriad of reasons. In 2005, the United States Supreme Court noted that there are “general differences between juveniles under 18 and adults”²⁰ Justice Kennedy, writing for the majority in *Roper v. Simmons*, recognized the lack of maturity and responsibility that prohibits those less than eighteen years of age from marrying without parental consent, serving on juries, or voting.²¹ The Court also recognized “that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” and that their personality traits are “more transitory, less fixed.”²² Based on these differences between juveniles and adults, the Court declared “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”²³

¹⁵ See MICHAEL A. CORRIERO, *JUDGING CHILDREN AS CHILDREN: A PROPOSAL FOR A JUVENILE JUSTICE SYSTEM* 80-83 (Temple Univ. Press 2006) (discussing the history of the juvenile justice system in America).

¹⁶ *Smith*, 538 U.S. at 99.

¹⁷ See Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-42 (1994) [hereinafter FJDA]; see also *United States v. Doe*, 94 F.3d 532, 536 (9th Cir. 1996) (noting that the purpose of the FJDA is to remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation).

¹⁸ See CORRIERO, *supra* note 15, at 48-49.

¹⁹ *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990).

²⁰ *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (holding that it is unconstitutional to impose capital punishment for crimes committed while under the age of eighteen).

²¹ *Id.*

²² *Id.* at 569-70.

²³ *Id.* at 570.

Based on the unique characteristics of juveniles, the Federal Juvenile Delinquency Act (FJDA), enacted in 1938, outlines a different set of procedures to govern federal juvenile adjudications.²⁴ The FJDA's underlying purpose is "to assist our youth in becoming productive members of our society" by focusing on rehabilitation, not punishment.²⁵ Accordingly, the FJDA establishes a number of confidentiality provisions that are essential to the Act's overarching rehabilitative purpose.²⁶ Specifically, juvenile courts are prohibited from disclosing any information or records during juvenile delinquency proceedings to anyone other than counsel for the juvenile and the government.²⁷ The FJDA also mandates that information about juvenile delinquency proceedings "be safeguarded from disclosure to unauthorized persons" after the adjudication process.²⁸ This prohibits the juvenile record from being released when the information is related to an application for employment, license, bonding, or any civil right or privilege.²⁹ More importantly, "[u]nless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding."³⁰ As demonstrated below, these privacy safeguards often directly conflict with sex offender registry requirements.

II. JUVENILE SEX OFFENDERS AND SORNA

The number of sex offenses perpetrated by juveniles has been a growing concern in the United States over the past twenty years. It is currently estimated that juvenile offenders account for one-fifth of all rapes and almost one-half of all cases of child molestation committed each year.³¹ Adolescent males ages thirteen to seventeen make up the vast majority of juvenile offenders committing these rapes and child molestations.³² Policymakers have responded to these facts by requiring juveniles to register as sex offenders and making these registries available to the public in online databases.³³

²⁴ FJDA, 18 U.S.C.A. §§ 5031-42 (1994).

²⁵ *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 367 (D.C. Cir. 1990) (quoting S. Rep. No. 1011, 93d Cong., 2d Sess. 22 U.S. Code Cong. & Admin. News 1974 p. 1267 (1974)).

²⁶ FJDA, 18 U.S.C. § 5038(a) (1994); *see also* *United States v. Three Juveniles*, 61 F.3d 86, 88 (1st Cir. 1995).

²⁷ 18 U.S.C. § 5038(c).

²⁸ *Id.* at § 5038(a).

²⁹ *Id.*

³⁰ *Id.* at § 5038(e).

³¹ Center for Sex Offender Management, U.S. Department of Justice, *Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches and Management Practices* (1999), available at <http://www.csom.org/pubs/juvbrf10.html>.

³² *Id.*

³³ *See* Petteruti & Walsh, *supra* note 8.

While the number of juvenile sex offenders is alarming, there is a growing body of research demonstrating significant differences between juvenile offenders and their adult counterparts. The Coalition for Juvenile Justice, the Justice Policy Institute, and the National Juvenile Justice Network have compiled numerous studies demonstrating that juvenile sex offenders have much lower recidivism rates than adult offenders.³⁴ Furthermore, juveniles are less predatory, less likely to engage in aggressive behaviors, and are more amenable to successful treatment.³⁵ However, policies regarding the treatment of juvenile sex offenders often fail to take these differences into account. Currently, thirty-two states have registration laws for juveniles under the age of eighteen, seventeen states require community notification, and many allow for periodic re-assessments to determine whether the juvenile has been rehabilitated.³⁶

In 2006, Congress enacted SORNA, as part of the AWA, in response to “vicious attacks by violent predators,” and to “protect the public from sex offenders and offenders against children.”³⁷ SORNA establishes a national registration of sex offenders, and requires anyone convicted of specified crimes to register with the national sex offender registry.³⁸ SORNA mandates that juveniles ages fourteen or older who were adjudicated for certain sex offenses in juvenile court register for a period of twenty-five years to life.³⁹ SORNA imposes additional burdens by requiring community notification and prohibiting any process that allows a state to eventually remove a rehabilitated youth from the registry.

Congress delegated to the United States Attorney General the decision whether SORNA should apply retroactively to sex offenders who were convicted before the statute became effective.⁴⁰ The Attorney General created a regulation that renders SORNA applicable to “all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.”⁴¹ In doing so, it appears that the Attorney General neglected to consider

³⁴ See Justice Policy Institute, Youth Who Commit Sex Offenses, Facts and Fiction, http://njjn.org/media/resources/public/resource_841.pdf (last visited Nov. 1, 2009); see also Coalition for Juvenile Justice, Remove Federal Juvenile Sex Offender Requirements (Adam Walsh Act), http://www.juvjustice.org/position_10.html (last visited Nov. 1, 2009); Center for Sex Offender Management, *supra* note 31.

³⁵ Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 DEV. MENTAL HEALTH L. 34, 43 (2008).

³⁶ National Center on Sexual Behavior of Youth, Sex Offender Registration Laws, <http://www.ncsby.org/pages/registry.htm> (last visited Oct. 9, 2009).

³⁷ Adam Walsh Protection and Safety Act, *supra* note 6.

³⁸ *Id.* at § 16911(4)(A)(i).

³⁹ *Id.* at § 16911(8) (requiring that the offender be “14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in 18 U.S.C.A. § 2241), or was an attempt or conspiracy to commit such an offense.”).

⁴⁰ *Id.* at § 16913(d).

⁴¹ *United States v. Juvenile Male*, 581 F.3d 977, 981 (9th Cir. 2009).

any of the special circumstances of juveniles who were adjudicated as delinquent under a different and largely confidential judicial system.⁴²

III. RETROACTIVE REGISTRATION AND THE EX POST FACTO CLAUSE

There have been numerous cases challenging the constitutionality of sex offender registration laws; many of these cases specifically considered whether retroactive registration requirements violate the United States Constitution's Ex Post Facto Clause.⁴³ The Ex Post Facto Clause prohibits the government from enacting any statute or regulation that imposes retroactive punishment.⁴⁴ In 2003, the United States Supreme Court decided *Smith v. Doe*, holding that the retroactive application of Alaska's Sex Offender Registration Act did not have a punitive effect, and therefore did not violate the Ex Post Facto Clause.⁴⁵

In considering whether a law constitutes retroactive punishment forbidden by the Ex Post Facto Clause, courts first ascertain "whether the legislature meant [the statute] to establish 'civil proceedings.'"⁴⁶ If the statute is criminal and intended to impose punishment, the court looks no further and the statute is held unconstitutional. Most sex offender registration statutes including the Alaska statute at issue in *Smith v. Doe*, are considered to be civil regulatory schemes.⁴⁷ Courts further examine the statutory scheme in order to determine whether the statute is nevertheless punitive because "its effect is clearly shown to be punitive."⁴⁸ In *Smith v. Doe*, the Court determined that the purpose of the Alaskan statute was not to punish, but rather to create a civil scheme that will help protect public safety.⁴⁹ When analyzing whether a statute is punitive in effect, courts use seven factors noted in *Kennedy v. Mendoza-Martinez*.⁵⁰ Courts consider these factors to be helpful, but not dispositive in determining whether a statute has a punitive effect.⁵¹ The five factors most relevant to the Court in *Smith v. Doe* were whether, in its necessary operation, the statute: "has been regarded in our history

⁴² *Id.*

⁴³ U.S. CONST. art. I § 9, cl. 3.; *see also* *Collins v. Youngblood*, 497 U.S. 37, 45-46 (1990) ("[A]n *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed; or an additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict. . .").

⁴⁴ *Lynce v. Mathis*, 519 U.S. 433, 441 (1997) ("To fall within the *ex post facto* prohibition, a law must be retrospective"—that is, it must apply to events occurring before its enactment—and it must "[disadvantage] the offender affected by it, by [altering the definition of criminal conduct or] increasing the punishment for the crime . . ." (citations omitted)).

⁴⁵ *Smith v. Doe*, 538 U.S. 84, 92 (2003).

⁴⁶ *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)).

⁴⁷ *Id.* at 105.

⁴⁸ *Id.* at 92-93.

⁴⁹ *Id.* at 102-03.

⁵⁰ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963).

⁵¹ *Smith v. Doe*, 538 U.S. 84, 97 (2003).

and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a non-punitive purpose; or is excessive with respect to this purpose.”⁵²

The Court concluded that the statute was not punitive in effect because: (1) regulatory schemes requiring community notification are relatively new and have not been historically regarded as punitive;⁵³ (2) the statute does not impose an affirmative disability or restraint, as it does not impose a physical restraint, and the periodic update requirements do not have to be made in person;⁵⁴ (3) the statute does not promote the traditional aims of punishment simply because it might deter future crimes;⁵⁵ (4) the Act has a rational connection to a legitimate, non-punitive purpose, public safety, which is advanced by alerting the public to the risk of sex offenders in their community;⁵⁶ and (5) the statute is not excessive with respect to the Act’s purpose.⁵⁷

It should be noted that two adults challenged the statute, and many of the justifications for the constitutionality of the statute included factors that are applicable solely to the adult criminal justice system. To this end, the Court left open the question of whether a statute requiring the retroactive registration of a juvenile who was adjudicated in the juvenile system violates the Ex Post Facto Clause.

IV. UNITED STATES V. JUVENILE MALE

The Ninth Circuit is the only circuit to address the issue of whether SORNA’s juvenile registration provision may be applied retroactively to individuals adjudicated in the juvenile system.⁵⁸ The court applied the same *Mendoza-Martinez* factors as the Court in *Doe v. Smith* and determined that the retroactive application of SORNA’s provisions to former juvenile offenders was punitive in effect and, therefore, unconstitutional.⁵⁹

A. *The Background of United States v. Juvenile Male*

Starting at the age of thirteen, S.E., a juvenile male, committed non-consensual sexual acts with a ten-year-old child.⁶⁰ The sexual activity continued over the period of two years.⁶¹ S.E. was adjudicated as a juvenile delinquent under the FJDA at the age of fifteen for these acts that, if committed by an adult, would

⁵² *Id.*

⁵³ *Id.* at 97-99.

⁵⁴ *Id.* at 99-102.

⁵⁵ *Id.* at 102.

⁵⁶ *Id.* at 102-03.

⁵⁷ *Id.* at 103-05.

⁵⁸ *United States v. Juvenile Male*, 581 F.3d 977, 979 (9th Cir. 2009).

⁵⁹ *Id.* at 993.

⁶⁰ *Id.* at 979.

⁶¹ *Id.*

have constituted aggravated sexual abuse in violation of 18 U.S.C. § 2241(c). In 2005, one year before SORNA was adopted, S.E. was sentenced to a period of confinement of twenty-four months to be followed by supervised release until age twenty-one.⁶² In 2007, one year after SORNA was enacted, the district court revoked S.E.'s supervised release because S.E. failed to engage in a job search and abide by conditions of the pre-release center.⁶³ S.E. was ordered to six more months of confinement and continued supervised release until his twenty-first birthday. The court also mandated that S.E. register as a sex offender under SORNA.⁶⁴

S.E. appealed this decision, arguing that the retroactive application of SORNA's provision covering individuals who were adjudicated as juvenile delinquents violates the Ex Post Facto Clause of the United States Constitution.⁶⁵ The Ninth Circuit decided that the retroactive application of SORNA's provisions to former juvenile offenders was punitive in effect, and therefore unconstitutional.⁶⁶

B. An Abrogation of *Smith v. Doe*?

At first blush, it appears that the Ninth Circuit has not accorded *Smith v. Doe* its full precedential weight; the court used the same five *Mendoza-Martinez* factors used by the Supreme Court in *Smith v. Doe*, but reached the opposite conclusion. The court notes, however, that in light of the “two different systems of justice—one public and punitive, the other largely confidential and rehabilitative—the impact of sex offender registration and reporting upon former juvenile offenders and upon convicted adults differs in ways that we cannot ignore.”⁶⁷

When applying the first *Mendoza-Martinez* factor, the Ninth Circuit found that making juvenile adjudication information public has historically constituted punishment.⁶⁸ Juvenile adjudications have traditionally been shielded from the public, unless the juvenile is transferred to adult criminal court for punitive purposes.⁶⁹

The Ninth Circuit found the second *Mendoza-Martinez* factor the most persuasive when making its final decision to strike down the SORNA provision.⁷⁰ The court determined that SORNA's juvenile registration provision “imposes an affirmative disability or restraint” in a way that the Alaskan statute did not.⁷¹ In *Smith v. Doe*, the Court determined that the retroactive registration requirement of

⁶² *Id.* at 980.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 979.

⁶⁷ *Id.* at 984.

⁶⁸ *Id.* at 988.

⁶⁹ *Id.* at 989.

⁷⁰ *Id.* at 985.

⁷¹ *Id.*

the Alaskan statute did not impose a disability or restraint in part because the conviction was already a matter of public record.⁷² The Court compared the registration and notification provisions to “a visit to an official archive of criminal records”⁷³ With juvenile proceedings, however, the opposite is true; information about federal juvenile delinquency adjudications is carefully protected.⁷⁴ The Ninth Circuit recognized that registration would be severely damaging to former juvenile offenders because individuals who “pled true to acts of juvenile delinquency with the expectation that their adjudication would remain confidential—may decades later, be required to publicly expose that information to friends, family, colleagues, and neighbors.”⁷⁵ In addition, the Alaskan statute at issue in *Smith v. Doe* did not mandate in-person registration. SORNA, however, requires individuals to register in person four times a year for at least twenty-five years.⁷⁶

When applying the third *Mendoza-Martinez* factor, the Ninth Circuit determined that the goal of SORNA was not only to protect public safety in the future, but also to revisit past crimes, making the statute retributive.⁷⁷ Specifically, the Ninth Circuit took issue with SORNA’s legislative purpose: “in response to the vicious attacks by violent predators.”⁷⁸ Because of this retributive aim, the Ninth Circuit held that SORNA promotes traditional aims of punishment.⁷⁹

The Ninth Circuit does not give much weight either way to the fourth and fifth factors in making their ultimate decision.⁸⁰ The court notes that Congress debated whether SORNA should apply to juveniles at all and that the result appears to be a compromise.⁸¹ On the other hand, “given the low risk that former juvenile sex offenders pose to public safety and the lifetime confidentiality that most former juveniles would otherwise enjoy, retroactively applying SORNA’s juvenile registration provision is an exceptionally severe means of achieving the statute’s non-punitive goal.”⁸²

Ultimately, the Ninth Circuit found that the *Mendoza-Martinez* factors taken together provide proof that SORNA’s registration requirements applied to individuals adjudicated in the juvenile system prior to the enactment of the statute have a punitive effect. As such, the court held SORNA’s juvenile retroactive registration requirement unconstitutional in violation of the Ex Post Facto Clause of the United States Constitution.⁸³

⁷² *Smith v. Doe*, 538 U.S. 84, 102 (2003).

⁷³ *Id.* at 99.

⁷⁴ *Juvenile Male*, 581 F.3d at 986.

⁷⁵ *Id.* at 987.

⁷⁶ *Id.*; see also SORNA, 42 U.S.C.A. § 169161(3) (2006).

⁷⁷ *Juvenile Male*, 581 F.3d at 990.

⁷⁸ *Id.*; SORNA, 42 U.S.C.A. § 16901 (2006).

⁷⁹ *Juvenile Male*, 581 F.3d at 989.

⁸⁰ *Id.* at 992-93.

⁸¹ *Id.* at 991.

⁸² *Id.*

⁸³ *Id.* at 993.

C. Potential Problems with United States v. Juvenile Male

While the Ninth Circuit decision is constitutionally correct based on the differences between juveniles and adults, there are some potential policy problems. While many individuals who committed these crimes as juveniles may be productive law-abiding adults, there may be others who have not been fully rehabilitated and still pose a threat. Both Congress and the Attorney General went too far in one direction when they required juveniles to register retroactively without distinguishing between those who still pose a threat and those who are success stories of the juvenile justice system. Likewise, the Ninth Circuit's decision goes too far in the opposite direction, potentially allowing for more horror stories like Amanda Wengert. The one-size-fits-all approach taken by both Congress and the Court is contradictory to the goals of the juvenile justice system.

V. THE NEED FOR A CASE-BY-CASE REVIEW BEFORE REQUIRING REGISTRATION

The best way to balance the competing concerns between the public's interest in sex offender registration and the potential harm posed to those adjudicated as juveniles would be to review each individual on a case-by-case basis. This approach may at first seem to be costly and burdensome; however, it is important to note that the current regime is also costly and burdensome.⁸⁴ Valuable law enforcement time is wasted maintaining registry information, tracking down and prosecuting individuals who fail to comply with registry requirements, enforcing residency restrictions, and checking-up on individuals who no longer pose a threat.⁸⁵ It is more efficient to narrow the pool of potential repeat offenders as early as possible.

The SORNA provisions dealing with retroactive registration requirements of juveniles should be changed to require individual determinations, rather than summarily requiring every individual convicted as a juvenile to register. Factors that courts should consider include: (1) the age of the offender when the offense occurred; (2) what appeared to be the motivating factor behind the offense; (3) whether the offender successfully completed rehabilitation program and parole; and (4) whether there have been any subsequent charges or convictions against the offender.

In addition, this approach would not run afoul of the constitution because it is non-punitive and is truly aimed at protecting public safety. Specifically, the third, fourth and fifth *Mendoza-Martinez* factors would support this type of registry.

⁸⁴ See Lauren FitzPatrick, *Costs Mount to Support Sex Offender Laws*, THE METROWEST DAILY NEWS (Aug. 26, 2007), available at <http://www.metrowestdailynews.com/news/x 997379036>.

⁸⁵ *Id.*

CONCLUSION

Initially, sex offender registries were used largely to track adults who had been convicted of violent sex offenses. More recently, policymakers have expanded the scope of registries by including juveniles. Many of these new registries, such as SORNA, require individuals adjudicated in the juvenile system to register retroactively. As the Ninth Circuit noted, the vast majority of individuals affected by the SORNA's retroactive registration requirements will no longer be juveniles, but rather adults who committed these offenses long ago, and have since built families, homes and careers without their juvenile proceedings being made public. However, the potential remains that some individuals adjudicated as juveniles remain a threat. A case-by-case approach aimed at re-assessing the individual to determine whether they continue to pose a threat to society should be implemented.